

Commercial and Federal Litigation Section Newsletter

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

A Message from the Outgoing Chair

It is with a great sense of productivity and pride that I pass the chairpersonship of this Section to your new Chair, Peter Brown. The intelligence, hard work, and dedication of our Section members are outstanding and, as a result, the Section had a tremendous year: we had record-breaking attendance at our Annual and Spring Meetings, numerous written reports from our committees on timely litigation topics, and fantastic CLE programs.



Carrie H. Cohen

(Continued on page 2)

A Message from the Incoming Chair

I am pleased and honored to write to you for the first time as Chair of the Commercial and Federal Litigation Section. The responsibilities of Chair are a personal challenge, as I strive to meet the high standards of the distinguished series of Bar leaders who have preceded me. I am honored to serve this year under New York State Bar Association President Bernice Leber. Bernice began her extraordinary record of Bar leadership as Chair of this Section. She is a dynamic leader, who will lead the Association to exceed the expectations of the lawyers of New York.



Peter Brown

(Continued on page 2)

Inside

Section Welcomes New Officers:
Jonathan D. Lupkin and Victoria Zaydman 4

Report on the Spring Meeting 5

Committee Spotlight:
Committee on Immigration Litigation 8

Stellar Panel of Jurists of Color Presents CLE Program
"Pathways to the Bench" 10
(Carla M. Miller)

Cesar A. Perales Receives 2008
Hon. George Bundy Smith Award 11
(Susan M. Davies)

Foundation Awards Section's 2008 Minority Law Student
Fellowship to Fordham Student 12
(Susan M. Davies)

Notice of New Electronic Filing and Alternative Dispute
Resolution Rules 13
(Victoria Zaydman)

Use of Diagrams and Photographs in Appellate Briefs
in New York State Courts 14

Section Supports Celebration of Cultural Diversity in the
New York Legal Community 18
(Kathy M. Kass)

Federal Sentencing in White Collar Cases 19
(Harry Sandick)

Section's 2007 Empire State Counsel 20

CPLR Amendments: 2008 Legislative Session 21

2008 Amendments to the Uniform Rules for Supreme
and County Courts, Rules Governing Appeals, and
Certain Other Rules of Interest to Civil Litigators 22

Notes of the Section's Executive Committee Meetings 23



A Message from the Outgoing Chair

Continued from page 1

Starting in the winter at our Annual Meeting, we were especially fortunate to have the Honorable Judith S. Kaye present our Section's Stanley H. Fuld Award to the Honorable Albert N. Rosenblatt. In the early spring, our Section held our Second Annual Smooth Moves event at which the Honorable George Bundy Smith presented the 2008 Honorable George Bundy Smith Pioneer Award to Cesar A. Perales, the President and General Counsel of the Puerto Rican Legal Defense and Education Fund, at a reception held at Lincoln Center for the Performing Arts. And in the late spring, we had our Spring Meeting at the Equinox in Vermont, at which we teamed up with the Young Lawyers Section to present dual-track CLE programming targeted to junior litigators. In addition, at that meeting, we were honored to have the Honorable Kevin T. Duffy, United States District Judge, Southern District of New York, bestow our Robert L. Haig Award on our former Section Chair, the Honorable P. Kevin Castel, United States District Judge, Southern District of New York.

As I have said throughout my tenure, the work of our committees is the heart of our Section, and they were particularly productive this year with reports on a wide array of timely topics, including the Individual Practices of Judges and Magistrates in the Southern District of New York, contact with putative class members, antitrust cases from the past United States Supreme Court term, proposed changes to the CPLR regarding e-discovery

(which report was drafted by our CPLR Committee and is scheduled to be presented to the NYSBA House of Delegates), and the legal implications of linking and framing in Internet usage.

In addition, the editions of the *NYLitigator* and *Newsletter* were particularly robust during this past year; and the Section is grateful to our tireless editors, David Fioccola and Mark L. Davies, respectively. I also am pleased to report that our Section actively worked to meet immediate past NYSBA President Kate Madigan's membership challenge and our membership increased significantly during this past year.

Finally, all of our success this past year would not have been possible without the constant support and help from my fellow officers, Peter Brown, Vincent Syracuse, Susan Davies, and Kyana McCain, to whom I am forever grateful. In addition, immediate past NYSBA President Kate Madigan and current NYSBA President Bernice Leber led by example and were a constant source of inspiration to our Section leadership. I also would be remiss if I did not thank all of our past Section Chairs who unselfishly continue to give their time and expertise to our Section.

Thanks again to all of you for your hard work and dedication. It has been my pleasure and honor to serve as your Chair.

Carrie H. Cohen

A Message from the Incoming Chair

Continued from page 1

At our recent Spring Meeting I had the opportunity to thank our outgoing Chair, Carrie H. Cohen, for her year of record accomplishments. The Section increased its membership, to over 2,600 members. Our committee Chairs organized a record number of CLE programs which served Section members and lawyers across the state. Through constant attention and thoughtful comments, Carrie encouraged our committee leaders to issue useful and timely reports on many important areas of concern to commercial litigators. The Section owes her a debt of gratitude for an outstanding year of leadership. I am certain that Carrie will continue her service to the NYSBA in the future, but her service to the Section will not be forgotten.

I feel confident about the year ahead because I am supported by an experienced team of Section leaders.

Our Chair-Elect, Vince Syracuse, has served the Section in a number of capacities, including several years as the Section's Treasurer, while leading one of our most successful CLE programs on ethics and civility in the profession. Our Treasurer, Susan Davies, has served the Section as Secretary in the past and is now keeping us on budget. Jonathan Lupkin has served as Editor of the *NYLitigator*, the Section's journal for five years and also Co-Chaired the Committee on Commercial Division Law Report. The newest member of our team, Victoria Zaydman, is our enthusiastic new Secretary. She was selected because of her potential for further contributions in the years ahead.

Finally, I must add a personal note of gratitude to Kyana McCain, a junior associate at my former law firm, who agreed to take on the job of Section Secretary this

Continued on page 3

A Message from the Incoming Chair

Continued from page 2

past year, supporting Carrie Cohen despite a demanding workload. Unfortunately, her recent marriage and relocation out of state made it difficult for her to continue as an officer with the Section. I wish her all success in her personal and professional life.

Our outgoing President Kate Madigan initiated an effort to grow the New York State Bar Association membership during the coming year. We all recognize that in private practice the pressure to produce billable hours has discouraged some lawyers from participating in Bar activities. If you are reading this message, you have already decided that membership can enhance your career. I ask that you encourage the lawyers in your respective firms or your friends to join the Section. In particular, the membership of the Section does not accurately reflect the growing diversity of the Bar across the state. In the coming year I hope to encourage minority lawyers and woman to join the Section in larger numbers and contribute their unique experiences to the Section's activities.

About half of our Section's members have not signed up to join one of our many committees. If you are among those who have not joined or have not participated recently in committee activities, I must urge you to get involved. The most rewarding activities for most of our members come from becoming involved in these committees. There are three important reasons why you should consider becoming active in the Section's committees.

First, you can have a direct impact on the development of the law or the administration of justice in the State of New York. Our Section is in regular contact with state legislators, members of the judiciary and bar leaders who seek our advice or support on issues impacting lawyers and judges in New York. The Commercial Division of the New York State Supreme Court grew out of a need identified by an earlier generation of our Section leaders. The initial success of the Commercial Division in New York County resulted in new Commercial Division courts in counties across the state. New legislative initiatives are regularly brought to the attention of the Section, and each year the Section comments on a wide variety of pending legislation impacting court procedures and substantive law.

