

LEAVEWORTHY

Vol.III No. 4. Spring/Summer 2014

The Newsletter of the NYSBA Committee
on Courts of Appellate Jurisdiction

The opinions expressed herein are those of the author(s) only and do not reflect the official position of the Committee on Courts of Appellate Jurisdiction or the New York State Bar Association.

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A reminder to our readers: your contributions regarding cases, articles, interesting events and the like will all be considered for publication in future issues. Submissions can be sent to appcourts@nysba.org.

Welcome

The State Bar Association's Committee on Courts of Appellate Jurisdiction celebrates appellate law and seeks to improve appellate practice and appellate court operations in New York. In this edition of *Leaveworthy*, we discuss recent initiatives and some historic achievements of our committee, which was established in 1968. Our CLE programs have taught appellate practice in state and federal courts and have also included Meet the Justices symposia. Our committee reviews bills and regulations relevant to appeals and has also proposed its own legislation and rules.

As a public service, several years ago our committee launched a pro bono appeals program, and this year we are introducing a new public service initiative, a pilot moot court program for oral arguments in our state Court of Appeals. Finally, our newsletter *Leaveworthy* is another ongoing committee project. We thank the members of our committee—appellate practitioners, judges, and clerks—for their outstanding dedication, as well as the leadership and staff of the Association for their vital support of our efforts.

Cynthia F. Feathers and Denise A. Hartman
Immediate Past Co-chairs
Committee on Courts of Appellate Jurisdiction

Leaveworthy Highlights Appellate Community

By William B. Stock, Editor-in-Chief

Leaveworthy was conceived about five years ago by the Honorable Betty Weinberg Ellerin, who was then chairperson of the Committee on Courts of Appellate Jurisdiction. At a committee meeting she suggested that we should publish a newsletter. An editorial staff was chosen and we got to work. Our catchy name came from member Ellen Fishman.

The first question any new publication faces is what types of articles will it publish and where will they come from. The legal profession bursts with words written about itself. We decided early on that we would concentrate on the human side of the appellate world, introducing our readers to the judges, clerks and lawyers who make appeals so exciting.

In its relatively short existence, *Leaveworthy* has grown and covered much ground. A typical issue is published in 500 "hard" copies and is also distributed in an electronic format on the NYSBA's website. *Leaveworthy* is displayed in many courts including the Court of Appeals in Albany.

We have interviewed Gen. William Suter, then Clerk of the Supreme Court of the United States, Presiding Justice Randall T. Eng of The Second Department and many others. *Leaveworthy* also published a special memorial edition commemorating the life of Judge Theodore Jones of the Court of Appeals and another celebrating the distinguished career of Judge Carmen Caparick.

However, to "re-cap" all of our articles would be to have to select favorites, and that would involve painful choices. Instead, you can read these back issues at www.nysba.org/Leaveworthy.

It sometimes concerns us that *Leaveworthy* will one day run out of topics. But, each day courts come down with new decisions, familiar faces on the bench and in clerk's offices depart and new ones arrive, and thus we know that *Leaveworthy* will be busy for some time to come.

Pro Bono Appeals Program Serves Persons of Modest Means

"The work you did is one of the nicest gifts I've ever been given—I am truly at a loss for words." This response, by a client upon reading the brief submitted by his volunteer attorney, is typical of the reaction from clients receiving services through the State Bar's Pro Bono Appeals Program (PBAP).

In 2010, the Committee on Courts of Appellate Jurisdiction launched the present pro bono program as a pilot effort in the Appellate Division, Third Department. The State Bar's Executive Committee approved the venture, which offered pro bono representation in appeals involving family law matters. Later, other "Civil Gideon" topics were added, namely, education, health, housing, public benefits and unemployment insurance. In establishing an income cap of 250% or less of Federal Poverty Guidelines, the Program's goal was to focus on appellate representation for those who did not qualify for assigned counsel, but could not afford to retain private counsel to represent them.

