



**New York State Bar Association**  
One Elk Street, Albany, New York 12207

**Committee on  
Professional Discipline**

**Annual Report on  
Lawyer Discipline in New York State  
for the Year 1993**

Part IV of this report contains a draft set of uniform rules for lawyer discipline. It should be understood that the draft is being circulated for discussion purposes only and that, unless and until the draft is adopted in whole or in part by the House of Delegates of the New York State Bar Association, no part of the draft rules should be attributed to the Association.





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THE STATE OF TEXAS,  
COUNTY OF [ ]

Know all men by these presents, that [ ] of the County of [ ] State of Texas, for and in consideration of the sum of [ ] Dollars, to [ ] in hand paid by [ ], the receipt of which is hereby acknowledged, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said [ ] of the County of [ ] State of Texas, all that certain [ ]

This report contains a draft set of uniform rules for lawyer discipline, prepared by a subcommittee of the New York State Bar Association's Committee on Professional Discipline. The Committee welcomes written comments on the draft rules from bar associations, grievance committees, and other interested entities or individuals. Such comments should be submitted no later than **November 15, 1994** to the Committee on Professional Discipline, New York State Bar Association, One Elk Street, Albany, New York 12207. To obtain additional copies of this report, please call the Committee's staff liaison at (518) 463-3200, extension 5691.

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## Introduction

Our annual reports in recent years have been divided into three parts. This year, we have added a fourth part that contains a draft set of uniform rules for lawyer discipline. It may be that this last part will prove to be the most significant (if not controversial) aspect of our report.

Although each part of our report is complete and self-contained, by way of introduction, we offer a summary of the report's various parts and a brief overview of the report as a whole so that the reader can better understand how those parts relate to each other.

In general, our report is intended to serve a dual purpose. It is, in part, a compilation of data, reflecting the immediate past in relation to the last ten years. Equally important (and with particular reference to the draft rules presented in Part IV), it is also an expression of our hope for progress in the future development of professional discipline as a constructive means for regulating the practice of law.

### PART I

The first part contains a statistical compilation of all disciplinary matters processed in New York State during 1993 and includes three tables. The last two of these tables compare disciplinary activity over the preceding ten years.

Before turning to the tables themselves, we identify in this introduction what we regard as some of the most significant statistics to be reported for the year just ended and offer a brief explanation of the terminology used in reporting about disciplinary matters.

#### Some Significant Statistics

Our statistics are generally intended to speak for themselves, with interpretation and analysis of the figures set forth in this report being left to its readers. However, there are a few apparently significant statistics that bear some comment.

First, as indicated by Table 1, the gap between the number of matters opened and the number of matters closed has begun to widen. Although the figures in last year's annual report indicated that there were fewer matters in process at the close of 1992 than at the close of 1991, the data for 1993 reflects 246 more matters in process at the close of the year than at its beginning. This is generally a sign that the disciplinary system is straining to cope with its caseload.

Second, as indicated by Table 2, the number of attorneys being disciplined by the courts has begun to level off. While last year's annual report indicated more

than a 20% increase in the number of such cases, the data for 1993 reveals a statewide decrease on the order of 12%. Indeed, except in the Fourth Department (where the number of such cases rose from 24 to 26), every department of the Appellate Division experienced some decrease during the year just ended.

Finally, the figures stated as of the close of 1993 reflect a significant increase in the number of private sanctions imposed by the grievance and disciplinary committees of the various departments. While the number of private sanctions imposed by these committees has risen somewhat in every department, the data reflects a truly remarkable 22% increase in such sanctions for the Second Department.

It may be too soon to say whether these differences mark a developing philosophy (of referring fewer cases to the courts for public discipline) or are just a statistical inconsistency produced by an irregular cycle of prosecutions. It is, however, clear that there are more matters being closed by private sanctions than in the past; and this trend is made even more evident when the reader compares the number of such dispositions for 1993 with the numbers in Table 2 going back over the years since 1984.

This last mentioned statistic has further significance for those who seek to eliminate the confidentiality which presently cloaks the hearing process in secrecy until there has been a determination of guilt warranting public censure, suspension or disbarment. With an ever-increasing amount of proceedings resulting in private sanctions, the system seems to be tending toward greater reliance in its supposed ability to correct misconduct without imperiling a respondent lawyer's reputation.

It also suggests that a system which provides for public hearings only after there has been a determination of probable cause to believe that the respondent is guilty of serious professional misconduct will result in a far smaller percentage of disciplinary proceedings being opened to the public than had been previously supposed. This is because, under the systems which obtain in three of the four departments, only the most serious cases require the use of so-called "formal" charges to initiate court-approved hearings.

#### Understanding the Tables

To those unfamiliar with the nomenclature of professional discipline in New York State, some of the terms used in the following tables may be confusing. The most basic unit used for statistical reporting purposes is a "matter"; but, even that seemingly uncomplicated term requires a word of explanation.

The practice has been initially to consider each intended complaint of misconduct or supposed cause for investigation as an "inquiry." When it appears that the

"inquiry" does not allege conduct which, even if true, would constitute professional misconduct, it is rejected "for failure to state a complaint." Otherwise, where a cognizable complaint has been alleged, the file is assigned for investigation.

All inquiries in the form of a written complaint that come to the attention of a disciplinary committee, whether or not subsequently dismissed for "failure to state a complaint," are deemed "matters" for reporting purposes. Simple requests for information about an attorney's conduct or mere telephonic accusations are no longer reported as "matters." Prior to 1990, for a time, such requests were reported as "matters" in at least two of the Departments, and that lack of uniformity had made statistical comparisons exceedingly difficult.

Often several "matters" will involve the same attorney; and all matters involving that attorney which are considered simultaneously will be deemed one "case."

The disciplinary procedures employed vary widely among the four Departments. Understandably, some of the terminology used to describe those differing procedures will also vary. What is remarkable about New York is that often the same procedures will be described differently by the various Departments of the Appellate Division and even functionally equivalent agencies of discipline will be known by different names.

For example, until May 1994 (when the First Department abolished them), all four Departments used "Letters of Caution." In the First, Second and Fourth Departments, such letters have not been considered professional discipline. However, in the Third Department, where there are so-called "Letters of Education" as well as Letters of Caution, the former have been deemed the functional equivalent of Letters of Caution and the latter considered a form of professional discipline.

Even the names used to describe the official agencies of discipline vary from one department to another. In the First Department, we refer to the "Departmental Disciplinary Committee" as the principal agency of professional discipline; in the Third Department, its functional equivalent is known as the "Committee on Professional Standards"; in the Second and Fourth Departments, there are three district "Grievance Committees" which serve as the principal agencies of discipline in each of those two Departments.

The amount of committee consultation and review also varies widely among the Departments; and assessing the workload of the respective disciplinary agencies in terms of the statistics reported is complicated by the wide variation in procedures. For example, before formal proceedings may be instituted in the Second, Third and Fourth Departments, the full district committee must be consulted and the court must approve issuance of the charges. However, in the First Department,

only one member of the committee need be consulted and the staff is authorized to issue charges without further consultation of the committee or approval by the court. The procedures on closing files reflect a similar degree of diversity in the amount of committee consultation and review.

The multiplicity of disciplinary committees operating throughout the State results in each committee receiving a substantial number of inquiries and complaints that fall within the jurisdiction of other committees and which must then be referred out. Sometimes this is a consequence of the complainant having chosen the wrong forum; other times it is as a consequence of judicial policy requiring official staff review of all complaints relating to attorney conduct. For example, in the Second and Fourth Departments, all complaints received by county bar association grievance committees (with the sole exception of the Monroe County Bar Association in the Fourth Department) are routinely referred to the professional staff of one of the district grievance committees. Even if the complaint appears to be nothing more than a fee dispute, by court rule in these Departments, a policy has been established to refer all inquiries to the district grievance committee's professional staff. Upon review, the district grievance committee, in turn, will refer a large portion of these matters to county bar association committees for further processing and investigation. Often a matter that was initially referred to the district committee will be referred back to the same county bar association. Such matters would be reported by the district committee as both "new matters received" and "referred to other disciplinary committees."

Statistics from the First Department include matters that are referred by the departmental disciplinary committee to the so-called "complaint mediation panels" operated pursuant to court order by members of the Association of the Bar of the City of New York, the Bronx County and Association and the New York County Lawyers' Association. Other matters, more properly regarded as "fee disputes," are referred to the joint committee on fee disputes for New York and Bronx Counties, consisting of members appointed by the same three local bar associations. Occasionally, matters that have been referred out to the mediation panels or the joint committee are referred back to the departmental disciplinary committee for further investigation.

The statistics from the Second Department represent the total number of actions taken by the various court appointed district committees and include the reports of county bar association grievance committees. The reports of the district committees, as well as those of the local bar association committees (including the respective grievance committees of the Dutchess, Orange, Putnam, Rockland and Westchester Bar Associations), are separately reproduced. In the Tenth Judicial District, the grievance committees of the Nassau and Suffolk County Bar Associations only investigate so-called "mi-

nor complaints" and then report them to the district committee which makes the ultimate disposition. Such matters, although for the most part processed by the local bar association committees, are incorporated in the report of the district committee.

In the Third Department, relatively few matters are processed by local bar associations. It is estimated that less than 10% of the total number of such matters are handled by such associations. But, no statistics are available that separately reflect such bar association activity.

Finally, in the Fourth Department, a substantial number of so-called "minor complaints" are processed by local bar associations. The local processing of such matters is included, without differentiation, in the statistics furnished by the district committees.

## PART II

The second part of this report summarizes all disciplinary decisions published by the four departments of the Appellate Division during 1993. Although these decisions are important in terms of expressing the judiciary's treatment of serious misconduct, it should be remembered that they represent only a small portion of the matters which pass through the disciplinary system each year, and that more than 90% of the cases that involve some form of professional misconduct are not referred to the court for imposition of discipline.

The lists of cases contained in this part are intended to summarize the disciplinary decisions issued by the four departments of the Appellate Division during the year just ended. There are eight lists, one for each of the official agencies of discipline. Each list is divided into three columns. The first column contains the respondent's name and the official citation; the second column contains a brief statement of the action taken by the court; and the last column summarizes the charges, where relevant to the proceedings.

As with all summaries, the need to condense a large body of information results in a loss of substantial detail. Accordingly, the reader who is interested in obtaining information about a particular case or respondent is cautioned not to rely on the summary presentation contained in these lists. Instead, such reader is urged to refer to the full text of the court's decision.

## PART III

The third part of our report contains various data on the organization and budget of our State's eight official agencies of discipline. It reflects appropriations made for those agencies during fiscal 1993-1994, as well as the professional staff's salaries as of June 1994.

This part is comprised of two sections. The first section sets forth the names and titles of the professional

disciplinary staff and their respective volunteer committee members in each of the eight official disciplinary agencies of the State. The second section sets forth the disciplinary budget appropriations for fiscal 1993-1994 and the salaries of disciplinary staff as of June 1994.

In reviewing these statistics, the reader is urged to consider the number of complaints processed in the course of a year as against the resources and personnel available to do the job. The tables contained in Part I of this report reveal that approximately 10,000 complaints are processed each year. Some of these complaints are very complicated and vigorously contested by skilled adversaries. Available to do this job are 156 volunteer lawyers and 36 non-lawyer volunteers appointed by the four departments of the Appellate Division. Assisting these volunteers are a few full-time professionals. State-wide, this group of professionals consists of only 52 staff attorneys, 29 examining investigators and 35 clerical personnel.

It is truly remarkable that each year this very small, albeit dedicated, group of approximately 300 individuals has been able to produce the amount of work required.

## PART IV

As stated, the fourth and final section of this report contains a draft uniform set of rules for lawyer discipline in New York. The draft was prepared by one of our subcommittees for consideration and comment by interested groups, individuals and public agencies. It is by no means final and is very much a work in process. It is being circulated with our report this year in order to move us farther along the path toward that day when New York will have a uniform set of rules for lawyer discipline.

The recommendations contained in this draft were to some extent influenced by findings made in connection with the comprehensive study of the discipline system which the Committee undertook last year. That study included on-site inspections of all eight district offices, and a review of 480 closed files selected at random. As part of our study, we also analyzed 225 cases designated by the Lawyers' Fund for Client Protection and conducted a statewide survey of lawyer attitudes about the disciplinary system.

Although no staff attorney-members of our Committee have participated in the work of the drafting subcommittee, the subcommittee's work has been greatly enhanced by comments and suggestions made by our staff attorney-members over the past year concerning various problems with which they have had to deal. Additionally, the subcommittee benefited from the observations made by all of the State's chief disciplinary counsel at the Committee's May 1994 annual seminar on professional discipline.

In preparing the draft, our subcommittee also reviewed several proposals to reform lawyer discipline generally and New York's system in particular. Among the various proposals studied were the ABA's "Lawyer Regulation for a New Century" (1992), the 1991 Report of its Commission on Evaluation of Disciplinary Enforcement (popularly known as the "McKay Committee"), and the ABA's Standards for Disciplinary Enforcement. Additionally, the subcommittee examined a number of proposals advanced by this Committee's report to our House of Delegates, as well as suggestions to change New York's system of lawyer discipline made in the 1980's by former Chief Judge Lawrence Cooke and Presiding Justice Francis T. Murphy of the First Department.

It was a humbling exercise for the subcommittee to review the many good ideas that have been proposed over the years. It was also very helpful to understand what well-informed and highly respected lawyers, judges and academicians considered to be an optimum system. Indeed, some of the proposals would have produced a radically different system than the one which currently exists in New York.

However, in the final analysis, the subcommittee declined to propose that the present system be radically changed. The draft which is presented for our consideration does not assume that we can write on a blank slate, using unlimited resources and with no regard for the political realities that have shaped the present system.

The inescapable fact is that we cannot write on a blank slate. Our resources are exceedingly limited and there are very real concerns about the manner in which the legal profession is regulated that will continue to shape lawyer discipline in New York.

What is proposed is not intended as an exercise in theory. Rather, the draft focuses on what is feasible; and, in an effort to create a realistic chance for its adoption, the draft provides for a uniform system that would change only those procedures which the subcommittee deemed most in need of modification, while occasioning relatively few dislocations in personnel and methods of operation.

For example, the present departmental and local bar association committee composition and structures are essentially retained with little change in their function or authority. Also by way of illustrating the subcommittee's incremental approach, although the draft makes specific provision for opening the disciplinary process to public scrutiny, it is done within the confines of the present law and without the need for additional legislation.

Consistent with the subcommittee's incrementalism, the discussion draft also continues a number of

progressive trends in disciplinary enforcement. Among the most significant of these is to place responsibility for the prosecution of disciplinary matters in the hands of independent professionals and to augment their ability to dispose of certain matters on an expedited basis. In a related context, the draft also limits the role of bar association committees to complaints involving minor misconduct by attorneys with no significant disciplinary history, complaint mediation programs and the resolution of fee disputes; and, even in those limited areas, the draft requires that the members of such committees be appointed by the courts.

Apart from the subcommittee's evident desire to see its work adopted, there is another reason that it opted for an incremental approach to change. In this connection, the subcommittee was keenly aware that the present system has been in operation without substantial change for the last 20 years. Yet, the system has avoided serious scandal and, though working in very sensitive areas involving some respondents with considerable influence, it has maintained a reputation for integrity. This is an impressive record of accomplishment; and, anyone proposing change to the disciplinary system must be prepared to demonstrate both why such change is necessary and that the benefits of the present system will not be imperiled by what is proposed.

As indicated, the discussion draft is neither a wish list nor a menu of vaguely stated options. Instead, it is highly detailed and, if adopted, would provide specific procedures in virtually all areas of lawyer discipline.

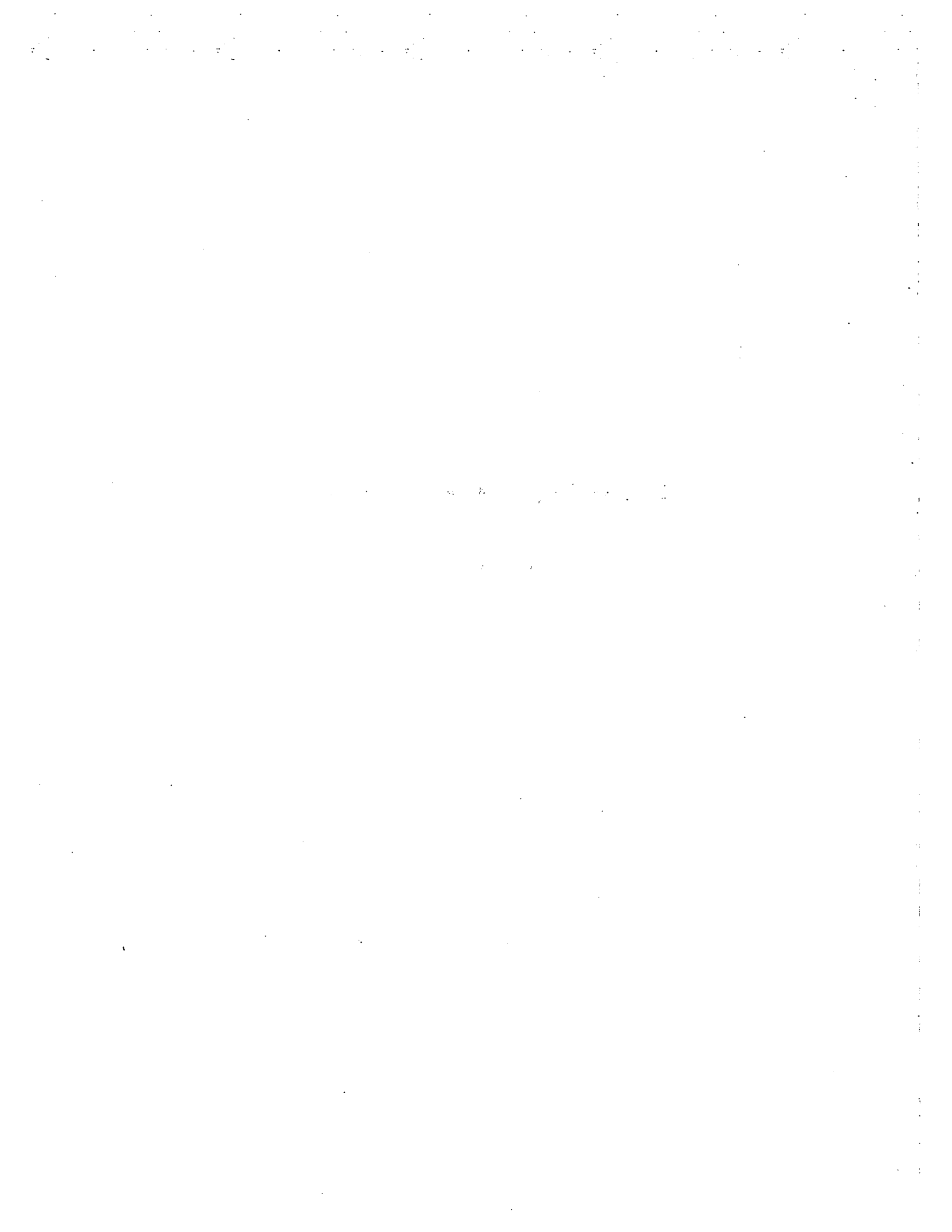
Whether these procedures are appropriate, desirable or sufficient are issues which can only be resolved by inviting examination and discussion of the draft. At this point, we have an adequate basis for discussion; and, we can now proceed to address lawyer discipline in New York using a common language and a uniform set of rules. But, if our project is to realize its goal, those rules must be the product of informed consensus. It is in that spirit that we seek written comments from the readers of this report.

After a suitable period for comments on the present draft, we hope to be able to use those comments in making revisions to the proposed uniform rules. A revised draft would then be submitted to the Association's governing body and, if approved, forwarded to the Administrative Board.

Frank R. Rosiny  
Chair

# **Disciplinary Statistics 1993**

## **Tables**





**Table 1**  
**Appellate Division**  
**(January 1, 1993 - December 31, 1993)**

	1st Dept.	2d Dept.	3d Dept.	4th Dept.	Total
<b>I. MATTERS PROCESSED:*</b>					
Pending at start of period	1288	2150	713	955	5106
New matters received**	3280	5542	1612	2185	12619
Matters disposed of	3264	5078	1702	2329	12373
Pending at end of period	1304	2614	623	811	5352
<b>II. COMMITTEE DISPOSITIONS:</b>					
Rejected for failing to state complaint	1054	1721	817	784	4376
Referred to other agencies***	498	1493	145	125	2261
Dismissed or withdrawn	1388	1164	486	1160	4198
Letters of caution	31	253	59	107	450
Letters of admonition	122	124	57	29	332
Admonition or reprimand	4	1	33	N/A	38
Referred to court	167	318	105	124	714
Other	0	4	0	0	4
<b>TOTAL DISPOSED OF:</b>	<b>3264</b>	<b>5078</b>	<b>1702</b>	<b>2329</b>	<b>12373</b>
<b>III. CASES PROCESSED IN COURTS:</b>					
Cases pending at start of period****	50	146	19	27	242
Cases received	151	155	81	56	443
<b>CASES CLOSED:</b>					
Disbarred	19	32	14	7	72
Resigned	9	11	13	3	36
Suspended	33	33	15	12	93
Censured	8	9	2	4	23
Censured privately	0	0	0	0	0
Remanded to Grievance Committee	6	2	5	1	14
Reinstatements granted	7	7	7	3	24
Reinstatements denied	5	14	0	3	22
Discontinued	7	1	0	0	8
Dismissed	12	1	3	0	16
All other dispositions	32	42	20	11	105
<b>TOTAL CLOSED:</b>	<b>138</b>	<b>152</b>	<b>79</b>	<b>44</b>	<b>413</b>
<b>TOTAL PENDING:</b>	<b>63</b>	<b>149</b>	<b>21</b>	<b>39</b>	<b>272</b>

\* "Matters" refers to the number of complaints, not of attorneys.  
 \*\* This includes complaints received and reactivated.  
 \*\*\* This includes matters referred to other disciplinary committees and other agencies.  
 \*\*\*\* Number of attorneys, not number of complaints.



**Table 2**

	<b>New Matters*</b>	<b>Matters Closed*</b>	<b>Disciplinary Action by Committees</b>	<b>Disciplinary Action by Court</b>
<b>1st Department</b>				
1984	3011	2693	123	39
1985	2869	2867	198	41
1986	2477	2838	194	38
1987	2328	2111	94	56
1988	4996	5087	86	45
1989	5278	5174	144	39
1990	2247	2408	175	40
1991	2343	2288	155	44
1992	2819	2808	146	71
1993	2782	2766	157	69
<b>2nd Department</b>				
1984	2646	2702	269	61
1985	2990	2966	290	64
1986	3452	3064	264	36
1987	3325	3465	282	49
1988	3119	3049	247	80
1989	3535	3170	291	75
1990	3275	3459	415	74
1991	3770	3672	395	105
1992	3519	3458	309	112
1993	4049	3585	378	85
<b>3rd Department</b>				
1984	662	746	57	24
1985	950	794	71	12
1986	976	986	96	16
1987	979	983	96	16
1988	1079	925	95	20
1989	1235	1237	63	13
1990	1374	1322	89	28
1991	1411	1326	121	40
1992	1450	1376	142	47
1993	1467	1557	149	44
<b>4th Department</b>				
1984	2083	1904	26	5
1985	2166	1934	42	5
1986	1895	1645	60	14
1987	2181	1992	51	19
1988	2631	2653	34	14
1989	2307	2368	26	14
1990	1659	2116	68	20
1991	1930	1775	77	12
1992	1939	2040	105	24
1993	2060	2204	136	26

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

**Statewide**

1984	8402	8045	475	129
1985	8975	8516	601	160
1986	8800	8310	614	104
1987	8813	8551	523	140
1988	11825	8929	462	159
1989	12355	11949	524	141
1990	8555	9305	747	162
1991	9454	9061	748	201
1992	9727	9682	702	254
1993	10358	10112	820	224

**Table 3**

	<b>New Matters*</b>	<b>Matters Closed*</b>	<b>Disciplinary Action by Committees</b>	<b>Disciplinary Action by Court</b>
<b>Departmental Disciplinary Committee for the First Department</b>				
1984	3011	2693	123	39
1985	2869	2867	198	41
1986	2477	2838	194	38
1987	2328	2111	94	56
1988	4996	5087	86	45
1989	5278	5174	144	39
1990	2247	2408	175	40
1991	2343	2288	155	44
1992	2819	2808	146	71
1993	2782	2766	157	69
<b>Grievance Committee for the Second and Eleventh Judicial Districts, Second Department</b>				
1984	519	453	49	24
1985	802	672	66	17
1986	867	716	55	6
1987	1019	916	56	18
1988	992	1017	92	33
1989	1142	941	102	12
1990	1122	1201	220	26
1991	1211	1134	210	34
1992	1104	1147	142	41
1993	1238	1308	182	36
<b>Grievance Committee for the Ninth Judicial District, Second Department</b>				
1984	604	534	38	20
1985	567	612	40	11
1986	826	598	24	18
1987	829	894	41	10
1988	825	732	63	22
1989	915	900	101	34
1990	733	938	92	28
1991	1042	1030	48	34
1992	915	802	45	27
1993	1017	853	77	21
<b>Grievance Committee for the Tenth Judicial District, Second Department</b>				
1984	1180	1411	164	17
1985	1070	1156	173	20
1986	826	1138	173	9
1987	829	1355	169	21
1988	1302	1300	92	25
1989	1478	1329	88	29
1990	1420	1320	103	20
1991	1517	1508	137	37
1992	1500	1509	116	44
1993	1794	1424	119	28

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

**Committee on Professional Standards, Third Department**

1984	662	746	57	24
1985	950	794	71	12
1986	976	986	96	16
1987	979	983	96	16
1988	1079	925	95	20
1989	1235	1237	63	13
1990	1374	1322	89	28
1991	1411	1326	121	40
1992	1450	1376	142	47
1993	1467	1557	149	44

**Grievance Committee for the Fifth Judicial District, Fourth Department**

1984	420	430	6	0
1985	568	566	0	2
1986	448	442	11	3
1987	385	382	1	5
1988	435	419	7	3
1989	406	404	2	8
1990	423	439	9	6
1991	453	400	12	0
1992	356	418	41	3
1993	423	364	13	4

**Grievance Committee for the Seventh Judicial District, Fourth Department**

1984	528	451	20	2
1985	424	441	24	2
1986	355	413	10	5
1987	602	467	14	5
1988	571	535	12	7
1989	535	566	17	6
1990	516	469	19	5
1991	486	472	15	3
1992	609	585	28	10
1993	647	741	32	7

**Grievance Committee for the Eighth Judicial District, Fourth Department**

1984	1136	1024	0	3
1985	1174	927	18	1
1986	1092	790	39	6
1987	1194	1143	36	9
1988	1625	1699	15	4
1989	1366	1398	7	0
1990	720	1208	40	9
1991	991	903	50	9
1992	972	1037	36	11
1993	990	1099	91	15

## **Statistical Reports of Disciplinary Committees**





## Departmental Disciplinary Committee for the First Department

### I. Matters Processed:\*

A. Matters Pending on Jan. 1, 1993	1288	
B. New Matters Received During Period	3280	
C. Closed Matters Reactivated During Period	0	
D. Total Matters To Be Processed During Period		4568
E. Total Matters Disposed of During Period		3264
F. Matters Pending on Dec. 31, 1993		1304

**CASES:**                      **MATTERS:**

### II. Matters Disposed of By Committee

A. Rejected as Failing to State a Complaint	1054	1054
B. Referred to Other Disciplinary Committees/Agencies	498	498
C. Dismissed	1388	1388
E. Letter of Caution	30	31
F. Letter of Admonition	110	122
G. Reprimand After Hearing	4	4
H. Referred to Appellate Division	61	167
I. Total Disposed of During Period	3145	3264

### III. Cases Processed in All Courts:

A. Cases Pending on Jan. 1, 1993		50
1. Disciplinary Proceedings	37	
2. Other	13	
B. Cases Received During Period		151
1. Disciplinary Proceedings	107	
2. Other	44	
C. Total To Be Processed During Period		201
D. Cases Closed		
1. Disbarred		19
2. Resigned		9
3. Suspended**		33
4. Censured		8
5. Privately Censured		0
6. Remanded to Grievance Committee		6
7. Discontinued		7
8. Dismissed		12
9. Reinstatements Granted		7
10. Reinstatements Denied		5
11. All Other Dispositions		32
12. Total Closed		138
E. Total Cases Pending at End of Period		63
1. Disciplinary Proceedings	50	
2. Other	13	

\* For purposes of this Report, "Matters" represents the number of complaints, telephone calls which initiate an investigation, inquiries and *sua sponte* investigation, 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.

\*\* Fifteen of the reported suspensions were interim suspensions.