Second, the Section provides the opportunity to meet and work directly with state and federal judges in your region. A number of current and retired judges serve on the Section's committees. They are also frequent contributors to the Section's many successful CLE programs. Developing a relationship with judges in your area will enhance your professional standing in your community. The insights learned in dealing with judges on Section activities will make you a more effective advocate when you appear in court on behalf of your clients.

Third, Section activities allow you to network with a broad cross-section of the Bar in your community. A younger lawyer can build a professional reputation by becoming active in Section activities. You will gain access to Bar and law firm leaders who can enhance your career in many ways. For more experienced lawyers, this Section offers an opportunity to focus on your professional practice specialties to help shape the direction of the law. The Section is always in need of committed and knowledgeable leaders who are prepared to commit time to committee activities. The Section's many activities, from CLE programs to annual meetings, provide an ideal opportunity for professional networking. Developing personal relationships with the senior law firm partners and general counsel of major companies in your community is one of the best ways of enhancing your professional career. In addition, you are likely to make some new friends who will make the practice of law even more rewarding.

I am delighted to serve the Section during the year of its twentieth anniversary celebration. To celebrate this milestone, the Section expects to have a celebratory reception for our members and the judiciary. You will be invited as soon as the plans are finalized.

Many of the Section's activities for the coming year are now in the planning stage. I need and encourage you to contact me or the Section's committee chairs with your ideas and suggestions. If there are activities, professional reports, or specific CLE programs of interest to you, please do not hesitate to call me or send an e-mail.

I look forward to a productive year as the Section Chair, and I hope to meet as many Section members as possible during the months ahead.

Peter Brown

Section Welcomes New Officers: Jonathan D. Lupkin and Victoria Zaydman



Jonathan D. Lupkin

The Section's 2008-2009 officers assumed their duties on June 1, 2008. In accordance with Article III of the Section's by-laws, Peter Brown of Baker & Hostetler LLP succeeded Carrie H. Cohen, Assistant United States Attorney for the Southern District of New York, as **Section Chair**, and Vincent J. Syracuse of Tannenbaum Helpern Syracuse & Hirschtritt LLP succeeded Mr. Brown as

Section Chair-Elect. At the Section's Annual Meeting on January 30, 2008, Susan M. Davies of Shalov Stone Bonner & Rocco LLP was re-elected to a second term as **Section Treasurer**, Jonathan D. Lupkin of Flemming Zulack was elected **Section Vice-Chair**, and Victoria Zaydman of Hogan & Hartson LLP was elected **Section Secretary**.

Mr. Lupkin, a partner with the firm of Flemming Zulack Williamson Zauderer LLP, has been a member of the Section's Executive Committee for the past 8 years. From 2000 to 2005, he served as the Editor of *NYLitigator*, and, after passing the baton on the *NYLitigator*, Mr. Lupkin served for one year as Co-Chair of the Committee on Civil Prosecutions. In 2006, he was appointed Co-Editor of the Commercial Division Law Reports. Mr. Lupkin also has played an active role in the Section's CLE offerings. In 2002, he was a faculty member at the Annual Meeting and co-presented a program entitled "The Trial of a Commercial Case: Successful Techniques and Tactics." In 2003 and again earlier this year, Mr. Lupkin participated in the presentations given to the Justices of the Commercial Division at the New York State Judicial Institute at Pace University. Finally, in late 2007, Mr. Lupkin co-presented a Section-sponsored CLE program entitled "Civil RICO: Legal Overview and Tactical Considerations."

Ms. Zaydman is an associate in Hogan & Hartson LLP's Litigation Department, where her practice focuses on commercial litigation matters. Ms. Zaydman has experience in a wide variety of breach of contract cases at the trial and appellate level in state and federal courts. She also has litigated bankruptcy, trademark, and copyright matters. Ms. Zaydman graduated from Benjamin N.



Victoria Zaydman

Cardozo School of Law in 2002, and holds a joint degree in Economics and Politics from Brandeis University. While in law school, Ms. Zaydman was a member of the Moot Court Honor Society and interned for The Honorable Kevin Thomas Duffy in the U.S. District Court for the Southern District of New York.

Biographical information for Mr. Brown, Mr. Syracuse, and Ms. Davies can be found on the Section's web pages at www.nysba.org/comfed.

The Section also elected Section Chair Peter Brown, and former Section Chairs Lesley F. Rosenthal of Lincoln Center for the Performing Arts, Inc. and Sharon M. Porcelio of Lippes Mathias Wexler Friedman LLP, as the Section's delegates to the Association's House of Delegates for 2007-2008. David H. Tennant of Nixon Peabody LLP, Co-Chair of Section's Committee on Appellate Practice, and David Rosenberg of Marcus Rosenberg & Diamond LLP, Co-Chair of the Section's Committee on Real Estate and Construction Litigation, were elected as alternate delegates.

The Section expresses its gratitude to outgoing 2007-2008 Section Chair Carrie H. Cohen and to outgoing 2007-2008 Section Secretary Kyana B. McCain of Thelen Reid Brown Raysman & Steiner LLP.



Catch Us on the Web at WWW.NYSBA.ORG/COMFED

Report on the Spring Meeting

The Commercial and Federal Litigation Section held its annual Spring Meeting at the Equinox Resort in Manchester, Vermont, on May 2-4, 2008. The Spring Meeting had an enthusiastic turnout, as attorneys from across New York State descended on the Equinox for a weekend of informative CLE programs and nightly social and networking events. For the first time, the Section offered a dual-track CLE program: Track A for experienced litigators, and Track B, which was offered in conjunction with the Young Lawyers Section, for junior litigators. The CLE programs and events are described below.



Section officers Peter Brown, Carrie H. Cohen and Vince Syracuse

Opening Banquet

On Friday, May 2, 2008, the Opening Banquet of the Spring Meeting was prefaced by welcoming remarks from Section Chair Carrie H. Cohen, Esq., Section Chair-Elect, and Program Chair Peter Brown, Esq., and Section Chair-Elect of the Young Lawyers Section, Sherry Levin Wallach, Esq. President of the New York State Bar Association Bernice K. Leber, Esq. gave a welcome on behalf of the New York State Bar Association. Following the welcoming remarks, Keynote Speaker Colonel Matthew Bogdanos of the U.S. Marine Corps, an Assistant District Attorney of the New York County District Attorney's Office, gave a stirring presentation on the search for antiquities stolen from the National Museum of Iraq in April 2003. Bogdanos led a team of investigators in this effort, including several officials from the Iraqi museum itself. As a result of these efforts, almost 6,000 stolen antiquities were recovered in eight countries.



"How Courts Supervise Electronic Discovery" speakers Christopher W. Meyer and Stephen P. Younger

Saturday, May 3 Programs for Experienced Litigators

The theme of the weekend's CLE programs was "Commercial Litigation Issues for the 21st Century." On Saturday, May 3, 2008, the first "Track A" program for experienced litigators was "How the Courts Supervise Electronic Discovery: Mock Presentations in State and Federal Court." The program consisted of a hypothetical case involving several electronic discovery disputes set against

the backdrop of state and federal court, with the speakers acting out the part of plaintiff's counsel, defense counsel, and the judge. The disputes involved the production of metadata (and associated privilege issues), searching of



"How Courts Supervise Electronic Discovery" speakers Hon. Karla Moskowitz and Hon. Hugh B. Scott

backup tapes, and possible spoliation issues for failure to preserve evidence. The speakers for the program included the Honorable Karla Moskowitz of the Appellate Division, First Department, the Hon. Hugh B. Scott of the United States District Court, Western District of New York, Constance Boland, Esq. of Nixon Peabody LLP, John G. Horn, Esq. of Harter Secrest & Emery LLP, Christopher William Meyer, Esq. of Whiteman Osterman & Hanna LLP, and Stephen P. Younger, Esq. of Patterson Belknap Webb & Tyler LLP.