In shaping the PBAP, the Committee partnered with two local not-for-profit organizations, the Rural Law Center of New York and The Legal Project. These partners have assisted by providing outreach efforts throughout the 28-county Third Department region; intake services for potential clients; and malpractice insurance to cover volunteer attorneys. In addition, the Committee established an eight-person subcommittee to review potential cases and accept only those which appear to be meritorious.

Over the ensuing years, the PBAP quickly began to take root in the Third Department. In addition to providing representation in about ten cases per year, the PBAP provides brief advice and assistance in many more cases. For example, rejected applicants are provided with a copy of the Pro Se Appeals Manual developed by the Committee in conjunction with the Third Department, and with insights as to the potential problems with their case.

In early 2013, with the support of the Rural Law Center, the PBAP established an Albany office staffed by two part-time appellate attorneys affiliated with the Committee. Not only do these attorneys perform initial review and case analyses, they also provide ongoing substantive support to volunteer attorneys handling appeals accepted by the PBAP.

As a result of the success of the program in the Third Department, during the spring of 2013, the PBAP sought and received State Bar Executive Committee approval to expand into the 22 counties covered by the Appellate Division, Fourth Department. As part of this expansion, a new service model was introduced. In addition to continuing to provide services to private litigants whose matters were accepted, the PBAP also entered into agreements with two legal service providers—the Hiscock Legal Aid Society and the Monroe County Public Defender's Office—to handle up to five Family Court "mandated representation" appeals per year as of counsel for each organization.

Not only has the PBAP been enthusiastically received by the Appellate Divisions and pro bono clients, it has also received an overwhelming response from the private bar. Today, the program maintains a confidential listserv of more than 100 experienced appellate attorneys who have offered to provide their services to appellate litigants on a volunteer basis. Further evidencing both the success and importance of the PBAP, the New York Bar Foundation has generously provided financial support for several years.

Today, the PBAP is able to provide free, quality appellate representation to litigants with modest means throughout upstate New York in 50 of the state's 62 counties. In addition, representatives of the Committee have met with colleagues at the New York City Bar Association to explore the expansion of the PBAP to the First and Second Departments.

Three Pro Bono Appeals Program appeals have already made new law. Most recently, in *Matter of Hazan v. World Trade Center Volunteer Fund*, ___ AD3d ___ (2014 WL2516444 June 5, 2014), the Third Department reversed a ruling by the Worker's Compensation Board that the claim-

ant was not a participant in the World Trade Center rescue operations because he did not serve under an authorized agency. In a matter of first impression that could benefit hundreds of other volunteers, the reviewing court found that imposing the authorized agency requirement contravened the plain meaning and legislative history of Worker's Compensation Law Article 8-A.

The court in *Oswald v. Oswald*, 107 AD3d 45, disagreed with 1989 Second Department precedent which had found, as a matter of law, that the Universal Life Church was not a church within the meaning of the Religious Corporation Law so as to have the authority to solemnize marriages. In a decision that could impact the validity of hundreds of marriages, the Third Department found issues of fact about the capacity of ULC ministers to officiate at marriage ceremonies.

In *Matter of Bowman v. Bowman*, 82 AD3d 144, the Third Department adopted a new interpretation of a provision of the Uniform Interstate Family Support Act that makes it easier for a custodial parents in New York State to initiate modifications proceedings here regarding out-of-state orders where both parents have left the state that issued the prior order—a decision which could have a significant impact, given the mobility of families.

Finally, New York's efforts received national attention when two Committee members spearheaded publication of a national manual on pro bono appeals programs for state court appeals. This resource, which includes detailed descriptions of New York's program and those in thirteen other states, was highlighted at a conference of the ABA Council of Appellate Lawyers in the fall of 2013.

If you are interested in volunteering for PBAP, email jnelson@nysba.org or go to www.nysba.org/probonoappeals.



The New York Bar Foundation presented a grant check to the NYSBA Committee on Courts of Appellate Jurisdiction for its Pro Bono Appeals Program (PBAP). The grant will help meet the needs of appellate litigants seeking legal representation in state appellate courts who cannot afford to hire an appellate attorney and are not eligible for assigned counsel.