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

### I. Matters Processed:

A. Matters Pending on Jan. 1, 1993	837	
B. New Matters Received During Period	1754	
C. Closed Matters Reactivated During Period	35	
D. Total Matters To Be Processed During Period		2626
E. Total Matters Disposed of During Period		1859
F. Matters Pending on Dec. 31, 1993		767

### CASES:

### MATTERS:

### II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	558	558
B. Referred to Other Disciplinary Committees	536	536
C. Referred to Other Agencies	15	15
D. Dismissed or Withdrawn	359	359
E. Letter of Caution (or Education)	129	129
F. Letter of Admonition	35	52
G. Admonition (or Reprimand)	1	1
H. Referred to Appellate Division	53	205
I. Tabled Pending Litigation	4	4
J. Total Disposed of During Period	1690	1859

### III. Cases Processed in All Courts:

A. Cases Pending on Jan. 1, 1993	51	135
1. Disciplinary Proceedings	39	123
2. Other	12	12
B. Cases Received During Period	71	165
1. Disciplinary Proceedings	42	136
2. Other	29	29
C. Total To Be Processed During Period	122	300
D. Cases Closed		
1. Disbarred	15	76
2. Resigned	3	1
3. Suspended	12	36
4. Censured	6	9
5. Privately Censured	0	0
6. Remanded to Grievance Committee	0	0
7. Discontinued	0	0
8. Dismissed	0	0
9. Reinstatements Granted	2	2
10. Reinstatements Denied	10	10
11. All Other Dispositions	16	16
12. Total Closed	64	150
E. Total Cases Pending at End of Period	58	150
1. Disciplinary Proceedings	45	137
2. Other	13	13

## Richmond County Bar Association Grievance Committee

### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	11
B.	New Matters Received During Period	33
C.	Closed Matters Reactivated During Period	0
D.	Total Matters to be Processed During Period	44
E.	Total Matters Disposed of During Period	30
F.	Matters Pending on Dec. 31, 1993	14

### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	0
B.	Retained by District Disciplinary Committee	7
C.	Referred to Fee Conciliation Committee	2
D.	Settled by Fee	0
E.	Judicially Settled	0
F.	In Litigation	0
G.	Referred to Commn. on Judicial Conduct	0
H.	Closed by Appellate Division	5
I.	Dismissed	14
J.	Letter of Caution	0
K.	Withdrawn	0
L.	Admonition (by district committee)	0
M.	Suspension (by district committee)	0
N.	Reprimand (by district committee)	0
O.	Disbarred	0
P.	Letter of Instruction	1
Q.	Total Disposed of During Period	30

## Brooklyn Bar Association Grievance Committee

Grievance Files Received in 1993:	95
Matters disposed of:	74
Matters pending on December 31, 1993:	21

Fee Dispute Files Received in 1993:	54
Scheduled for hearings:	0
Resolved:	0
Pending:	54

## Queens County Bar Association Grievance Committee

Dismissed:	40
Letter of Caution:	3
Tabled by Committee:	6
Referred to District Committee:	2

Fee Disputes Committee	
No consent from respondent:	9
No consent from complainant:	5
Matters settled before arbitration:	3
No response from either complainant or respondent:	10
Matters closed by arbitration:	7



## Dutchess County Bar Association Grievance Committee

### Appellate Division, Second Department, Ninth Judicial District

#### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	6
B.	New Matters Received During Period	31
C.	Closed Matters Reactivated During Period	0
D.	Total Matters to be Processed During Period	37
E.	Total Matters Disposed of During Period	21
F.	Matters Pending on Dec. 31, 1993	16

#### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	0
B.	Referred to Other Disciplinary Committees	1
C.	Referred to Other Agencies	1
D.	Dismissed	19
E.	Dismissed with Cautionary Language	0
F.	Letter of Caution	0
G.	Letter of Admonition	0
H.	Reprimand	0
I.	Total Disposed of During Period	21

## Orange County Bar Association Grievance Committee

### Appellate Division, Second Department, Ninth Judicial District

#### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	13
B.	New Matters Received During Period	33
C.	Closed Matters Reactivated During Period	1
D.	Total Matters to be Processed During Period	47
E.	Total Matters Disposed of During Period	36
F.	Matters Pending on Dec. 31, 1993	11

#### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	4
B.	Referred to Other Disciplinary Committees	0
C.	Referred to Other Agencies (White Plains handling)	0
D.	Dismissed	22
E.	Dismissed with Cautionary Language	9
F.	Letter of Caution	0
G.	Letter of Admonition	1
H.	Reprimand	0
I.	Total Disposed of During Period	36

## Putnam County Bar Association Grievance Committee

### Appellate Division, Second Department, Ninth Judicial District

#### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	4
B.	New Matters Received During Period	11
C.	Closed Matters Reactivated During Period	0
D.	Total Matters to be Processed During Period	15
E.	Total Matters Disposed of During Period	8
F.	Matters Pending on Dec. 31, 1993	7

#### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	5
B.	Referred to Other Disciplinary Committees	0
C.	Referred to Other Agencies	0
D.	Dismissed	3
E.	Dismissed with Cautionary Language	0
F.	Letter of Caution	0
G.	Letter of Admonition	0
H.	Reprimand	0
I.	Total Disposed of During Period	8

## Rockland County Bar Association Grievance Committee

### Appellate Division, Second Department, Ninth Judicial District

#### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	28
B.	New Matters Received During Period	37
C.	Closed Matters Reactivated During Period	0
D.	Total Matters to be Processed During Period	65
E.	Total Matters Disposed of During Period	46
F.	Matters Pending on Dec. 31, 1993	19

#### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	0
B.	Referred to Other Disciplinary Committees	1
C.	Referred to Other Agencies	0
D.	Dismissed or withdrawn	42
E.	Dismissed with Cautionary Language	1
F.	Letter of Caution	2
G.	Letter of Admonition	0
H.	Reprimand	0
I.	Total Disposed of During Period	46

# Westchester County Bar Association Grievance Committee

## Appellate Division, Second Department, Ninth Judicial District

### I. Matters Processed:

A.	Matters Pending on Jan. 1, 1993	92
B.	New Matters Received During Period	132
C.	Closed Matters Reactivated During Period	0
D.	Total Matters to be Processed During Period	224
E.	Total Matters Disposed of During Period	89
F.	Matters Pending on Dec. 31, 1993	135

### II. Matters Disposed of by Committee:

A.	Rejected as Failing to State Complaint	0
B.	Referred to Other Disciplinary Committees	9
C.	Referred to Other Agencies	0
D.	Dismissed	64
E.	Dismissed with Cautionary Language	4
F.	Letter of Caution	0
G.	Letter of Admonition	4
H.	Reprimand	0
I.	Withdrawn	8
J.	Total Disposed of During Period	89





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

**I. Matters Processed:**

A. Matters Pending on Jan. 1, 1993	713	
B. New Matters Received During Period	1563	
C. Closed Matters Reactivated During Period	49	
D. Total Matters To Be Processed During Period		2325
E. Total Matters Disposed of During Period		1702
F. Matters Pending on Dec. 31, 1993		623

**CASES:**

**MATTERS:**

**II. Matters Disposed of by Committee:**

A. Rejected as Failing to State a Complaint	777	817
B. Referred to Other Disciplinary Committees	121	121
C. Referred to Other Agencies	24	24
D. Dismissed or Withdrawn	423	486
E. Letter of Caution (or Education)	57	59
F. Letter of Admonition	46	57
G. Admonition (or Reprimand)	18	33
H. Referred to Appellate Division	62	105
I. Total Disposed of During Period	1528	1702

**III. Cases Processed in All Courts:**

A. Cases Pending on Jan. 1, 1993		
1. Disciplinary Proceedings	14	44
2. Other	5	5
B. Cases Received During Period		
1. Disciplinary Proceedings	60	115
2. Other	21	21
C. Total To Be Processed During Period	100	185
D. Cases Closed		
1. Disbarred	14	53
2. Resigned	13	13
3. Suspended	15	18
4. Censured	2	2
5. Privately Censured	0	0
6. Remanded to Grievance Committee	5	6
7. Discontinued	0	0
8. Dismissed	3	3
9. Reinstatements Granted	7	7
10. Reinstatements Denied	0	0
11. All Other Dispositions	20	29
12. Total Closed	79	131
E. Total Cases Pending at End of Period	21	54
1. Disciplinary Proceedings	19	52
2. Other	2	2



## Grievance Committee for the Seventh Judicial District of the Fourth Department

### I. Matters Processed:

A. Matters Pending on Jan. 1, 1993	319	
B. New Matters Received During Period	621	
C. Closed Matters Reactivated During Period	38	
D. Total Matters To Be Processed During Period		978
E. Total Matters Disposed of During Period		753
F. Matters Pending on Dec. 31, 1993		225

**CASES:**

**MATTERS:**

### II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	236	244
B. Referred to Other Disciplinary Committees	10	10
C. Referred to Other Agencies	2	2
D. Dismissed or Withdrawn	324	414
E. Letter of Caution (or Education)	12	25
F. Letter of Admonition	3	7
G. Admonition (or Reprimand)	N/A	N/A
H. Referred to Appellate Division	14	51
I. Total Disposed of During Period	601	753

### III. Cases Processed in All Courts:

A. Cases Pending on Jan. 1, 1993		6
1. Disciplinary Proceedings	6	
2. Other	0	
B. Cases Received During Period		14
1. Disciplinary Proceedings	8	
2. Other	6	
C. Total To Be Processed During Period		20
D. Cases Closed		
1. Disbarred		1
2. Resigned		0
3. Suspended		4
4. Censured		2
5. Privately Censured		0
6. Remanded to Grievance Committee		0
7. Discontinued		0
8. Dismissed		0
9. Reinstatements Granted		0
10. Reinstatements Denied		2
11. All Other Dispositions		0
12. Total Closed		9
E. Total Cases Pending at End of Period		11
1. Disciplinary Proceedings	8	
2. Other	3	

## Grievance Committee for the Eighth Judicial District of the Fourth Department

### I. Matters Processed:

A. Matters Pending on Jan. 1, 1993	543	
B. New Matters Received During Period	921	
C. Closed Matters Reactivated During Period	90	
D. Total Matters To Be Processed During Period		1554
E. Total Matters Disposed of During Period		1120
F. Matters Pending on Dec. 31, 1993		434

CASES:                      MATTERS:

### II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	372	393
B. Referred to Other Disciplinary Committees	18	18
C. Referred to Other Agencies	3	3
D. Dismissed or Withdrawn	399	555
E. Letter of Caution (or Education)	56	72
F. Letter of Admonition	14	19
G. Admonition (or Reprimand)	N/A	N/A
H. Referred to Appellate Division	33	60
I. Total Disposed of During Period	895	1120

### III. Cases Processed in All Courts:

A. Cases Pending on Jan. 1, 1993		18
1. Disciplinary Proceedings	7	
2. Other	11	
B. Cases Received During Period		33
1. Disciplinary Proceedings	20	
2. Other	13	
C. Total To Be Processed During Period		51
D. Cases Closed		
1. Disbarred		6
2. Resigned		3
3. Suspended		4
4. Censured		2
5. Privately Censured		0
6. Remanded to Grievance Committee		0
7. Discontinued		0
8. Dismissed		0
9. Reinstatement Granted		2
10. Reinstatement Denied		1
11. All Other Dispositions		10
12. Total Closed		28
E. Total Cases Pending at End of Period		23
1. Disciplinary Proceedings	10	
2. Other	13	

**Disciplinary Decisions Reported by  
Appellate Division in 1993**



## FIRST DEPARTMENT

Attorney	Discipline Imposed	Statute or Rule
Joseph L Colp 185 AD2d 43	Indefinite Suspension	22 NYCRR 603.16(b)(1) (mental incapacity).
Omar Z. Ghobashy (admitted as Omar Zaki Ghobashy) 185 AD2d 23	Disbarred	DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresenta- tion); DR 7-101(A)(3) (pre- judicing or damaging client); DR 4-101(B)(1),(2) (revealing client confidences); DR 6-101 (A)(3)(neglect); DR 2-110 (B) (4) (refusal to withdraw); DR 2-110(A)(2) (failure to coop- erate with new counsel and attempt to interfere); DR 7- 106(C)(1) (false and reckless affirmations to Court); DR 9- 102(B)(4)(failure to return client property); DR 5-108(A) (1)(after 1990 amendments) (conflict of interest); DR 1- 102(A)(6), (7) (after 1990 amendments)(conduct ad- versely affecting fitness to practice law).
William J. Unroch (admitted as William Joseph Unroch) 189AD2d 704	Suspended 6 months retroactive to 2/3/83	Judiciary Law §90(4)(d) (serious crime).
Morton Greenberg 187 AD2d 12	Interim Suspension	Judiciary Law §90(4)(d) (serious crime - felony con- viction [conspiracy to commit mail fraud and mail fraud]).
Carol A. Safier 187 AD2d 198	Interim Suspension	22 NYCRR §603.4(e)(1)(i) and (ii) (willful failure to cooperate with Committee's investigation of professional misconduct; substantial ad- missions under oath of pro- fessional misconduct).
Louis V. Viscomi 187 AD2d 78	Interim Suspension	22 NYCRR §603.4(e)(1)(i) (willful failure to cooperate with Committee's investi- gation).

Jerrold Alvin Domingo 188 AD2d 78	Disbarred	DR 1-102(A)(4)(conversion); DR 9-102(A)(commingling); DR 6-101(A)(3)(neglect); DR 1-102(A)(conduct prejudicial to administration of justice [willful failure to cooperate with committee's investiga- tion and failure to register]).
Ephraim Frenkel 188 AD2d 104	Stricken on Consent	22 NYCRR §603.11 (resigna- tion of attorney under in- vestigation).
Tomas L. Ryan (admitted as Tomas Luis de Heredia Ryan) 189 AD2d 96	Censured	DR 5-101(A) (failure to refuse employment when interests of the lawyer may impair pro- fessional judgment).
Bertram Zweibon 188 AD2d 65	Stricken	Judiciary Law §90(4)(b) (plea of guilty to felony [grand larceny, 2d degree]).
Narciso Zantiago Marilao (admitted as Narciso Santiago Marilao, Jr.) 188 AD2d 146	Stricken	Judiciary Law §90(4)(b) (felony conviction [18 USC §371, conspiracy to defraud the INS; 18 USC §1001, making false statements to the INS; Penal Law §175.35, class "E" felony]).
Charles M. Powell, Jr. (admitted as Charles Michael Powell, Jr.) 189 AD2d 155	Suspended 3 months	DR 1-102(A)(5) and (6) [now 7] (failure to satisfy judg- ments); DR 6-101(A)(3) and DR 7-101(A)(3) (neglect, failure to communicate and failure to cooperate with successor counsel); DR 6- 101(A)(3) and DR 1-102(A)(4) (making false representations to client re status of matter).
Leo Eckman	Indefinite Suspension	22 NYCRR §603.16(b)(1) (mental incapacity).



Elliot J. Stein  
189 AD2d 128

Disbarred

DR 1-102(A)(4) (conversion), DR 1-102(A)(6)[now 7] (conduct adversely reflecting on fitness to practice law, conversion); DR 9-102(A) and (B) (failure to maintain and preserve identity of client funds); DR 9-102(B)(4) and (C)(4) [as amended effective 9/1/90] (failure to pay funds promptly to clients); DR 1-102(A)(4), DR 1-102(A)(6) [now 7], DR 7-101(A)(1) and (3) (improper settlement of client matters, failure to advise of receipt of settlement checks); DR 1-102(A)(4),(5) and (7) (forged document to committee, lying under oath).

Seymour Brown  
189 AD2d 146

Stricken on Consent

22 NYCRR §603.11 (resignation of attorney under investigation).

Jonathan Lubell (admitted as  
Jon Lubell)  
189 AD2d 186

Interim Suspension

22 NYCRR §603.4 (e)(1)(i) and (iii) (willful failure to cooperate with committee's investigation; uncontroverted evidence of professional misconduct).

Leonard Howard Rubin  
189 AD2d 184

Stricken

Judiciary Law §90(4)(b) (felony conviction [Penal Law §155.40(1), grand larceny 2d degree]).

Daniel P. Duthie (admitted  
as Daniel Patrick Duthie)  
189 AD2d 197

Censured

Judiciary Law §90(4) (serious crime [failure to file state tax returns [misdemeanors]]).

Samson Jochnowitz  
189 AD2d 342

Disbarred

DR 1-103(A)(failure to report misconduct); DR 1-102(A)(4) (dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 1-102(A)(6) [now 7] (conduct adversely reflecting on fitness to practice law); DR 6-101(A)(3) (neglect).

<p>Ross S. Frankel (admitted as Ross Spencer Frankel) 189 AD2d 261</p>	<p>Stricken</p>	<p>Judiciary Law §90(4)(b) (felony conviction [18 USC §371, conspiracy; 15 USC §78j(b), 78(ff), securities fraud; 18 USC §1341, mail fraud; 18 USC §1621, perjury; 18 USC §1505, obstruction of justice]).</p>
<p>Jarrett F. Glantz (admitted as Jarrett Frankel Glantz) 189 AD2d 271</p>	<p>Interim Suspension</p>	<p>22 NYCRR §603.4(e)(1)(ii) (substantial admissions under oath of serious professional misconduct).</p>
<p>Jacob Rabinowitz 189 AD2d 402</p>	<p>Suspended 3 years</p>	<p>DR 6-101(A)(3)(neglect); DR 1-102(A)(4)(misrepresenting status of legal matter and providing misleading infor- mation to the committee); DR 1-102(A)(5)(failing to comply with court order); DR 1- 102(A)(6) [now 7] (conduct adversely reflecting on fitness to practice law).</p>
<p>Alvin J. Klugerman 189 AD2d 284</p>	<p>Suspended 2 years</p>	<p>DR 9-102(A)(commingling); DR 9-102(B)(1),(2),(3) (fail- ing to notify client of receipt of funds, failing to maintain records, failing to pay funds to client); DR 1-102(A)(6) [now 7] (conduct adversely reflecting on fitness to prac- tice law).</p>
<p>Frank J. DeSalvo (admitted as Frank Joseph DeSalvo) 189 AD2d 322</p>	<p>Stricken</p>	<p>Judiciary Law §90(4)(b) (felo- ny conviction [18 USC §§1623 (a), 3551, Perjury (Penal Law §210.15, class "D" felony); 18 USC §1503, obstruction of justice; 18 USC §1503, intimid- ation of witnesses).</p>
<p>Thomas Kavanagh 189 AD2d 521</p>	<p>Censured</p>	<p>DR 1-102(A)(6) [now 7] (con- duct adversely reflecting on fitness to practice law); DR 7- 106(C)(6)(engaging in undig- nified or discourteous conduct which is degrading to a tri- bunal).</p>

Godwin R. Valdez (admitted as Godwin Reyes Valdez) 189 AD2d 459	Disbarred	Judiciary Law §90(4)(d) (serious crime [18 USC §911, falsely representing U.S. citizenship; 18 USC §371 (conspiring to make false statements to the INS)]).
Saul Radow 190 AD2d 1	Disbarred	DR 1-102(A)(4),(5) and (6) [now 7] (dishonesty, conduct prejudicial to administration of justice).
Helaine Brick 190 AD2d 1	Disbarred	DR 1-102(A)(4),(5) and (6) [now 7] (conduct prejudicial to administration of justice).
Saranto Pikoulos 189 AD2d 457	Interim Suspension	22 NYCRR §603.4(e)(1)(i) (willful failure to cooperate with Committee's investigation).
A. Richard Golub 190 AD2d 110	Censured	DR 1-102(A)(5) and (6) [now 7] (conduct prejudicial to administration of justice); DR 7-106(C)(6)(discourteous conduct degrading to tribunal).
David F. Brown (admitted as David Fain Brown) 190 AD2d 84	Interim Suspension	Judiciary Law §90(4)(d) (serious crime - 18 USC §371 [conspiracy to commit offense or defraud United States]).
John D. Goldman (admitted as John David Goldman) 190 AD2d 152	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney under investigation)
Steven A. Harris (admitted as Steven Alan Harris) 190 AD2d 132	Stricken	Judiciary Law §90(4)(b) (felony conviction - 18 UCS §§ 473 and 2 [counterfeiting]).
Kenneth Linn 190 AD2d 155	Suspended 5 years	DR 1-102(A)(4)(conversion).

Arthur I. Strier 190 AD2d 140	Disbarred	DR 1-102(A)(3)(illegal conduct involving moral turpitude); DR 1-102(A)(4) (dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 1-102(A)(6)[now 7](conduct adversely reflecting on fitness to practice law); DR 7-102(A)(7) (counselling or assisting a client in conduct the lawyer knows to be illegal or fraudulent).
Kenneth S. Pelsinger 190 AD2d 158	Suspended 3 years	DR 9-102(A)(failure to preserve identity of client funds, commingling); DR 1-102(A)(4) (using client funds for personal expenses); DR 9-102(B)(4)(failure promptly to return client property); DR 9-102(B)(3)(failure to render appropriate accounts); DR 1-102(A)(5)(failure to cooperate with committee in its investigation); DR 1-102(A)(6)[now 7] (conduct adversely reflecting on fitness to practice law).
Michael M. Maloney 190 AD2d 191	Stricken	Judiciary Law §90(4)(e) (felony conviction - 18 USC §371 [conspiracy]; 18 USC §1344 [bank fraud]).
Edward F. McLaughlin 190 AD2d 298	Interim Suspension	22 NYCRR 603.4(e)(1)(i) (willful failure to cooperate with Committee's investigation).
Jack G. Goldberg (admitted as Jack Gerald Goldberg) 190 AD2d 269	Suspenses 2 years, 6 months, <i>nunc pro tunc</i> , from date of interim suspension.	Judiciary Law §486 (practicing while suspended).
Jordan Schiff 190 AD2d 293	Censured	DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law).
David Segal 190 AD2d 295	Suspended 2 years	DR 6-101(A)(3)(neglect); DR 2-110(A)(3)(failure to return unearned fee).

James D. Fornari (admitted as James Daniel Fornari)  
190 AD2d 379

DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(6)[now 7] (conduct adversely reflecting on fitness to practice law).

Saul Jakubowitz  
190 AD2d 301

Stricken on Consent

22 NYCRR 603.11 (resignation of attorney under investigation).

Jonathan Lubell (admitted as Jon Lubell)  
190 AD2d 479

Disbarred

DR 1-102(A)(4)(conversion, conduct involving dishonesty, fraud, deceit or misrepresentation); DR 9-102(A)(failure to preserve identity of client funds); DR 7-102(A)(5)(knowingly making false statement of fact); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 7-106(A)(disregarding ruling of a tribunal); DR 1-102(A)(6)[now 7] (conduct adversely reflecting on fitness to practice law).

Steven F. Miller (admitted as Steven Frederick Miller)  
190 AD2d 335

Interim Suspension

22 NYCRR 603.4 (e)(1)(i) (willful failure to cooperate with Committee's investigation).

Gilbert Stuart Glotzer (admitted as Gilbert S. Glotzer)  
191 AD2d 112

Suspended 6 months

DR1-102(A)(4)(conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 1-102(A)(6)[now 7])(conduct adversely reflecting on fitness to practice law).

Michael F. Erdheim  
191 AD2d 105

Disbarred

DR 1-102(A)(4) and (6)[now 7] (conduct involving deceit and misrepresentation, conversion); DR 9-102(A)(commingling); DR 9-102(B)(3)(failure to account); DR 5-104(A) (engaging in prohibited financial activities with respect to clients).

Benjamin Sneed 191 AD2d 118	Suspended 5 years	DR 1-102(A)(6)[now 7](conduct adversely reflecting on fitness to practice law); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 6-101(A)(3)(neglect); DR 2-110(B)(4)(failure to withdraw from employment on discharge by client).
Michael G. Marinangeli 191 AD2d 93	Interim Suspension	Judiciary Law §90(4)(d) (serious crime/felony conviction - 18 USC §1708 [theft of mail]).
Michael Markovitch 191 AD2d 116	Interim Suspension	Judiciary Law §90(4)(d) (serious crime/felony conviction - 18 USC §371 [conspiracy to commit immigration fraud]).
Daniel Siegel 193 AD2d 181	Suspended 3 years	DR 6-101(A)(3)(neglect); DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); DR 7-101(A)(1)(intentionally failing to seek client's lawful objectives); DR 7-101(A)(2) (intentionally failing to carry out contract of employment); DR 1-102(A)(5)(conduct prejudicial to administration of justice).
Lorenzo A. DeLuca 193 AD2d 208	Interim Suspension	22 NYCRR 603.4(e)(1)(i) (willful failure to cooperate with Committee's investigation).
Birol John Dogan 193 AD2d 200	Stricken	Judiciary Law §90(4)(d)(felony conviction - Penal Law §155.30 [grand larceny, 4th degree - class E felony]).
Steven M. Kramer 193 AD2d 222	Censured	22 NYCRR 603.3 (discipline in foreign jurisdiction [New Jersey]).
Joel H. Cohen (admitted as Joel Harvey Cohen) 193 AD2d 197	Suspended 1 year	Judiciary Law §90(4)(d) (serious crime - 26 USC §7206 [1] [filing false tax return]).

William J. Werner 193 AD2d 119	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney under investigation).
Ann Rader Troitino Johnston (admitted as Ann Rader Troitino) 193 AD2d 168	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney convicted of "serious crime").
Alexander B. Stein 193 AD2d 217	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney under investigation).
Howard S. Pozmanter 193 AD2d 230	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney under investigation).
Walter G. Perry (admitted as Walter Gordon Perry) 193 AD2d 282	Suspended 5 years	22 NYCRR 603.3 (discipline in a foreign jurisdiction [Minnesota]).
Milton Feinman 193 AD2d 294	Stricken	Judiciary Law §90(4)(b)(felony conviction - grand larceny, 3d degree [class D felony]; scheme to defraud, 1st degree [class E felony]).
Alan J. Harris (admitted as Alan Jay Harris) 193 AD2d 317	Suspended 3 years	DR 102(A)(4)(dishonesty, fraud, deceit and misrepresentation); DR 1-102(A)(5) (conduct prejudicial to administration of justice); DR 1-102(A)(6)[now 7](conduct adversely reflecting on fitness to practice law).
Allen C. Cohen 193 AD2d 301	Stricken on Consent	22 NYCRR 603.11 (resignation of attorney under investigation).
Herbert Harris Jr. 193 AD2d 336	Interim Suspension	22 NYCRR 603.4(e)(1)(i) (willful failure to cooperate with Committee's investigation).
John D. LaSalle 194 AD2d 28	Censured	22 NYCRR 603.3 (discipline in a foreign jurisdiction [Colorado]).
Melvin M. Kazdin 194 AD2d 13	Suspended 1 year	Judiciary Law §90(4)(d)(serious crime - 18 USC §1512[b] [tampering with a witness]; 18 USC §7201 [tax evasion]).

William S. Kaye (admitted as William Spiegler Kaye) 194 AD2d 99	Interim Suspension	22 NYCRR 603.4(e)(1)(iii) (uncontroverted evidence of serious professional miscon- duct).
William M. Kunstler	Censured	Judiciary Law §90(4)(d)(seri- ous crime [summary criminal contempt]).
Ned S. Borowsky (admitted as Ned Samuel Borowsky)	Interim Suspension	Judiciary Law §90(4)(d)(seri- ous crime - 18 USC §1341 [mail fraud]).

## SECOND DEPARTMENT

### (Second and Eleventh Judicial Districts)

Paul E. DuBois 185 AD2d 46	Censured	Neglect and false notari- zation.
William Jacobs 185 AD2d 61	Disbarred	Failure to cooperate.
Peter D. Kolbrenner 185 AD2d 75	Suspended 1 year	Neglect and failure to cooperate.
David W. Alvey 188 AD2d 3	Disbarred	Felony conviction.
Melvin Y.Q. Wong 188 AD2d 150	Suspended 1 year	Reciprocal discipline - Hawaii.
George E. Taft 188 AD2d 106	Censured	Reciprocal discipline - 4 month suspension - Vermont.
Richard P. Perrin 188 AD2d 128	Disbarred	Serious crime conviction - General Business Law §352 (c)(2)(class A misdemeanor).
Diane Calderone 189 AD2d 1	Disbarred	Neglect; failure to respond to communications from court clerk; failure to cooperate.
Melyin M. Lebetkin 189 AD2d 107	Disbarred	Serious crime conviction - 18 USC §1341 (mail fraud).
Robert T. Rowe 191 AD2d 636	Disbarred	Upon remittitur from Court of Appeals - murder of family; criminal conviction (escape third degree).



Norman Eric Teitler 189 AD2d 162	Criminal contempt	Violation of disbarment order.
Richard J. Oddo 189 AD2d 212	Disbarred	Conversion; commingling; failure to produce records; altering documents.
Jerome Gross 189 AD2d 181	Censured	Failure to maintain escrow account; commingling; failure to maintain financial records.
Harvey Sorid 189 AD2d 377	Suspended 3 years	Neglect; submission of false and misleading document to grievance committee; failure to cooperate.
Walter H. Blaich, Jr. 189 AD2d 315	Disbarred	Felony conviction.
Norman Heiman	Interim Suspension	Serious crime conviction.
Simeon J. Greenaway 190 AD2d 69	Suspended 3 years	Neglect; failure to cooperate; seeking to improperly limit liability to client.
Irwin A. Rosenberg 189 AD2d 546	Disbarred	Represented a client in court which he served as Chief Law Assistant; tried to induce complainant to withdraw complaint; misuse of escrow funds.
Donald A. Rosales 190 AD2d 214	Censured	Assisted or counseled client in conduct known to be illegal or fraudulent (DR 7-102[A][7]).
Lee Bostic 190 AD2d 193	Suspended 1 year	Failure to safeguard client funds; failure to maintain required bookkeeping records; conflict of interest; neglect.
Gary M. Kaminsky 190 AD2d 225	Disbarred	Conversion; commingling; altered stipulation without advising adversary.
Gerald P. Harris 191 AD2d 76	Suspended 2 years	Failure to deposit down payment in bank account; failure to cooperate.
Joseph C. Schioppi 190 AD2d 258	Suspended 1 year	Reciprocal discipline - public reprimand by U.S. District Court, New Jersey.

R. Scott Daly 191 AD2d 127	Disbarred	Conversion; failure to maintain records; neglect; failure to cooperate.
Scott Posner	Interim suspension	Failure to answer complaints.
Norman F. Russakoff 192 AD2d 223	Disbarred	Conversion; commingling.
John W. Blaha 192 AD2d 255	Suspended 1 year	Failure to cooperate.
Joseph Licata	Interim suspension	Failure to answer complaints.
Wayne J. Price	Interim suspension	Substantial admissions and uncontroverted evidence of professional misconduct.
Seymour Friedman 192 AD2d 200	Disbarred (Later reduced to 5 year suspension)	Subornation of perjury; commingling; issuing checks which were dishonored due to insufficient funds; issuing checks on uncollected funds.
Robert Clark 193 AD2d 116	Censured	Physical assault on adversary; making false statement in answer to complaint; giving false testimony.
Albert Laboz	Interim suspension	Serious crime conviction - 18 USC §1343 (Wire fraud).
Frank X. Stella 193 AD2d 235	Suspended 2 more years	Commingling; conflict of interest; neglect; improperly retained interest on escrow account.
Denis A. Tomlinson 193 AD2d 227	Resigned	Conversion.
Louis Taubenblatt	Interim suspension	Failure to cooperate.
Michael D. Wohl 193 AD2d 274	Suspended 5 years	Reciprocal discipline - Florida resignation with leave to apply for readmission in 5 years.
Irving W. Levine 193 AD2d 296	Censured	While a judge, improperly agreed to adjourn a case pending before him; knowingly made false statement to F.B.I.

Wayne J. Price 193 AD2d 299	Disbarred	Felony conviction.
Peter Brogan 193 AD2d 286	Resigned	Conversion.
Leo Agrillo 194 AD2d 16	Disbarred	Failure to safeguard funds entrusted to him as attorney; failure to produce financial records; failure to act competently as attorney in a criminal case; failure to file Federal and State personal income tax returns.
Mark S. Kaminsky 194 AD2d 89	Resigned	Conversion.
Derick William White	Interim suspension	Failure to cooperate.
Melvin M. Pine 604 NYS2d 974	Suspended 3 years	Conflict of interest.
Indar Singh	Disbarred	Felony conviction.

(Ninth Judicial District)

Raymond R. Barlaam 192 AD2d 106	Censured	DR 6-101(A)(3)(neglect); DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law).
Paul A. Bartolotta	Reinstatement denied.	
Kenneth Z. Berman 188 AD2d 189	Disbarred (resignation)	DR 9-102(B)(conversion).
Angela M. Bray 189 AD2d 148	Disbarred	DR 6-101(A)(3)(neglect); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); 22 NYCRR 691.4(1)(failure to cooperate); Judiciary Law §468-a(failure to register).

Jerome D. Brownstein 189 AD2d 244	Censured	DR 5-101(A)(conflict of interest, own financial or business interests); DR 1-102 (A)(7) (conduct adversely reflecting on fitness to practice law); DR 2-103()D(4)(a), (d) (being employed or paid by legal services organization which he initiated to provide financial or other benefit to himself which does not provide procedures for alternate counsel where there is claim that counsel provided is unethical, improper or inadequate).
David A. Cass 187 AD2d 4	Disbarred	DR 5-101(A)(conflicts of interest, own financial or business interest); DR 9-102(A), (B)(conversion, commingling).
R. Emmet Delany	Interim Suspension	Judiciary Law §90(4)(d),(g) (convicted of serious crime, disciplinary proceeding authorized).
Richard A. DeLorenzo 189 AD2d 256	Disbarred (Resigned)	DR 9-102(A), (B) (mishandling escrow funds).
Paul B. Donohue	Interim Suspension	22 NYCRR 691.4(a)(failure to cooperate, disciplinary proceeding authorized, attorney appointed to inventory files).
Paul B. Donohue 193 AD2d 232	Disbarred	DR 6-101(A)(3)(neglect); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law, failure to communicate, failure to cooperate); DR 2-106(A)(collection of illegal or excessive fee); DR 9-102(C)(failure to account); Judiciary Law §468-a (failure to register).

Paul J. Eckelman  
189 AD2d 263

Disbarred

DR 9-102(A),(B),(C) (conversion, breach of fiduciary responsibility); DR 9-102(A), (B)(failure to maintain duly constituted escrow account, commingling); DR 1-102(A)(7) (conduct adversely reflecting on fitness to practice law, failure to communicate); DR 9-102(D)(1)(failure to maintain escrow records); DR 6-101(A)(3)(neglect); Judiciary Law §468-a(failure to register); DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresentation, false statements under oath).

Edward J. Filipowicz  
188 AD2d 98

Suspended 3 years.

DR 6-101(A)(3)(neglect); DR 9-102(A)(failure to account); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 1-102(A)(4)(dishonesty, fraud, deceit or misrepresentation and overreaching).

Gerald J. Garner  
113 S. Ct. 1263

Petition for Writ of Certiorari denied.

Lora C. Graham

Interim Suspension

22 NYCRR 691.4(1)(failure to cooperate; disciplinary proceeding authorized; attorney appointed to inventory files.

Lora C. Graham  
605 NYS2d 359

Disbarred (Resigned)

DR 6-101(A)(3)(neglect); DR 1-102(A)(7)(conduct adversely reflecting fitness to practice law, failure to cooperate); DR 9-102(mishandling escrow funds).