Keeping with the technological theme, the next panel was "Social Networks, Bloggers and Internet Jurisdiction," and consisted of Nancy Mertz, Esq. of Thelen Reid Brown Raysman & Steiner LLP, David E. McCraw,



“Social Networks, Bloggers and Internet Jurisdiction” speakers Nancy Mertz and Peter J. Pizzi

Esq., Assistant General Counsel of The New York Times Company, and Peter J. Pizzi, Esq. of Connell Foley LLP. The three issues covered by the panel ranged from the challenges of identifying anonymous wrongdoers on the Internet, to the impact of the Internet on the jurisdictional exposures of content industries such as *The Times*, to recent cases construing the protections afforded to Web sites by Communications Decency Act § 230 for user-generated content.

Saturday’s panels concluded with a useful display of courtroom technology by David Hoffman of TrialGraphix/Kroll Ontrack, as well as commentary by Lesley Friedman Rosenthal, Esq., Lincoln Center for the Performing Arts, Inc.’s General Counsel, and Marc Lee Mukasey, Esq. of Bracewell Giuliani LLP. During the panel discussion, which was titled “How To Use Effective Graphics at Trial,” Ms. Rosenthal and Mr. Mukasey discussed the extent to which jurors have come to expect courtroom presentations to be strengthened by appropriate use of technology, and Mr. Hoffman illustrated presentations that ranged from trial briefs with exhibits seamlessly retrievable by hypertext links embedded in the text, to interactive time lines and computer-based animations, such as the step-by-step construction of a factory destroyed by fire in order to illustrate the construction defects.

Saturday, May 3 Programs for Junior Litigators

The Track B programs for Junior Litigators on Saturday, May 3 consisted of two CLE programs. The first, “Conducting an Effective Deposition,” was presented by Paul D. Sarkozi, Esq. of Hogan & Hartson LLP and Lisa A. Coppola, Esq. of Rupp Baase Pfalzgraf Cunningham & Coppola, LLC. Mr. Sarkozi and Ms. Coppola discussed the various purposes of a deposition, methods in which to jog an uncooperative witness’s memory, and how to prepare one’s witness for deposition. The presentation included helpful tips and accounts of the speakers’ own deposition experiences.

The second Track B program, “Arguing Your First Motion in the Commercial Division,” was presented by the Hon. Stephen G. Crane, Associate Justice of the Appellate Division, Second Department (Ret.), Carol E. Heckman Esq. of Harter Secrest & Emery LLP, and Richard A. Williamson, Esq. of Flemming Zulack Williamson & Zauderer LLP. The speakers discussed the CPLR rules and rules particular to the Commercial Division that an attorney may wish to consult before making a motion or oral argument. The Speakers also provided helpful tips to ensure that one’s first oral argument is successful, including how to prepare for oral argument, materials to bring for oral argument, and how to answer the court’s questions effectively.

2008 Award for Excellence in Commercial Brief Writing

At the lunch on Saturday, May 3, 2008, Jonathan D. Lupkin, Esq., Co-Chair of the Commercial Division Law Report Committee, presented the 2008 Award for Excellence in Commercial Brief Writing to Gabriel Hertzberg, Esq. (who accepted the award), T. Barry Kingham, Esq.,



Gabriel Hertzberg, recipient of the Section’s 2008 Award for Excellence in Commercial Brief Writing (center) with Jonathan Lupkin and Section Chair Carrie H. Cohen

and Turner P. Smith, Esq., attorneys at Curtis Mallet-Prevost, Colt & Mosle LLP, for their Memorandum of Law in Support of Defendant-Appellant’s Motion to Stay an Anti-Suit Injunction issued by Judge Loretta Preska of the United States District Court for the Southern District of New York. The Memorandum of Law was filed in the Second Circuit on March 5, 2007, in *Mastercard International Inc. v. Federation Internationale de Football Association*. The Curtis Mallet team represented Federation Internationale de Football Association.

The competition was open to all Section members who filed briefs or memoranda of law of up to 25 pages in commercial litigation during 2007 in either New York State or federal courts. The judges for the competition were Magistrate Judge Andrew J. Peck, Jonathan D. Lupkin, Esq., and James Yellen, Esq.



On May 3, 2008, the 2008 Robert L. Haig Award was presented to The Hon. Kevin P. Castel. Pictured (L to R): Section Chair-Elect Peter Brown, Hon. Kevin T. Duffy, Hon. P. Kevin Castel, Section Chair Carrie H. Cohen, Section Vice-Chair Vince Syracuse and incoming Section Secretary Victoria Zaydman

Gala Dinner and Presentation of Robert L. Haig Award

On the evening of Saturday, May 3, the Section attendees were treated to a cocktail reception and gala dinner. The highlight of the gala dinner was the presentation of the Robert L. Haig Award for Distinguished Public Service to Judge P. Kevin Castel, United States District Judge for the Southern District of New York, by his colleague, the Hon. Kevin T. Duffy, United States District Judge for the Southern District of New York.

The Robert L. Haig Award is presented annually by the Commercial and Federal Litigation Section to honor a member of the legal profession who has rendered distinguished public service. This award is named in honor of Robert L. Haig, the founder of the Commercial and Federal Litigation Section.

Sunday, May 4 Program for Experienced Litigators

In the first “Track A” program on Sunday, May 4, 2008, two JAMS mediators, the Hon. William G. Bassler, United States District Judge for the District of New Jersey (Ret.), and Jeff Kichaven, Esq., along with Christine LePera, Esq. of Mitchell Silberberg & Knupp LLP, presented “Mediation Strategies—Introduction to Mediating the Complex Case.” The panel noted that a key to getting the most out of any mediation is to spend the time to select the mediator with the right expertise for one’s case and then prepare effectively for the session.

The next presenters offered an impressive array of in-house talent to discuss the subject of “In-House Counsel Panel: Using Better Communications and Common Sense to Enhance the Client Relationship.” The panelists—William H. Crosby, Jr., Esq., Assistant General Counsel of

The Interpublic Group of Companies, Inc., Karen L. Douglas, Esq., Divisional Counsel of Corning Incorporated, Stanley Pierre-Louis, Esq., Associate General Counsel of Viacom, Inc., and Jill Bond, Esq., General Counsel of Rich Products Corporation—stressed the importance of constant communication and anticipating the business needs of in-house counsel. They suggested providing litigation cost estimates at the outset of an engagement, even when not requested, and keeping that estimate updated as conditions in the litigation change.

Sherry Levin Wallach, Esq. of Wallach and Rendo LLP, Gregory P. Silberman, Esq. of Kaye Scholer LLP, Jeremy R. Feinberg, Esq., Statewide Special Counsel for Ethics and the Commercial Division of the N.Y.S. Unified Court System, and James M. Wicks, Esq. of Farrell Fritz PC, covered “Legal Ethics—New Issues Raised by E-mails, Blogs and MySpace.” Issues addressed included whether the attorney-client privilege is waived where an employee uses the employer’s e-mail system to communicate with her private lawyer, the ethical impact of losing a wireless device containing privileged communications, and the ethical implications of blogging by lawyers.

Sunday, May 4 Program for Junior Litigators

The Track B for junior litigators offered an informative and practical program titled “Civil Appeals: Strategies and Process in the New York Courts,” presented by Jonathan D. Lupkin, Esq. of Flemming Zulack Williamson & Zauderer LLP, and Preeta D. Bansal, Esq. of Skadden Arps Slate Meagher & Flom LLP. The speakers discussed some of the differences between state and federal appeals, including the fact that interlocutory appeals can be taken from most orders in state court. The speakers also discussed how to take and perfect appeals in state court.