Shown L to R, Foundation Board Member, James Barnes, Esq.; Program Administrator, Cynthia Feathers, Esq.; Program Administrator, George J. Hoffman, Jr., Esq.; Executive Director of the Rural Law Center (a program partner of PBAP), Susan L. Patnode, Esq.; and Lisa Frisch, Executive Director of The Legal Project (a program partner of PBAP).

Moot Court Program for Court of Appeals Cases Launched

The Committee on Courts of Appellate Jurisdiction will soon launch a pilot moot court program for oral arguments in the state Court of Appeals. The Moot Court Program for Appellate Counsel will provide an opportunity, one to two weeks before the actual arguments, for attorneys to rehearse arguments in front of professors, former judges and clerks, and experienced appellate lawyers. Participants will also receive a candid evaluation session in which strengths and weaknesses of the presentation are discussed. All participants will sign a confidentiality agreement before the sessions, which will be held at the State Bar Center in Albany.

Applications for attorneys seeking to be moot courted, as well as volunteers to serve as moot court judges, will soon be available on the State Bar website. This benefit will be available on a first-come, first-serve basis to one side in a given case. However, if the attorneys consent to having both sides moot courted, the Program will use a "bilateral" approach in such cases.

The Program will be rolled out in two phases, with the second stage providing moot courts for arguments in the Appellate Divisions, as well as the Court of Appeals, at locations throughout the state. The Committee envisions that practitioners from smaller firms could greatly benefit from such regional programs, which could involve partnerships with local bar associations and/or law schools, as well as less formal "cooperatives" of appellate attorneys willing to trade mootings and judging among themselves.

In recommending the program design, the Subcommittee on a Moot Court Program for Appellate Counsel researched existing programs in other jurisdictions. The Committee is aware of only two bar association programs, one created last year by the Erie County Bar Association for arguments in the Fourth Department, the state Court of Appeals, and the Second Circuit, and another established by the Indianapolis Bar Association two years ago. Thus, New York's program will apparently be the first one in the country sponsored by a state bar association.

Most appellate moot court programs are centered at law schools. Georgetown Law School's program, perhaps the best known, is limited to United States Supreme Court arguments, while Berkeley Law School's program is devoted to cases before the Supreme Court of California. A unique approach is taken by New York University School of Law, which brings in both lawyers in a given case to more realistically simulate the actual argument. The University of New Hampshire also has a program, and until recently, Golden Gate University Law School had a program.



Appellate Division Rules Project Recommends Changes

As an aid to appellate practitioners, the Subcommittee on Appellate Division Rules has for many years published a pamphlet that charts the appellate practice rules for each of the four Departments. In May 2012, the Subcommittee embarked on an ambitious project to examine the practice rules of the four Departments with an eye toward recommending uniformity. The Subcommittee recognized that some rules reflect deeply imbedded procedures, culture, and history, but yet believed a significant body of rules can be made uniform without adversely affecting the courts' operations, benefiting practicing attorneys by minimizing traps for the unwary and minimizing the need for the courts to address corrective motions.



Early in the process, the Subcommittee enlisted the cooperation of representatives from each of the four Departments' clerks' offices. They provided insights critical to the Subcommittee's understanding of the rationale behind the courts' rules and their importance to the courts' operations.

After many working meetings, the Subcommittee issued its preliminary Report in the fall of 2013, recommending that a substantial body of appellate practice rules be made uniform. In the spring of 2014, the Committee on Courts of Appellate Jurisdiction adopted the Subcommittee's Report as its own; and the State Bar Association's Executive Committee adopted it soon thereafter. The Report, recently submitted to the four Presiding Justices and to New York's Chief Judge and Chief Administrative Judge, makes the following recommendations.