S. Simpson Gray

Motion for reinstatement held in abeyance, referred to Committee on Character and Fitness.

Benjamin B. Hersh

Motion to vacate disbarment denied.

Benjamin B. Hersh

Reinstatement denied.

William E. Karamitis 188 AD2d 123	Disbarred	DR 1-102(A)(4)(conduct involving dishonesty, fraud, deceit or misrepresentation, conversion); DR 6-101(A)(3) (neglect); DR 1-102(A)(7) (conduct adversely reflecting on fitness to practice law, failure to maintain duly constituted escrow account, failure to maintain escrow records).
William E. Karamitis 82 NY2d 652	Motion for leave to appeal denied.	
Lawrence E. Kristoff 194 AD2d 30	Disbarred	22 NYCRR 691.3 (reciprocal discipline - Connecticut).
Herbert M. Kuschner	Interim Suspension	Judiciary Law §90(4)(d) (serious crime - conviction of Penal Law §175.30, offering false instrument for filing; disciplinary proceeding authorized).
Dennis C. Larsen	Motion for reargument denied.	
Dennis C. Larsen	Appeal dismissed for want of prosecution.	
Stephen J. Lehrman 193 AD2d 698	Suspended 2 years	DR 1-102(A)(4)(conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); DR 3-101(A) (aiding a nonlawyer in unauthorized practice of law); DR 1-102(A)(5)(conduct prejudicial to administration of justice); DR 7-106(C)(7) (intentionally violating a rule of procedure); DR 6-101(A)(2), (3)(neglect, handling a legal matter without adequate preparation); DR 5-105(A), (B)(engaging in impermissible conflict of interest).
Stephen J. Lehrman	Motion for leave to appeal denied.	

Kenneth F. Merlo	Motion for reinstatement held in abeyance, referred to Committee on Character and Fitness.	
Roger I. Milch 192 AD2d 297	Disbarred	DR 1-102(A)(4),(7)(conduct involving dishonesty, fraud, deceit or misrepresentation, conduct adversely reflecting on fitness to practice law, conversion); DR 9-102(commingling, failure to maintain duly constituted escrow account); DR 6-101(A)(3)(neglect).
Joseph C. Noto 185 AD2d 94	Censured	22 NYCRR 691.3 (reciprocal discipline - New Jersey).
Herbert N. Posner	Motion for reinstatement held in abeyance - referred to Committee on Character and Fitness.	
Herbert N. Posner	Reinstated	
John P. Rooney, Jr. 192 AD2d 278	Disbarred	Judiciary Law §90(4)(felony conviction - 18 USC §1001, theft or bribery concerning programs receiving federal funds).
Matthew A. Siegel 81 NY2d 835	Motion for reargument of motion for leave to appeal denied.	
Matthew A. Siegel 114 S. Ct. 122	Petition for Writ of Certiorari denied.	
Stephen V. Staehle 187 AD2d 209	Suspended 3 years	DR 6-101(A)(3)(neglect); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law; failure to communicate in court; failure to cooperate).
Melvin Smith	Motion for reinstatement held in abeyance, referred to Committee on Character and Fitness.	
Melvin Smith	Motion for reinstatement granted.	

Aaron G. Windheim Interim suspension 22 NYCRR 691.4(1)(failure to cooperate; disciplinary proceeding authorized).

In Re Anonymous Motion for leave to appeal dismissed.

In Re Anonymous Motion for leave to appeal dismissed.

(Tenth Judicial District)

Howard J. Bodner Disbarred Judiciary Law §90(4) (Felony Conviction - Grand larceny 2d Degree [Penal Law §155.40]).  
188 AD2d 115

Denis M. Breen III Suspended 2 years 22 NYCRR 691.3 (Reciprocal discipline - Arizona - Conflict of interest).  
187 AD2d 43

Nicholas S. Carlisi Disbarred DR 1-102(A)(1), (4), (5), (6), DR 9-102 (conversion); 22 NYCRR 691.20, DR 1-102(A)(1), (5), (6) (failure to file closing statement); DR 9-102, 22 NYCRR 691.12 (conversion and commingling of client funds, failure to maintain and preserve required records).  
189 AD2d 346

Nicholas S. Carlisi Motion for leave to appeal denied.  
81 NY2d 77

John P. Charles Interim Suspension 22 NYCRR 691.4, DR 1-102(A)(7) (failure to cooperate with grievance committee).

John Donald Clause Resigned 22 NYCRR 691.9.  
196 AD2d 264

Jerome D. Cohen Disbarred DR 1-102(A)(7)(rendered judicial decisions influenced by improper motives; breach of public trust).  
190 AD2d 179

Jerome D. Cohen Motion for leave to appeal denied.  
82 NY2d 658

Dennis C. Collins Censured DR 1-102(A)(1), (6), DR 9-102 (failure to properly segregate funds).  
193 AD2d 22



Edward M. Cooperman 187 AD2d 56	Suspended 2 years	DR 2-110(A) (3), (B) (4) (use of "non-refundable" retainer agreement to circumvent obligation to promptly refund unearned fee upon withdrawal; DR 2-106(A) (collection of excessive fees).
Myron Fox 192 AD2d 120	Suspended 5 years	DR 9-102(C)(4)(conversion of escrow funds); DR 1-102(A) (3), (4), (6) (giving false, misleading sworn testimony); DR 9-102(C)(3) (failing to maintain required escrow records).
Alan M. Friedlander 188 AD2d 13	Disbarred	Judiciary Law §90(4) (felony conviction - Grand Larceny, 3d Degree - class D felony [Penal Law §155.35]).
Bruce A. Glubin 179 AD2d 294	Resigned	22 NYCRR 691.9 (conversion of client funds).
John Huber 193 AD2d 289	Disbarred	Judiciary Law §90, 22 NYCRR 691.4 (failure to cooperate with grievance committee; neglect, failure to cooperate, conversion of escrow funds and failure to maintain current registration found on default - DR 1-102(A)(7), DR 6-101(A)(3), Judiciary Law §468-a).
David B. Jacobs 188 AD2d 228	Suspended 3 years	DR 1-102(A)(4), (5), (7) (conduct involving misrepresentation, conduct prejudicing the administration of justice and conduct adversely reflecting on lawyer's fitness to practice law); DR 2-106 (entering into agreement for, charging and collecting an excessive fee); DR 6-102 (limiting liability to client).
David B. Jacobs 82 NY2d 681	Appeal denied.	
William H. Kain 189 AD2d 368	Disbarred	Judiciary Law §90 (felony conviction - Grand Larceny, 1st degree).

Geoffrey J. Mascaro 189 AD2d 388	Suspended 2 years	Judiciary Law §90 (convicted of misdemeanors - Criminal Contempt 2d Degree [Penal Law §215.50], Conspiracy 5th Degree [Penal Law §105.05]).
Peter J. Moriarity 191 AD2d 96	Resigned	22 NYCRR 691.9 (27-charge petition for neglect and failure to cooperate).
Charles J. Mattingly, Jr. 193 AD2d 292	Disbarred	Judiciary Law §90 (Felony conviction - Grand Larceny, 4th Degree).
Harold Mortensen 146 AD2d 446	Suspended	DR 6-101(A)(3)(neglect); DR 1-102(A)(4), (7), 22 NYCRR 691.4 (failure to cooperate).
Peter M. Napolitano 194 AD2d 166	Suspended 5 years	DR 1-102(A)(4),(7), DR 9-102(A)(conversion of client funds); DR 9-102(A)(commingling client funds); DR 9-102(D), DR 1-102(A)(4), (5), (7) (making false entries into escrow records and testifying falsely before grievance committee); DR 9-102(D) (failure to maintain escrow records).
Pietrina J. Reda	Interim Suspension	22 NYCRR 691.4 (failure to cooperate with grievance committee).
James R. Rerisi	Resigned	DR 9-102(C)(4) (conversion of funds).
Roger Michael Rosenberg 190 AD2d 273	Resigned	DR 1-102(A)(4), (7) (Federal conviction - forging signatures [18 USC §1341 ]).
Vincent V. Savoca 193 AD2d 219	Resigned	DR 5-101, DR 5-105, DR 5-107 (impermissible conflicts of interest); Judiciary Law §468-a, 22 NYCRR 118 (failure to register as attorney).
Richard D. Simon 81 NY2d 707	Motion for leave to appeal denied.	

Mark A. Spiritus 187 AD2d 240	Suspended 2 years	Judiciary Law §90(4), DR 1-102(A)(4) (dishonest conduct); DR 1-102(A)(5), 22 NYCRR 691.4 (failure to cooperate); DR 9-102 (failure to maintain required bookkeeping records).
Rhoda Stockton 188 AD2d 10	Suspended 5 years	Judiciary Law §90 (misdemeanor convictions - Criminal Trespass, 2d Degree [Penal Law §140.15], Assault 3d Degree [Penal Law §110.120], Criminal Mischief, 4th Degree [Penal Law §140.00).
Sol Wachtler 192 AD2d 171	Resigned	22 NYCRR 691.9, DR 1-102(A) (3), (4), (5), (7) (engaged in illegal conduct involving moral turpitude, deceit, conduct prejudicial to administration of justice and adversely reflecting on lawyer's fitness to practice law); Federal felony conviction [18 USC §875(C)] (New York misdemeanor).
Michael Wagner 192 AD2d 247	Suspended 3 years	Judiciary Law §90(4) (Federal felony conviction [18 USC §922 (A)(1)] unlawfully engaging in business of dealing in firearms).

### THIRD DEPARTMENT

Edward P. Abbott 191 AD2d 899	Disbarred	DR 1-102(A)(4),(5),(6),(7), DR 9-102 (conversion); DR 1-102(A)(5),(7)(failing to forward client's property to new counsel).
Anonymous	Motion for protective order denied.	22 NYCRR 806.4(d).
Anonymous	Motio to reconsider denied.	Motion to reconsider denial of protective order denied (22 NYCRR 806.4[d]).

Anonymous	Motion to suspend denied.	Motion to suspend for failure to register as required by Judiciary Law §468-a denied for lack of a provision in the Court's rules permitting such a motion. Denial without prejudice to commencement of disciplinary proceeding.
James E. Barnes, II	Censured	DR 1-102(A)(5),(7)(gross mismanagement of client's funds); DR 1-102(A)(5),(7), DR 9-102(D)(failure to maintain escrow account records); DR 1-102(A)(5),(7)(failure to cooperate with committee).
Edward M. Bartholomew	Suspended 6 months	DR 1-102(A)(5),(7), DR 9-102 (conversion of clients' funds); DR 1-102(A)(5), DR 9-102(A), (B)(failing to deposit client funds into an escrow account and commingling with personal funds); DR 1-102(A)(5), DR 9-102(A),(B)(failing to maintain escrow account); DR 1-102(A)(5), (7), DR 9-102(D)(failing to maintain required records); DR 5-103(B)(advancing financial assistance to client);
Jeffrey L. Besse 193 AD2d 1020	Disbarred	Judiciary Law §90(4)(a),(e) (felony conviction - Grand Larceny 3d degree [Penal Law §155.35], Grand Larceny 2d degree [Penal Law §155.40, Scheming to defraud 1st degree [Penal Law §190.65]).
Darrell L. Bowen	Reinstated	
William A. Brenner 191 AD2d 899	Suspended 3 months	DR 1-102(A)(5), (7) (making false accusations and assertions against Family Court hearing examiner without attribution as to source or reliability); DR 7-110 (improper communication with Family Court hearing examiner during pending matter).
William A. Brenner	Motion to reduce suspension denied.	

William A. Brenner	Further motion to reduce suspension denied.	
William A. Brenner	Motion for leave to appeal denied.	
William A. Brenner	Appeal dismissed	Appeals and motions for leave to appeal dismissed. Motion to vacate order of dismissal denied.
William A. Brenner	Motion to reargue dismissed.	Motion to extend time to move to reargue and motion to reargue dismissed as untimely.
James W. Carroll 193 AD2d 881	Interim Suspension	Judiciary Law §90(4)(d), (f) (serious crime - Petit Larceny [Penal Law §155.25]).
James W. Carroll 194 AD2d 921	Suspended 6 months	Judiciary Law §90(4)(d), (f) (serious crime - Petit Larceny [Penal Law §155.25]).
Gina Dieli Cecil 190 AD2d 986	Suspended 1 year	Judiciary Law §90(4)(d) (serious crime - Making false statement to federally insured financial institution [18 USC §1014]).
John M. Cholakis 194 AD2d 920	Disbarred	DR 6-101(A)(3) (neglect of an estate); DR 1-102(A)(4), (5), (7), DR 9-102 (conversion of funds); DR 1-102(A)(4), (5), (7) (signing the name of co-executor to estate checks without that individual's knowledge or consent); DR 1-102(A)(4), (5), (7), DR 7-102(A)(5) (misleading and deceiving guardian ad litem); DR 1-102(A)(5), (7) (failing to cooperate with committee).
Harold M. Cohen 192 AD2d 874	Disbarred	22 NYCRR 806.19 (reciprocal discipline - New Jersey disbarment).

Kenneth H. Cohn 194 AD2d 987	Disbarred	DR 6-101(A)(3) (neglect); DR 1-102(A)(5) (furnishing false documents to court, failing to respond to clients, opposing counsel, committee and county bar, failing to comply with committee directive and attempting to mislead and deceive committee, misleading county on adoption matter and submitting documents with false notarization); DR 1-102(A)(4), (5) (misleading and deceiving clients); DR 1-102(A)(4), DR 2-101(A)(misleading and self-laudatory advertisement); DR 5-105 (conflict of interest in adoption matter).
William J. Ewing	Suspended 1 year	22 NYCRR 806.19 (reciprocal discipline - New Jersey suspension).
Albie S. Ferrucci	Reinstated	
Joseph Finkelstein	Disbarred	22 NYCRR 806.19 (reciprocal discipline - Florida resignation without leave to reapply for seven years).
Jerrold M. Fleisher 194 AD2d 861	Disbarred	22 NYCRR 806.19 (reciprocal discipline - New Jersey disbarment).
John B. Folmer	Reinstated	
Edward M. Gasperi	Interim Suspension	22 NYCRR 806.4(b) (failure to comply with subpoena duces tecum).
William H. Intemann	Reinstated	
Wayne A. Johnson	Disbarred	Judiciary Law §90(4)(a), (e) (felony conviction - Forgery 2d Degree [Penal Law §170.10 (1)]; Grand Larceny 3d Degree [Penal Law §155.35]; Grand Larceny 4th Degree [Penal Law §155.30]; Petit Larceny [Penal Law §155.25]).

Paul H. Karwell 194 AD2d 862	Suspended 3 months	22 NYCRR 806.19 (reciprocal discipline - New Jersey suspension).
Lawrence B. Lennon	Disbarred	DR 6-101(A)(3) (neglect of estates); DR 9-102(C)(3)(failure to account for funds belonging to client) DR 1-102(A)(4), (5), (7) (misleading and deceiving the Appellate Division); DR 1-102(A)(5), (7) (failure to comply with court order); DR 1-102(A)(5)(failure to file registration statement and pay registration fee as required by statute).
Daniel E. Lyons 194 AD2d 993	Indefinite Suspension	Failure to comply with subpoena duces tecum.
Daniel E. Lyons	Suspension stayed	
William R. Miller, Jr. 192 AD2d 869	Disbarred	DR 6-101(A)(3)(neglect); DR 1-102(A)(5), (7) (failure to respond to communications from and on behalf of his clients); DR 1-102(A)(4), (5), (7) (attempting to mislead and deceive clients as to the status of their legal matters); DR 1-102(A)(4), (5), (7), (attempting to mislead and deceive committee); DR 5-103(B)(advancing financial assistance to clients); DR 1-102(A)(5), (7) (failure to cooperate with committee); DR 1-102(A)(5), (7) (failure to comply with rule of Appellate Division).
David I. Moed	Reciprocal discipline motion denied.	Motion for reciprocal discipline based upon Florida resignation denied as resignation did not admit misconduct and Florida court did not make such a finding.
Frederick J. Neroni	Reinstated	
Joel M. Proyect 192 AD2d 868	Suspended 5 years	Judiciary Law §90(4)(f) (Federal felony of manufacturing marijuana [18 USC §841 (a)(1), (b)(1)(B)]).

Michael H. Rosenberg 192 AD2d 871	Suspended 1 year	DR 1-102(A)(4), (5), (7), DR 9-102(A), (B) (conversion of clients' funds); DR 9-102(D) (failure to maintain accurate ledger for escrow account); DR 9-102(A)(commingling personal funds with client funds); DR 6-101(A)(3) (neglect); DR 6-102 (attempting to limit liability to client for malpractice); DR 1-102(A)(5), (7) (failure to cooperate with committee).
Robert Schlesinger	Interim Suspension	22 NYCRR 806.4(f)(1) (suspension pending consideration of disciplinary charges).
Herabert P. Segarra	Censured	DR 1-102(A)(5), (7) (failure to obey order appointing conservator); DR 1-102(A)(4), (5) (attempting to deceive and mislead committee); DR 1-102(A)(5), (7) (engaging in prohibited practice of law); DR 1-102(A)(5), (7) (failure to cooperate with committee).
James C. Steenburgh	Reinstated	
Kevin P. Sullivan 192 AD2d 866	Suspended 4 months	22 NYCRR 806.19 (reciprocal discipline - Minnesota suspension).
Eric P. von Wiegen 190 AD2d 905	Motion to strike denied.	Judiciary Law §90(4)(a), (e) (serious crime - Federal felony, income tax evasion [26 USC §7201]).
Eric P. von Wiegen 193 AD2d 1049	Disbarred	Judiciary Law §90(4)(a), (e) (serious crime - Federal felony, income tax evasion [26 USC §7201]).
Eric P. von Wiegen	Appeal to Court of Appeals dismissed.	
Martin P. Winsor	Reinstated	
Robert S. Yacono	Disbarred	22 NYCRR 806.19 (reciprocal discipline - Maryland disbarment).



Joseph V. Zumbo  
191 AD2d 805

Disbarred

Judiciary Law §90(4)(a), (e)  
(Federal felony [18 USC  
§1001] essentially similar to  
Penal Law §175.35).

Joseph V. Zumbo

Motion to App. Div. for leave  
to appeal denied.

Joseph V. Zumbo

Motion to Court of Appeals  
for leave to appeal denied.

#### FOURTH DEPARTMENT

(Fifth Judicial District)

James A. Resti  
188 AD2d 8

Suspended 3 months

Judiciary Law §90(4) (Misdemeanor conviction - 26 USC §7203).

James A. Resti

Reinstated

Edward W. Dietrich  
192 AD2d 19

Suspended 2 years, restitution  
ordered.

DR 1-102(A)(4)(engaging in  
conduct involving dishonesty,  
fraud, deceit and misrepresenta-  
tion); DR 1-102(A)(7)  
(engaging in conduct adverse-  
ly reflecting on fitness to  
practice law); DR 5-104(A)  
(failing to limit business  
relations with client having  
differing interests therein  
without full disclosure).

John C. Kanaley  
192 AD2d 168

Suspended 2 years

DR 1-102(A)(4)(engaging in  
conduct involving dishonesty,  
fraud, deceit or misrepresenta-  
tion); DR 1-102(A)(7)(en-  
gaging in conduct adversely  
reflecting on fitness to prac-  
tice law); DR 9-102(A),  
former 22 NYCRR 1022.5  
(failing to preserve identity  
of funds and property of  
client, commingled clients'  
funds with his own and  
converted clients' funds for  
his own personal use).

Richard L Levine  
191 AD2d 141

Suspended 1 year

DR 1-102(A)(7)(engaging in conduct adversely reflecting on fitness to practice law); DR 5-101(A)(entering into business relationship with client without full disclosure); DR 5-104(A)(representing client when the exercise of professional judgment is adversely affected by own financial interest).

John C. Kanaley

Motion for leave to appeal denied.

John T. Papworth

Interim Suspension

Judiciary Law §90(4)(Federal conviction, serious crime - 10 USC §371).

**(Seventh Judicial District)**

Edward John Roder

Reinstatement denied.

Willie R. Felton  
193 AD2d 131

Interim Suspension

Jefferson T. Lalik  
193 AD2d 133

Suspended 2 years

DR 1-102(A)(4)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 1-102(A)(7)(engaging in conduct adversely reflecting on fitness to practice law); DR 9-102 (failing to identify and preserve clients' funds, failing to observe proper banking and accounting practices, commingling and converting funds, adversely reflecting on capability to practice as attorney).

George R. LaCava

Reinstatement denied.

John C. Wallen 194 AD2d 26	Suspended 6 months	DR 6-101(A)(3)(neglecting three matters entrusted to him); DR 1-102(A)(4)(engaging in conduct involving deceit and misrepresentation); DR 7-101(A)(3)(engaging in conduct that prejudiced and damaged a client in the course of the professional relationship); DR 9-102(C)(4) (failing to pay promptly funds owed to a client); DR 1-102(A)(5)(engaging in conduct prejudicial to administration of justice).
Christopher R. Wilkins	Disbarred	Judiciary Law §90(4)(Felony conviction - Penal Law §§155.35, 155.30[1]).
Irwin R. Gilbert 194 AD2d 262	Suspended 1 year	DR 1-102(A)(7)(engaging in conduct adversely reflecting on fitness to practice law); DR 5-101(A)(accepting employment when exercise of professional judgment will or may reasonably be affected by personal interest).
William H. McKeon 194 AD2d 246	Censured	DR 6-101(A)(3)(neglecting legal matters entrusted to him and failing to communicate with his clients); DR 1-102(A)(5)(engaging in conduct prejudicial to administration of justice);
Steven J. Seidman 194 AD2d 269	Censured	DR 1-102(A)(4), (5), (7) (engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, conduct that is prejudicial to administration of justice, conduct adversely reflecting on fitness to practice law); DR 7-102(A) (4), (5), (7) (knowingly using false evidence, knowingly making false statement, assisting in conduct known to be illegal or fraudulent).

(Eighth Judicial District)

Catherine N. Coughlin 188 AD2d 1	Disbarred	DR 1-102(A)(4), (5), (7) (engaging in conduct involving misrepresentation, conduct prejudicial to administration of justice, conduct adversely reflecting on fitness to practice law); DR 2-106(A), DR 2-110(A)(3)(failing to refund unearned legal fees); DR 6-101(A)(3)(failing to carry out contract of employment, engaging in conduct prejudicial or damaging to client); DR 9-102(B)(1), (C)(4)(failing to maintain clients' funds in separate account, converting client's funds).
Joel E. Schweitzer 189 AD2d 61	Disbarred (restitution ordered)	DR 1-102(A)(4)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation [1978, 1990]); DR 2-106(A)(charging excessive fee [1978]); DR 5-104(A)(failing to limit business relations with client [1978]); DR 9-102(A), (B) [1978], DR 9-102(A), (B)(1), (C)(4) (conversion of client's funds [1990]); Judiciary Law §468-a, 22 NYCRR 118.1 (failing to register as attorney and pay biennial registration fee).
Joseph F. Scirto, Jr. 189 AD2d 47	Supplemental charges (restitution ordered)	Judiciary Law §90(6-a).
William Blanchard	Reinstated	
Henry E. Wyman	Disbarred (restitution ordered).	22 NYCRR 1022.25(a) (resigned under investigation).
Frederick D. Stevens	Disbarred (restitution ordered).	22 NYCRR 1022.25(a) (resigned under investigation).

Julian C. Johnson  
192 AD2d 7

Suspended 2 years (restitution  
ordered).

DR 1-102(A)(4)(engaging in  
conduct involving dishonesty  
and fraud); DR 1-102(A)(7)  
(engaging in conduct adverse-  
ly reflecting on fitness to  
practice law); DR 9-102(A)  
(failing to preserve and iden-  
tify client funds); DR 9-102  
(B)(3)(failing to maintain  
complete records of all client  
funds coming into his possess-  
ion and rendering appropriate  
accounts to clients regarding  
them); 22 NYCRR 1022.5  
(b)(1) (failing to maintain re-  
cords of all deposits and  
withdrawals from his clients'  
trust account); 22 NYCRR  
1022.25 (b)(2) (failing to  
maintain individual ledger  
sheets reconciled with his  
clients' account that illus-  
trated disbursements and the  
existing balance of clients'  
funds in his possession).

Raymond E. Lloyd

Interim Suspension

Judiciary Law §90(4) (misdemeanor conviction - Penal Law §190.05).

David E. Hampton  
193 AD2d 140

Disbarred

DR 9-102 (misappropriating  
and converting clients' funds  
to him, failing to promptly  
pay over to the client as  
requested funds in his possess-  
ion that the client was enti-  
tled to receive); DR 1-102(A)  
(4)(engaging in conduct in-  
volving dishonesty, fraud,  
deceit or misrepresentation);  
DR 1-102(A)(7)(engaging in  
conduct adversely reflecting  
on fitness to practice law).

Thomas Lippes

Reinstatement denied.

Paul A. Foley  
194 AD2d 111

Censured

DR 1-102(A)(4)(engaging in  
conduct involving deceit and  
misrepresentation).

Bruce S. Kirby  
194 AD2d 83

Suspended 1 year

DR 9-102(A), (B)(commingling and converting clients' funds and failing to maintain separate account for his trust funds and personal funds); DR 9-102(C), (D)(failing to maintain true and correct records of clients' fiduciary accounts).

Jay A. Pohlman  
194 AD2d 96

Censured

DR 1-102(A)(4)(engaging in conduct involving misrepresentation); DR 1-102(A)(5)(engaging in conduct prejudicial to administration of justice); DR 1-102(A)(7)(engaging in conduct adversely reflecting on fitness to practice law); DR 5-105(A), (C)(representing clients having differing interests without full and adequate disclosure to the clients); DR 6-101(A)(3)(neglect); DR 7-101(A)(2)(failing to carry out a contract of employment); DR 9-102(C)(4)(failing to promptly pay out funds deposited in his trust account).

Timothy A. Fischer

Disbarred

Judiciary Law §90(4)(felony conviction - Penal Law §155.35).

Susan B. Quaintance

Interim Suspension

Judiciary Law §90(4)(misdemeanor conviction - Penal Law §110-155.30).

Robert F. Hahn

Disbarred

DR 9-102(A), (B), former 22 NYCRR 1022.5(a), (b) (commingling and converting client's funds and failing to preserve and maintain client funds in an identifiable bank account); DR 9-102(C)(3), (4), (D)(failing to maintain complete records of client funds and to pay client funds promptly to a client); DR 1-102(A)(4), (5), (7)(engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, conduct prejudicial to administration of justice, conduct adversely reflecting on fitness to practice law; DR 5-101(A)(accepting employment when professional judgment affected by own financial, business and personal interests).

Duane M. Stenstrom, Jr.  
194 AD2d 277

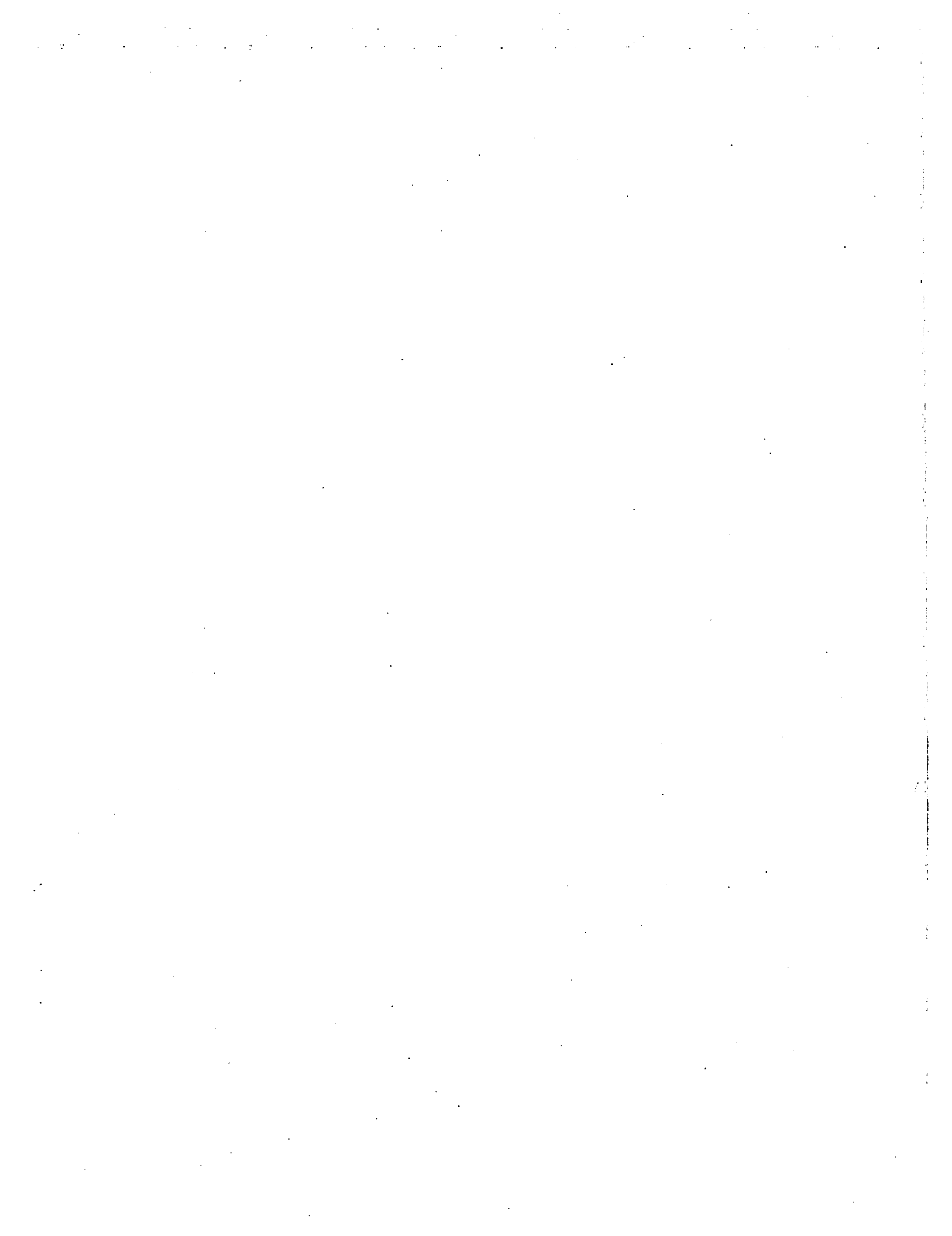
Disbarred

DR 6-101(A)(3)(neglect); DR 7-101(A)(2)(failing to carry out contract of employment; DR 1-104(A)(2)(failing to exercise supervisory authority over nonlawyer employees in their communication with clients); DR 7-101(A)(3) (engaging in conduct that intentionally prejudiced or damaged a client); DR 1-102(A)(7)(engaging in conduct adversely reflecting on fitness to practice law); DR 2-110(A)(3), DR 9-102(C)(4)(refusing or failing to refund unearned fees and disbursement funds after being discharged by clients); DR 9-102(A), (B)(1) (failing to deposit clients' funds in a special account, converting and commingling clients' funds).