In-house Counsel Panelists Stanley Pierre-Louis of Viacom, Inc. and Karen L. Douglas of Corning Incorporated



Committee on Immigration Litigation

The mission of the Section's recently established Committee on Immigration Litigation is to provide a forum for the improvement of substantive law and procedure in the area of immigration litigation and to assist in the administration of justice as it pertains to immigration litigation and litigants. The Committee serves its mission by:

- Developing relationships and sharing practical experience with fellow immigration practitioners, state, federal and immigration judges, and with regulatory and administrative bodies;
- Promoting research and discussion on current issues and trends affecting immigration law;
- Influencing and proposing legislation affecting immigration law; and
- Providing networking opportunities for its members.

Since it was established in 2007 by Section Chair Carrie Cohen, the Committee on Immigration Litigation has reviewed and discussed issues presented in scholarly articles on the surge in immigration appeals in the federal courts, particularly in the Second Circuit Court of Appeals. The Circuit Court of Appeals has jurisdiction to review decisions of the Board of Immigration Appeals (BIA). The BIA, within the Department of Justice, is a judicial body that provides appellate review of decisions of immigration judges in removal proceedings. Reports indicate that the BIA issues many of its decisions through summary affirmances without opinion, which generally affirms the immigration judge's decision to remove the non-citizen litigant who is the subject of removal from the United States. As a result, litigants flock to the federal courts seeking review of the BIA decisions in order to remain in the United States.

Many theories attempt to explain the surge in the Second Circuit Court's immigration docket, which developed around 2001 and forced the Second Circuit to adopt substantial administrative changes to handle the caseload. Efforts to increase staff, create a docket that heard only immigration appeals, and devise other methods to deal with a burgeoning caseload were employed. Today, several issues appear ripe for exploration, such as the extent to which the surge continues, the types of immi-

gration cases that constitute the surge, what additional efforts, if any, the Second Circuit can make to address the issue while protecting due process rights, how the immigration appellate docket is handled between *pro se* and represented aliens, and what impact the surge has on the court's other cases.

The Committee is currently comprised of approximately 15 members, who range from private bar immigration attorneys throughout the State, including law firm partners, associates, and solo practitioners, to Assistant United States Attorneys in the U.S. Attorney's Office EDNY and SDNY, as well as an immigration judge in New York City.

The Committee's inaugural meeting took place in February 2008 at the law offices of Fragomen, Del Rey, Bernsen & Loewy, LLP in Manhattan, where members discussed the phenomenal surge in immigration appellate cases in the federal courts, a topic that served as the impetus to the Committee's formation. Committee member David Tennant talked about his article in progress at the time, entitled "The Surge in Asylum Appeals: What Does It Mean to Civil Appellate Litigation?," in which he explores the problem presented by the increase in immigration appeals for asylum cases in the Second Circuit and its impact on the civil appellate docket. Members shared their knowledge of the issue from various perspectives based on their diverse legal practice experiences.

Upcoming Projects

The Committee anticipates publishing an update on the New York City Bar Association's 2004 report on "The Surge of Immigration Appeals and Its Impact on the Second Circuit Court of Appeals." That report was produced by the City Bar's Committee on Federal Courts. At that time, the report concluded that while the surge in immigration appeals had not yet caused other appeals to be delayed, if the surge continued, disposition times for all litigants in the Second Circuit were likely to be adversely affected. The Committee will endeavor to review this conclusion, as four years have passed since the publishing of the report.

Members of the Section who are interested in joining the Committee on Immigration Litigation should contact Michael Patrick at mpatrick@fragomen.com or Clarence Smith, Jr. at csmith@connellfoley.com.

Special thanks to Committee member Sophia M. Goring-Piard of Piard Dalley, PLLC for her lead contributions to this article. Ms. Goring-Piard is a partner at Piard Dalley, PLLC located at 1916 Park Avenue, Harlem, New York 10037, a law firm providing services in the area of immigration and nationality law.

Committee on Immigration Litigation Co-Chair Bios

Michael D. Patrick

Michael D. Patrick, Co-Chair of the Committee on Immigration Litigation, is a partner in the New York Office of Fragomen, Del Rey, Bernsen & Loewy PLLC, the largest immigration firm in the nation. At Fragomen, Mr. Patrick serves on the Firm's Executive and Finance Committees, is Co-Chair of the Firm's Corporate Compliance Committee, and has led the representation of many companies during government audits and investigations.



Michael D. Patrick

Prior to joining Fragomen, Mr. Patrick was a founding partner of Campbell, Patrick & Chin (1986–1990) and served as a Special Assistant United States Attorney and Chief of the Immigration Unit of the United States Attorney's Office for the Southern District of New York (1981–1986), where he represented the Immigration and Naturalization Service, State Department, Department of Labor, and other federal agencies in the federal courts. Prior to joining the U.S. Attorney's Office, Mr. Patrick was an Assistant Corporation Counsel for The City of New York (1978–1981).

A widely published author in the immigration field, Mr. Patrick writes a bimonthly immigration column in *The New York Law Journal* and is a frequent speaker on immigration topics before Bar Associations, international trade organizations, and human resource groups. He is also listed in the current editions of *Best Lawyers in America*, *SuperLawyers*, *Chambers USA: America's Leading Business Lawyers*, and the *International Who's Who of Corporate Immigration Lawyers*.

Mr. Patrick is a member of the American Bar Association, the International Bar Association, the Federal Bar Council (Trustee, 2006–2009), the American Immigration Lawyers Association, and the American Foreign Lawyers Association (Treasurer, 2004–2007).

Mr. Patrick received a B.A., *cum laude*, from Syracuse University in 1975 and a J.D. from Hofstra University in

1978. At Hofstra, Mr. Patrick served as Associate Editor on the *Hofstra Law Review*, was President of the Law Fellows Program, and received the "Service to the School" award upon graduation.

Clarence Smith, Jr.

Clarence Smith, Jr., Co-Chair of the Committee on Immigration Litigation, is a partner at Connell Foley LLP, where he leads the Firm's Immigration Law practice, an important component of the Firm's comprehensive Labor and Employment Law services.



Clarence Smith, Jr.

Mr. Smith joined Connell Foley after several years of service as Assistant Chief Counsel to the United States Department of Homeland Security. An authority on immigration law, he brings to Connell Foley extensive experience in exclusion, deportation, removal, and rescission proceedings and in matters involving civil document fraud. He is available to counsel employers regarding such matters as non-immigrant and immigrant visas, employment based visas, labor certifications, naturalization, and all aspects of immigration related benefits. In addition, Mr. Smith regularly assists employers in complying with the United States Department of Labor and Department of Homeland Security statutes and regulations pertaining to non-citizen employees.

Mr. Smith currently serves as an arbitrator before the Financial Industry Regulatory Authority (formerly the National Association of Securities Dealers).

Mr. Smith's published decision, *Matter of Minkle*, 221 A.D. 2d 28 (1st Dep't 1996), an attorney disciplinary matter, concerned an attorney who was publicly censured for conviction of failure to file United States income tax returns in violation of 26 U.S.C. § 7203. Mr. Smith has also authored publications, including "Obtaining a Visa for a Manager or Executive of a Multinational Corporation" in *The Metropolitan Corporate Counsel* (April 2006) and "The H-1B Visa Cap Impedes a Company's Ability to Meet Competition in the Global Marketplace" in *The Metropolitan Corporate Counsel* (December 2006).

Mr. Smith has served as a presenter for the Immigration Section of the National Bar Association's 81st and 82nd Annual Conventions in 2006 and 2007.

Mr. Smith received a B.A. in Government and Public Administration from John Jay College of Criminal Justice in 1984 and a J.D. from Fordham Law School in 1988.