First, many of the courts' "form and content" rules are essentially harmonious and can be made uniform with little difficulty. The Report recommends complete uniformity for certain general requirements and terminology; rules governing the form and content of briefs, records, and appendices; rules governing oral argument; and rules governing redaction and sealing of confidential materials. In particular, uniform "form and content" rules would complement and facilitate statewide electronic filing and should be adopted expeditiously.

Second, some rules are not now harmonious but can be made uniform without undue adverse effects on the internal operations of the different Departments. Examples of these rules include those governing initial filings, general motion practice, emergency applications for interim relief, original and transferred proceedings, and motions for reargument or leave to appeal. Efforts should be made to unify these rules as well, although changes to these rules may take more time to study and implement.

And third, there is a body of rules that will be difficult to unify without significant changes in the unique internal operations of one or more of the courts. For example, the First Department has its unique method for

calendaring cases for argument; the Second Department tracks appeals from the initial filing of the jurisdictional document through decision or abandonment, and thus has a dismissal calendar; and the Fourth Department prefers not to resume its practice of holding settlement conferences. And, of course, the First and Second Departments hear appeals from the Appellate Term. Unifying rules related to these unique operational practices would be difficult unless the courts are willing to change them.

In addition, the Report recommends that particular attention be given to standardizing quickly certain rules that present unnecessary traps for appellate practitioners who may have little experience in one or more of the Departments. For example, nuanced differences in the courts' rules governing deadlines for perfection and abandonment can be pitfalls for the inexperienced practitioner: The First Department requires the record to be filed within 30 days after "filing the notice of appeal"; the Third and Fourth Departments require the record and brief to be filed within 60 days after "service of the notice of appeal." The First, Second, and Third Departments deem appeals abandoned if not perfected within 6 or 9 months of the "date of the notice of appeal," while the Fourth Department deems appeals abandoned 9 months after "service of the notice of appeal." Even if the deadlines themselves cannot be made uniform, it would be helpful if perfection and abandonment deadlines were uniformly measured from the same event.

The Report acknowledges that it may not be possible to have completely uniform appellate practice rules, but recommends uniformity when feasible. To the extent each Department retains its own rules, the Report recommends that the Departments adopt parallel numbering systems so that the sequence of rules is the same in all courts. This would enable practitioners unfamiliar with a particular Department to easily find the applicable rule.



Meet the Justices of the Appellate Divisions Symposia Presented

Attorneys value the insights and perspectives of Appellate Division justices regarding general practice, effective brief writing, and oral advocacy in our state's intermediate appellate courts. For this reason, our committee has presented several symposia at which all the justices of a given Appellate Division Department have participated. In lively two-hour sessions, the justices have answered questions from a panel of experienced appellate practitioners, as well as audience members. Immediately following the CLE presentation, attendees have had the opportunity to meet the justices at a cocktail reception.



These special events have been very popular, with standing-room only audiences and enthusiastic feedback from attendees who ranged from appeals neophytes to seasoned practitioners. The first program with the Fourth Department was held in Rochester in 2007. The committee has also sponsored Meet the Justices programs for the Second Department in Brooklyn in 2010 and the Third Department in Albany in 2008 and 2013. In the future, we expect to have our first such event for the First Department and to return to the Second and Fourth Departments.



Appellate Practice CLE Program Trains 6,000 Attorneys

The first New York Appellate Practice CLE program presented by the Committee on Courts of Appellate Jurisdiction took place in 1980 in two locations, Albany and New York City. The eighteenth, and most recent, occurred in fall 2013 in five sites around the state – Rochester, Albany, New York City, Westchester and Long Island.

These eighteen full-day programs provided for seventy-four individual sessions across the state and in the course of these thirty-four years, over 6,000 registrants took advantage of valuable presentations by hundreds of faculty members. We were, and continue to be, fortunate to have on our program faculties not only veteran appellate practitioners, but numerous appellate court judges and clerks – from New York's Appellate Divisions and the Court of Appeals – who freely share

their knowledge, expertise and successful practice tips.

In recent years, local chairs of individual regional sessions have customized their program agendas to focus on the most applicable and relevant practices and procedures in their respective judicial departments.