Burt J. Valvo

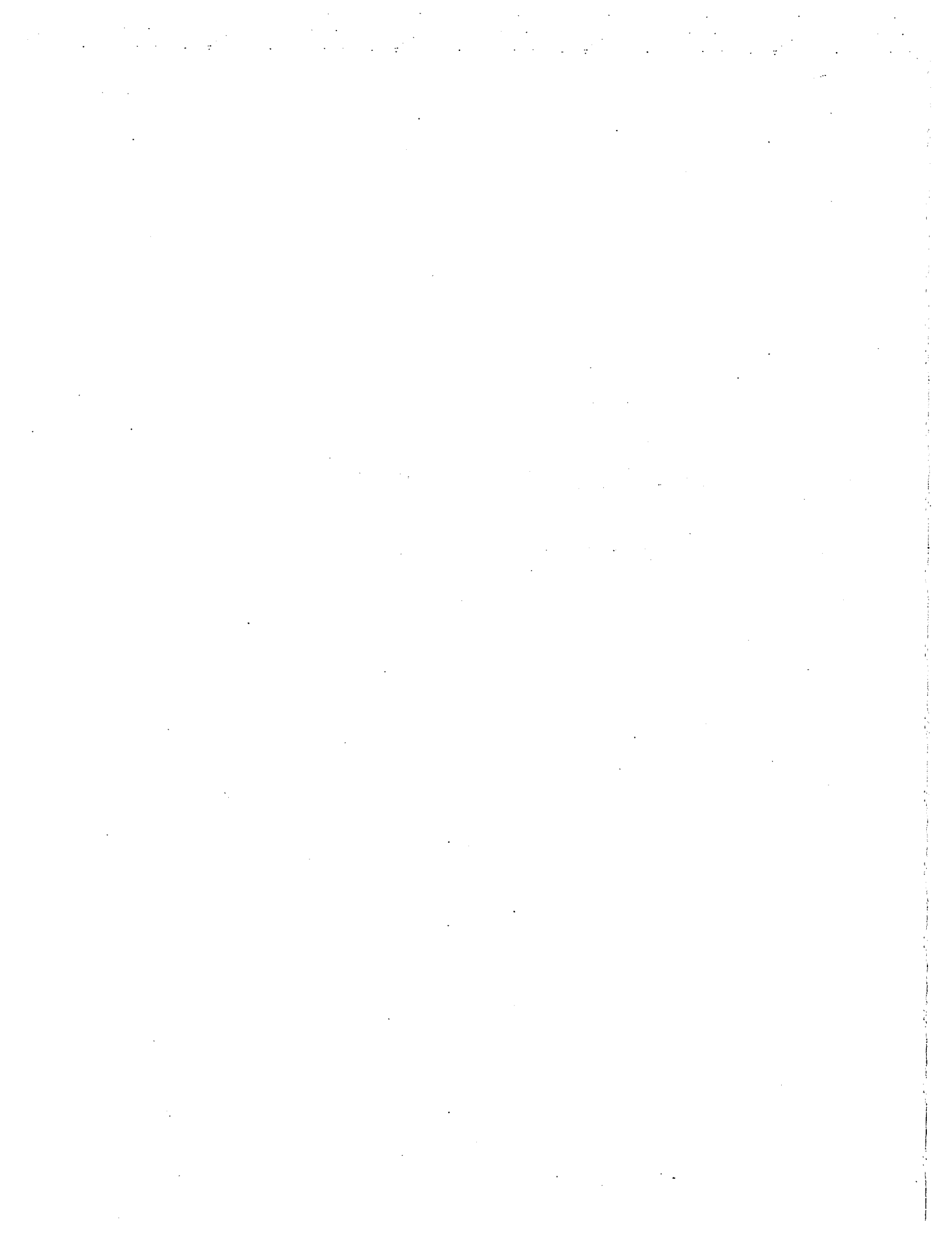
Disbarred

22 NYCRR 1022.25(A)(resigned under investigation).





**Professional Disciplinary Staffs  
and  
Departmental and District  
Grievance Committees**



## Professional Disciplinary Staffs

### FIRST DEPARTMENT

Departmental Disciplinary Committee  
First Judicial Department  
41 Madison Avenue, 39th Floor  
New York, NY 10010  
Tel. (212) 685-1000

Hal R. Lieberman, Chief Counsel  
Barbara S. Gillers, 1st Deputy Chief Counsel  
Richard M. Maltz, Deputy Chief Counsel  
Sarah Jo Hamilton, Special Trial Counsel  
Andral N. Bratton, Staff Attorney  
Sherry K. Cohen, Staff Attorney  
Jorge Dopico, Staff Attorney  
Mady Edelstein, Staff Attorney  
Jeremy S. Garber, Staff Attorney  
Elyse N. Post, Staff Attorney  
Karen A. Robinson, Staff Attorney  
Deborah A. Scalise, Staff Attorney  
Eileen Shields, Staff Attorney  
Naomi F. Simon, Staff Attorney  
Judith N. Stein, Staff Attorney  
Raymond Vallejo, Staff Attorney

Martin Silverstein, Office Manager  
Vincent C. Ranieri, Grievance Examiner  
Christopher Kern, Grievance Examiner  
Patrick A. Smith, Grievance Examiner  
Kenneth VanLew, Grievance Examiner  
John E. Pugliese, Legal Assistant  
Rebecca Taub, Legal Assistant  
Carol Scheuer, Legal Assistant

### SECOND DEPARTMENT

9th Judicial District  
Grievance Committee  
399 Knollwood Road  
White Plains, NY 10603  
Tel. (914) 949-4540

Gary L. Casella, Chief Counsel  
Etta M. Biloon, Deputy Counsel  
Gary D. Egerman, Associate Counsel  
Maryann Yannarella, Associate Counsel  
Gloria A. Bunze, Assistant Counsel  
Forrest Strauss, Assistant Counsel  
George A. Lowery, Grievance Examiner  
Denise Santomorens, Secretary  
Virginia E. Mordiglia, Secretary  
Maria J. Mangione, Secretary  
Maryellen Horan, Secretary  
Lori A. Russo, Secretary  
Kimberly Ihmeidan, Secretary

2nd & 11th Judicial Districts  
Grievance Committee  
210 Joralemon Street  
Municipal Building, 12th Floor  
Brooklyn, NY 11201  
Tel. (718) 624-7851

Robert H. Straus, Chief Counsel  
Diana Maxfield Kears, Deputy Counsel  
Richard Lombardo, Assistant Counsel  
Mark F. DeWan, Assistant Counsel  
Diana J. Szochet, Assistant Counsel  
Robert J. Saltzman, Assistant Counsel  
David C.Y. Cheung, Assistant Counsel  
Mitchell Borkowsky, Court Analyst  
Daniel McKenna, Grievance Examiner

10th Judicial District  
Grievance Committee  
6900 Jericho Turnpike  
Syosset, NY 11791  
Tel. (516) 364-7344

Frank A. Finnerty, Jr., Chief Counsel  
Grace D. Moran, Deputy Counsel  
Robert P. Guido, Assistant Counsel  
Muriel L. Gennosa, Assistant Counsel  
Nancy A. Bolger, Assistant Counsel  
Chris G. McDonough, Assistant Counsel  
Dianne M. Saccone, Assistant Counsel  
Sharon M.J. Commissiong, Assistant Counsel

### **THIRD DEPARTMENT**

Committee on Professional Standards  
Third Judicial Department  
A.E. Smith State Office Building, 22nd Floor  
P.O. Box 7013, Capitol Station Annex  
Albany, New York 12225  
Tel. (518) 474-8816

Mark S. Ochs, Chief Attorney  
Michael Philip Jr., Deputy Chief Attorney  
John J. McAlary, Staff Attorney  
Kenneth H.P. Bryk, Staff Attorney  
Susan R. Katzoff, Staff Attorney  
Joseph L. Legnard, Grievance Examiner  
Vincent M. Tepedino, Grievance Examiner

### **FOURTH DEPARTMENT**

**8th Judicial District**  
Grievance Committee  
1036 Ellicott Square Building  
Buffalo, New York 14203  
Tel. (716) 858-1190

Gerard M. LaRusso, Chief Counsel  
Vincent L. Scarsella, Principal Counsel  
Roderick Quebral, Associate Counsel  
Margaret C. Callanan, Associate Counsel  
Joanne Walsh, Grievance Examiner  
William P. Zenosky, Grievance Examiner  
Mary E. Davis, Grievance Examiner  
Kenneth G. Schroeder, Jr., Auditor

**5th Judicial District**  
Grievance Committee  
472 South Salina Street, Room 310  
Syracuse, NY 13202  
Tel. (315) 471-1835

Gerard M. LaRusso, Chief Counsel  
Paul J. Ginnelly, Principal Counsel  
Robert Bevilacqua, Grievance Examiner  
Kenneth G. Schroeder, Jr., Auditor

**7th Judicial District**  
19 West Main Street, Room 1002  
Rochester, NY 14614  
Tel. (716) 546-8340

Gerard M. LaRusso, Chief Counsel  
Daniel A. Drake, Principal Counsel  
Ann M. Peters, Grievance Examiner  
Kenneth G. Schroeder, Jr., Auditor

## Departmental and District Grievance Committees

### FIRST DEPARTMENT

Haliburton Fales, 2d, Chairman  
Hon. Samuel J. Silverman, Special Counsel  
Beverly S. Bond  
Gardner Botsford\*  
P. Kevin Castel  
Donald J. Cohn  
Michael Conforti  
Prof. Mary C. Daly  
John M. Delehanty  
Peter J. DeLuca  
Joan L. Ellenbogen  
Sheldon H. Elsen  
Arthur Norman Field  
Rosalind S. Fink  
Charlotte Moses Fischman  
Robert B. Fiske, Jr.  
Prof. Beatrice S. Frank  
Philip R. Forlenza  
John J. Galban  
Dr. Judith Ginsberg\*  
Bernard Goldstein  
Harvey J. Golubock

Arthur W. Grieg  
Elinor Guggenheimer\*  
Patricia Handal\*  
Patricia Hatry  
Simon J. Hauser  
John R. Horan  
Barbara M. Huggins\*  
Joseph M. Irom  
Joanne Sidener Johnson\*  
Irwin Kahn  
Stephen R. Kaye  
Jonathan J. Lerner  
James Milligan\*  
Archibald R. Murray  
Mercedes A. Nesfield\*  
Roy L. Reardon  
Emil M. Sanchez  
Andrew N. Sears  
Howard S. Stein\*  
Jay H. Topkis  
Susan Welsher\*  
Dr. Walter A. Wichern, Jr.\*

### SECOND DEPARTMENT

#### 2nd & 11th Districts Grievance Committee

Gerard A. Gilbride, Chairman  
Robert A. Bohner  
Rosemarie Cavera  
Victoria Delgado\*  
George A. Farkas  
Michael K. Feigenbaum  
Catherine R. Glover  
A. Paul Goldblum  
Harvey S. Jacobs

Barry M. Kamins  
Joan Kronick\*  
Richard A. LaRosa  
Mark A. Longo  
Doris E. Mortis  
Lynn S. Okin  
Paul Pavlides  
Paul E. Proske\*  
Marjorie Weinberg Rooney  
Melvin Wolinsky

#### 9th District Grievance Committee

Edward I. Sumber, Chair  
Dorothy Allen\*  
Robert B. Dietz  
Robert P. Dohn  
Chester Gordon  
Richard Greenblatt  
Hector M. Hyacinthe\*  
Mary F. Kelly  
Mark J. Metzger  
Joseph P. McGlenn  
Camille Failla Murphy\*

Ellen B. O'Han\*  
Sidney Schwartz  
Thomas J. Singleton  
Mark D. Stern  
James G. Sweeney  
Margaret H. Tyre  
Judge Sam D. Walker  
Belle M. Zeck

## 10th District Grievance Committee

Frank A. Gulotta, Jr., Chair  
Emmet J. Agolia  
Carl C. Banno  
Harvey B. Besunder  
Frank J. Cafaro  
Daniel Greenberg  
Harry Kassel\*  
Vincent A. Malito  
Msgr. Edward L. Melton\*  
Joshua M. Pruzansky

Stephen W. Schlissel  
Paula S. Seider  
Rhoda Selvin\*  
Thomas J. Spellman, Jr.  
Michael F. Sperendi  
Elaine Jackson Stack  
Joan Tiedemann\*  
Owen B. Walsh  
Barry L. Warren

## THIRD DEPARTMENT

Robert L. Maider, Chair

### 3rd District

Margaret N. Bliss\*  
Theodore Drew  
Nan Goldsberry\*  
Joseph D. Hill

B. Robert Joel\*  
Elliott F. Marinstein  
George J. Pulver  
James J. Ryan  
Mary Anne Tommaney

### 4th District

Peter V. Coffey  
Thomas J. McNamara

Martin A. Meyer  
William L. Owens  
Dana D. Peck

### 6th District

John V. Moore  
Edward S. Nelson  
N. Theodore Sommer

Walter L. Terry, III  
Grant Van Sant  
Robert I. Williamson

## FOURTH DEPARTMENT

### Fifth District Grievance Committee

Carl W. Peterson, Chair  
Joseph S. Basloe  
Leighton R. Burns  
Stephen E. Chase\*  
Herbert J. Cully  
George S. Deptula  
Earl B. Dunckel  
Samuel D. Hester  
Lawrence Katzman  
Richard C. Kram  
Beverly A. Michaels

Roberta Millet\*  
Thomas A. Reynolds  
Edward J. Rose  
Judith M. Sayles  
Addison Vars, III  
Stephen Wechsler  
John P. Wegerski  
Paul A. Worlock  
Howard J. Woronov  
Charles D. Zimmerman\*

### **Seventh District Grievance Committee**

Jane B. Hopfinger, Chair  
Eugene T. Clifford  
Mark H. Fandrich  
Walter C. Gage  
Laurence Karz  
John J. Keigher  
John Leyden  
Charles Marangola  
Mary Lou Medley  
Randolph A. Meyer  
Anita C. Miller

Weston H. Palmer  
Richard A. Palumbo  
Daniel Saperstone\*  
James L. Sapienza  
Bertram C. Serling  
Sanford R. Shapiro  
Gerald VanStrydonck\*  
Vincent J. Welch  
Beth Ela Wilkens  
Leigh H. Williams\*

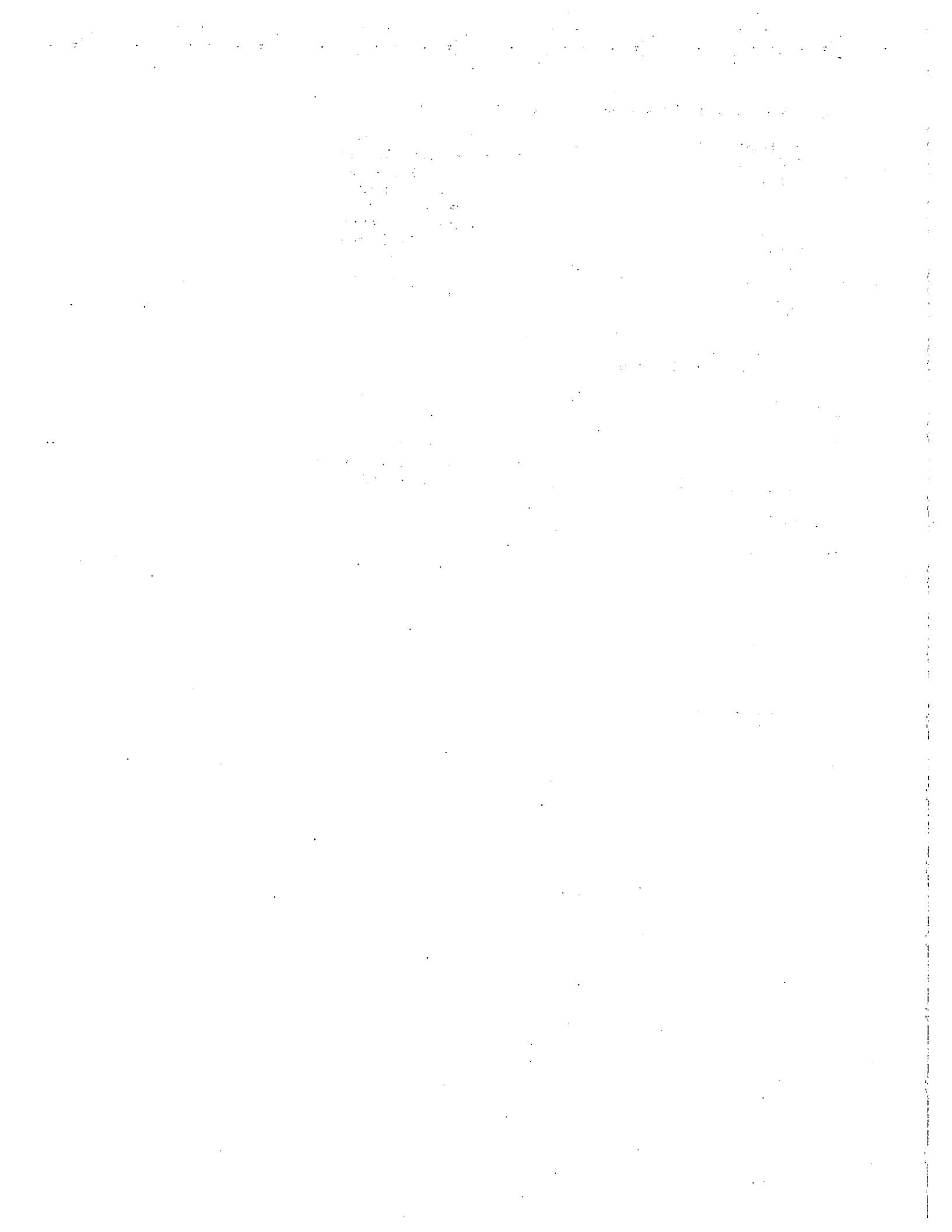
### **Eighth District Grievance Committee**

Richard T. Sullivan, Chair  
Thomas F. Brinkworth  
Edmund S. Brown, Jr.  
Thomas P. Brown  
Peter D. Clark  
Joseph D. Coleman  
Robert B. Conklin  
Norman P. Effman  
Eva M. Hassett\*  
Alan H. Levine

David L. Metzler  
Gregory P. Miller  
John K. Plumb  
James P. Renda  
Hon. H. Buswell Roberts  
Richard J. Rotella  
J. Michael Shane  
Allan B. VanDeMark\*  
Norris L. Webster  
David R. Wendt  
Robert A. Zugger\*

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\* Denotes non-lawyer members





**Attorney Discipline Budget Appropriations  
(Fiscal 1993-1994)  
and  
Salaries of Disciplinary Staff  
(June 1994)**

1900

1901

1902

1903

**First Department**

Title	Grade	June 1994 Salary
Chief Attorney	34	\$91,835
Principal Attorney	30	72,584
Principal Attorney	30	74,956
Principal Attorney	30	74,956
Associate Attorney	27	60,196
Associate Attorney	27	56,254
Associate Attorney	27	54,265
Senior Attorney	25	48,716
Senior Attorney	25	58,184
Associate Attorney	27	69,227
Senior Attorney	25	48,716
Senior Attorney	25	52,258
Administrative Secretary	17	42,884
Court Assistant	16	28,694
Sr. App. Court Assistant	21	40,799
Grievance Examiner	17	38,327
Court Analyst	18	37,562
Law Stenographer	14	25,581
Law Stenographer	14	25,581
Law Stenographer	14	31,294
Law Stenographer	14	35,256
Law Stenographer	14	36,486
Law Stenographer	14	30,072
Grievance Examiner	17	34,114
Sr. Admin. Serv. Clerk	20	43,288
Law Stenographer	14	25,581
Asst. Court Analyst	16	32,217
Senior Office Typist	08	17,980
Principal Court Analyst	23	49,384
Sr. App. Office Asst.	09	20,795
Sr. App. Court Asst.	21	49,480
Grievance Examiner	17	38,327
Principal Attorney	30	77,494
Associate Attorney	27	62,325
Grievance Examiner	17	38,327
Senior Attorney	25	50,521
Senior Attorney	25	50,521
Attorney	22	39,862
Senior Attorney	25	46,979
Senior Attorney	25	46,979
Court Analyst	18	32,158
Secretary	14	36,486

**1993-94 Appropriations:**

Personal Service	\$1,761,055
Nonpersonal Service	<u>396,908</u>

**Total** \$2,157,963

**Second Department**

Title	Grade	June 1994 Salary
<b>(Second and Eleventh Judicial Districts)</b>		
Chief Attorney	32	\$90,839
Principal Attorney	30	80,273
Senior Attorney	25	50,521
Associate Attorney	27	62,325
Associate Attorney	27	69,227
Associate Attorney	27	69,227
Attorney	22	43,007
Court Analyst	18	32,158
Grievance Examiner	17	35,518
Asst. Court Analyst	16	28,694
Secretary	14	32,517
Secretary	14	25,581
Law Stenographer	14	36,496
Law Stenographer	14	30,072
Senior Office Assistant	08	27,368

**1993-94 Appropriations:**

Personal Service	\$706,965
Nonpersonal Service	<u>172,914</u>

**Total** \$879,879

**(Ninth Judicial District)**

Chief Attorney	32	\$91,155
Principal Attorney	30	75,800
Attorney	22	43,007
Associate Attorney	27	54,521
Associate Attorney	27	69,227
Associate Attorney	27	65,090
Court Analyst	18	32,158
Grievance Examiner	17	32,879
Secretary	14	35,871
Secretary	14	17,628
Secretary	14	26,656
Law Stenographer	14	35,256

**1993-94 Appropriations:**

Personal Service	\$594,617
Nonpersonal Service	<u>230,067</u>

**Total** \$824,684

**Second Department**

(Tenth Judicial District)

Title	Grade	June 1994 Salary
Chief Attorney	32	\$91,155
Principal Attorney	30	80,273
Associate Attorney	27	31,439
Associate Attorney	27	69,227
Associate Attorney	27	56,254
Senior Attorney	25	48,716
Associate Attorney	27	60,750
Senior Attorney	25	46,979
Court Analyst	18	32,158
Grievance Examiner	17	31,593
Law Stenographer	14	31,294
Law Stenographer	14	36,486
Law Stenographer	14	36,486
Law Stenographer	14	35,256
Secretary	14	26,656
<b>1993-94 Appropriations:</b>		
Personal Service		\$700,554
Nonpersonal Service		<u>298,185</u>
Total		\$998,739

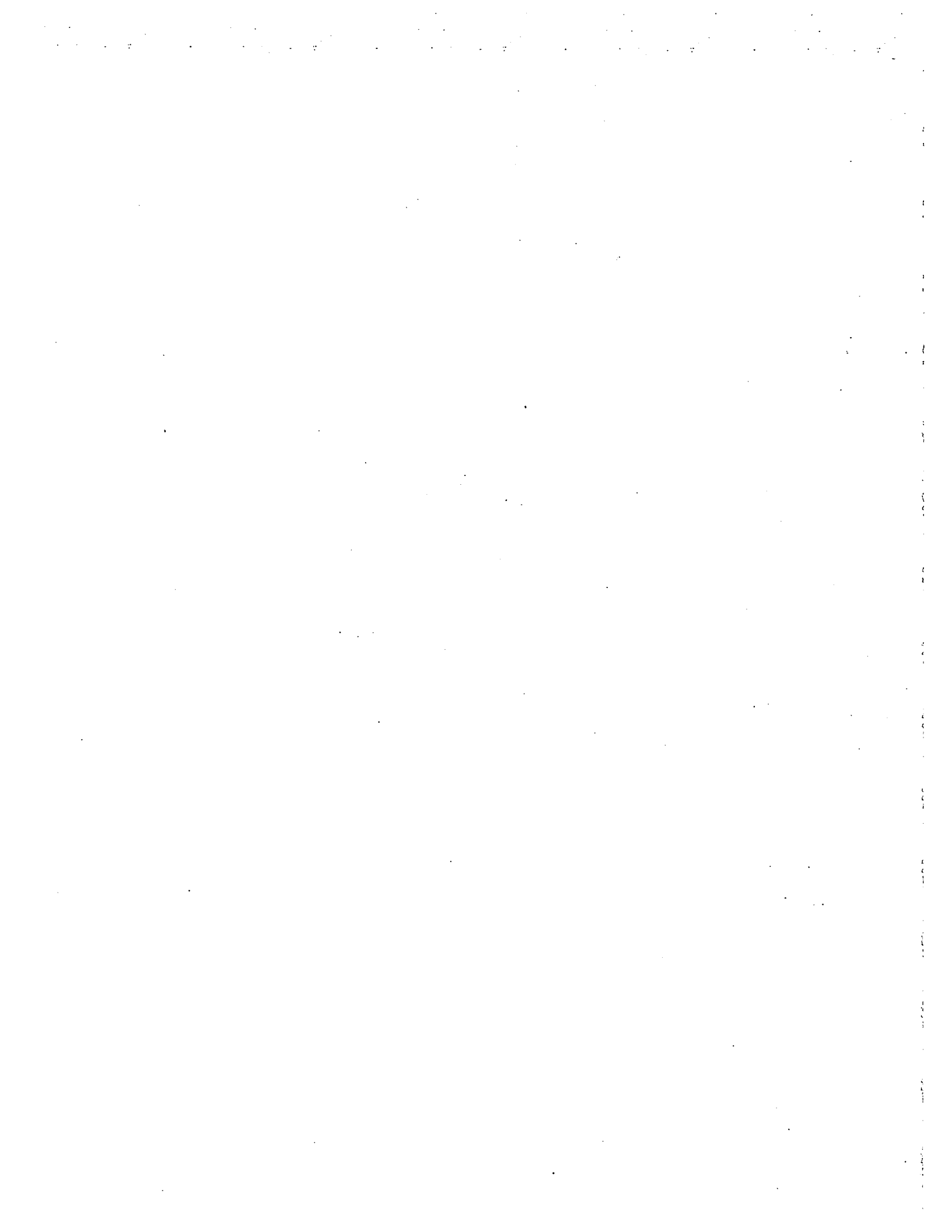
**Third Department**

Title	Grade	June 1994 Salary
Chief Attorney	32	\$88,616
Principal Attorney	30	69,146
Attorney	22	41,403
Senior Court Analyst	21	44,467
Senior App. Office Steno.	10	20,834
Secretary	14	30,057
Secretary	14	26,788
Senior Attorney	25	52,258
Secretary	14	35,057
Attorney	22	43,007
Court Analyst	18	39,798
Junior Court Analyst	12	22,707
Court Analyst	18	32,158
<b>1993-94 Appropriations:</b>		
Personal Service		\$503,162
Nonpersonal Service		<u>96,377</u>
Total		\$599,539

**Fourth Department**

Title	Grade	June 1994 Salary
Chief Attorney	32	\$88,616
Principal Attorney	30	72,584
Principal Attorney	30	82,657
Principal Attorney	30	72,584
Associate Attorney	27	57,995
Senior Attorney	25	48,716
Law Stenographer	14	36,486
Attorney	22	39,862
Principal Office Stenographer	12	31,310
Secretary	14	27,774
Secretary	14	28,849
Principal App. Off. Asst.	13	25,123
Grievance Examiner	17	41,473
Grievance Examiner	17	42,708
Grievance Examiner	17	39,731
Grievance Examiner	17	42,883
Grievance Examiner	17	42,883
Court Analyst	18	32,158
Assistant Court Analyst	16	34,165
<b>1992-93 Appropriations:</b>		
Personal Service		\$812,740
Nonpersonal Service		<u>216,597</u>
Total		\$1,029,337

**Draft**  
**Uniform Rules for**  
**Lawyer Discipline**



**UNIFORM RULES AND PROCEDURES FOR THE  
DEPARTMENTAL DISCIPLINARY COMMITTEES OF THE  
APPELLATE DIVISION OF THE SUPREME COURT OF  
THE STATE OF NEW YORK**

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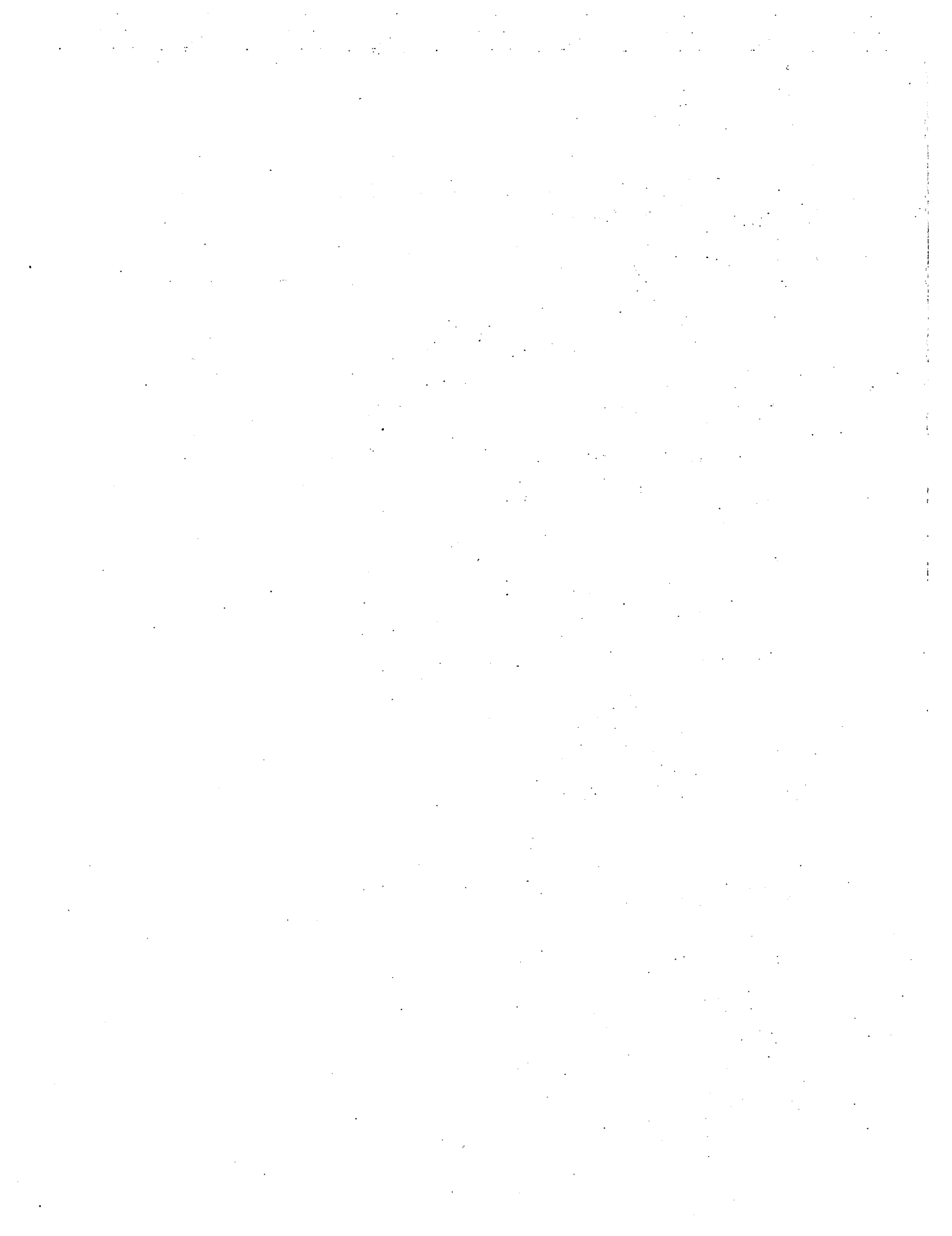
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UNIFORM RULES AND PROCEDURES FOR THE  
DEPARTMENTAL DISCIPLINARY COMMITTEES OF THE  
APPELLATE DIVISION OF THE SUPREME COURT OF  
THE STATE OF NEW YORK

1500.1 Title, Citation, Application and Construction of Rules

(a) These Rules shall be known, and may be cited, as the "Uniform Rules and Procedures for the Departmental Disciplinary Committees of the Appellate Division of the Supreme Court of the State of New York" (each such committee hereinafter referred to as "the Committee").

(b) These Rules shall apply to all attorneys who are admitted to practice, reside in, commit acts in or who have law offices in the State of New York, as well as any attorney from another state, territory, district or foreign country admitted pro hac vice to participate in the trial or argument of a particular cause in any court in the State of New York, or who in any way participates in an action or proceeding therein, or any attorney who is admitted to practice by a court of another jurisdiction who regularly practices within the State of New York as counsel for governmental agencies or as house counsel to corporations or other entities, or otherwise, and to all legal consultants licensed to practice pursuant to the provisions of subdivision 6 of section 53 of the Judiciary Law. Each Department of the Appellate Division of the Supreme Court of the State of New York (hereinafter referred to as "the Court") shall exercise its respective disciplinary jurisdiction over the persons described in the immediately preceding sentence so as to minimize duplication of effort and conflict among the various departments and judicial districts.