Stellar Panel of Jurists of Color Presents CLE Program "Pathways to the Bench"

By Carla M. Miller



Panelist the Hon. Marguerite A. Grays (Commercial Division, Queens County)

On April 7, 2008, a panel comprising U.S. District Judge George Daniels (S.D.N.Y.), U.S. Magistrate Judge Marilyn Dolan Go (E.D.N.Y.), N.Y. Supreme Court Justice Marguerite A. Grays (Commercial Division, Queens Co.), and U.S. District Judge Victor Marrero (S.D.N.Y.) presented an insightful and inspiring MCLE program entitled "Pathways to the Bench." The panel

was moderated by The Honorable Zachary W. Carter of Dorsey & Whitney LLP, who is a former New York State Criminal Court judge, U.S. Magistrate Judge, and U.S. Attorney for the Eastern District of New York. "Pathways to the Bench" was the second free MCLE program in the Section's annual series "Smooth Moves: Career Mobility for Attorneys of Color." The program was co-chaired by the Honorable Barry A. Cozier of Epstein Becker & Green, P.C., himself a former Justice of the Appellate Division of the N.Y. Supreme Court and the Chair of the Section's Committee on Diversity, and Carla M. Miller, Esq. of Universal Music Group, Co-Chair of the Section's Corporate Litigation Counsel Committee.

The judges on the panel told inspiring personal stories and gave accounts of their varied career paths to the judiciary. Several panelists emphasized public service and bar association activities as important and useful means to position oneself for service on the bench by enhancing one's visibility within the profession. Those members of the panel who have served as both state and federal judges offered a unique perspective and compared their experiences within both systems.



Smooth Moves II Program Co-chairs: Carla M. Miller, Esq. of Universal Music Group and The Hon. Barry A. Cozier of Epstein Becker & Green, P.C.

Immediately following the MCLE program, the Section held an award ceremony at which the 2008 Honorable George Bundy Smith

Pioneer Award was presented to Cesar A. Perales, President and General Counsel of the Puerto Rican Legal Defense and Education Fund, by The Honorable George Bundy Smith, and the Section's 2008 Minority Law Student Summer Fellowship was presented to Fordham 1L Ji Zhang by John R. Horan, President of The New York Bar Foundation. The evening culminated in a cocktail reception with music by students of The Juilliard Institute for Jazz Studies.



Panelist the Hon. Victor Marrero (S.D.N.Y.)



The Hon. Zachary W. Carter of Dorsey & Whitney LLP moderating "Pathways to the Bench"

The Smooth Moves II MCLE program, award ceremony, and reception were co-sponsored by the following Sections and Committees of the New York Bar Association: Judicial (Courts of Record) Section, Committee on Diversity & Leadership Development, Committee on Minorities in the Profession, Entertainment, Arts and Sports Law Section, Young Lawyers Section, and Committee on Women in the Law.

The Section thanks the following law firms for their financial support of the event:

Gold Sponsors: Chadbourne & Parke LLP, FTI Consulting Inc., Flemming Zulack Williamson Zauderer LLP, and Morrison & Foerster LLP; **Silver Sponsors:** Connell Foley LLP, Fried Frank Harris Shriver & Jacobson, Jenner & Block LLP, Labaton Sucharow LLP, Patterson Belknap Webb & Tyler LLP, Proskauer Rose LLP, and Seyfarth Shaw LLP; **Bronze Sponsors:** Dewey & LeBoeuf, LLP, Epstein Becker & Green, P.C., Hogan & Hartson LLP, Lord Bissell & Brook LLP, Mitchell Silberberg & Knupp LLP, Law Offices of Douglas T. Tabachnik P.C., Shalov Stone Bonner & Rocco LLP, and Tannenbaum Helpert Syracuse & Hirschtritt LLP. The Section also thanks Ellen Grauer Court Reporting Co. LLC for contributing the transcription of the award ceremony that is reprinted in the Summer 2008 issue of *NYLitigator*.



Panelists the Hon. George Daniels (S.D.N.Y.) and the Hon. Marilyn Dolan Go (E.D.N.Y.)

Cesar A. Perales Receives 2008 Hon. George Bundy Smith Award

By Susan M. Davies



The Hon. George Bundy Smith (right) presents the 2008 George Bundy Smith Pioneer Award to Cesar A. Perales, President and General Counsel of the Puerto Rican Legal Defense and Education Fund

On April 7, 2008, the Section's 2008 Honorable George Bundy Smith Pioneer Award was bestowed upon Cesar A. Perales, President and General Counsel of the Puerto Rican Legal Defense and Education Fund.

The Honorable George Bundy Smith Pioneer Award was established by the Section in 2007 to recognize legal excellence, community commitment, and mentoring by a

minority lawyer. The inaugural award was presented to The Hon. George Bundy Smith, a retired Associate Judge of the New York State Court of Appeals and partner of Chadbourne & Parke LLP, in recognition of his work in the civil rights movement and his 30 years of public service on the bench.

The 2008 award was presented to Mr. Perales by The Honorable George Bundy Smith at a public ceremony and reception held at Lincoln Center for the Performing Arts in New York City in conjunction with the Section's free MCLE program "Pathways to the Bench," part of the Section's annual series "Smooth Moves: Career Mobility for Attorneys of Color." (See related article on page 10.) Among the distinguished guests present to honor Mr. Perales was New York State Bar Association President Kathryn Grant Madigan.

The 2008 award was presented to Mr. Perales in recognition of both his extraordinary effectiveness as a litigator advocating for the rights of minorities and immigrants, and his contributions to the Latino community as a role model and mentor. A graduate of City College of New York and Fordham Law School, Mr. Perales was one of the founders of the Puerto Rican Legal Defense and Education Fund in 1972 and became the organization's first President. Under his leadership, PRLDEF has initiated numerous groundbreaking lawsuits that have established the right to bilingual education, struck

down civil service requirements that barred Latinos from public employment, and eliminated barriers to government benefits for non-English speaking applicants. The right to bilingual ballots, added to the federal Voting Rights Act in 1975, was established by PRLDEF through litigation in federal courts. Mr. Perales also has advocated for the rights of immigrant workers, including in a suit against the government of Puerto Rico for failure to ensure decent working conditions for migrant farmworkers sent to the mainland United States.

In accepting the Award, Mr. Perales emphasized the importance of lawyers as role models for young people, noting that he shared this value with The Honorable George Bundy Smith. "While we take a lot of pride—maximum amount of pride—in what happens in the courtroom and in the practice of law, we know that perhaps the most lasting effect some of us can have is to be role models and to inspire others to the highest ideals of our profession. If I have inspired one or two young people to want to become lawyers because of my work, that is probably the most important thing," Mr. Perales said. A video about PRLDEF screened at the award ceremony highlighted the organization's LAWbound program, which provides mentoring and training for Latino and Latina college undergraduates interested in the law.

In addition to paying tribute to Mr. Perales for his inspired leadership, Ms. Madigan in her remarks at the award ceremony praised the Section for its leadership on the issue of diversity. Ms. Madigan noted that the Section's 2007 "diversity report card" reflected that ethnic minorities and women made up a greater proportion of the Section's leadership (7% and 27% respectively) than their proportion of Section membership (5% and 25% respectively). Ms. Madigan emphasized the need for

the Section, and the Association, to recruit and encourage participation by a diversity of members. "We are a much richer association and more effective because of diversity, because it really does increase our strengths, our capabilities, and our adaptability," Ms. Madigan said.

The Section gratefully acknowledges the law firms (listed at page 10) that provided generous sponsorship for the award ceremony and reception, and Ellen Grauer Court Reporting Co., LLC for providing the transcription of the award ceremony that is reprinted in the Summer 2008 issue of *NYLitigator*.