This ongoing New York Appellate Practice CLE presentation has become a biennial fall event, with many committee members serving as chairs and panelists at all sessions. The committee's recently formed CLE Subcommittee, currently chaired by Norman Olch and David Tennant, intends to maintain and improve upon this staple of programming in future years and to be on the cutting edge of developing new topics, new formats and new faculty members, ultimately enhancing the quality of appellate practice in the state.

Federal Appellate Practice CLE Program Proves a Great Success

In 2010, the committee embarked on a new CLE project – bi-annual programs for federal practitioners aspiring to practice in the Second Circuit. It also has proved a great success.

The first program, presented in May 2010, in New York City, avoided the standard program format – how to write a brief and tips on oral argument. Titled "Beyond Brief-Writing: Practice in the Second Circuit," it featured a variety of presentations. Catherine O'Hagan Wolfe, Clerk of the Second Circuit, talked about "The Second Circuit's New Local Rules," a timely presentation since the rules had gone into effect on January 1. Then Judge Richard C. Wesley, who had been a New York Court of Appeals judge prior to his appointment to the Second Circuit, explained



"Differences Between Federal and State Advocacy" and "Differences in the Way State and Federal Appellate Judges Approach Their Work." The program ended with a panel on "Practice Issues in the Second Circuit," covering collateral orders, interlocutory appeals, certification standards of review, new pleading requirements, and rehearing and en banc review. In addition to Judges Reena Raggi and Wesley, the panel included attorneys Denise Hartman (Assistant Attorney General), Sarah Sheive Norman (Assistant United States Attorney) and Alan Pierce (Hancock & Estabrook), and was moderated by J. D. Barnea, Assistant United States Attorney.

Because of the success of the first federal CLE, our second, in October 2012, was held in New York and Syracuse. The 2010 program had focused primarily on civil cases; the 2012 program, "The Comprehensive Second Circuit: Practice in the Second Circuit Court of Appeals," gave equal time to criminal practitioners. It began with a detailed look at the mechanics of perfecting appeals: "Civil and Criminal Appeals From A to Z: Walking Through the Process," with Malvina Nathanson (solo practitioner) on criminal cases and Tiffany A. Buxton (Alston & Bird) on civil appeals. The segment on "Significant Decisions and Issues Likely to be Considered by the Second Circuit" was presented in New York City by Norman Olch (solo practitioner) and Peter C. Hein (Wachtell, Lipton) and in Syracuse by Mr. Hein and Denise Hartman. In the last hour, "Ask the Judges," Judges Rosemary Pooler and Richard C. Wesley in Syracuse and Debra Ann Livingston, Raymond Lohier and Barrington D. Parker, Jr. in New York City answered questions suggested by committee members and program registrants and posed by moderator J. D. Barnea.

As is usual, the most popular (and lively) aspect of the programs was the opportunity to hear what judges had to say about what we do. There were a host of helpful hints. We learned:

- The standard of review is often outcome-determinative. Weave it into the argument.
- Clerk Wolfe will answer questions by phone – her direct line is 212-857-8585.
- Do not assume Second Circuit judges are familiar with New York law. Only Judges Richard Wesley and Chester Straub were New York state court judges.
- Judges frequently read the district court opinion first. It is helpful if it is included in a special appendix bound with the brief even if one is not required.

- Use the summary of argument to tell a story, not to make legal arguments.
- If requesting a stay, focus on irreparable harm (not money loss), and include a time frame for an expedited appeal.
- Arguments mentioned only in footnotes may be treated as abandoned.
- Repeat record/appendix citations in the argument.
- Use descriptive subheadings so the table of contents provides a road map of the facts and argument.
- If you have the technology, create links in the brief to cases and the appendix.
- Avoid string cites, even with parenthetical explanations. Better to synthesize the case into the argument.
- Use the same names and labels as those used in the district court to identify parties and others.
- Each brief, including appellee's brief and appellant's reply, must stand on its own.