(c) These Rules are promulgated for the purpose of assuring fair and uniform treatment of all persons involved in the disciplinary process. No action undertaken pursuant to these Rules will be held invalid by reason of any nonprejudicial irregularity; and any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(d) Neither the conduct of proceedings nor the imposition of discipline pursuant to these Rules shall preclude the imposition of any further or additional sanctions prescribed or authorized by law, and nothing herein contained shall be construed to deny to any other court or agency such powers as are necessary for that court or agency to maintain control over proceedings conducted before it, such as the power of contempt.

## 1500.2 Definitions

(a) Subject to additional definitions contained in subsequent provisions of these Rules which are applicable to specific sections, subsections or other provisions of these Rules, the following words and phrases, when used in these Rules, shall have the meanings given to them in this section unless the context clearly indicates otherwise:

( 1) **Admonition.** Discipline administered without hearing, by letter issued at the direction of the Committee by the Committee Chairperson, in those cases in which misconduct in violation of a Disciplinary Rule is found by the Committee, but is determined to be of insufficient gravity to warrant prosecution of formal charges in the Court.

( 2) **Answer.** A formal pleading filed by the Respondent in answer to a Notice of Charges.

( 3) **Chief Counsel.** The chief counsel appointed by the Court or, in the absence of such chief counsel, the person designated deputy chief counsel and, in the absence of such deputy, an associate counsel designated to serve as acting chief counsel.

( 4) **Code of Professional Responsibility.** The Code of Professional Responsibility adopted jointly by the Appellate Divisions of the Supreme Court, effective September 1, 1990, as thereafter amended, and with respect to conduct occurring prior to September 1, 1990, the Lawyer's Code of Professional Responsibility theretofore adopted by the New York State Bar Association, as amended.

( 5) **Committee.** The departmental disciplinary committee established pursuant to section 1500.22 of this Part for such judicial districts as is provided therein. When action is to be taken by the Committee under these Rules, except as expressly provided to the contrary in section 1500.22 of this Part, such action shall be deemed and understood to be that of the Committee when a quorum is present and a majority of those members present and voting has approved such action.

( 6) **Committee Chairperson.** The Chairperson of the Committee appointed by the Court.

( 7) **Complainant.** A person communicating a grievance to the Committee or to the Office of Chief Counsel, whether or not such grievance is set forth in a complaint or alleges an act of misconduct.

( 8) **Complaint.** A written statement of the nature described in section 1500.5(c) of this Part with respect to a

grievance concerning an attorney communicated to the Committee or to the Office of Chief Counsel, alleging conduct which, if true, would constitute professional misconduct.

( 9) **Confidential Clerk.** An official of the Court with whom all pleadings, papers, records and documents are to be filed when the same are directed to the Court and confidentiality is required by these Rules.

(10) **Court.** The Appellate Division of the Supreme Court of the State of New York for the Judicial Department having jurisdiction of the Judicial District which the Committee serves.

(11) **Disciplinary Rule.** Any provision of the rules of the Court governing the conduct of attorneys, as well as any Disciplinary Rule of the Code of Professional Responsibility, all as more particularly described in section 1500.3 of this Part.

(12) **Formal Charges.** The misconduct alleged to have been committed by a respondent as set forth in the pleading served by the Office of Chief Counsel in a formal disciplinary proceeding pursuant to leave of the Court.

(13) **Formal Disciplinary Proceeding.** A proceeding instituted by leave of the Court and subject to sections 1500.10 through 1500.13 of this Part.

(14) **Grievance.** An accusation of impropriety which may or may not constitute misconduct.

(15) **Grievance Committee.** A committee established pursuant to section 1500.25 of this Part, which committee is administered by one or more local bar associations and consists of volunteer attorney members who will investigate, hear and report to the Committee on complaints of minor misconduct referred to it by the Office of Chief Counsel.

(16) **Inquiry.** An accusation which, even if true, would not constitute misconduct.

(17) **Hearing Panel.** A group of Committee members appointed pursuant to section 1500.8(b) of this Part to hear evidence with respect to a complaint and report their findings for action by the Committee.

(18) **Investigation.** Fact gathering with respect to alleged misconduct, whether preliminarily under the direction of the Office of Chief Counsel or, thereafter, by the Committee or a duly constituted subcommittee thereof.

(19) **Investigator.** Any person designated by the Office of Chief Counsel or the Committee to assist it in the

investigation of alleged misconduct.

(20) **Letter of Caution.** A letter issued at the direction of the Committee by the Committee Chairperson, pursuant to section 1500.9 of this Part, when it is believed that the respondent acted in a manner which, while not constituting a clear violation of a Disciplinary Rule, involved behavior requiring comment.

(21) **Mediation Committee.** A committee established pursuant to section 1500.26 of this Part, which committee is administered by one or more local bar associations and consists of volunteer attorney members who will attempt to mediate and resolve complaints referred to it by the Office of Chief Counsel, which complaints involve minor misconduct by attorneys with no significant disciplinary history.

(22) **Minor Misconduct.** Misconduct which does not include any element of interference with the administration of justice, criminal contempt of court, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, moral turpitude, or any other intentional conduct that raises a substantial question as to the respondent's honesty, trustworthiness or fitness as a attorney.

(23) **Notice of Charges.** A pleading served by the Office of Chief Counsel, pursuant to either section 1500.8(b) or 1500.11(a) of this Part, that is intended to provide the respondent with notice of the charges that will be heard at a hearing, whether incident to disciplinary proceedings before a panel of the Committee or formal disciplinary proceedings ordered by the Court.

(24) **Office of Chief Counsel.** The Office of Chief Counsel as provided in section 1500.23 of this Part.

(25) **Parties.** The Office of Chief Counsel and the respondent.

(26) **Petition for Leave to Institute Formal Disciplinary Proceedings.** A pleading served by the Office of Chief Counsel at the direction of the Committee requesting leave of the Court to commence formal disciplinary proceedings.

(27) **Probable Cause.** The standard of proof necessary for the Court to authorize the institution of a formal disciplinary proceeding; a finding of probable cause is intended to express the likelihood that the respondent has committed the serious misconduct with which he or she is charged.

(28) **Reprimand.** Discipline administered by the



Committee after a hearing in those cases in which misconduct in violation of a Disciplinary Rule is found by the Committee, but is determined to be of insufficient gravity to warrant prosecution of formal charges in the Court.

(29) **Respondent.** A person subject to these Rules (as described more specifically in section 1500.1[b] of this Part) who is alleged to have been guilty of misconduct.

(30) **Reviewing Member.** The Committee member designated under section 1500.5(h)(2) of this Part to review the recommended disposition of a complaint.

(31) **Staff Counsel.** The attorneys (including the chief counsel) constituting the Office of Chief Counsel and, where appropriate, such other attorney or attorneys who may be appointed by the Court from time to time to serve therein.

(32) **Special Counsel.** An attorney (or attorneys) who is (or are) duly appointed by the Court to act as counsel in a particular investigation or proceeding where staff counsel is disqualified or otherwise disabled from undertaking or continuing such investigation or proceeding.

(33) **Special Referee.** An attorney (including a judge, justice, judicial hearing officer or other judicial official) who is duly appointed by the Court to preside at a formal disciplinary proceeding and to report thereon to the Court.

### 1500.3 Grounds for Discipline

Any person subject to these Rules who fails to conduct himself both professionally and personally, in conformity with the standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in this State and any attorney who violates any provision of the rules of the Court governing the conduct of attorneys, or with respect to conduct on or after January 1, 1970, any disciplinary rule of the Code of Professional Responsibility, as adopted by the New York State Bar Association, effective January 1, 1970, as amended, or with respect to conduct on or before December 31, 1969, any canon of the Canons of Professional Ethics, as adopted by such bar association and effective until December 31, 1969, or with respect to conduct on or after September 1, 1990, as amended, any disciplinary rule of the Code of Professional Responsibility, as jointly adopted by the Appellate Divisions of the Supreme Court, effective September 1, 1990, or any other rule or announced standard of the Court governing the conduct of attorneys, shall be deemed to be guilty of professional misconduct within the meaning of subdivision (2) of section 90 of

the Judiciary Law and subject to discipline therefor. Discipline may also be imposed on attorneys pursuant to subdivision (4) of section 90 of the Judiciary Law for any of the criminal conduct specified therein, and on other persons subject to these Rules for the violation of any announced standards applicable to their conduct.

**1500.4    Types of Discipline; Subsequent  
Consideration of Action Taken**

(a) Misconduct under Section 90 of the Judiciary Law of the State of New York, the Disciplinary Rules or decisional law shall be grounds for any of the following:

- ( 1) Disbarment -- by the Court.
- ( 2) Suspension -- by the Court.
- ( 3) Censure -- by the Court.
- ( 4) Reprimand -- by the Committee after hearing, with or without referral to the Court for further action.
- ( 5) Admonition -- by the Committee without hearing.

(b) The Committee Chairperson shall issue a letter of caution to a respondent pursuant to section 1500.8(a)(2) of this Part when it is deemed to be appropriate by the Committee. The issuance of a letter of caution does not constitute discipline by the Committee.

(c) The fact that a person subject to these Rules has been issued an admonition, or a reprimand (with or without referral to the Court), or that a person subject to these Rules has been subjected to disciplinary action by the Court, may (together with the basis thereof) be considered in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against such person subsequently. Charges which have been vacated or dismissed shall not be considered. The issuance of a letter of caution may be considered only to the extent of demonstrating that a respondent was on notice that certain behavior would constitute professional misconduct, where such behavior is the subject of the subsequent proceeding. In considering whether and to what extent discipline should be imposed, due consideration shall be given to the extent to which the issuance of an admonition or a reprimand then could be, or had been, reviewed, whether by the Committee or the Court; to the extent that the issuance of such sanctions was not previously subject to review,

the respondent shall be accorded an opportunity to state his or her ability to seek review of the prior determination and to explain or otherwise comment upon the issuance of such sanction.

#### **1500.5 Investigations, Discovery and Screening**

(a) **Initiation of Investigations.** The Office of Chief Counsel shall, except as otherwise provided by subdivision (b) of this section, undertake and complete an investigation of all matters involving alleged misconduct of attorneys within the jurisdiction of the Committee called to its attention by a complaint filed pursuant to subdivision (c) of this section, by the Court, or by the Committee pursuant to written direction issued by the Committee Chairperson. The Office of Chief Counsel shall use such Investigators as are deemed appropriate by the chief counsel.

#### **(b) Preliminary Screening of Grievances.**

( 1) Any grievance received by the Office of Chief Counsel against a member of the Committee or staff counsel involving alleged misconduct shall be transmitted forthwith to the Committee Chairperson, who shall assign it either to the Office of Chief Counsel (where the grievance does not relate to the conduct of of the Office of Chief Counsel or its staff), to a member of the Committee (where the grievance does not relate to a member of the Committee), or to special counsel (in such cases as are hereinafter provided in this subdivision) who shall [1] conduct or direct an investigation, and [2] give a written recommendation as to the disposition of the grievance to the Committee Chairperson, who shall review the recommendation prior to placing the matter before the full Committee for action pursuant to these Rules. Any such grievance which relates to the Committee Chairperson shall, in the first instance, be transmitted to the Office of Chief Counsel which shall forthwith assign the same to a special counsel, who shall conduct an investigation and provide the Court with a written report for such action as the Court may deem appropriate.

( 2) Except as provided in subdivision (1) of this section, all grievances coming to the attention of the Office of Chief Counsel or the Committee shall be promptly reviewed by the Office of Chief Counsel to determine whether a complaint of misconduct is stated or there is reason to believe that misconduct has occurred and that a complaint could be stated. Where there is no allegation of misconduct, the matter shall be closed by the Office of Chief Counsel and the complainant notified of such closure. Where the allegations are determined to involve minor misconduct, the Office of Chief Counsel may proceed

as set forth in sections 1500.25 or 1500.26 of this Part.

**(c) Contents of Complaint.**

( 1 ) **General Rule.** Each complaint relating to alleged misconduct of an attorney shall be in writing and subscribed by the complainant and shall contain a concise statement of the facts upon which the complaint is based. Verification of the complaint shall not be required. If necessary, the Office of Chief Counsel may assist the complainant in reducing a grievance to writing. The complaint shall be deemed filed when received by the Office of Chief Counsel.

( 2 ) **Other Situations.** In the case of an allegation of misconduct originating in the Office of Chief Counsel, the Court or the Committee, the writing containing the allegation shall be treated as a complaint and so designated in the file.

(d) **Investigation and Discovery.** Subject to direction by the Committee, the staff of the Office of Chief Counsel shall make such investigation of each complaint as may be appropriate. Upon application by the Office of Chief Counsel, the Committee Chairperson, the chairperson of any duly constituted subcommittee or hearing panel thereof, or a respondent, the clerk of the Court shall issue subpoenas, in the name of the Presiding Justice, for the attendance of witnesses and the production of books and papers before the Office of Chief Counsel, the Committee or any subcommittee or hearing panel thereof designated in such application, at a time and place therein specified. The Office of Chief Counsel, the Committee and any subcommittee or hearing panel thereof are empowered to take and cause to be transcribed the evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

**(e) Notification of Respondent.**

( 1 ) **General Rule.** No discipline or Letter of Caution shall be recommended by the Office of Chief Counsel until the respondent shall have been afforded a reasonable opportunity to state his or her position with respect to the allegations of the complaint.

( 2 ) **Transmission of Notice.** Except where it appears that there is no basis for proceeding further or the matter must be referred to another disciplinary committee, the Office of Chief Counsel shall promptly prepare and forward to the respondent a request for a statement in response to the complaint, together with a copy of the complaint as filed, and advising the respondent of:

( i ) the respondent's right to state his or her position with respect to the complaint; and

(ii) such aspects of the complaint as the Office of Chief Counsel may deem warrant a response.

( 3 ) **Time Within Which to Reply.** Unless a shorter time is fixed by the Committee Chairperson and specified in the written notice transmitted pursuant to subdivision (2) of this section, or a longer time is permitted on good cause being shown, the respondent shall have 20 days from the date of such notice within which to file such a response in the Office of Chief Counsel.

(f) **Notification of Complainant.** Except where it appears that there is no basis for proceeding further or the matter must be referred to another disciplinary committee, the Office of Chief Counsel shall promptly forward to the complainant an accurate summary or copy of the response to the complaint and a notice advising the complainant of his or her opportunity to comment thereon. Unless a shorter time is fixed by the Committee Chairperson and specified in the written notice provided to the complainant pursuant to the immediately preceding sentence, or a longer time is permitted on good cause being shown, the complainant shall have 20 days from the date of such notice within which to file his or her comments with the Office of Chief Counsel. Where it appears that there is no basis for proceeding further or the matter must be referred to another disciplinary committee, the complainant shall be so notified in writing by the Office of Chief Counsel.

(g) **Recommendation by Office of Chief Counsel.** Following completion of any investigation of a complaint (including consideration of any statement filed by the respondent pursuant to subdivision (e)(1) of this section and any comments thereon filed pursuant to subdivision (f) of this section), the Office of Chief Counsel shall prepare a written recommendation for one of the following dispositions:

( 1 ) referral to another disciplinary committee in the State of New York by reason of a lack of territorial jurisdiction;

( 2 ) dismissal for any reason (with an indication of the reason therefor), and referral to another body if appropriate;

( 3 ) letter of caution;

( 4 ) admonition; or

( 5 ) application to the Court for the institution of formal disciplinary proceedings.

(h) **Action Following Recommendation.**

( 1) **No Jurisdiction.** If the Office of Chief Counsel determines that the Complaint should be referred under subdivision (g) (1) of this section, it shall notify the complainant and the respondent (if previously notified of the complaint) of such disposition in writing and close the file on the matter. In cases under subdivision (g) (1) of this section, the Office of Chief Counsel shall bring the matter to the attention of the appropriate disciplinary committee having jurisdiction, and shall advise the complainant of such referral. Where there exists some other duly constituted body which may be able to provide a forum for the consideration of the grievance, the Office of Chief Counsel shall advise the complainant of the availability of such other body.

( 2) **Other Cases.** Where recommendations are made pursuant to subdivisions (g) (2), (3), (4) and (5) of this section, the Committee Chairperson shall designate one or more attorney members of the Committee to review, pursuant to section 1500.7 of this Part, such recommendations prior to their submission to the full Committee.

#### **1500.6 Protective Orders**

(a) **Application.** A respondent aggrieved by any investigation may apply to the Court by affidavit, upon such notice to the Office of Chief Counsel as a justice of the Court may direct, for a protective order denying, limiting, conditioning or regulating the use of any information being sought in relation to the complaint.

(b) **Stay Pending Determination.** For good cause shown, the Court may order that any or all proceedings on the complaint be stayed pending its determination of the application for a protective order.

(c) **Service and Filing of Application.** A copy of the application shall be served on the Office of Chief Counsel, and the original thereof together with five copies and proof of its service shall be filed with the confidential clerk of the Court.

#### **1500.7 Review of Recommended Disposition of Complaint**

(a) **Examination of File by Reviewing Member.** In the case of recommendations under section 1500.5 (g) (2), (3), (4) and (5) of this Part, the chief counsel shall make the file available for examination by the reviewing member designated under section 1500.5(h) (2) of this Part no less than five days prior to the

next scheduled meeting of the full Committee. In the case of recommendations under section 1500.5(g)(5) of this Part, the chief counsel shall also make available to the reviewing member, the proposed charges, and a memorandum summarizing the evidence adduced in support of the charges.

(b) **Action by Reviewing Member.**

( 1) **General Rule.** The reviewing member may approve or request a modification of the recommendation by the Office of Chief Counsel concerning the disposition of a complaint, which request may be accepted or rejected by the Office of Chief Counsel, subject to the requirements of subdivision (b)(3) of this section.

( 2) **Modification.** If the reviewing member requests a modification of the recommendation by the Office of Chief Counsel, the reviewing member shall set forth such request in writing. Such request, if made, shall be noted on the file folder or jacket and stated as one of the following:

- (i) dismissal of the complaint;
- (ii) further investigation;
- (iii) letter of caution;
- (iv) admonition;
- (v) informal hearing; or
- (vi) reference to the Court for the institution of formal disciplinary proceedings.

( 3) **Notice of Action by Reviewing Member.** The full Committee shall be informed of any request that has been made by the reviewing member and/or the agreement of the reviewing member with the recommendation made by the Office of Chief Counsel.

**1500.8 Disposition Without Formal Disciplinary Proceedings**

(a) Upon receipt or initiation of a specific complaint of professional misconduct, the Committee may, after investigation and upon a majority vote of the Committee:

( 1) dismiss the complaint and so advise the complainant and the respondent;

( 2) conclude the matter by issuing a Letter of Caution to the respondent and by appropriately advising the

complainant of such action;

( 3 ) conclude the matter by privately admonishing the respondent, which admonition shall clearly indicate the improper conduct found and the disciplinary rule which has been violated, and by appropriately advising the complainant of such action;

( 4 ) serve written charges upon the respondent and hold a hearing on the matter as set forth in subdivision (b) of this section;

( 5 ) forthwith recommend to the Court the institution of a formal disciplinary proceeding where the public interest demands prompt action and where the available facts show probable cause for such action.

(b) Except where the Committee determines to refer the matter to the Court forthwith as provided in paragraph (5) of subdivision (a) of this section, if, after investigation, the Committee shall deem a matter of sufficient importance to warrant a hearing, a written notice of charges predicated on its investigation, plainly stating the matter or matters charged, together with a notice of not less than 20 days, shall be served upon the respondent, either personally, by certified mail, or in such other manner as the Committee may direct. The respondent when so served shall file a written answer at the time and place designated in the notice and the Committee Chairperson shall designate a hearing panel consisting of no less than three members of the Committee to hear the case. The respondent may be represented and assisted by counsel thereat and in connection therewith. The hearing panel shall decide all questions relating to its procedures and the admissibility of evidence. Stenographic or electronically recorded minutes of the hearing shall be kept.

( 1 ) Whenever in the course of a hearing evidence is presented upon which another charge or charges against the respondent might be made, it shall not be necessary for the Committee to prepare and serve an additional charge or charges on the respondent, but the hearing panel may, after reasonable notice to the respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if the same had been made and served at the time of the service of the original charge or charges.

( 2 ) The hearing panel shall make findings of fact and report those findings, together with their recommendations, to the Committee.

(c) Upon the completion of a hearing, the Committee shall promptly meet to consider the findings and report of the



hearing panel, and either approve or reject those findings and report by sustaining, dismissing and/or modifying such of the charges as circumstances warrant. Subject to the quorum requirements specified in section 1500.22 of this Part, any action taken by the Committee shall be by majority vote of those present and voting.

( 1) Where appropriate, the Committee may decide to issue a Letter of Caution with respect to such of the charges as have not been sustained when the Committee determines that the conduct of the respondent nevertheless requires comment.

( 2) As to any charges sustained, the Committee shall either, reprimand the respondent and/or, upon determining that probable cause exists therefor, instruct the Office of Chief Counsel to petition for the filing of formal disciplinary proceedings against the respondent in the Court.

( 3) In the event that a minority of the Committee disagrees with the determination of the majority, a minority report may be prepared and promptly filed with the Court, together with any majority report and the report of the hearing panel. Upon such filing, the Committee shall await the determination of the Court before otherwise disposing of the matter.

(d) Unless otherwise ordered by the Court, all proceedings conducted by the Committee shall be sealed and be deemed private and confidential.

#### **1500.9 Notice and Review of Disposition Without Formal Disciplinary Proceedings**

(a) **Notification of Respondent.** Upon the determination of the appropriate disposition by the Committee as provided in section 1500.8 of this Part, unless the disposition involves the institution of formal disciplinary proceedings, as appropriate to such determination:

( 1) the Office of Chief Counsel by means of written notice shall notify the respondent of the dismissal of the complaint; or

( 2) the Office of Chief Counsel shall transmit to the respondent a letter of caution (which shall bear the designation "Letter of Caution") signed by the Committee Chairperson; or

( 3) the Office of Chief Counsel shall transmit to the respondent an admonition (which shall bear the designation "Admonition") signed by the Committee Chairperson; or

( 4) the Office of Chief Counsel shall transmit to the respondent a reprimand (which shall bear the designation "Reprimand") signed by the Committee Chairperson.

(b) **Notification of Complainant.** A copy of the notice described in subdivision (a) of this section or in the alternative a brief description of its substance, shall be forwarded to the complainant, together with a statement from the Office of Chief Counsel advising the complainant concerning the confidential nature of such disposition.

(c) **Review of Letters of Caution, Admonitions and Reprimands.**

( 1) **General Rule.** A record shall be made and maintained by the Office of Chief Counsel (as more particularly provided in section 1500.29 of this Part) of the basis for letters of caution, admonitions and reprimands.

( 2) **Letter of Caution.** In the letter of caution, the respondent shall be advised of:

(i) the right to submit a written response under section 1500.9(d) of this Part;

(ii) the fact that the issuance of the letter of caution does not constitute discipline by the Committee; and

(iii) the fact that, pursuant to section 1500.4 of this Part, the letter of caution may be brought to the attention of a hearing panel or the Court in any subsequent proceeding where there has been a determination of misconduct in considering whether to impose discipline, and the extent of discipline to be imposed, in connection with such subsequent misconduct.

( 3) **Admonition.** In the admonition, the respondent shall be advised of:

(i) the right to seek reconsideration of the admonition under section 1500.9(d) of this Part or to petition the Court for vacatur of the admonition under section 1500.9(e) of this Part; and

(ii) the fact that, pursuant to section 1500.4 of this Part, the admonition may be brought to the attention of a hearing panel or the Court in any subsequent proceeding where there has been a determination of misconduct in considering whether to impose discipline, and the extent of discipline to be imposed, in connection with such subsequent misconduct.

( 4) **Reprimand.** In the reprimand, the respondent shall be advised of:

(i) the right to petition the Court for vacatur of the reprimand under section 1500.9(e) of this Part; and

(ii) the fact that, pursuant to section 1500.4 of this Part, the reprimand may be brought to the attention of a hearing panel or the Court in any subsequent proceeding where there has been a determination of misconduct in considering whether to impose discipline, and the extent of discipline to be imposed, in connection with such misconduct.

**(d) Action Available to Respondent on Letter of Caution or Admonition.**

( 1) **General Rule.** A respondent shall not be entitled to seek review of a letter of caution issued after the matter has been heard by a hearing panel as provided in section 1500.8 of this Part, but the respondent may submit a written response thereto within thirty days after its issuance, which response shall be maintained with the file relating to the complaint; or, in the alternative, where a letter of caution has been issued without the matter having been heard by a hearing panel under section 1500.8 of this Part, respondent may submit a written application for reconsideration which shall be disposed of in accordance with subsection (2) of this subdivision.

( 2) **Application for Reconsideration.** An application for reconsideration of a letter of caution issued without benefit of a hearing (as provided in section 1500.8 of this Part) or an admonition shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the letter of caution or admonition is forwarded to the respondent by the Office of Chief Counsel. The Office of Chief Counsel shall forthwith transmit the application and the file relating to the matter to an attorney member of the Committee designated to examine the matter by the Committee Chairperson. Within 30 days after receipt of the application by the Office of Chief Counsel, the member so designated shall either confirm the letter of caution or admonition or otherwise report to the Committee that the same should be reconsidered.

**(e) Action Available to Respondent on Reprimand or After Reconsideration of an Admonition.** Within 30 days after the issuance of a reprimand or affirmance of an admonition on reconsideration, the respondent may petition the Court to vacate the reprimand or admonition. Upon such petition, the Court may consider the entire record and may vacate the reprimand or admonition or impose such other discipline as the record may warrant.

**1500.10 Formal Disciplinary Proceedings; Preliminary Provisions**

**(a) Representation of Respondent:**

( 1) **Appearance Pro Se.** When a respondent appears pro se in a formal disciplinary proceeding, the respondent shall file with the Office of Chief Counsel an address to which any notice or other written communication required to be served upon the respondent may be sent.

( 2) **Representation of Respondent by Counsel.** When a respondent is represented by counsel in a formal disciplinary proceeding, such counsel shall file with the Office of Chief Counsel, a written notice of appearance, which shall state such counsel's name, address and telephone number, the name and address of the respondent on whose behalf counsel appears, and the caption of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent may be sent to the counsel of record for such respondent at the stated address of the counsel in lieu of transmission to the respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subdivision, any notice or other written communication required to be served on or furnished to the respondent shall also be served upon or furnished to the respondent's counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

(b) **Format of Pleadings and Documents.** Pleadings or other documents filed in formal disciplinary proceedings shall substantially comply with and conform to the requirements for comparable documents under the Civil Practice Law and Rules.

(c) **Avoidance of Delay.** All formal disciplinary proceedings under these Rules shall be as expeditious as possible. Only the special referee presiding may grant an extension of time in a formal disciplinary proceeding, and only upon good cause shown. Application for such an extension shall be made in advance and in writing where practicable.

(d) **Service by Office of Chief Counsel.** Except as expressly otherwise provided in subdivision (a) (1) of section 1500.11 of this Part with respect to the institution of a formal disciplinary proceeding:

( 1) Orders, notices and other documents originating with the Committee or the Office of Chief Counsel shall be served by the Office of Chief Counsel either personally or by mailing a copy thereof, to the person to be served, addressed to such person at such person's last known address. Whenever any such

document is to be served by mail upon the respondent individually, it shall be mailed by both certified mail, return receipt requested, and by first class mail. In all other instances, service by mail may be effected by first class mail.

( 2) Service by mail shall be complete upon mailing. When service is not accomplished by mail, personal service may be effected by anyone duly authorized by the Office of Chief Counsel in the manner provided in the laws of the State of New York relating to service of process in civil actions.

(e) **Service by Respondent.** Documents originating with the respondent, whether represented by counsel or otherwise, shall be served as follows:

( 1) By delivering a copy either personally or by mail to the Office of Chief Counsel. Where documents are delivered by mail:

(i) if the respondent is represented by counsel, such delivery may be effected by either first class mail or certified mail, return receipt requested;

(ii) if the respondent is not represented by counsel, such delivery shall be effected by certified mail, return receipt requested.

( 2) Service by mail shall be complete upon mailing.

(f) **Number of Copies.** Except as expressly otherwise provided in subdivision (a)(2) of section 1500.11 of this Part with respect to the institution of a formal disciplinary proceeding, the following number of copies of documents shall be served by each Party in a proceeding:

( 1) Documents being served by the Office of Chief Counsel: one copy of each document to the respondent, and one copy to the special referee.

( 2) Documents being served by the Respondent: two copies of each document to the Office of Chief Counsel, and one copy of each document to each other Respondent, if any; in each case, to be served personally or by mailing a copy thereof (as provided in subdivision [e] of this section) to the person to be served. The Office of Chief Counsel shall forthwith transmit one copy of any document so served to the special referee.

( 3) Copies of exhibits to be offered during the hearing shall be provided as specified in subdivision (m) of section 1500.12 of this Part.

(g) **Amendment and Supplementation of Pleadings.** No

amendment or supplementation of any notice of charges or of any answer shall be made unless specified in the pre-hearing stipulation or otherwise granted by the special referee. Any objection to a proposed amendment shall be determined by the special referee upon conditions deemed appropriate.

( 1 ) Whenever, in the course of any hearing under these Rules, evidence shall be presented upon which another charge or charges against the respondent might be made, it shall not be necessary to prepare or serve an additional notice of charges with respect thereto, but the special referee may, after reasonable notice to the respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time of service of the notice of charges, and may render a decision upon all such charges as may be justified by the evidence in the case.

( 2 ) Whenever, in the course of any hearing under these Rules, evidence shall be presented upon which another defense or defenses against a charge might be made, it shall not be necessary to prepare or serve another answer with respect thereto, but the special referee may, after reasonable notice to the Office of Chief Counsel and an opportunity to be heard with respect thereto, proceed to the consideration of such additional defense or defenses as if they had been made and served at the time of service of the answer, and may render a decision upon all such defenses as may be justified by the evidence in the case.

(h) **Expedited Hearing.** In any case where the Committee Chairperson determines that the misconduct in question poses an immediate threat to the public by reason of the grounds alleged in subdivisions (a)(1) through (3) of section 1500.14 of this Part, the Committee Chairperson may direct the chief counsel to request the Court, incident to a petition made pursuant to sections 1500.11 or 1500.14 of this Part, to appoint a special referee for the purpose of conducting a hearing on an expedited basis. Such request shall be on notice to the respondent as provided in section 1500.11(a)(1) or 1500.14(b), as the case may be. When appointed on such basis, the special referee shall, so far as is practicable, conduct the hearing from day to day until completed and, notwithstanding section 1500.13(b)(3) of this Part, issue a written report thereon within 10 days after the conclusion of the hearing.

(i) **Summary Disposition.** In any case where the Committee Chairperson determines that the misconduct in question:

( 1 ) has been adjudicated by a court of competent jurisdiction; or

( 2 ) is established by:

( i) a default in responding to the process of the Committee;

( ii) a substantial admission of the respondent under oath; or

(iii) other uncontroverted evidence of the misconduct,

the Committee Chairperson may direct the chief counsel to request the Court, incident to a petition made pursuant to sections 1500.11 or 1500.14 of this Part, to request the Court to issue an order summarily disposing of the charges or so much thereof as may be appropriate to the circumstances. Such request shall be on notice to the respondent as provided in section 1500.11(a)(1) or 1500.14(b), as the case may be.

**1500.11 Formal Disciplinary Proceedings;  
Pleadings and Preliminary Procedures**

(a) **Commencement of Formal Disciplinary Proceedings.**  
The Office of Chief Counsel shall institute formal disciplinary proceedings, when so directed by the Committee, by serving on the respondent copies of a notice of petition and a petition for leave to institute formal disciplinary proceedings, the petition annexing a notice of charges.

( 1) **Service and Filing of Process.** Service of the notice and petition shall be made either personally or by certified and first class mail. If service is made by mail and the respondent shall fail to answer or respond within the time specified by the notice, a copy of the notice and petition shall be served upon the respondent personally. If the respondent cannot be served personally, the Court may make such order as is appropriate to the circumstances. Promptly after service of the notice and petition, the Office of Chief Counsel shall file with the confidential clerk of the Court the signed originals and five copies thereof together with proof of their service on the respondent.