At the presentation of the 2008 George Bundy Smith Pioneer Award, from left to right: Smooth Moves II Program Co-Chairs Carla M. Miller and the Hon. Barry A. Cozier, Section Chair Carrie H. Cohen, Honoree Cesar A. Perales, the Hon. George Bundy Smith, and State Bar President Kathryn Grant Madigan

Foundation Awards Section's 2008 Minority Law Student Fellowship to Fordham Student

By Susan M. Davies

Fordham Law student Ji Zhang is the recipient of the Section's 2008 Minority Law Student Fellowship. Mr. Zhang is serving his Fellowship this summer as a law clerk in the chambers of the Honorable Herman Cahn, Justice of the Commercial Division of the New York Supreme Court, New York County.

The 2008 Fellowship was bestowed on Mr. Zhang by John R. Horan, President of The New York Bar Foundation, at an awards ceremony held at Lincoln Center for the Performing Arts in New York City on April 7, 2008. The awards ceremony was held in conjunction with the Section's free MCLE program "Pathways to the Bench," which was presented as part of the Section's annual series "Smooth Moves: Career Mobility for Attorneys of Color." (See related article on page 10.) The ceremony was followed by a cocktail reception, featuring music by students of The Juilliard Institute for Jazz Studies.

Mr. Zhang is a *magna cum laude* graduate of Ohio Wesleyan University, where he earned a Bachelor of Arts degree in Accounting. He expects to receive his CPA certification from the Ohio Board of Accountancy this year. While at Ohio Wesleyan, Mr. Zhang received the Trustee Scholarship for four consecutive years, and the Charter One Bank Scholarship in 2004. He placed second in the competition for the 2002 Florence Leas Prize in mathematics and computer science. Mr. Zhang was a member of the Ironman USA Triathlon team. He also organized a student housing clinic at Ohio Wesleyan to provide students with housing-related legal advice and mediate disputes between students and landlords.

The recipient of the 2007 Fellowship, Lina M. Martinez, is also a student at Fordham Law School. Ms. Martinez served her Fellowship in the chambers of the



President of The New York Bar Foundation John R. Horan presents the 2008 Minority Law Student Fellowship to Fordham 1L Ji Zhang

Honorable Charles E. Ramos of the Commercial Division of New York Supreme Court, New York County. Ms. Martinez is currently a summer associate at Mayer Brown LLP in New York City.

The Commercial and Federal Litigation Section Minority Law Student Fellowship, which is administered by The New York Bar Foundation, was established by the Section in 2007 as a means of providing law students from diverse backgrounds with an opportunity to experience commercial litigation practice at an early stage in their professional training. The Section's

long-term goal is for the Fellowship to create professional networks and forge relationships that will foster a greater diversity of lawyers engaged in the practice of commercial litigation in New York and actively engaged in the work of the Section. Currently, the Fellowship is funded through and including the summer of 2010.

Application forms for the 2009 Fellowship will be distributed to all law schools in New York State in September 2008, and also will be available from The New York Bar Foundation, One Elk Street, Albany, New York 12207, 518/487-5651 or foundation@tnybf.org. The 2009 Fellowship is open to all minority students who are enrolled as 1Ls in a New York law school as of fall 2008 and will be available to spend ten weeks over the summer of 2009 working in the chambers of a Commercial Division Justice in New York City. The 2009 Fellowship is valued at \$5,000.

The Section gratefully acknowledges The New York Bar Foundation for implementing and administering the Fellowship. The Section also thanks the law firms (listed at page 10) that provided generous sponsorship for the award ceremony and reception, and Ellen Grauer Court Reporting Co., LLC for transcribing the award ceremony.

Notice of New Electronic Filing and Alternative Dispute Resolution Rules

By Victoria Zaydman

Effective June 15, 2008, all new Commercial Division cases in all Division Parts shall be electronically filed through the New York State Courts Electronic Filing System (NYSCEF). Specifically, in New York County, all Commercial Division cases should be commenced electronically, and all cases in which a Request for Judicial Intervention (RJI) is sought after June 15, 2008, should be electronically filed. Furthermore, Justices in all Division Parts may request that Division cases that were previously filed in hard copy format be converted to electronic filing status; in such instances, counsel will be informed either by the Justice or the E-Filing Office. In order to electronically file documents, attorneys will need to register for IDs and passwords, which may be done by contacting the E-Filing Office at 646-386-3610 or newyorkef@courts.state.ny.us.

Please note that although electronic filing is not mandatory, it is expected that attorneys will cooperate with the Commercial Division Justices in their effort to improve the efficiency of court operations and to bring the courthouse into the age of advanced technology. If an attorney wishes not to participate in electronic filing in a particular action, he or she shall address the subject with the Division Justice assigned to the action and all other parties at a conference or as otherwise directed by the Justice. The E-Filing Office of the Commercial Division, New York County, is located in Room 119 of the New York County Courthouse, 60 Centre Street, Manhattan. The office offers each week a two-hour training course in the NYSCEF electronic filing program at no charge, for which two CLE credits are awarded. All interested attorneys and staff are encouraged to attend a training course.

"Please note that although electronic filing is not mandatory, it is expected that attorneys will cooperate with the Commercial Division Justices in their effort to improve the efficiency of court operations and to bring the courthouse into the age of advanced technology."

Beginning later this year, pursuant to procedures that will be announced, in all Commercial Division cases that are not electronically filed, counsel submitting motion papers, including papers on motions brought on by order to show cause, shall submit with the papers a computer diskette bearing an exact copy of the papers in PDF format. The papers will be included in the Supreme Court Records On-Line Library (SCROLL) and will be available on the general Web site of the Supreme Court, Civil Branch, New York County.

Pursuant to the electronic filing rules (Uniform Rule § 202.5-b), courtesy hard copies must be submitted in electronically filed cases; and beginning on June 15, 2008, the courtesy copy must include the following legend (indicating the number of the document as shown in the e-filed docket of the case in NYSCEF): COURTESY COPY. THIS DOCUMENT HAS BEEN E-FILED AS DOCUMENT NO. ___. Courtesy copies will be discarded by court staff upon the completion of judicial action, unless counsel states on the first page that "COUNSEL WILL RETRIEVE THIS COPY AND REQUESTS RETENTION," in which case the courtesy copy will be retained in the Motion Support Office Courtroom (Room 130) for two weeks.

In addition, on June 15, 2008, the new rules issued by the Alternative Dispute Resolution Program of the Commercial Division became effective. Under the new rules, mediation remains mandatory. The initial mediation session(s) shall last for four hours and are free of charge; thereafter, if the parties find it beneficial to continue mediation, the Commercial Division mediator must be compensated as set forth in the ADR Rules.

Further information, including a copy of the applicable electronic filing procedures and ADR rules, is available in the New York County section of the Web site of the Commercial Division, at www.nycourts.gov/comdiv.

Use of Diagrams and Photographs in Appellate Briefs in New York State Courts

The Section's Committee on Appellate Practice received anecdotal reports indicating that the Appellate Division clerks' offices might or might not accept briefs with photographs or diagrams embedded in the text. With desktop publishing allowing attorneys to easily insert photographs and diagrams into briefs with salutary effect, the Committee undertook to survey actual practices in the four departments of the Appellate Division. The results are captured in a Committee report entitled "The use of photographs and diagrams in appellate briefs: a survey of Appel-

late Division policies and practices." Section Chair Peter Brown sent the report to the four Appellate Division presiding justices by cover letter dated June 19, 2008. Peter Brown and the Committee on Appellate Practice, co-chaired by Preeta Bansal and David H. Tennant, look forward to exploring the report's findings and recommendations with members of each department.

The report and Peter's Brown's June 19 letter follow.