Legislative Proposals Include Amendment of CPLR 5501

Our committee actively discusses proposed legislation affecting appellate practice.

For example, March 2012 was a fertile period for the exploration of CPLR 5501, a core statutory provision regarding the scope of review in appeals to New York's appellate courts. That month, the committee approved a report recommending that the phrase, "any non-final judgment or order" be replaced with "any order or interlocutory judgment." Our report inspired the CPLR committee of the New York State Bar Association to amend its report to adopt our suggested language; and in June 2012, the State Bar Executive Committee approved the CPLR Committee's report.

March 2012 also saw the Committee on Courts of Appellate Jurisdiction oppose a proposal by the Office of Court Administration Advisory Committee on Civil Practice to amend CPLR 5501 to eliminate the requirement that, only if a non-final judgment or order "necessarily affects the final judgment," may it be brought up for review on appeal from the final judgment. The committee also opposed the OCA committee's proposal to amend CPLR 5501 to overrule *Matter of Aho*, 39 NY2d 241, which holds

that once a final judgment is entered, appeals from intermediate orders and interlocutory judgments abate and review of such papers must be had on appeal from the final judgment in the action.

As this issue of *Leaveworthy* goes to press, the NYSBA and OCA committees expect to resume their ongoing dialogue about their respective proposals, both of which are under consideration in the state legislature.



Retrospective: Committee Spurs Reform of Transcript Fee Rules

By: Scott M. Karson*

During my years as law secretary to Justice Lawrence J. Bracken of the Appellate Division, Second Department, he invited me to join the New York State Bar Association Committee on Courts of Appellate Jurisdiction. I have been a proud member of the Committee ever since. Being a member of the Committee has given me a special opportunity to participate in debates, and formulate proposals and recommendations, concerning important issues involving the appellate courts, the judges and justices who serve on those courts and the lawyers who practice before them.

One such opportunity occurred in 1997, during my term as Chair of the Committee, when we became aware of concerns being voiced by members of our profession concerning the system then in effect for the compensation of court reporters for furnishing transcripts to private litigants.

By statute, court reporters are required to furnish transcripts of court proceedings to litigants upon the payment of the "fees allowed by law". Judiciary Law §§ 300, 302.

CPLR 8002 provides, "Unless otherwise agreed or provided by law, a stenographer is entitled . . . to the fee set forth in the rules promulgated by the chief administrator of the courts (emphasis added)."

In 1997, the pertinent rule, Rule 108.2(b) of the Rules of the Chief Administrator of the Courts, provided: "For furnishing a transcript of court proceedings, or some portion thereof, a court reporter shall be paid at a rate of \$1.375 per page."

Thus, under the law as it existed in 1997, a court reporter was entitled to charge a private litigant \$1.375 per page, unless otherwise agreed. However, anecdotal evidence adduced by the Committee suggested that parties ordering transcripts were routinely being charged substantially more than the \$1.375 default rate, and it occurred to the Committee that there was a disparity in bargaining power between court reporters, on the one hand, and lawyers and litigants, on the other, because most attorneys were simply unaware of the rule and their right to insist on paying the minimum rate or some other mutually agreed-upon fee. Attorneys and litigants, having no knowledge of the minimum rate and their right to negotiate, and having an absolute need to acquire the transcript, simply paid whatever rate was quoted by the reporter.

In order to address and rectify this problem, the Committee conducted a study and issued its Report re Court Reporters, dated May 1997. The Report contained a number of recommendations, including: (1) disseminate information about the then-current version of Part 108, including the \$1.375 default rate "unless otherwise agreed," to the Bar; (2) revise Part 108 to provide for reasonable uniform rates for daily and expedited copies; (3) revise Part 108 to proscribe court reporters from requiring prepayment of transcript fees in full, and permitting a down payment reflecting a fair and reasonable percentage of the entire fee; (4) amend Part 108 to require the development and use of written agreements between parties ordering transcripts and court reporters, to be filed with the appropriate administrative judge, to permit monitoring of transcript fees being charged, volume of transcript orders taken and length of time required to complete orders; and (5) amend Rule 108.3, which prescribes standard transcript specifications, to require a greater number of words per page, in order to reduce costs and serve environmental concerns. After the Report was issued by the Committee, it was adopted by the New York State Bar Association.