( 2) **Answer to Petition.** Except as otherwise provided in sections 1500.14 or 1500.17 of this Part, the respondent shall be accorded 20 days to answer the petition. A copy of the answer, if any, shall be served on the Office of Chief Counsel, and the original thereof together with five copies and proof of its service shall be filed with the confidential clerk of the Court.

(b) **Order of the Court.** The Court shall make such order with respect to the petition as circumstances warrant, including

the appointment of a special referee to hear and report. Any compensation to be paid to such special referee shall be paid by the Court and neither the Committee nor the Office of Chief Counsel shall be permitted to discuss such compensation with the special referee.

(c) **Confidentiality of Proceeding.** All papers records and documents relating to the proceeding shall be sealed and deemed private and confidential unless and until charges of misconduct have been sustained by the Court; provided, however, upon a showing of probable cause to believe that the respondent has committed serious acts of misconduct with which the respondent has been charged, the Court may order that the proceeding be open to the public where it determines that the public interest would be served thereby. Any order which opens the proceeding to the public shall state in substance that a determination of probable cause is not equivalent to a finding of misconduct, and no such inference should be made or suggested.

(d) **Notice of Charges.**

( 1) **General Rule.** Unless the Court shall have ordered that the notice of charges be amended, the respondent need not be served with any copy other than that annexed to the notice and petition served pursuant to subdivision (a) of this section 1500.11. The order of the Court will direct that the respondent answer the notice of charges as annexed to the petition. However, if the Court shall have ordered that the notice of charges be amended, the Office of Chief Counsel shall serve a copy of an amended notice of charges on the respondent promptly after the Court shall have made an order as provided in subdivision (b) of this section 1500.11. The amended notice of charges shall conform in all respects to the order made by the Court, and the original thereof, together with proof of its service on the respondent, shall be filed with the confidential clerk of the Court.

( 2) **Contents of Notice.** The notice of charges shall set forth the charges of misconduct against the respondent, the disciplinary rules alleged to have been violated, and, in appropriate cases, the fact that the Office of Special Counsel will seek restitution or reimbursement pursuant to section 90-6-a(a) of the Judiciary Law, and costs pursuant to section 1500.13 of this Part. The notice of charges shall also set forth the number of days within which the respondent may answer; the locations whereat the answer is to be served and filed; the date, time and place of the hearing; and shall advise the respondent that the respondent is entitled to be represented by counsel, to cross-examine witnesses, to present evidence and shall also indicate the special referee to which the matter has been assigned.



(e) **Answer.**

( 1) **General Rule.** The respondent shall answer the notice of charges by serving an answer on the Office of Chief Counsel within 20 days after service of the notice of charges, and filing the original thereof with the special referee (together with proof of service thereof) unless different times are directed by the special referee and specified in the notice of charges.

( 2) **Contents of Answer.** The answer shall be in writing and shall respond specifically (by admissions, denials or otherwise) to each allegation of the notice of charges and shall assert all affirmative defenses.

( 3) **Request to Be Heard in Mitigation.** The respondent may include in the answer matters in mitigation.

( 4) **Effect of Failure to Answer.** In the event the Respondent fails either to serve and file an answer or respond specifically to any allegation or charge, such allegation or charge shall be deemed admitted.

(f) **Pre-hearing Stipulation.** A form of pre-hearing stipulation shall be served on the respondent together with the notice of charges. The said form shall substantially reflect the order and content of the model set forth as Appendix A in section 1500.31 of this Part.

(g) **No Other Pleadings.** Pleadings shall be limited to a Notice of Charges and any Answer thereto as amended or supplemented in accordance with these Rules.

(h) **Assignment for Hearing.** Promptly after appointment by the Court, the special referee will establish the date, time and place of the hearing. The parties will be so advised and the same shall be confirmed by a writing served by the Office of Chief Counsel on the respondent no less than ten days prior to the hearing, unless a shorter period of notice is established by the special referee.

(i) **Transmission of Pleadings.** The confidential clerk of the court shall transmit copies of the notice of charges, and of the answer thereto, if and when available, to the special referee.

(j) **Subpoenas.** Both staff counsel and the respondent shall have the right to summon witnesses and require production of books and papers by issuance of subpoenas in accordance with the rules of the Court and to the full extent available in civil actions under the Civil Practice Law and Rules.

(k) **Depositions.** When there is good cause to believe that the testimony of a potential witness will be unavailable at the time of hearing, testimony may be taken by deposition. Such deposition shall be initiated and conducted in the manner provided for the taking of depositions in the New York Civil Practice Law and Rules, and the use of such depositions at hearings shall be in accordance with the use of depositions at trials under the Civil Practice Law and Rules.

(l) **Motions.** The special referee to which a matter has been assigned will entertain, from time to time, such motions as justice may require, in accordance with the principles set out in section 1500.1(c) of this Part.

#### **1500.12 Formal Disciplinary Proceedings: Conduct of Hearing**

(a) **Conferences.** In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited (including preparation of agreed stipulations of fact) staff counsel and respondent and/or respondent's counsel shall meet five business days after the answer is served (unless a different time be established by the special referee) to complete and sign a pre-hearing stipulation in conformity with the model set forth in section 1500.31(a) of this Part. The signed stipulation shall be forwarded to the special referee by the Office of Chief Counsel no later than five days prior to the hearing.

(b) **Appearances.** The special referee shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

(c) **Order of Procedure.** In proceedings upon a notice of charges, the Office of Chief Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence. Opening statements, when permitted in the discretion of the special referee, shall be made first by staff counsel. Closing statements shall be made first by the respondent.

(d) **Burden of Proof.** The burden of proof in all proceedings upon a notice of charges shall be a fair preponderance of the evidence.

(e) **Presentation by the Parties.** Respondent and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The special referee may examine all witnesses.

(f) **Limiting Number of Witnesses.** The special referee

may limit the number of witnesses who may be heard upon any issue to eliminate unduly cumulative evidence.

(g) **Additional Evidence.** At the hearing, the special referee may, if deemed advisable, authorize any party to file specific documentary evidence as a part of the record within such time as shall be fixed by the special referee.

(h) **Oral Examination.** Witnesses shall be examined orally unless the testimony is taken by deposition as provided in section 1500.11(k) of this Part, or the facts are stipulated in the manner provided in section 1500.11(d) of this Part. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(i) **Fees of Witnesses.** Witnesses subpoenaed by the Office of Chief Counsel or the respondent shall be paid, by the subpoenaing party, the same fees and mileage as are paid for like service in the Supreme Court.

(j) **Presentation and Effect of Stipulation.** The parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on such parties with respect to the matters therein stipulated.

(k) **Admissibility of Evidence.**

( 1) **General Rule.** All evidence which is deemed by the special referee to be relevant, competent and not privileged shall be admissible in accordance with the principles set out in section 1500.1(c) of this Part.

( 2) **Pleadings.** The notice of charges and the answer thereto shall, without further action, be considered as parts of the record.

( 3) **Convictions.** A certificate of the conviction of a respondent for any crime shall be conclusive evidence of the respondent's guilt of that crime in any disciplinary proceeding instituted against the respondent and based on the conviction, and the respondent may not offer evidence inconsistent with the essential elements of the crime for which the respondent was convicted as determined by the statute defining the crime except such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.

(1) **Reception and Ruling on Evidence.** When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated concisely, if so requested by the

special referee, and may be stated concisely if no such request is made. Formal exceptions are unnecessary. The special referee shall rule on the admissibility of all evidence.

(m) **Copies of Exhibits.** When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to the parties and to the special referee at the hearing.

(n) **Record of Proceeding.** Hearings shall be recorded by reporters authorized to take oaths; or by mechanical recording devices and a transcript of the hearing so recorded, if such transcription is made, shall be a part of the record and sole official transcript of the proceeding. Such transcript shall consist of a verbatim report of the hearing, an exhibit list and the reporter's certificate, and nothing shall be omitted from the record except as is directed by the special referee. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony, except as provided in subdivision (g) of this section or changes in the transcript, except as provided in subdivision (o) of this section.

(o) **Transcript Corrections.** Corrections in the official transcript may be made only to make it conform to what actually transpired at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the special referee, at any time during the hearing or after the close of the hearing, but in no event more than 10 days after the receipt of the transcript. Resolution of any dispute among the parties as to correction of the official transcript shall be resolved by the special referee, whose decision shall be final.

(p) **Copies of Transcripts.** A respondent desiring copies of an official transcript may obtain such copies at the respondent's own expense from the official reporter. Any witness may obtain from the official reporter at the witness' own expense a copy of that portion of the transcript relating to the witness' own testimony, or any part thereof. The Office of Chief Counsel shall in either such case, bear the expense of one such copy if and when directed by the special referee and shall furnish the same to the special referee as and when directed.

(q) **Reopening of Record.**

( 1) Application. No application to reopen a proceeding shall be granted except upon the application of the respondent to the special referee, made prior to the filing of the special referee's report and recommendation, and only upon

good cause shown. Such application shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, and shall be served on the parties and delivered to the special referee together with proof its of service.

( 2 ) Responses. Within five days after the service of such application, any other party may serve an answer thereto (delivering the original thereof to the special referee together with proof of its service), and in default of such answer shall be deemed to have waived any objection to the granting of such application.

**1500.13 Formal Disciplinary Proceedings: Concluding Procedures**

**(a) Determinations.**

( 1 ) **Determination of Charges.** After the hearing of concluding arguments and receipt of additional material, if any, the special referee shall determine whether any charges against the respondent are to be sustained.

( 2 ) **No Charge Sustained.** If the special referee decides that none of the charges against the respondent should be sustained, the special referee may so advise the parties on the record, and the referee shall proceed to prepare and file with the confidential clerk of the Court a report recommending that the charges be dismissed and the matter closed.

( 3 ) **Any Charge Sustained.** If the special referee decides that any charge against the respondent should be sustained, the special referee shall so advise the parties on the record, and shall thereupon ascertain from staff counsel, whether the respondent has previously received a letter of caution or has previously been subject to disciplinary action by the Court, the Committee, any grievance committee established or authorized by any other Appellate Division of the Supreme Court of the State of New York, or by any other court.

( 4 ) **Sanctions.** Following the determination to be made in accordance with paragraph (3) of this subdivision, the special referee shall consider and deliberate which of the following disciplinary sanctions should be recommended:

- (i) private reprimand;
- (ii) censure, suspension or disbarment;
- (iii) restitution or reimbursement pursuant to section 90 6-a of the Judiciary Law, if deemed appropriate;
- (iv) costs be imposed on the respondent;

and/or  
warrant.

(v) such other sanction as circumstances

Upon such deliberations having been had, the special referee shall prepare a report and recommendation for the Court as provided in section 1500.13(b) of this Part.

**(b) Report and Recommendation of the Special Referee.**

( 1) **All Cases.** In all cases there shall be a report and recommendation by the special referee which shall state the special referee's findings of fact and conclusions of law. In all cases it shall be in the discretion of the special referee to deliver the report and recommendation orally on the record at the close of the hearing.

( 2) **Submissions of the Parties.** The special referee may require staff counsel and/or the respondent to submit briefs or proposed findings of fact and conclusions of law in accordance with such schedule as may be set by the special referee. Copies of any submission to the special referee shall be simultaneously served on all of the parties at the time of its submission to the special referee.

( 3) **Service and Filing of Report.** Unless good cause exists to proceed otherwise, the special referee shall issue a report and recommendation within 60 days after the conclusion of the hearing and submission of all post-hearing papers. The special referee shall file an original and five copies of the report and recommendation with the confidential clerk of the Court and serve copies thereof upon the parties.

( 4) **Petitioning the Court for Final Action.** The Office of Chief Counsel and/or the respondent may petition the Court within 30 days after service of the special referee's report and recommendation to confirm or disaffirm the same, whether in whole or in part, and request the Court to enter an order for such other and further relief as may be appropriate under the circumstances including, but not limited to, reversal or modification of any finding in the report and/or a different sanction. Copies of such petition shall be served by the petitioner on the other party, with the original and five copies thereof being filed with the confidential clerk of the Court. The opposing party shall be accorded no less than 20 days to respond to the petition.

( 5) **Notification of Complainant.** The Office of Chief Counsel by means of written notice shall advise the complainant of any referral to the Court (which notice shall inform the Complainant of the requirement of confidentiality to whatever extent appropriate), and of any final action by the

Court.

**1500.14 Suspension Pending Consideration of Charges.**

(a) **Grounds for Interim Suspension.** An attorney who is the subject of an investigation, or of charges by the Committee of professional misconduct, or who is the subject of a formal disciplinary proceeding pending in the Court against whom a petition has been filed pursuant to section 1500.11 of this Part, or upon whom a notice has been served pursuant to section 1500.8(b) of this Part, may be suspended from the practice of law, pending consideration of the charges against the attorney, upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. Such a finding shall be based upon:

( 1) the attorney's default in responding to the petition or notice, or the attorney's failure to submit a written answer to pending charges of professional misconduct or the attorneys failure to submit a written answer to a complaint of professional misconduct within 10 days of receipt of a demand for such an answer by the Committee, served either personally or by certified mail upon the attorney or the attorney's failure to comply with any of the lawful demands of the Court or the Committee made in connection with any investigation, hearing, or disciplinary proceeding; or

( 2) a substantial admission under oath that the attorney has committed an act or acts of professional misconduct; or

( 3) other uncontroverted evidence of professional misconduct.

(b) **Application and Order.** The suspension shall be made by order of the Court upon the application of the Office of Chief Counsel acting at the direction of the Committee, after notice of such application has been given to the attorney pursuant to subdivision 6 of section 90 of the Judiciary Law. The Court shall briefly state its reasons for its order of suspension which shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded, and until further order of the Court.

**1500.15 Attorneys Convicted of Serious Crimes;  
Record of Conviction as Conclusive Evidence.**

(a) The clerk of any court within the judicial department in which an attorney admitted to practice in this

State is convicted of a crime shall within five days of said conviction forward a certificate thereof to the clerk of this Court and to the clerk of the Appellate Division of the Supreme Court in the judicial department in which said person was admitted to practice.

(b) Upon the filing with the Court of a certificate that an attorney has been convicted of a serious crime as hereinafter defined in a court of record of any State, territory or district, including this State, the Court shall:

( 1) suspend the attorney from the practice of law until a final order is made pursuant to paragraph (g) of subdivision (4) of section 90 of the Judiciary Law, unless upon good cause shown, the Court determines when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public and the interests of justice, to set aside such suspension; and

( 2) cause formal charges to be made and served upon the respondent and shall enter an order immediately referring the matter to a special referee appointed by the Court to conduct forthwith formal disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(c) The term "serious crime" shall include any felony, not resulting in an automatic disbarment under the provisions of subdivision (4) of section 90 of the Judiciary Law, and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, criminal contempt of court, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, an attempt or a conspiracy or solicitation of another to commit a "serious crime" or a crime involving moral turpitude.

(d) A certificate of the conviction of an attorney for any crime shall be conclusive evidence of guilt of that crime in any disciplinary proceeding instituted against the attorney based on that conviction, and the attorney may not offer evidence inconsistent with the essential elements of the crime for which the attorney was convicted as determined by the statute defining the crime; provided, however, that the attorney may offer such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.

(e) Upon the filing with the court of a certificate that an attorney has been convicted of a crime not constituting a serious crime as hereinbefore defined in a court of record in any



State, territory or district, including this State, the Court shall either refer the matter to the Committee for whatever action may be appropriate, or cause formal charges to be made and served upon the respondent and enter an order immediately referring the matter to a special referee appointed by the Court to conduct forthwith formal disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(f) The Committee or the Office of Chief Counsel, upon receiving information that any attorney to whom these Rules apply has been convicted of a crime in a court of record of any State, territory or district, shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate of the conviction to the Court. If the certificate has not been forwarded by the clerk, the Office of Chief Counsel shall obtain a certificate of the conviction and file the same with the Court.

**1500.16 Discipline of Attorneys for Professional Misconduct in Foreign Jurisdiction.**

(a) **Application of Section.** Any attorney subject to these Rules, pursuant to section 1500.1 of this Part, who has been disciplined in a foreign jurisdiction, may be disciplined by the Court because of the conduct which gave rise to the discipline imposed in the foreign jurisdiction. For purposes of this Part, foreign jurisdiction means another state, territory or district.

(b) **Notice of Proceedings.** Upon receipt of a certified or exemplified copy of the order imposing such discipline in a foreign jurisdiction, and of the record of the proceedings upon which such order was based, the Court, directly or by the Committee acting through the Office of Chief Counsel, shall give written notice to such attorney pursuant to subdivision 6 of section 90 of the Judiciary Law, according him or her the opportunity, within 20 days of the giving of such notice, to file a verified statement setting forth evidentiary facts for any defense to discipline enumerated under subdivision (c) of this section, and a written demand for a hearing at which consideration shall be given to any and all such defenses. Such notice shall further advise the attorney that in default of such filing such discipline or such disciplinary action as may be appropriate will be imposed or taken. When a verified statement setting forth evidentiary facts for any defense to discipline and a demand for hearing have been duly filed, no discipline shall be imposed without affording the attorney an opportunity for hearing. The hearing may be conducted by a special referee or by the Committee, as the Court directs. In the event the Committee or the attorney desires further action by the Court, a petition

may be filed in the Court, together with the record of the proceedings before the special referee or the Committee.

(c) **Permissible Defenses.** Only the following defenses may be raised:

( 1) that the procedure in the foreign jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

( 2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duties, accept as final the finding in the foreign jurisdiction as to the attorney's misconduct; or

( 3) that the misconduct for which the attorney was disciplined in the foreign jurisdiction does not constitute misconduct in this jurisdiction.

(d) **Attorneys Required to File.** Any attorney subject to these Rules pursuant to section 1500.1 of this Part, who has been disciplined in a foreign jurisdiction shall promptly file with the Court a certified copy of the order imposing such discipline.

(e) **Filing by Committee.** Whenever the Committee or the Office of Chief Counsel learns that an attorney subject to these Rules pursuant to section 1500.1 of this Part has been disciplined in a foreign jurisdiction, it shall ascertain whether a certified or exemplified copy of the order imposing such discipline has been filed with the Court, and if it has not been filed, the Committee or the Office of Chief Counsel shall cause such order to be filed.

**1500.17 Proceedings Where Attorney Is Declared  
Incompetent or Alleged to Be Incapacitated.**

(a) **Suspension Upon Judicial Determination of Incompetency or on Involuntary Commitment.** Where an attorney subject to this Part has been judicially declared incompetent or involuntarily committed to a mental hospital, the Court, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of the law, effective immediately and for an indefinite period and until the further order of the Court. A copy of such order shall be served upon such attorney, his committee, guardian or other legal representative, and/or the director of the mental hospital in such manner as the Court may direct.

**(b) Proceeding to Determine Alleged Incapacity and Suspension Upon Such Determination.**

( 1) Whenever a committee appointed pursuant to section 1500.22 of this Part shall petition the Court to determine whether an attorney is incapacitated from continuing to practice law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration of the matter, the Court is satisfied and concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period and until the further order of the Court and any pending disciplinary proceedings against the attorney shall be held in abeyance.

( 2) The Court shall provide for such notice to the respondent-attorney of proceedings in such matter as it deems proper and advisable and may appoint an attorney to represent the respondent, if the respondent-attorney is without adequate representation.

**(c) Procedure When Respondent Claims Disability During Course of Proceeding.**

( 1) If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent adequately to defend himself or herself, the Court thereupon shall enter an order suspending the respondent from continuing to practice law until a determination is made of the respondent's capacity to continue the practice of law in a proceeding instituted in accordance with the provisions of subdivision (b) of this section.

( 2) If, in the course of a proceeding under this section or in a disciplinary proceeding, the Court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

**(d) Appointment of Attorney to protect Client's and Suspended Attorney's Interest.**

( 1) Whenever an attorney is suspended for incapacity or disability, the Court, upon such notice to the attorney as it may direct, may appoint another attorney or

attorneys to inventory the files of the suspended attorney and to take such action as it deems proper and advisable to protect the interest of his or her clients and for the protection of the interest of the suspended attorney.

( 2) Any attorney so appointed by the Court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates, except as is necessary to carry out the order of the Court which appointed the attorney to make such inventory.

**(e) Reinstatement Upon Termination of Disability.**

( 1) Any attorney suspended under the provisions of this section shall be entitled to apply for reinstatement at such intervals as the Court may direct in the order of suspension or any modification thereof. Such application shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he or she is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper for a determination as to whether the attorney's disability has been removed, including the direction of an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such examination shall be paid by the attorney.

( 2) Where an attorney has been suspended by an order in accordance with the provisions of subdivision (a) of this section and thereafter, in proceedings duly taken, has been judicially declared to be competent, the Court may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement upon such terms as it deems proper and advisable.

**(f) Burden of Proof.** In a proceeding seeking an order of suspension under this section, the burden of proof shall rest with the petitioner. In a proceeding seeking an order terminating a suspension under this section, the burden of proof shall rest with the suspended attorney.

**(g) Waiver of Doctor-Patient Privilege Upon Application for Reinstatement.** The filing of an application for reinstatement by an attorney suspended for disability shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since his or her suspension and the attorney shall furnish to the Court written consent to

each to divulge such information and records as is requested by court-appointed medical experts or by the clerk of the Court.

(h) **Payment of Expenses of Proceedings.**

( 1) The necessary costs and disbursements of an agency, committee or appointed attorney in conducting a proceeding under this section shall be paid in accordance with subdivision (6) of section 90 of the Judiciary law.

( 2) The Court may fix the compensation to be paid to any attorney or medical expert appointed by the Court under this section. The compensation may be directed by the Court to be paid as an incident to the cost of the proceeding in which the charges are incurred and shall be paid in accordance with law.

**1500.18 Resignation by Attorney Under Disciplinary Investigation.**

(a) **Tender of Resignation.** An attorney who is the subject of an investigation into allegations of misconduct, or who is the subject of a disciplinary proceeding pending in the Court, may tender a resignation by submitting to the Committee an affidavit stating that he or she intends to resign and that:

( 1) his or her resignation is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; and he or she is fully aware of the implication of submitting his or her resignation;

( 2) he or she is aware that there is pending an investigation into allegations that he or she has been guilty of misconduct, the nature of which shall be specifically set forth; and

( 3) he or she acknowledges that if charges were predicated upon the misconduct under investigation, he or she could not successfully defend on the merits against such charges.

(b) **Recommendation to the Court.** On receipt by the Committee of an affidavit from an attorney who intends to resign, the Committee Chairperson shall designate an attorney member of the Committee to review the affidavit and such other matters as the the member may deem appropriate to determine either (1) to recommend that the resignation be accepted and to recommend any terms and conditions of acceptance which may be appropriate to the circumstances, or (2) to recommend that the resignation not be accepted with the reasons therefor. The Committee shall promptly thereafter consider the matter and file its report with the Court together with the affidavit of the resigning attorney.

(c) **Entry of Order.** Upon the filing of the report of the Committee with the required affidavit, the Court may enter an order either disbarring the attorney, ordering that there be further proceedings, or accepting the resignation and striking his or her name from the roll of attorneys on consent and upon such terms and conditions as it deems appropriate. The Court may also order that the affidavit to which reference is made in subdivisions (a) and (b) of this section be deemed private and confidential under subdivision 10 of section 90 of the Judiciary Law.

(d) **Notification of Complainant.** The Office of Chief Counsel, by means of written notice, shall advise the complainant of any action taken by the Court with respect to the respondent's resignation.

#### **1500.19 Nonabatement of Disciplinary Proceedings**

(a) **Refusal of Complainant or Respondent to Proceed, etc.** Neither unwillingness or neglect of the complainant to prosecute a charge, nor settlement, compromise or restitution, nor the failure of the respondent to cooperate, shall, in itself, justify abatement of an investigation or the deferral or termination of proceedings under these Rules.

(b) **Matters Involving Related Pending Civil Litigation or Criminal Matters.**

( 1) **General Rule.** The processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not be deferred pending determination of such litigation.

( 2) **Effect of Determination.** The acquittal of a respondent on criminal charges involving substantially similar material allegations shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

(c) **Restitution.** Restitution made by or on behalf of a respondent for property which has been converted by the respondent or payments made to reimburse or otherwise compensate persons injured by the respondent, shall not abate or otherwise bar the commencement or continuance of disciplinary proceedings.

#### **1500.20 Conduct of Disbarred, Suspended or Resigned Attorneys; Abandonment of Practice by Attorney**

(a) **Compliance with Judiciary Law.** Disbarred, suspended

or resigned attorneys at law shall comply fully and completely with the letter and spirit of sections 478, 479, 484 and 486 of the Judiciary law relating to practicing as attorneys at law without being admitted and registered, and soliciting of business on behalf of an attorney at law and the practice of law by an attorney who has been disbarred, suspended or convicted of a felony.

(b) **Compensation.** A disbarred, suspended or resigned attorney may not share in any fee for legal services performed by another attorney during the period of his removal from the bar. A disbarred, suspended or resigned attorney may be compensated on a quantum meruit basis for legal services rendered and disbursements incurred by him prior to the effective date of the disbarment or suspension order or of his resignation. The amount and manner of payment of such compensation and recoverable disbursements shall be fixed by the court on the application of either the disbarred, suspended or resigned attorney or the new attorney, on notice to the other as well as on notice to the client. Such applications shall be made at special term in the court wherein the action is pending or at special term in the Supreme Court in the county wherein the moving attorney maintains his or her office if an action has not been commenced. In no event shall the combined legal fees exceed the amount the client would have been required to pay had no substitution of attorneys been required.

(c) **Notice to Clients Not Involved in Litigation.** A disbarred, suspended or resigned attorney shall promptly notify, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of his or her disbarment, suspension or resignation and his or her consequent inability to act as an attorney after the effective date of his or her disbarment, suspension or resignation and shall advise said clients to seek legal advice elsewhere.

(d) **Notice to Clients Involved in Litigation.**

( 1) A disbarred, suspended or resigned attorney shall promptly notify, by registered or certified mail, return receipt requested, each of his or her clients involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his or her disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date of his or her disbarment, suspension or resignation. The notice to be given to the client shall inform the client of the advisability of a prompt substitution of another attorney or attorneys in his or her place.

( 2) In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or resignation, it shall be the responsibility of the disbarred, suspended or resigned attorney to move pro se in the court in which the action is pending, or before the body in which an administrative proceeding is pending, for leave to withdraw from the action or proceeding.

( 3) The notice given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred, suspended or resigned attorney. In addition, notice shall be given in like manner to the Office of Court Administration of the State of New York in each case in which a retainer statement has been filed.

(e) **Conduct After Entry of Order.** The disbarred, suspended or resigned attorney, after entry of the disbarment or suspension order or after entry of the order accepting the resignation, shall not accept any new retainer or engage in any new case or legal matter of any nature as attorney for another. However, during the period between the entry date of the order and its effective date he or she may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(f) **Filing Proof of Compliance and Attorney's Address.** Within 10 days after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred, suspended or resigned attorney shall file with the clerk of the Court an affidavit showing:

( 1) that he or she has fully complied with the provisions of the order and with these Rules;

( 2) that he or she has served a copy of such affidavit upon the petitioner or moving party; and

(3) the residence or other address of the disbarred, suspended or resigned attorney where communications may be directed to the said attorney.

(g) **Appointment of Attorney to protect Clients' Interests and Interests of Disbarred, Suspended or Resigned Attorney.** Whenever it shall be brought to the Court's attention that a disbarred, suspended or resigned attorney shall have failed or may fail to comply with the provisions of subdivisions (c), (d) or (f) of this section, the Court, upon such notice to such attorney as the Court may direct, may appoint the disbarred, suspended or resigned attorney and to take such action as seems indicated to protect the interests of his or her clients and for the protection of the interests of the disbarred, suspended or



resigned attorney.

(h) **Disclosure of Information.** Any attorney so appointed by the Court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of the Court appointing the attorney to make such inventory.

(i) **Fixation of Compensation.** The Court may fix the compensation to be paid to any attorney appointed by it under this section. The compensation may be directed by the Court to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged in accordance with law.

(j) **Required Records.** A disbarred, suspended or resigned attorney shall keep and maintain records of the various steps taken by him or her under this section so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with this section and with the disbarment or suspension order or with the order accepting the resignation will be available.

(k) **Abandonment of Practice by Attorney.** When, in the opinion of the Court, an attorney has abandoned his or her practice, the Court, upon such notice to such attorney as it may direct, may appoint the Office of Chief Counsel or an individual attorney, to take custody and inventory the files of such attorney and to take such action as seems indicated to protect the interests of his or her clients.

#### **1500.21 Application for Reinstatement.**

(a) **General.** Any attorney who has been suspended for a period of six months or less pursuant to formal disciplinary proceedings shall be reinstated, subject to the procedures set forth in subdivisions (a)(1) and (2) hereof and if no objection is made by the Committee, 60 days after the end of the period of suspension by filing with the Court and serving upon the Office of Chief Counsel an affidavit stating that he or she has fully complied with the requirements of the suspension order, including the making of any restitution ordered by the Court and the payment of any fees and costs required by its order.

( 1) Upon receipt of the affidavit, the Office of Chief Counsel shall mail a copy of it and a notice to each complainant in the disciplinary proceeding that led to the suspension advising the complainant that he or she has 20 days after the date of mailing of such affidavit and notice to raise

an objection to, support or otherwise offer written comments on, the affidavit.

( 2) Within 40 days after service of the affidavit on the Office of Chief Counsel, the Committee shall advise the Court if it objects to reinstatement of the attorney and shall file a report setting forth its objection. Upon the filing of such report, the Court may make an order appropriate to the circumstances or require that the attorney petition for reinstatement in accordance with the procedures set forth in subdivisions (b) through (f) of this section.

(b) **Procedure on Petition.** Persons who have been disbarred or who have been suspended for more than six months, or whose names have been stricken from the roll of attorneys on consent, may only apply for reinstatement by petitioning the Court.

( 1) **Conditions Precedent to Entertaining Petition.** Unless the Court shall first order otherwise, a petition for reinstatement will not be accepted for filing unless the requisite fees therefor have been paid and where:

( i) The petitioning attorney has been disbarred after a hearing or has been stricken from the roll of attorneys pursuant to subdivision 4 of section 90 of the Judiciary Law or has resigned on consent, until the expiration of seven years after the effective date of the disbarment or removal; or

(ii) The petitioning attorney has been denied reinstatement, until the expiration of two years after the date of the Court's order denying restatement.

( 2) **Petition to Be Verified and Submitted in the Form Prescribed.** A petition for reinstatement shall be verified and shall be submitted substantially conforming to the form and content of the model set forth as Appendix B in section 1500.31 of this Part.

( 3) **Service and Filing of Petition.** A petitioner shall serve a copy of the petition on the Office of Chief Counsel and the Lawyers' Fund for Client Protection.

(c) **Investigation.** The Committee or the Committee on Character and Fitness, as the Court may direct, shall inquire into the facts submitted in support of the petition and all other relevant facts.

( 1) **Standard Inquiry.** Upon reference to the Committee (or to the Committee on Character and Fitness, as the case may be) of a petition made by a person who has been

disbarred or who has been suspended for more than six months, or whose name has been stricken from the roll of attorneys on consent, the Office of Chief Counsel (or the Committee on Character and Fitness) shall mail a copy of the petition and a notice to each complainant in the disciplinary proceeding that led to the suspension or disbarment advising the complainant that he or she has 60 days after the date of mailing such affidavit and notice to raise an objection to, support or otherwise offer written comments on, the petition for reinstatement. Specific inquiry shall be made by the Office of Chief Counsel (or the Committee on Character and Fitness) as to whether and to what extent restitution has been made to those persons who were injured by the applicant's misconduct.