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

COMMERCIAL AND FEDERAL LITIGATION SECTION

2008-2009 Officers

June 19, 2008

PETER BROWN

Section Chair
Baker & Hostetler LLP
45 Rockefeller Plaza, 11th Floor
New York, NY 10111
212/589-4660
FAX 212/589-4201
pbrown@bakerlaw.com

VINCENT J. SYRACUSE

Section Chair-Elect
Tannenbaum Helpert Syracuse
& Hirschtritt LLP
900 Third Avenue
New York, NY 10022-4728
212/508-6722
FAX 212/656-1916
syracuse@thshlaw.com

JONATHAN D. LUPKIN

Section Vice-Chair
Flemming Zulaack Williamson
Zauderer LLP
One Liberty Plaza, 35th Floor
New York, NY 10006
212/412-9579
FAX 212/964-9200
jlupkin@fzwz.com

VICTORIA ZAYDMAN

Section Secretary
Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022-4728
212/918-3000
FAX 212/918-3100
vzaydman@hhlaw.com

SUSAN M. DAVIES

Section Treasurer
Shalov Stone Bonner & Rocco LLP
485 Seventh Avenue, Suite 1000
New York, NY 10018
212/239-4340
sdavies@lawssb.com

Delegates to the House of Delegates

Peter Brown
Sharon M. Porcellio
Lesley F. Rosenthal
David H. Tennant, Alternate
David Rosenberg, Alternate

FORMER CHAIRS:

Robert L. Haig
Michael A. Cooper
Shira A. Scheindlin
Harry P. Trueheart, III
P. Kevin Castel
Mark H. Alcott
Gerald G. Paul
Mark C. Zauderer
Bernice K. Leber
John M. Nonna
Jack C. Auspitz
Sharon M. Porcellio
Jay G. Safer
Cathi A. Hession
Lewis M. Smoley
Lauren J. Wachtler
Stephen P. Younger
Lesley F. Rosenthal
Carrie H. Cohen

Hon. Jonathan Lippman, Presiding
Justice
New York State Supreme Court
Appellate Division, First Department
27 Madison Avenue
New York, New York 10010

Hon. Anthony V. Cardona, Presiding
Justice
New York State Supreme Court
Appellate Division,
Third Department
P.O. Box 7288, Capitol Station
Albany, New York 12224-0288

RE: NYSBA Report on Appellate Division Policies and Practices
Concerning Photographs and Diagrams in Briefs

Dear Honorable Presiding Justices:

As Chair of the New York State Bar Association's Commercial and Federal Litigation Section, I respectfully enclose, for your consideration, a report prepared by our Appellate Practice Committee. The report surveys current practices in the Appellate Division concerning the acceptance of briefs with photographs or diagrams embedded in the text. As suggested in the report, we believe the quality of advocacy in the Appellate Division would be enhanced by adopting a rule expressly allowing such material to be inserted into briefs, provided the photograph or diagram is part of the record.

We appreciate your time and consideration. We look forward to hearing from you.

Very truly yours,

Peter Brown
Section Chair

Enclosure

The use of diagrams and photographs in appellate briefs: a survey of Appellate Division policies and practices

Committee on Appellate Practice
Commercial and Federal Litigation Section
New York State Bar Association

The four Departments in the Appellate Division take different approaches to the inclusion of photographs or diagrams in briefs: Three of the four state no such material should be embedded in the brief while one department permits the practice subject to approval of the court or challenge by the opposing party. Based on anecdotal experience, it appears that even in those departments specifically eschewing such material, that policy is not uniformly followed, as we note below. The NYSBA Commercial and Federal Litigation Section, Committee on Appellate Practice, submits this report to document current policy and practices and to make recommendations that the Committee hopes will promote better advocacy. The Committee is thankful to the clerks' offices for the Appellate Division who were most helpful in providing information on their respective department's practices.

Survey Results

First Department

Policy: No photographs or diagrams are permitted in the body of the brief. If photographs or diagrams are part of the Record on Appeal, then the brief can refer to such Record cite.

Practice: Based on anecdotal experience, briefs with embedded photos and diagrams are accepted.

Second Department

Policy: Generally, photographs or diagrams are not permitted in the body of the brief. If photographs or diagrams are part of the Record on Appeal, then the brief can refer to such Record cite. For case specific questions about what may be included in a brief, the parties can contact the court.

Practice: On one occasion, the clerk's office said this was a new idea; that the rules did not prohibit the practice; anything that is new might generate opposition; but that it seemed very helpful.

Third Department

Policy: The Third Department does not appear to have a set practice or rule regarding the use of photographs or diagrams in the body of a brief. A party seeking to use a photograph or diagram in its brief may seek permission from the court via letter to the clerk attaching the photograph or diagram and explaining the basis for the request. If prior permission has not been sought and a photograph or diagram is included in a brief, the opposing party may object.

Practice: Anecdotally, the Third Department has granted permission and accepted briefs containing embedded photographs.

Fourth Department

Policy: No photographs or diagrams are permitted in the body of the brief. If photographs or diagrams are part of the Record on Appeal, then the brief can refer to such Record cite.

Practice: Fourth Department permits addenda to briefs and thus provides an alternative method to include photographs and diagrams as part of the brief.

Conclusion

The rule rejecting briefs with embedded photos or diagrams – which prevails to a lesser or greater extent in three of the four Departments – appears to be unduly restrictive. Such materials may substantially promote the reader’s understanding of the issues discussed in the brief. The potential utility of the material appears to be recognized in practice, if not by policy, in each department. Accordingly, the Committee respectfully suggests that a clear rule should be adopted allowing parties to use photos and diagrams in their briefs provided those materials are included in the Record on Appeal. Should a party seek to use a photo or diagram that is not in the Record on Appeal, that party should proceed by way of motion practice as would be the case with any other request to have the court consider material outside the record. The Committee believes such a clear rule will promote better advocacy and avoid possible confusion and inadvertent error by the appellate practitioner.

Section Supports Celebration of Cultural Diversity in the New York Legal Community

By Kathy M. Kass

On Friday, June 6, 2008, the Section participated in the fifth annual Unity in Diversity Luncheon and Program hosted by the Cultural Diversity Committee of the Supreme Court, New York County, Civil Branch, and the New York County Clerk's Office. The event was held from 12:15 p.m. to 2:30 p.m. in the Courthouse Rotunda at 60 Centre Street in Manhattan. The purpose of the program was to celebrate diversity in the legal community, as well as to develop, maintain, and strengthen professional relationships. Numerous bar associations participated, each hosting a table of food often representative of the bar association's culture.

The program officially began with a marching performance by the New York State Courts Pipe and Drum Band, followed by welcoming remarks from Hon. Jacqueline W. Silbermann, Administrative Judge, Supreme Court, New York County, Civil Branch. Robert E. Fertitta, world-renowned countertenor, then gave a riveting opera performance.

During the main portion of the event, attendees went from table to table meeting the representatives of various bar associations and court organizations and sampling the foods. The Section's table was staffed by Section Chair Peter Brown, Chair-Elect Vincent J. Syracuse, and the two Co-Chairs of the Section's Committee on State Court Counsel Deborah E. Edelman and Kathy M. Kass, all of whom greeted visitors with smiles and generous servings of delicious Italian food.