Responding favorably to the Association's Report, the Chief Administrative Judge issued an order in December 1997 which amended Part 108 and, in doing so, adopted much of what the Association had recommended in its Report. Since 1997, Part 108 has undergone further amendment.

Presently, with respect to rates, Rule 108.2(b)(1)(iii) provides that where a transcript is ordered by a private litigant, the fee shall be as follows: for regular delivery, between \$3.30 per page and \$4.30 per page; for expedited delivery, between \$4.40 and \$5.40 per page; and for daily delivery, between \$5.50 and \$6.50 per page. Pursuant to Rule 108.2(b)(2)(vi), the court reporter shall be paid at a rate which is within the prescribed range and which the reporter and ordering party may agree upon, based on consideration of the regional and market cost of transcripts and transcript production, the complexity of the subject matter of the proceeding involved, and the reporter's transcript volume. Where no agreement can be reached, the reporter shall not be required to produce and deliver the transcript, except where regular delivery has been ordered, in which event the rate of payment shall be the lowest rate within the range of rates provided for regular delivery.

In addition, the 1997 amendments to Part 108 adopted a further recommendation contained in the Report by imposing a requirement that a written agreement between the reporter and the ordering party be entered into and filed in the office of the appropriate administrative judge. See, Rule 108.4.

Upon the promulgation of the 1997 amendments to Part 108, the court reporter unions resorted to litigation to challenge those amendments. In particular, the Committee found itself embroiled in a proceeding brought by the unions before the Public Employment Relations Board ("PERB"). The unions alleged that the Unified Court System ("UCS") committed an improper employer practice in violation of the Taylor Law by unilaterally amending Part 108 and thereby altering the terms and conditions of employment, rather than engaging in collective bargaining. As Chair of the Committee, I – along with then Deputy Chief Administrative Judge for Management and Support Ann Pfau – were called by the UCS as witnesses before PERB and testified about the Association's Report and the recommendations contained therein, which led to the amendment of Part 108.

PERB ruled in favor of the unions, and the UCS commenced a proceeding pursuant to CPLR Article 78 to annul that determination. The proceeding was transferred to the Appellate Division, Third Department, which annulled the determination of PERB and granted the UCS's petition. See, *Matter of Lippman v. Public Employment Relations Bd.*, 296 A.D.2d 199 (3rd Dept. 2002).

Part 108 of the Rules of the Chief Administrator, as amended, stands as a clear example of a contribution by the Committee which has benefitted the members of our Association, the profession as a whole, and the litigants who appear in our courts.

Mr. Karson is a partner at Lamb & Barnosky, LLP in Melville, New York and concentrates his practice on state and federal appellate matters.



At Ease: The Committee's Annual Dinner

While the Committee on Courts of Appellate Jurisdiction devotes much time to working on projects and discussing matters germane to appellate practice, a highlight of each year is its annual dinner – a more relaxed, convivial event held during the Bar Association's annual meeting. At its annual dinner, Committee members and invited guests – Court of Appeals Judges, Appellate Division Justices, Clerks and others who have worked with the Committee on projects or CLE programs, and Bar Association officers – have the opportunity to enjoy each other's company for dinner and conversation.

By tradition the Committee honors one or more individuals who have made a notable impact on the appellate community. This year the Committee honored Judge (once Chief Judge) Dennis Jacobs of the Second Circuit Court of Appeals, who entertained the assembled group with anecdotes reflecting the relationships among the "family" of Second Circuit Judges. In the recent past, the Committee has honored New York Court of Appeals Judge Carmen Beauchamp Ciparick, Chief Administrative Judge Gail Prudenti, the Clerks of the Departments of the Appellate Division, and former New York Court of Appeals Chief Judge Judith Kaye.