( 2 ) **Supplemental Inquiry.** The Committee (or the Committee on Character and Fitness) may, in its discretion, require the petitioner to (i) submit additional sworn proof, (ii) submit to an examination under oath, (iii) produce records or other documents relevant to the application, (iv) provide proof of compliance with all disciplinary orders, and (v) submit to medical or psychiatric examination by qualified experts.

(d) **Committee Recommendation and Report.** After completing the investigation to which reference is made in subdivision (c) of this section, the Committee (or the Committee on Character and Fitness) shall decide whether to support or oppose the petition and shall thereupon direct the Office of Chief Counsel to prepare a report consistent with its decision. If the Committee (or the Committee on Character and Fitness) opposes reinstatement, the reasons for its opposition shall be set forth in the report and it may request that the Court either deny the petition or refer the petition to a special referee to hear and report to the Court on such matters as may be appropriate. A copy of the report shall be served on the petitioner and the original thereof shall be filed with the Court together with proof of its service.

(e) **Hearing on Petition.** If the Court orders that there be a hearing on the petition, the Court shall appoint a special referee to conduct the hearing and to report his or her findings to the Court. At the hearing, both the petitioner and the Office of Chief Counsel (or such other body as the Committee on Character and Fitness may designate) may present evidence relevant to the issues raised by the petition.

(f) **Conditions for Granting Petition.** A petition for reinstatement may be granted by the Court only after there has been compliance with the procedures set forth in this section and the petition has been reviewed by the Committee or the Committee on Character and Fitness or such other individual or body as the Court may deem appropriate and upon a showing by the petitioner:

( 1 ) by clear and convincing evidence that the

petitioner has fully complied with the provisions of the order disbaring or suspending him or her or striking his or her name from the roll of attorneys, and that the petitioner possesses the character and general fitness to practice law; and

( 2) that, subsequent to the entry of such order, the petitioner has taken, and attained a passing score on, the Multistate Professional Responsibility Examination described in section 520.8(a) of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors-at-Law, the passing score thereon being that determined by the New York State Board of Law Examiners pursuant to section 520.8(c) of such rules.

( 3) The Court in its discretion may direct as a condition of reinstatement that:

( i) the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the petitioner; and/or

(ii) the petitioner make full restitution to such persons as were injured by his or her misconduct.

( 4) In reviewing a petition for reinstatement, the Court may:

( i) order that notice of the petition for reinstatement be published in one or more newspapers circulated within the territorial jurisdiction of the Court; and

(ii) consider the misconduct for which the petitioner was originally suspended or disbarred and any other relevant conduct or information which may come to its attention.

(g) **Stay of Petition Pending Condition.** In the event that the Court determines to grant a petition for reinstatement, it may nevertheless withhold final action on the petition for a period of not more than two years pending the satisfaction of one or more conditions, including the attainment by the petitioner of a passing score on the Multistate Professional Responsibility Examination described in section 520.8(a) of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors-at-Law. Upon proof of successful completion of the said examination, and in the absence of further misconduct by the petitioner, the petition shall be granted.

**1500.22 Structure, Composition and Membership  
of the Departmental Disciplinary Committees**

There shall be eight departmental disciplinary

committees, structured and composed as follows:

(a) **First Judicial Department.** The Court shall appoint a departmental disciplinary committee for the First Judicial Department. The departmental disciplinary committee shall be charged with the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the First Judicial Department at the time of their admission to practice by the Appellate Division. The departmental disciplinary committee shall also have the power and duty to investigate and prosecute matters concerning attorneys to whom these Rules apply pursuant to section 1500.1(b) of this Part.

( 1) The departmental disciplinary committee shall consist of a chairman and forty-two members, nine of whom shall be non-attorneys.

( 2) Appointments shall be made, after consultation with the departmental disciplinary committee, for a term of three years. A vacancy shall be filled for the remainder of the term. No person who has served two consecutive terms shall be eligible for réappointment until the passage of three years from the expiration of his or her second term. The chairperson shall be named by the Court upon recommendation of the Committee. The chairperson may appoint an executive committee consisting of at least six members of the Committee.

( 3) The chairperson of the departmental disciplinary committee shall have the power to appoint its members to subcommittees of not less than three members, two of whom shall constitute a quorum and shall have power to act. At least two members of a subcommittee shall be attorneys. The chairperson of the departmental disciplinary committee shall designate a member of the subcommittee to act as its chairperson. Such subcommittees may hold hearings as authorized by section 1500.8 of this Part.

( 4) The membership of the departmental disciplinary committee shall be a total of not more than 44 persons each of whom shall be appointed by the Court for a term of three years, except members who have been appointed to complete unexpired terms, in which case such members may be reappointed for three-year or shorter terms. At least two-thirds of the members of the Committee shall be members of the bar of the State of New York in good standing, each of whom shall reside or have an office in the City of New York, and up to one-third of such members shall be persons who are not members of the bar, each of whom shall reside or have a principal place of business in the City of New York. Appointments to the departmental disciplinary committee may be made from lists of nominees submitted by the Association of the Bar of the City of New York, the New York County Lawyers'

Association, and the Bronx County Bar Association, and by such other means which the Court deems in the public interest. A member of the bar who has served two consecutive terms shall not be eligible for reappointment until one year after the expiration of the second term.

(b) **Second Judicial Department:** The Court shall appoint three departmental disciplinary committees for the Second Judicial Department. One of these committees shall be charged with the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Second and Eleventh Judicial Districts at the time of their admission to practice by the Appellate Division; another shall have the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Ninth Judicial District at the time of their admission to practice by the Appellate Division; and the third shall have the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Tenth Judicial District at the time of their admission to practice by the Appellate Division. These committees shall also have the power and duty to investigate and prosecute matters concerning attorneys to whom these Rules apply pursuant to section 1500.1(b) of this Part.

( 1) Each departmental disciplinary committee shall consist of 19 members and a chairman, all of whom shall be appointed by this court and 16 of whom shall be attorneys. The chairman shall have the power to appoint an acting chairman from among the members of the departmental disciplinary committee. Appointments may be made from lists of prospective members submitted by the following county bar associations within the Second Judicial Department: Brooklyn Bar Association, Dutchess County Bar Association, Bar Association of Nassau County, New York, Inc., Orange County Bar Association, Putnam County Bar Association, Queens County Bar Association, Richmond County Bar Association, Rockland County Bar Association, Inc., Suffolk County Bar Association and Westchester County Bar Association.

( 2) Five persons shall be appointed to each such committee for a term of one year, five persons for a term of two years, five persons for a term of three years and five persons for a term of four years. Thereafter, yearly appointments of five persons shall be made to each such committee for a term of four years. No person who has served two consecutive terms shall be eligible for reappointment until the passage of one year from the expiration of his or her second such term. The person appointed chairman shall serve as chairman for a term of two years and shall be eligible for reappointment as chairman for not more than one additional term of two years.

( 3 ) The chairperson of each departmental disciplinary committee shall have the power to appoint its members to subcommittees of not less than three members, two of whom shall constitute a quorum and shall have power to act. At least two members of a subcommittee shall be attorneys. The chairperson of the committee shall designate a member of the subcommittee to act as its chairperson. Such subcommittees may hold hearings as authorized by section 1500.8 of this Part.

(c) **Third Judicial Department.** The Court shall appoint a departmental disciplinary committee for the Third Judicial Department. The departmental disciplinary committee shall be charged with the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Third Judicial Department at the time of their admission to practice by the Appellate Division. The departmental disciplinary committee shall also have the power and duty to investigate and prosecute matters concerning attorneys to whom these Rules apply pursuant to section 1500.1(b) of this Part.

( 1 ) The departmental disciplinary committee shall consist of a chairman and twenty members, three of whom shall be non-attorneys. Appointment of attorneys shall, as far as practicable, be made equally from practicing attorneys in each of the judicial districts of the Third Judicial Department.

( 2 ) Appointments shall be made, after consultation with the departmental disciplinary committee, for a term of three years. A vacancy shall be filled for the remainder of the term. No person who has served two consecutive terms shall be eligible for reappointment until the passage of three years from the expiration of his or her second term. Seven members of the committee shall constitute a quorum and the concurrence of six members shall be necessary for any action taken. The chairperson shall be named by the Court upon recommendation of the Committee. The chairperson may appoint an executive committee consisting of at least one member of the Committee from each judicial district.

( 3 ) The chairperson of the departmental disciplinary committee shall have the power to appoint its members to subcommittees of not less than three members, two of whom shall constitute a quorum and shall have power to act. At least two members of a subcommittee shall be attorneys. The chairperson of the departmental disciplinary committee shall designate a member of the subcommittee to act as its chairperson. Such subcommittees may hold hearings as authorized by section 1500.8 of this Part.

(d) **Fourth Judicial Department:** The Court shall appoint three departmental disciplinary committees for the Fourth Judicial Department. One of these committees shall be charged

with the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Fifth Judicial District at the time of their admission to practice by the Appellate Division; another shall have the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Seventh Judicial District at the time of their admission to practice by the Appellate Division; and the third shall have the duty and power to investigate and prosecute matters arising in or concerning attorneys practicing, or currently residing or having resided in the Eighth Judicial District at the time of their admission to practice by the Appellate Division. These committees shall also have the power and duty to investigate and prosecute matters concerning attorneys to whom these Rules apply pursuant to section 1500.1(b) of this Part.

( 1 ) Each departmental disciplinary committee shall consist of 21 members and a chairperson, all of whom shall be appointed by the Court, reside in their respective district, and 18 of whom shall be attorneys. The chairperson shall have the power to appoint an acting chairperson from among the members of the departmental disciplinary committee. Appointments may be made from lists of prospective members submitted by bar associations within the Fourth Judicial Department.

( 2 ) Six attorneys shall be appointed for a term of one year, six for a term of two years, and six for a term of three years. One non-attorney shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Thereafter appointments shall be made for a term of three years, and no person who has served two consecutive three-year terms shall be eligible for reappointment until the passage of three years from the expiration of the second term. A vacancy shall be filled for the remainder of the term.

( 3 ) The chairperson of each departmental disciplinary committee shall have the power to appoint its members to subcommittees of not less than three members, two of whom shall constitute a quorum and shall have power to act. At least two members of a subcommittee shall be attorneys. The chairperson of the committee shall designate a member of the subcommittee to act as its chairperson. Such subcommittees may hold hearings as authorized by section 1500.8 of this Part.

(e) **Meetings, Notice of Time and Place.** The Committee shall meet not less frequently than every other month, and such meetings shall be held upon notice given at the direction of the Committee Chairperson. The notice shall ordinarily be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by the Committee Chairperson. In lieu of such written notice, meetings may be



called on notice given to each member of the Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone. All notices shall be given to members of the Committee at the addresses furnished for such purposes by the members. The Committee Chairperson or his or her designee shall preside at all meetings of the Committee. Minutes of all meetings shall be kept and filed in the Office of Chief Counsel. To the extent possible, an agenda for each meeting of the Committee shall be prepared by or with the approval of the Committee Chairperson and shall be distributed to all members of the Committee prior to the meeting.

(f) **Quorum and Manner of Acting.** Except as otherwise expressly stated to the contrary in these Rules, a majority of the members of the Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the members present at the meeting.

(g) **Disqualification.** No person shall, while serving on the Committee, appear before the Committee or any of its constituent parts on behalf of any other person.

#### **1500.23 Appointment and Duties of Staff Counsel.**

(a) **General.** There shall be an Office of Chief Counsel which shall consist of the chief counsel, deputy chief counsel and other staff counsel. The Court shall, in consultation with the Committee, appoint all such persons, together with such supporting staff as it deems advisable.

(b) **Supervision by Chief Counsel.** The Office of Chief Counsel shall be supervised by the chief counsel who shall, either personally or by other staff counsel, exercise the powers and perform the duties of the Office of Chief Counsel set forth in these Rules. The chief counsel may from time to time designate the deputy chief counsel or in the absence of such deputy chief counsel, an associate counsel, to serve as acting chief counsel in the chief counsel's absence.

(c) **Powers and Duties of the Office of Chief Counsel.** The Office of Chief Counsel shall:

( 1) have the powers and duties set forth in this Part;

( 2) subject to the limitations and requirements of section 1500.29 of this Part, maintain permanent records of all matters processed by it, including the disposition thereof, and maintain dockets and assign such docket numbers as may be

appropriate for the clear designation of each matter, which shall include the calendar year in which the matter is originally docketed;

( 3 ) represent the Committee in all proceedings before the Court;

( 4 ) periodically report to the Committee Chairperson and the Court on the operation of the office, including, for each reporting period, the number of matters received and disposed, the number of matters under investigation, the number of matters referred to other agencies, the number of matters in hearings, and the number of hearing days required for each such matter.

( 5 ) have such other duties as may be assigned to it from time to time by the Committee, the Committee Chairperson or the Court.

**1500.24 Appointment, Status and Duties of Special Counsel.**

(a) **General.** From time to time, the Court may appoint an attorney to act as counsel in a particular investigation or proceeding where staff counsel is disqualified or otherwise disabled from undertaking or continuing such investigation or proceeding. Such special counsel may serve either without compensation on a pro bono voluntary basis or, when no such qualified attorney can readily be appointed, the Court may provide for reasonable compensation.

(b) **Recruitment.** From time to time, the Committee Chairperson or the Court may send notices to the principal bar associations located in the Judicial Department, describing the use of special counsel and soliciting the resumes of interested volunteers.

(c) **Conflicts.** Before accepting the assignment of a case, Special Counsel shall determine whether accepting the assignment would create a conflict under the Lawyer's Code of Professional Responsibility, and shall inform the Court of any conflict or potential conflict which arises in the course of handling the case.

(d) **Confidentiality.** Special Counsel shall be bound by the confidentiality rules contained in Judiciary Law Section 90(10) and all other applicable confidentiality provisions.

(e) **Reporting and Independence of Special Counsel.** From time to time, special counsel shall report on the assigned case to the Committee Chairperson, who shall assume direct

responsibility for supervising the manner in which the case is being processed by special counsel. In all respects, special counsel shall be independent of the Office of Chief Counsel.

(f) **Defense and Indemnification of Special Counsel.** All special counsel serving voluntarily, whether or not compensated, are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17 of the Public Officers Law and are thereby entitled to receive, and shall receive, the protections of that law.

(g) **Application of Rules to Special Counsel.** Apart from this section 1500.24, references in these Rules to the Office of Chief Counsel shall mean and be understood to refer to special counsel where and to the extent that special counsel has assumed the duties of the Office of Chief Counsel in relation to an assigned case.

**1500.25 Appointment, Status and Duties of  
Local Bar Association Grievance Committees.**

( 1) **General.** The Court may, from time to time, appoint persons to serve as volunteer members of one or more grievance committees administered by the principal bar associations located in the Judicial Department. Such persons shall be attorneys of sound judgment and demonstrated ability and shall not then be serving as a member or staff counsel of a departmental disciplinary committee.

( 2) **Recruitment.** From time to time, the Committee Chairperson shall send notices to the principal bar associations located in the Judicial Department, describing the grievance process and soliciting the resumes of interested volunteers. The Committee Chairperson may recommend qualified attorneys to the Court for such appointments. The Office of Chief Counsel shall forward these recommendations to the Court together with a proposed order requesting the appointment of the volunteers. The Court may also appoint by similar order such qualified attorneys as may be known to be willing to serve as volunteer members of a grievance committee on its own initiative.

( 3) **Referrals.** The Office of Chief Counsel may refer complaints involving minor misconduct by attorneys with no significant disciplinary history to a bar association administered grievance committee. Such reference may be made only upon the prior written concurrence of an attorney member of the Committee designated by the Committee Chairperson for such purpose. Upon receipt of the referred complaint, the grievance committee shall investigate and report on the issues raised by the complaint. If it appears that the matter should be further

considered by the Committee because it then no longer appears to involve merely minor misconduct or the respondent fails to cooperate with the grievance committee, the complaint shall be referred back to the Office of Chief Counsel for investigation under these Rules. The grievance committee shall only consider such matters as may be referred to it pursuant to this section, and shall refer to the Office of Chief Counsel any grievance coming to its attention which has not been so referred.

( 4 ) **Action on Complaint.** Upon completion of an investigation by the grievance committee of a complaint, a written report of its findings shall be prepared and forwarded to the Office of Chief Counsel for consideration of the recommendations contained therein. The report shall then be reviewed by an attorney member of the departmental disciplinary committee designated for that purpose by the Committee Chairperson who may accept or reject the recommendation on behalf of the Committee pursuant to the procedures set forth in section 1500.7(b) of this Part.

( 5 ) **Grievance Committee Rules and Procedures.** The grievance committee shall prepare written rules and procedures governing its proceedings which are not inconsistent with the principles and procedures set forth in sections 1500.5 through 1500.9 of this Part. Such grievance committee rules and procedures shall be filed with the Court which may accept or modify them.

( 6 ) **Confidentiality.** Grievance committee members shall be bound by the confidentiality rules contained in section 90(10) of the Judiciary Law and all other applicable confidentiality provisions.

( 7 ) **Supervision and Reporting.** The Committee Chairperson shall designate one or more attorney members of the Committee to supervise the local grievance committee with the assistance of the Office of Chief Counsel. The Office of Chief Counsel shall report to the Committee at its regularly scheduled meetings concerning the disposition of matters assigned.

**1500.26 Appointment, Status and Duties of  
Local Bar Association Mediation Committees.**

( 1 ) **General.** The Court may, from time to time, appoint persons to serve as volunteer complaint mediators. Such persons shall be attorneys admitted to practice no less than ten years and shall not then be serving as a member or staff counsel of a departmental disciplinary committee.

( 2 ) **Recruitment.** From time to time, the Committee Chairperson shall send notices to the principal bar associations located in the Judicial Department, describing the mediation service and soliciting the resumes of interested volunteers. The Committee Chairperson may recommend qualified attorneys to the Court for such appointments. The Office of Chief Counsel shall forward these recommendations to the Court together with a proposed order requesting the appointment of the volunteers. The Court may also appoint by similar order such qualified attorneys as may be known to be willing to serve as volunteer mediators on its own initiative.

( 3 ) **Referrals.** The Office of Chief Counsel may refer complaints involving minor misconduct by attorneys with no significant disciplinary history to a bar association administered mediation committee. Such reference may be made only upon the prior written concurrence of an attorney member of the Committee designated by the Committee Chairperson for such purpose. Upon receipt of the referred complaint, the mediation committee shall designate a mediator who shall attempt to mediate and resolve the matters raised by the complaint. If the mediator is unable to resolve the matter, or if it appears that the matter should be further considered by the Committee, the mediator shall refer the complaint back to the Office of Chief Counsel for investigation under these Rules. The mediation committee shall only consider such matters as may be referred to it pursuant to this section, and shall refer to the Office of Chief Counsel any grievance coming to its attention which has not been so referred.

( 4 ) **Conflicts.** Before accepting the assignment of a matter, the mediator shall determine whether accepting the assignment would create a conflict under the Lawyer's Code of Professional Responsibility, and shall agree to inform the Office of Chief Counsel of any conflict or potential conflict which arises in the course of handling the matter.

( 5 ) **Confidentiality.** Mediators shall be bound by the confidentiality rules contained in section 90(10) of the Judiciary Law and all other applicable confidentiality provisions.

( 6 ) **Supervision and Reporting.** The Committee Chairperson shall designate one or more attorney members of the Committee to supervise the volunteer mediation program with the assistance of the Office of Chief Counsel. The Office of Chief Counsel shall report to the Committee at its regularly scheduled meetings concerning the disposition of matters assigned for mediation.

**1500.27 Defense and Indemnification of Committee Members.**

(a) **General.** Members of the departmental disciplinary committees, as well as members of the authorized grievance and mediation committees, are volunteers, and are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17 of the Public Officers Law and are thereby entitled to receive, and shall receive, the protections of that law.

(b) **Bar Associations.** Local bar associations administering grievance and mediation programs shall be deemed volunteers and, to the extent of their Court authorized participation in such programs, will be deemed to be participating in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17 of the Public Officers Law and are thereby entitled to receive, and shall receive, the protections of that law.

**1500.28 Communications with Other Disciplinary Agencies.**

Nothing contained in these Rules shall be deemed to prohibit communications between the various disciplinary agencies identified in these Rules with respect to any complaint or proceeding relating to the conduct of an attorney.

**1500.29 Retention of Disciplinary Records.**

The following records shall be retained to the extent and in the manner hereinbelow set forth:

(a) **Matters Where Discipline Has Been Imposed.** Where discipline has been imposed, case files containing the documentary record of a complaint filed against an attorney (including, but not limited to, any complaint, investigation report, attorney response, deposition or hearing transcript, special referee's report, petition to the Appellate Division, affidavit, motion, order and decision of the Court) shall be retained for fifty years after the date of the disposition of such matter by the Office of Chief Counsel and then destroyed.

(b) **Matters Which Have Been Rejected for Failure to State a Complaint, Etc.** Where a grievance has been rejected for failure to state a complaint, lack of jurisdiction or referred to another agency and the attorney about whom the grievance was made has not been accorded an opportunity to respond, all records relating to such grievance shall be retained for one year after the date of

its disposition by the Office of Chief Counsel and then destroyed.

(c) **Matters Which Have Been Dismissed Without Imposition of Any Discipline or Advisement.** Where a complaint has been dismissed without the imposition of any discipline or advisement, all records relating to such matter (including, but not limited to, any complaint, investigation report, attorney response, deposition or hearing transcript or other record of proceedings) shall be retained for five years after the date of its disposition by the Office of Chief Counsel and then destroyed.

(d) **Matters Which Have Been Closed With Advisement.** Where a matter has been closed by the issuance of a letter of caution or similar advisement, all records relating to such matter (including, but not limited to, any complaint, investigation report, attorney response, deposition or hearing transcript or other record of proceedings, and letter of caution or similar advisement) shall be retained for ten years after the date of its disposition by the Office of Chief Counsel and then destroyed.

(e) **Indexes, Etc.** Any index or listing (including, but not limited to, any manual or machine-readable material that contains information relating to disciplinary matters, the identities of the complainant and/or respondent, the date opened and/or closed) shall be retained for fifty years after the date of its entry by the Office of Chief Counsel and then destroyed or otherwise eliminated from such index or listing.

(f) **Statistical Reports.** Any statistical report filed with the Office of Court Administration (including, but not limited to, Form UCS-145) shall be retained by the Office of Chief Counsel for one year after the date of its filing with the Office of Court Administration.

**1500.30 Regulations and Procedures for Random Review and Audit and Biennial Affirmation of Compliance**

(a) **Availability of Bookkeeping Records; Random Review and Audit.** The financial records required by DR 9-102 of the Code of Professional Responsibility shall be available at the principal New York State office of the attorneys subject hereto, for inspection, copying and determination of compliance with DR 9-102, to a duly authorized representative of the Court pursuant to the issuance, on a randomly selected basis, of a notice or subpoena by the Court or the appropriate departmental disciplinary committee.

(b) **Confidentiality.** All matters, records and proceedings relating to compliance with DR 9-102, including the

selection of an attorney for review hereunder, shall be kept confidential in accordance with applicable law, as and to the extent required of matters relating to professional discipline.

(c) Prior to the issuance of any notice or subpoena in connection with the random review and audit program established by this section, the appropriate departmental disciplinary committee shall propose regulations and procedures for the proper administration of the program. The Court shall approve such of the regulations and procedures of the departmental disciplinary committee as it may deem appropriate, and only such regulations and procedures as have been approved by the Court shall become effective.

(d) Any attorney subject to the Court's jurisdiction shall execute that portion of the biennial registration statement provided by the Office of Court Administration affirming that the attorney has read and is in compliance with DR 9-102 of the Code of Professional Responsibility. The affirmation shall be available at all times to the departmental disciplinary committees. No affirmation of compliance shall be required from a full-time judge or justice of the unified court system of the State of New York or of a court of any other state, or of a federal court.

#### 1500.31 APPENDIX OF FORMS

##### (a) Appendix A: Form of Pre-Hearing Stipulation

[VENUE AND CAPTION]

- ( 1) amendments;
- ( 2) claims or defenses abandoned;
- ( 3) undisputed facts:
  - (i) facts not in dispute as to Staff's Counsel's case;
  - (ii) facts not in dispute as to the Respondent's case;
- ( 4) facts in dispute:
  - (i) the Staff Counsel's contentions;
  - (ii) the Respondent's contentions;



( 5) documents to be offered in evidence during the hearing:

[All documents (including schedules, summaries, charts and diagrams] to be offered [other than those to be used for impeachment or rebuttal) are to be listed in the stipulation with a description of each sufficient for identification. The documents are to be premarked by counsel, and, to the extent practicable, such markings are to be in the sequence of which the documents will be offered. If illegible or handwritten documents are to be offered, counsel shall include a typed version of the document.

Objections as to authenticity must be made in this stipulation or else they shall be deemed waived. Counsel are directed to exchange copies of their exhibits within two business days prior to the scheduled hearing.

Counsel offering an exhibit shall provide copies for the special referee and opposing counsel at that time. Witnesses to be called in rebuttal or for impeachment purposes need not be identified in this stipulation.]

(i) staff counsel will offer the following numbered exhibits;

(ii) the respondent will offer the following lettered exhibits;

( 6) witnesses to be called:

[Witness identification should include the witness' name and address, as well as a brief statement of the overall scope of the witness' testimony. For example, if specific witnesses are to be called to substantiate particular claims or defenses on portions thereof, that should be noted. In addition, any witness being called as a character witness should be so designated.]

(i) by staff counsel;

(ii) by the respondent;

( 7) statement of legal contentions and authorities;  
[Only a brief statement of each contention is required, together with the principal authority relied upon; string cites are not necessary.]

( 8) estimated length of hearing.



7. The discipline imposed upon me was predicated upon, or arose out of, my misappropriation or misuse of the real or personal property of others. Attached to this application is a full listing of each property, its dollar value, the name of the true owner, and the extent to which I have yet to make full restitution. Where I still owe a party under this section, I have also attached a copy of a restitution agreement, signed by that owner and myself setting forth the terms of my repayment obligations.

8. On the date of my discipline, the following matters, which were not the basis of that order, were pending against me before the Departmental Disciplinary Committee (or its predecessor, then known as \_\_\_\_\_): \_\_\_\_\_.

9. On the effective date of discipline, I was also admitted to practice in the following courts/jurisdictions: \_\_\_\_\_.

10. Based upon this Court's discipline of me, I also have been disciplined in the following way(s): \_\_\_\_\_.

11. In addition, dating back to my original admission to the bar up until the present, I have also been disciplined for other actions or activities, in the following ways: \_\_\_\_\_, \_\_\_\_\_.

12. Prior to my discipline, my law practice involved the following areas of law: \_\_\_\_\_.

13. Since the effective date of my discipline, I have engaged in the practice of law in other jurisdiction(s), on the date(s) and in the manner specified: \_\_\_\_\_.

14. Since the effective date of my discipline, I have been engaged in the following legal-type or law-related activities: \_\_\_\_\_.

15. Since the effective date of my discipline I have had the following employment or been engaged in the following business (set forth names, dates, addresses) \_\_\_\_\_.

16. I am attaching copies of all federal, state and local tax returns filed by me for the past two years.

17. At the time of my discipline, I took the following affirmative steps to notify my clients of my inability to continue representing them: \_\_\_\_\_.

18. As required by the Rules of this Court, I filed an affidavit of compliance on           (date)          .

-or-

I did not file an affidavit of compliance, as required by this Court's rules, because \_\_\_\_\_.

19. Since the date of my discipline, I have maintained the following bank accounts and brokerage accounts \_\_\_\_\_.

20. There presently exist the following unpaid judgments against me or a partnership, corporation or other business entity

of which I am an employee or in which I have an ownership interest \_\_\_\_\_.

21. Since my discipline, I or a partnership, corporation or other business entity in which I have an ownership interest, have/has been involved in the following lawsuits, to the extent indicated \_\_\_\_\_.

22. I, or a partnership, corporation or other business entity in which I have an ownership interest, petitioned to be adjudicated a bankrupt on (date) to (court).

23. (a) Since my discipline, I applied for the following licenses(s) which required proof of good character: \_\_\_\_\_.

(b) These applications resulted in the following action(s): \_\_\_\_\_.

24. Since my admission to the bar, I have had the following licenses suspended or revoked for the stated reason(s), unrelated to this Court's order of discipline: \_\_\_\_\_.

25. Since my discipline, on the date(s) specified I have been arrested, charged with, indicted, convicted, tried, and/or have pleaded guilty to the following violation(s), misdemeanor(s) and/or felony(ies): \_\_\_\_\_.

26. Since my discipline, I have been the subject of the following governmental investigation(s) on the specified date(s), which resulted in the charge or complaint indicated being brought against me: \_\_\_\_\_.

27. Other than the passage of time and the absence of additional misconduct, the following facts establish that I possess the requisite character and general fitness to be reinstated as an attorney in New York: \_\_\_\_\_.

28. I have made the following efforts to maintain or



## COMMENTS

**1500.1 (Title, Citation, Application and Construction of Rules):** Subdivisions (b) and (c) are modelled on similar provisions found in the Rules of the First Department.

**Breadth of Application.** Subdivision (b) is intended to express the breadth of the Rules' application. In practice, the various departmental disciplinary committees may limit the exercise of their respective jurisdiction to the district or department in which the principal office of the respondent lawyer is maintained.

**Nonprejudicial Error.** Subdivision (c) is intended to underscore the purpose of the Rules as expressing a logical and fair method of proceeding, while recognizing the immateriality of nonprejudicial error in failing to follow the Rules in all particulars.

**Availability of Other Sanctions and Remedies.** Subdivision (d) is modelled on a similar provision in the Rules of the Second Department. It is intended to express the non-exclusive nature of sanctions and remedies imposed in disciplinary proceedings.

### 1500.2 (Definitions):

**Private Action and Sanctions.** Definitions 1 ("Admonition"), 20 ("Letter of Caution") and 28 ("Reprimand") are intended to make uniform various forms of private (as distinguished from public) action. Under the Rules, there are only three forms of private action, two of which (the admonition and the reprimand) are deemed to be professional discipline. Such devices as "letters of education" have been eliminated.

Letters of Caution were eliminated from the rules of the First Department in May 1994. Although they continue to exist in all other departments, the Third Department views Letters of Caution as constituting professional discipline, while the Second and Fourth Departments do not.

Definition 20 makes explicit that a letter of caution does not constitute discipline and is to be issued only when, on the basis of the record before the Committee, it is unclear whether a disciplinary rule has been violated. Such letters may be issued only by the Committee Chairperson, and not by a local bar association grievance committee. Although letters of caution are not considered a form of discipline, they may be used in subsequent proceedings to determine the appropriate level of

sanction which should be imposed, provided due consideration is given to the respondent's inability to obtain review of such letters, as well as according respondent an opportunity to place in the record any facts which respondent deems appropriate to a correct understanding of the letter and the circumstances attendant upon its issuance.

**Committees.** Definitions 5 ("Committee"), 15 ("Grievance Committee") and 21 ("Mediation Committee") are intended to regularize and make uniform the present confusing assortment of terms used to describe three essentially different kinds of committees. Definition 5 refers to the departmental disciplinary committee of which there are eight (one in the First Department; three in the Second Department; one in the Third Department; and three in the Fourth Department). These are the principal (and most broadly empowered) public agencies of discipline, wholly independent of bar associations in their administration. Definitions 15 and 21, on the other hand, refer to committees which are generally administered by private bar associations.

**Forms of Complaint.** Definitions 8 ("Complaint"), 12 ("Formal Charges"), 14 ("Grievance") and 16 ("Inquiry") are intended to make uniform and logically consistent the nomenclature used to describe the various forms of communication by which the departmental disciplinary agencies are informed of an attorney's conduct. All such communications when they are first brought to the committee's attention are deemed "inquiries" (that is, a communication about the conduct of an attorney which does not necessarily state a "complaint"). By recognizing and making uniform the custom in some departments to avoid calling such communications "complaints," we avoid the anomaly of dismissing a "complaint" for "failure to state a complaint."

The generic term for an initial communication with the agency (prior to any analysis or review of its content) is "grievance." Hence, a "grievance" which alleges misconduct cognizable by the agency is a "complaint," while a grievance which fails to allege such misconduct is dismissed and will thereafter be deemed merely an "inquiry."

When, after investigation, the allegations of a complaint are deemed sufficiently serious, the Committee may request staff counsel to petition the Court for permission to institute a formal disciplinary proceeding. That proceeding will seek to adjudicate "formal charges" of misconduct.

**Degrees of Misconduct.** Definition 22 ("Minor Misconduct") effectively serves to delineate that degree of misconduct which may properly be referred to local bar association grievance or mediation committees. More serious misconduct must be handled by the departmental disciplinary committee. Because the practical consequence of describing misconduct as "minor" is to allow it to

be referred to a bar association committee, the definition is phrased in negative terms to focus on the kinds of significant misconduct which it is not intended to encompass. This produces a definition that fully delineates the kinds of misconduct which must remain with the departmental disciplinary committee.

In practice, minor misconduct should be understood to describe the relatively limited kind of behavior that should be referred to grievance or mediation committees. This would include isolated cases of simple neglect which do not cause significant loss, failure to respond to appropriate client inquiries, and similar lapses in conduct required by the Code.

Often, in practice, the cause of the grievance and the underlying lapse in cases of minor misconduct is seen to be a failure of communication or an inadequate understanding of the client's needs. Such matters are at times more appropriately handled in the context of mediation than professional discipline.

#### **Leave of Court Required on Showing of Probable Cause.**

Definitions 26 ("Petition for Leave to Institute Formal Disciplinary Proceeding") and 27 ("Probable Cause") respectively serve to describe the pleading mechanism and the burden of persuasion required to institute a formal disciplinary proceeding. The requirement of leave to institute such proceedings would be new only in the First Department: the other three departments have used this procedure for more than 20 years.

Integral to the petitioning process is the ability to request the Court for various forms of interim relief, including interim suspensions, expedited hearings and a variety of summary dispositions. Of course, such interim relief is to be made available only where warranted by the circumstances -- including proof of serious misconduct posing an imminent threat to the public. Understandably, the proof necessary for such relief is of a much higher degree of certainty than the mere probability required to institute any formal proceeding.

**Committee Recommendations.** Definitions 17 ("Hearing Panel") and 30 ("Reviewing Member") represent an amalgam of procedures now used in all four Departments.

The hearing panel contemplated by the proposed Rules is essentially similar to that currently employed in the Second, Third and Fourth Departments -- differing substantially from that used in the First Department in two important respects: (1) it would not undertake protracted hearings in cases of serious misconduct; and (2) it would report to the full Committee (rather than directly the Court). Court-authorized formal disciplinary proceedings before special referees, rather than hearing panels, would be the principal means of adjudicating serious misconduct.



The reviewing member procedure contemplated by the proposed Rules is similar to (albeit somewhat different from) that now used in the First Department. The notion is to have one or more lawyer members of the Committee review staff counsel's recommendations before the Committee's regular meeting, when large numbers of such recommendations are presented for approval to the full Committee with little time for reflection or an examination of the relevant files.

**Court Appointees.** Definitions 32 ("Special Counsel") and 33 ("Special Referee") serve to describe persons respectively appointed by the Court to prosecute complaints of misconduct and preside at formal disciplinary proceedings. Usually, the appointment of special counsel will be sought by the Office of Chief Counsel shortly after it has been determined that a complaint of misconduct has been alleged and that there exists some disqualifying conflict which precludes the Office of Chief Counsel from proceeding with investigation of that complaint.

#### **1500.3 (Grounds for Discipline):**

**Former Standards Applicable to Past Misconduct.** Section 1500.3 is modelled on a similar provision found in the Rules of the Second Department and is intended to carry forward disciplinary standards as they existed prior to September 1, 1990, for alleged instances of misconduct committed prior to that date.

**Code Is Not Exclusive Standard for Discipline.** Section 1500.3 serves to remind the Bar that the Disciplinary Rules contained in the Code of Professional Responsibility do not provide the only standards by which attorneys may be disciplined. Rather, the section recognizes the inherent power of the Court under Judiciary Law § 90(2) to create "other rule[s] or announced standard[s] ... governing the conduct of attorneys." For the sake of clarity and inclusiveness, unlike the Second Department rule, section 1500.3 also contains a reference to the so-called "automatic disbarment/suspension" rules of Judiciary Law § 90(4).

#### **1500.4 (Types of Discipline; Subsequent Consideration of Disciplinary Action):**

Section 1500.4 is intended, consistent with the new definitions set forth in the proposed Rules, to make uniform various forms of discipline.

**Private Discipline.** Under the Rules, there are only two kinds of private discipline: the admonition and the reprimand. These forms of discipline can be imposed by the Committee without any action by the Court. When issued without referral to the Court, these two forms of discipline are usually considered identical in substantive degree. They differ procedurally in three respects. First, a reprimand is the form of discipline employed after a hearing, while an admonition is issued without a hearing. Second, a reprimand may be issued either orally on the record at the conclusion of a hearing or written in letter form; an admonition is always issued in the form of a letter. Third, and most significantly, a reprimand may be part of a process leading to more serious discipline being imposed by the Court.

**Public Discipline.** Public discipline (i.e., censure, suspension and disbarment) is continued under the Rules as the exclusive province of the Court. Such discipline can only be imposed by formal disciplinary proceedings, whether instituted on the basis of the Committee's recommendation after informal proceedings or as the consequence of a summary proceeding or an application for interim relief.

**Consideration of Respondent's Disciplinary History.** Section 1500.4 also addresses the extent to which a respondent's disciplinary history may be considered in subsequent disciplinary proceedings. The Section makes explicit that previously imposed discipline may be considered both in deciding whether discipline should be imposed and in assessing the degree of sanction that may be imposed.

This proposal would mark a significant change in some departments which limit consideration of a respondent's disciplinary history to deciding the degree of sanction to be imposed or do not currently permit consideration of a respondent's disciplinary history in deciding whether there has been misconduct in relation to a subsequent complaint. It would also change existing practice in some departments to the extent of permitting consideration of letters of caution.

Subsequent consideration of letters of caution may create unique problems of due process in light of a respondent's limited ability to have them reviewed. Although the First Department eliminated letters of caution in May 1994, we propose to continue their use. However, because it appears that the First Department does not consider it feasible to review such letters, we have accommodated this concern by limiting the conditions under which such letters may be considered in later proceedings.

Section 1500.4 thus recognizes that letters of caution (although technically not deemed a form of discipline) may be considered; however, because of the limited opportunity to review or comment upon the issuance of such letters, their use in

subsequent proceedings is subject to significant limitations, as well as the respondent's right to place in the record matters which may not previously have been considered. The most significant of the limitations on the use of letters of caution is set forth in the third sentence of subdivision (c) ("The issuance of a letter of caution may be considered only to the extent of demonstrating that a respondent was on notice that certain behavior would constitute professional misconduct, where such behavior is the subject of the subsequent proceeding").

Also, for reasons of due process and because of the lack of uniformity among the various departments (and even within some of the departments, at different times), in considering a respondent's disciplinary history, subdivision (c) requires that "due consideration ... be given to the extent to which the issuance of an admonition or a reprimand then could be, or had been, reviewed, whether by the Committee or the Court." Where there was no review, subdivision (c) allows the respondent "an opportunity to state his or her ability to seek review of the prior determination and to explain or otherwise comment upon the issuance of such sanction."

#### **1500.5 (Investigations, Discovery and Screening):**

Section 1500.5 is an adaptation of a similar provision found in the Rules of the First Department to procedures generally modelled on those of the other three departments.

**More Involvement of Complainant and Committee.** The principal changes would require: (1) more involvement of the complainant in those matters where investigation is deemed warranted; (2) more consistent documentation and review of recommended dispositions; and (3) Committee action on all informal dispositions other than those relating to grievances dismissed for lack of jurisdiction or failure to state a complaint.

**Screening and Fee Disputes.** Where a matter is determined to relate solely to the reasonableness of an attorney's fee, and it is not apparent on the face of the grievance that the fee is excessive, the file should be closed. The matter should not be referred for to a mediation committee of the kind established by section 1500.24 of these Rules. Rather, where local bar associations have established fee mediation committees or the rules of court require that certain kinds of fee disputes be arbitrated, the parties should be so advised and encouraged to seek the help of such other agencies to resolve their dispute.

**1500.6 (Protective Orders):**

**Availability of Protection Made Explicit.** Section 1500.6 is adapted from a similar provision found in the Rules of the Third Department. Although all departments accord similar rights to respondent attorneys, the availability of protective orders is now only made explicit in the Third Department.

**No Automatic Stay of Proceedings.** Although section 1500.6 recognizes the possibility of obtaining a stay of all proceedings, the stay is not automatic and should not be issued without a substantial showing of irreparable injury.

**1500.7 (Review of Recommended Disposition of Complaint):**

Section 1500.7 has no analogue in any of the departments. It derives from observations made by our Committee's inspection team in the course of examining 480 closed disciplinary files.

**Prior Review of Recommendation Staff Recommendation.**

Although the First Department uses the term "reviewing member," the individual so designated (unlike the one here proposed) has final authority in certain cases. The rules of the other three departments (unlike those of the First Department) generally provide for decisions to be made by the full committee without any prior review and without any real opportunity for anyone other than staff counsel to examine the files.

What is now proposed is the designation of one or more attorney members who will review the actual files in light of staff counsel's recommendations prior to any action being taken by the full committee.

**Notice of Decision by Reviewing Member.** The decision of the reviewing member contemplated by section 1500.7 is not binding on staff counsel, and the staff is authorized to proceed to make its original recommendation to the departmental disciplinary committee when it meets as a whole. However, section 1500.7 does require that the committee be informed of the decision of the reviewing member prior to the taking of any action on the recommendation of staff counsel.

**1500.8 (Disposition Without Formal Disciplinary Proceedings):**

Section 1500.8 is an adaptation of procedures currently used in the Second, Third and Fourth Departments.

**Informal Discipline Requires Concurrence of Committee.** What is proposed by section 1500.8 differs from the procedures now used in the First Department in that: (1) staff counsel would no longer be able to impose professional discipline with the concurrence of only one member of the committee; (2) the full committee would be consulted when it is proposed to hold hearings; (3) the hearing panel would report its recommendations to the full committee; and (4) professional discipline could be imposed only with the concurrence of a majority of the committee.

The "majority" of the disciplinary committee required to act is a simple majority of those in attendance constituting a quorum.

**Hearings Would Not Usually Be Required.** The hearings addressed by this section are "informal" in the sense that they are held without leave of the Court or the issuance of formal charges. Experience has shown that, in most cases, hearings will not be necessary. Usually, they are employed where there is a potential for referring the matter to the Court with a request for the institution of a "formal disciplinary proceeding."

**1500.9 (Notice and Review of Disposition Without Formal Disciplinary Proceedings):**

Section 1500.9 is an amalgam of the notice and review procedures now used to some extent in all four departments.

**Notice to Complainant.** The proposed procedures would generally recognize the right of a complainant to be informed concerning the disposition of his or her complaint. They would also establish clear and certain methods for a respondent to obtain review of letters of caution, admonitions and reprimands.

**Review of Informal Dispositions.** Because letters of caution are not deemed professional discipline, the ability of a respondent to obtain review is understandably more limited than in the case of admonitions and reprimands. Where a letter has been issued without a hearing, the respondent may ask for reconsideration; but, where a letter is issued after a hearing, the respondent is only allowed to submit a written response to the letter for the file.

Although respondents are allowed to petition the Court for review of admonitions and reprimands, the procedure is not without substantial risk to those who would do so frivolously. The Court, on review of the record, may impose any "other discipline" that it deems warranted.

**1500.10 (Formal Disciplinary Proceedings;  
Preliminary Provisions):**

Sections 1500.10 through 1500.13 describe the procedures applicable to formal disciplinary proceedings. Such proceedings are generally reserved for the most serious charges of misconduct and can result in public censure, suspension or disbarment.

**Expedited Hearings.** A novel provision found in Section 1500.10 would permit an application to the Court for hearings to be held on an expedited basis where a determination is made that "the misconduct in question poses an immediate threat to the public." In theory, such an application might be coupled with a request for an interim suspension under section 1500.14.

**Summary Dispositions.** Another provision found in Section 1500.10 which may seem novel to three of the departments would allow an application to be made for summary disposition of certain charges of misconduct. The provision is partly based on recent case law applying principles of collateral estoppel to the realm of professional discipline and is generally similar to a provision adopted by the First Department in May 1994. The proposed rule -- consistent with case law -- would give res judicata effect to certain determinations made in civil litigation in the same manner that all four departments have long treated criminal convictions. Since the burden of proof required in disciplinary proceedings is a "fair preponderance of the evidence," the more exacting burden required for a criminal conviction is not considered necessary to permit a summary disposition.

**1500.11 (Formal Disciplinary Proceedings;  
Pleadings and Preliminary Procedures):**

**Commencement of Proceedings.** For the most part, section 1500.11 is an adaptation of procedures currently used in the Second, Third and Fourth Departments. It differs from the procedures now used in the First Department in that: (1) staff counsel would no longer be able to issue formal charges and commence formal disciplinary proceedings with the concurrence of only one member of the committee; (2) the full committee would be consulted when it is proposed to bring formal charges; (3) leave of Court would be required to commence such proceedings; and (4) a special referee (rather than a volunteer panel) would preside at the hearing.

**Confidentiality of Proceedings.** Section 1500.11, if adopted, would permit public hearings in most cases where formal disciplinary proceedings are held. In theory, the philosophical trigger for opening the proceedings to the public would be a determination made by the Court, on a case by case basis, that the public interest would be served by such action. Factors militating against an open proceeding might include the interest of the respondent's clients in maintaining confidentiality or the improbability that others would be harmed by the respondent during the pendency of the proceedings.

Adoption of this proposal would not require an act of the Legislature. Rather, the proposal builds on the discretion presently vested in the Court by Judiciary Law § 90(10):

"[U]pon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all of any part of such [confidential] papers, records and documents. \* \* \* In furtherance of the purpose of this subdivision said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary."

**Compensation of Special Referee.** The Rules assume that (contrary to present practice) the compensation of these individuals will be provided from the Court's budget, rather than the Office of Chief Counsel. Whether viewed in terms of appearances or actual conflicting interests, the present practice must be changed. It is simply unacceptable to have one of two contending advocates responsible for the compensation of the person designated to hear the matter.

Moreover, where circumstances warrant expedited handling, the Committee and the Office of Chief Counsel must be able to recommend the appointment of a special referee who can sit from day to day without fear of its impact on the Office's budget. When the Court selects a sitting judge as the special referee, no additional compensation is required: the judge will handle the matter in the normal course of his or her duties. However, usually, when a sitting judge is appointed as a special referee, the press of his or her other judicial duties precludes having day to day hearings. For this reason, when an expedited hearing is needed, ordinarily a retired judge or judicial hearing officer is appointed; but, such appointments require additional compensation.

At present, the budget for the Office of Chief Counsel includes such funds; and the Office processes all requests for payment by the special referee. The solution is to move that budget item from the Office of Chief Counsel to the Court, and

then have the Court process all requests for payment.

**1500.12 (Formal Disciplinary Proceedings; Conduct of Hearing):**

Section 1500.12 generally follows the procedures set forth in the Rules of the First Department, modified to comport with the exclusive use of special referees as hearing officers.

**Procedural Guidelines.** The various procedures established by this section should be viewed merely as guidelines to enhance speed and substantive fairness. They are neither absolute nor jurisdictional, and should be applied with reason. Where procedural errors are committed, the same shall be deemed of no consequence unless they materially prejudice the rights of the parties.

**Burden of Proof.** New York State is among a minority of jurisdictions that use the civil litigation "fair preponderance" standard. The proposed rule continues this standard, notwithstanding some suggestion that New York should move to the more widely used standard of "clear and convincing evidence." One advantage of maintaining the current standard is the ability to give collateral effect to findings made against a respondent in related civil litigation.

**1500.13 (Formal Disciplinary Proceedings; Concluding Procedures):**

Section 1500.13 generally follows the procedures which exist in the Second, Third and Fourth Departments.

**Report and Recommendation.** One significant difference between the recommended procedures and current practice is the proposed ability of the special referee to recommend a specific sanction. For many years, the hearing panels in the First Department have recommended sanctions which the Court is at liberty to accept or ignore. In most cases, the Court has accepted the panels' recommendations. Current practice in the other departments generally limits a referee's report to specific findings. Although it may be argued that a more consistent level of sanction can be maintained by the Court (because it will have the benefit of many more proceedings than any one referee), the proposed rule does not limit the Court's ability to do it; rather, the new procedure would only serve to provide the Court with more information and an informed perspective on an issue which is still left for the Court to decide.



**Notification of Complainant.** The proposed procedure would advise the complainant of a referral to the Court and caution the complainant about the requirements of confidentiality to the extent appropriate to the circumstances of the case. The rule is intended to express the minimum amount of information that should be provided to the complainant; it should not be understood to limit the ability of staff counsel to communicate additional information to the complainant where appropriate.

**1500.14 (Suspension Pending Consideration of Charges):**

Section 1500.14 is derived from the rules of the Second, Third and Fourth Departments. It is intended to be applied in a manner consistent with the standards announced by the Court of Appeals in Matter of Russakoff, 79 N.Y.2d 520 (1992).

**Grounds for Interim Suspension.** The stated grounds for an interim suspension include "uncontroverted evidence" of serious misconduct. That term does not require the functional equivalent of an admission or default in responding. Rather, the term is meant to describe the respondent's inability to come forward with evidence that is legally sufficient to controvert, or raise a triable issue, with respect to the charges.

**Application and Order.** The order should specify whether or to what extent further proceedings against the respondent will be deemed confidential. Usually, both the Court's decision to grant an interim suspension, as well as all disciplinary proceedings thereafter, will not be deemed confidential.

**1500.15 (Attorneys Convicted of Serious Crimes; Record of Conviction as Conclusive Evidence):**

Section 1500.15 is generally consistent with the policies adopted by all four departments.

**Special Referee to Preside at Hearing.** The proposal differs procedurally from current practice in the First Department to the extent that the proposed Rules abandon the First Department's unique hearing panel structure; instead, if hearings are to be held, they would be assigned to a special referee. The proposal differs textually from the rules of the Fourth Department in making explicit procedures which are not currently set forth in detail.

**Interim Suspensions for Serious Crimes.** Section 1500.15

incorporates the operative language of Judiciary Law § 90(4)(f) and explicitly provides for the interim suspension of attorneys convicted of serious crimes, unless that suspension is stayed by the Court "upon good cause shown." Consistent with the Judiciary Law, that stay may be obtained on application of the respondent or on the Court's own motion.

**1500.16 (Discipline of Attorneys for Professional Misconduct in Foreign Jurisdiction).**

Section 1500.16 is adapted from a similar provision in the Rules of the First Department. It is intended to avoid duplication of effort in retrying facts already determined by proceedings in a foreign jurisdiction. However, it does not determine the level of sanction which the Court will impose.

**Limited Defenses to Foreign Discipline.** Subdivision (c) limits the kind of defenses that can be raised essentially to lack of notice, a clear failure of proof and behavior which would not be considered misconduct in New York. No other matters bearing upon the findings made in the foreign jurisdiction can be raised.

**Court Has Option to Direct Hearing.** In theory, while the Court has unlimited authority, it is expected that where the nature of the misconduct is such that it would not ordinarily be considered for formal disciplinary proceedings, the Court will direct that any hearings be held before the Committee. Where the misconduct appears to have been serious, the Court is more likely to direct that the hearing be held before a special referee.

**1500.17 (Proceedings Where Attorney Is Declared Incompetent or Alleged to Be Incapacitated):**

Section 1500.17 is derived from a similar provision found in the rules of the Second Department. The section addresses the three procedural contexts in which the mental incompetency of an attorney may be brought to the Court's attention: (1) a judicial declaration of incompetency or an involuntary commitment to a mental hospital; (2) an accusation of a respondent's incompetency made by the Committee; and (3) a claim of incompetency by a respondent in the course of proceedings.

**Judicial Declaration of Incompetency.** Subdivision (a) recognizes the power of the Court to enter an order, on proof of a judicial determination of an attorney's incompetency, to enter

an order immediately suspending the attorney from the practice for an indefinite period and until the further order of the Court.

**Petition by Committee for a Declaration of Incompetency.** Subdivision (b) authorizes the Committee to petition the Court to determine whether an attorney is incompetent. The provision does not require a pendant allegation of misconduct.

**Claim of Disability by Respondent.** Subdivision (c) recognizes an "addition to drugs or intoxicants" as a cause of disability in addition to "mental infirmity or illness." The claim (or admission) by a respondent is sufficient to authorize the Court to suspend the respondent "until a determination is made of the respondent's capacity to continue the practice of law."

**1500.18 (Resignation by Attorney Under Disciplinary Investigation):**

**Admission of Inability to Defend Is Required.** Section 1500.18 is an adaptation of provisions currently found in the rules of the First, Second and Third Departments. It proposes no significant change from current practice where an attorney seeks to resign while under investigation. The respondent attorney is not required to admit the misconduct with which he or she is charged, but only that he or she could not defend against such charges.

**Committee Recommendation to Court.** The request for permission to resign would be reviewed by an attorney member of the departmental disciplinary committee who would prepare a recommendation for the committee to forward to the Court. The proposed procedure assumes that, consistent with current practice, staff counsel would have a significant role in the preparation of the committee's recommendation.

**1500.19 (Nonabatement of Disciplinary Proceedings):**

Section 1500.19 combines provisions relating to pending litigation from the First Department with concepts of restitution in the Second and Fourth Departments.

**Discretion to Proceed.** The basic policy is that disciplinary committees should be able to proceed notwithstanding the existence of related litigation, the fact of restitution or a

complainant's unwillingness to cooperate. Whether or to what extent such factors may influence the decision to proceed with the investigation or prosecution of a particular matter is left to the sound discretion of the departmental committee and its staff.

**Protection of the Public Is Paramount.** In many cases which do not pose a significant risk of harm to the public, it may be prudent to await the outcome of pending litigation. This is certainly the case where the complaint relates to activities that are the subject of pending civil litigation and significant issues of fact remain to be resolved. Throughout, the question of whether to proceed will be seen as a matter of recognizing the paramount interest in protecting the public from misconduct and the need to allocate limited resources in that effort.

**1500.20 (Conduct of Disbarred, Suspended or Resigned Attorneys; Abandonment of Practice by Attorney):**

Section 1500.20 is adapted from similar provisions found in the rules of the Second and Third Departments, and is generally consistent with the practice in all four departments.

**Emphasis on Client Protection.** Section 1500.20 carries forward present practice in seeking to protect clients of the attorney who has been disbarred or suspended. It also makes uniformly explicit the requirement that a court pass on the appropriateness of any fees received by the attorney after the effective date of disbarment or suspension.

**Affirmative Action Required.** A disbarred or suspended attorney is required to take action to notify his or her clients and others of the disbarment or suspension.

**1500.21 (Application for Reinstatement):**

Section 1500.21 is essentially new, albeit derived from a variety of procedures currently in use.

**Suspensions of Less Than Six Months.** The concept of automatic reinstatement where an attorney has been suspended for a period of less than six months is borrowed from the First Department. Where an attorney has been suspended for a period of six months or less, no application for reinstatement need be made because the order of suspension issued by the Court will provide for a date of reinstatement. In all other cases of suspension or

disbarment, an application for reinstatement must be made.

**Inquiry About Restitution.** The notion of requiring specific inquiry as to whether restitution has been made simply makes explicit current practice.

**Court Has Option on Reference.** Providing the Court with an option of referring the matter to the Committee on Character and Fitness or a special referee to hear and report represents an adaptation of procedures currently employed in the Second Department.

**1500.22 (Structure, Composition and Membership of the Departmental Disciplinary Committees):**

**Committee Composition Unchanged.** Section 1500.22 permits each of the eight disciplinary committees to retain their present composition, but makes uniform the terminology used to describe their function and relation to the courts. At present, only the Second and the Fourth Departments use the term "Grievance Committee"; the First Department is the "Departmental Disciplinary Committee," and the Third Department refers to its corresponding body as the "Committee on Professional Standards." Complicating the nomenclature even further, many local bar associations also maintain their own grievance committees to investigate minor misconduct.

The proposed rules refer to each of the eight official agencies as a "departmental disciplinary committee" to emphasize that its authority is derived from a certain department of the Appellate Division. In the Second and Fourth Departments, where there are three such committees, the official designation would add a reference to the specific districts within their jurisdiction (e.g., "Departmental Disciplinary Committee for the Second and Eleventh Judicial Districts").

**Some Functions Reassigned.** Although the rules essentially permit the principle of local option and experience to determine the composition of the disciplinary committees, the rules will perforce have the effect of reassigning some of their traditional functions to newly proposed subcommittees, as well as individual committee members and committees of the whole. For example, in the First Department, the traditional roles of its Policy Committee and hearing panels have been reassigned to different persons or bodies within the committee.

**1500.23 (Appointment and Duties of Staff Counsel):**

Section 1500.23 is an amalgam of various provisions adapted from the rules of all four departments.

**Independence of Staff Counsel.** The proposed rules are generally intended to reinforce the independence of staff counsel, while acknowledging their role as advocates and eliminating those instances where that role may compromise the integrity of the adjudicatory responsibilities of the committee.

**Office of Chief Counsel.** All administrative responsibilities for the supervision of staff devolve on the chief counsel. Correlative to these responsibilities is the duty to report appropriately on the operation of the office. To that end, subdivision (c)(4) contains a non-exhaustive list of subjects about which the chairperson and the Court should be periodically informed.

**1500.24 (Appointment, Status and Duties of Special Counsel):**

Section 1500.24 provides for the appointment of special counsel when the Office of Chief Counsel is precluded from undertaking a matter because of some disqualifying conflict.

**Independence of Special Counsel.** Contrary to present practice, when special counsel is appointed, under the proposed Rules, he or she would be independent of the Office of Chief Counsel. Of course, where consent of the respondent can be obtained, it would normally be preferable to move the entire case to another office, rather than require appointment of special counsel.

Eliminated from the Rules is the notion of appointing as special counsel volunteer lawyers simply to relieve the case load of the Office of Chief Counsel. Such notions are essentially throwbacks to a time when the private bar processed grievances under a broad grant of authority from the courts and there were no professional staff lawyers. What began as a temporary expedient to relieve an extraordinary backlog in one of the Departments, has become a permanent (and ever-expanding) part of its process. The proposed Rules are intended to reverse the trend and to reassure the public of consistent prosecutorial standards, independent of private concerns or the appearance of compromising influences.

**Change of Venue on Consent as Alternative.** Of course, where consent of the respondent can be obtained, it would normally be preferable to move the entire case to another office, rather than require appointment of special counsel. When the

Office of Chief Counsel learns of a disqualifying conflict, it should request the committee chairperson to designate a committee member to explore with the respondent his or her willingness to consent to a different venue.

**1500.25 (Appointment, Status and Duties of  
Local Bar Association Grievance Committees):**

Section 1500.25 is generally modelled on the system of local bar association grievance committees which exists in the Second, Third and Fourth Departments. But, there are some significant differences proposed.

**Court Appointment of Grievance Committees Required.**

Contrary to current practice, all local grievance committee members would be appointed by the Court. This is intended to ameliorate an element of public suspicion about the work of private bar associations and to emphasize the public nature of the service required.

**All Misconduct to Be Screened.** Consistent with the practice which today obtains in the Second Department, the proposed procedures require that any grievance coming to the attention of a local bar association committee will be forwarded for screening to the Office of Chief Counsel. The work of the grievance committee will thus be limited to such matters as are referred to it by the Office of Chief Counsel.

**Only Minor Misconduct to Be Referred.** Section 1500.25 is to be read in conjunction with the definition of "minor misconduct" set forth in section 1500.2(a)(22), mindful that repeated instances of such misconduct cannot be referred.

**Concurrence of Designated Committee Member Required.**

Section 1500.25 also marks a significant departure from present practice in requiring the concurrence of a committee member. The added requirement makes it less likely that matters will be referred simply to lighten staff's caseload.

**1500.26 (Appointment, Status and Duties of  
Local Bar Association Mediation Committees):**

Section 1500.26 is generally modelled on a mediation program used in the First Department.

**Supervision of Mediation Program.** Unlike the mediation

program in the First Department, supervisory authority is removed from the Office of Chief Counsel. Instead, that authority is vested in certain designated members of the departmental disciplinary committee.

**Repeated Misconduct.** Section 1500.26, like section 1500.25, limits the kinds of matters that may be referred in two ways. The complaint itself must be deemed to allege only "minor misconduct"; and the respondent can have "no significant disciplinary history." The second criterion is intended to retain repeat offenders in the departmental disciplinary committee.

While the proposed rules do not fix a specific number of instances of prior misconduct which will require such retention, a respondent attorney who has previously been referred to a mediation committee, should more likely be referred to a grievance committee for the investigation of a subsequent complaint; and an attorney who has previously been referred to a grievance committee should more likely be retained by the departmental disciplinary committee.

**1500.27 (Defense and Indemnification of Committee Members):**

Section 1500.27 is modelled on a similar provision found in the rules of the Third Department. It serves to incorporate by reference the protections afforded by Public Officers Law § 17.

**Protection Extended to All Volunteers.** Section 1500.27 serves to clarify the present uncertain status of volunteers working on disciplinary matters in connection with bar association administered grievance and mediation programs.

**Related Bar Association Activities Also Covered.** Consistent with court appointment of their members, the section now makes clear that both those persons and the associations themselves (to the extent of their grievance and mediation activities) are entitled to be defended and indemnified.

**1500.28 (Communications with Other Disciplinary Agencies):**

Section 1500.28 is new. It derives from an often expressed need on the part of disciplinary counsel to know a respondent's disciplinary history in the investigatory stage of a complaint.

**Need to Identify and Track Repeat Offenders.** The proposed



rule is intended to facilitate the identification and tracking of repeat offenders. At times, the geographical limits which each committee has placed on its jurisdiction permits some attorneys to avoid early detection of their disciplinary history. It is intended that the proposed rule will operate to secure this information shortly after files are opened for investigation.

**Limited Access to Information.** Because of the need to maintain confidentiality, the section contemplates that the information about pending complaints will not be released to any disciplinary agencies other than those New York State agencies referenced in the proposed rules.

**1500.29 (Retention of Disciplinary Records):**

Section 1500.29 is an adaptation of a uniform rule on record retention adopted by the Office of Court Administration.

**Office of Chief Counsel to Maintain Custody of Records.** The rule requires that various disciplinary records be "retained" by the Office of Chief Counsel for certain periods. Retention, in this context, should be understood to mean custody and control, as distinguished from actual possession.

**Uniformity in Record Retention.** Consistent with the policy adopted by the Office of Court Administration, in addition to requiring that various records be retained, it also requires that certain records be destroyed after stated periods of time.

**1500.30 (Regulations and Procedures for Random Review and Audit and Biennial Affirmation of Compliance):**

Section 1500.30 is adapted from the rules of the First and Second Departments.

**Random Audit of Attorney Trust Accounts.** There are sharp differences of opinion concerning the efficacy of random audits. Since September 1990, DR 9-102(H) of the Code of Professional Responsibility has contained a provision that lays the predicate for a program of random audits.

**Local Option.** To date, only the First and Second Departments have adopted court rules which specifically address such audits. But, even in those two departments, the rules require the formulation and court approval of additional procedures before any such program can be implemented.

Section 1500.30 follows this last concept by recommending a uniform rule which would yet permit the various departments to exercise a local option in deciding whether or to what extent such programs should be implemented.

**1500.31 (Appendix of Forms):**

Section 1500.31 is an appendix of forms. It is intended to locate in one portion of the proposed rules those forms that are presently contained in the rules of some departments and, further, to facilitate the subsequent development of a more complete set of forms for use in connection with disciplinary proceedings.

**Pre-hearing Stipulation.** Appendix A is an adaptation of a form contained in the Rules of the First Department. It has been recast in language suited to statewide use.

**Petition for Reinstatement.** Appendix B is an adaptation of a similar form presently used in all four departments.