Other organizations and associations that participated in the event included: Asian American Bar Association, Association of Black Women Attorneys, Association of Designated Supreme Court Justices, Association of Secretaries to Supreme Court Justices, Association of Surrogates & Supreme Court Reporters, Board of Justices of the Supreme Court, Brehon Law Society, Catholic Court Attaches Guild, Cervantes Society, Inc., Columbian Lawyers Association, Court Attorneys Association of the City of New York, District Council 37, Local 1070 AFSCME, AFL-CIO, Gay-Straight Alliance of the New York State Courts, The Guardians Association of the New York State Courts, Guild of Catholic Lawyers, Inc., Hispanic Court Officers Association, Jewish Lawyers Guild, Judicial Friends, Law Secretaries & Law Assistants Collegium, Inc., Lesbian, Gay, Bisexual, & Transgender Law Association of Greater New York (LeGaL), Metropolitan Black Bar Association, Municipal Credit Union, New York Career Institute, The Bar Association of the City of New York, New York County Lawyers Association, New York State Court Clerks Association, New York State Supreme Court Officers Association, New York State Trial Lawyers Association, New York Women's Bar Association, Nigerian Lawyers Association, Shomrim Society of the New York State Courts, The South Asian Bar Association, The Tribune Society, and U. S. Legal Support.

Request for Submissions



If you have a submission you would like considered for publication, please contact *Commercial and Federal Litigation Section Newsletter* Editor:

Mark L. Davies
11 East Franklin Street
Tarrytown, NY 10591
mldavies@aol.com

Submissions should be in electronic document format (pdfs are NOT acceptable).

www.nysba.org/ComFedNewsletter

Federal Sentencing in White Collar Cases

By Harry Sandick

On June 4, 2008, the Section's Committee on White Collar Criminal Litigation sponsored a two-hour MCLE panel discussion entitled "Federal Sentencing in White Collar Cases: Expanded Judicial Discretion or Business as Usual?" The program was moderated by Harry Sandick of Schulte Roth & Zabel LLP, who serves as the chair of the Committee's Sentencing Subcommittee. The program was planned by Mr. Sandick, David Esseks (Allen & Overy LLP), Joshua R. Geller (Hafetz & Necheles), Matthew Levine (Fish & Richardson LLP), Mary Mulligan (Friedman & Kaplan LLP), and Alexandra A.E. Shapiro (Latham & Watkins LLP). Also participating in planning the event were Evan T. Barr, Steptoe & Johnson LLP, and Joanna Hendon, Merrill Lynch, who are the co-chairs of the Committee.

The distinguished panel included Judge Nicholas G. Garaufis (Eastern District of New York), Judge Shira A. Scheindlin (Southern District of New York), Commissioner Michael E. Horowitz (United States Sentencing Commission, and Cadwalader, Wickersham & Taft LLP), Jonathan Bach (Cooley Godward Kronish LLP), Celeste L. Koeleveld (Chief Appellate Attorney, Criminal Division, United States Attorney's Office, Southern District of New York), and Paul H. Schoeman (First Assistant United States Attorney, United States Attorney's Office, Eastern District of New York). For two hours, the panelists discussed their views about how white-collar sentencing in federal court has changed in recent years since the Supreme Court's landmark decision in *United States v. Booker*, in which the Court held that the federal Sentencing Guidelines were no longer mandatory, but only advisory.

The approximately 75 people who were in attendance heard a lively and informative discussion about several important sentencing issues. First, the panel discussed the Supreme Court's recent sentencing decisions in *Gall v. United States* and *Kimbrough v. United States*. Both Judges

Scheindlin and Garaufis agreed that the current system was better than the mandatory Guidelines regime that existed before *Booker*. Some panelists were concerned that recent Second Circuit decisions might unduly curtail judicial discretion.

"In all, those in attendance came away with an enhanced understanding of how to litigate sentencing issues in the new system that the panelists are together helping to create."

The panelists also discussed their respective experiences as judges, defense lawyers, and prosecutors in the post-*Booker* era. There was a general consensus that judges were taking advantage of their additional discretion and varying from the Guidelines in certain cases, but that judges were still giving due deference to the Guidelines. Mr. Bach discussed the expanded role of sentencing advocacy after *Gall*. Commissioner Horowitz reviewed some of the nationwide statistical data on sentencing and explained the historical evolution of the fraud guideline. Many panelists commented that the fraud guideline often recommends sentences that are far longer than necessary to advance the purposes of sentencing. Finally, Ms. Koeleveld and Mr. Schoeman discussed plea bargaining in the post-*Booker* environment and how their two offices have somewhat different approaches to the process.

At the conclusion of the program, the panelists answered some questions from the audience. The Committee is grateful to the panelists for their participation in what was a successful event. In all, those in attendance came away with an enhanced understanding of how to litigate sentencing issues in the new system that the panelists are together helping to create.

Section's 2007 Empire State Counsel

The Section honors the following Section members who qualified as NYSBA Empire State Counsel by providing at least 50 hours of legal services to the poor during 2007:

- Cyrus Amir-Mokri, Skadden Arps Meagher & Flom LLP
- Thomas C. Bivona, Milbank Tweed Hadley & McCloy LLP
- Christina Bost Seaton, Troutman Sanders LLP
- Carlotta Cassidy, Hogan & Hartson LLP
- Darren Cohen, Kramer Levin Naftalis & Frankel LLP
- Michael A. Cooper, Sullivan & Cromwell LLP
- Douglas F. Curtis, WilmerHale LLP
- William Dallas, Sullivan & Cromwell LLP
- Michael S. Davi, Vinson & Elkins LLP
- Robert Del Tufo, Skadden Arps Slate Meagher & Flom LLP
- David M. Eskew, Kaye Scholer LLP
- David Feldman, Nixon Peabody LLP
- Lauren Friedman, Troutman Sanders LLP
- Stacey Friedman, State of New Jersey—Gloucester County Courthouse
- Peter Glennon, Nixon Peabody LLP
- Alphonzo Grant, Sullivan & Cromwell LLP
- Claire P. Gutekunst, Proskauer Rose LLP
- Hoa Thanh Thi Hoang, Hogan & Hartson LLP
- Michael Horowitz, Cadwalader Wickersham & Taft LLP
- Zoe E. Jasper, Satterlee Stephens Burke & Burke LLP
- Jaime Lathrop, Esq.
- Ying Ying Li, Kramer Levin Naftalis & Frankel LLP
- Joseph Lipofsky, Zwering Schachter & Zwering, LLP
- Sara Manaugh, Sullivan & Cromwell, LLP
- Michael D. Mann, Sidley Austin LLP
- Joseph Neuhaus, Sullivan & Cromwell, LLP
- William S. Nolan, Whiteman Osterman & Hanna LLP
- Stacey O'Haire Fahey, Proskauer Rose LLP
- Sonal Patel, DLA Piper US LLP
- Jared Perez, Cadwalader Wickersham & Taft LLP
- Evelyn Rose Marie Protano, U.S. District Court for the Middle District of Pennsylvania
- Yvonne S. Quinn, Sullivan & Cromwell LLP
- Mark F. Rosenberg, Sullivan & Cromwell LLP
- Cary Samowitz, DLA Piper US LLP
- Larry P. Schiffer, Dewey & LeBoeuf LLP
- Brendan M. Schulman, Kramer Levin Naftalis & Frankel LLP
- Andrew Stillufsen, Kaye Scholer LLP
- John L. Warden, Sullivan & Cromwell LLP
- Megan Whyte, Fried Frank Harris Shriver & Jacobson LLP
- David M. Wirtz, Littler Mendelson PC

The Association's Empire State Counsel program was established in 2006 to give special recognition to members of the Association who provide 50 hours of legal services in a calendar year, at no fee and without expectation of fee, to persons of limited financial means; not for profit, governmental or public services organizations, where the legal services are designed primarily to address the legal and other basic needs of persons of limited financial means; or organizations specifically designed to increase the availability of legal services to persons of limited financial means. Members who report such voluntary service are given the honorific title "Empire State Counsel" and receive a certificate, a ribbon, and a lapel pin.

For more information about the Association's Empire State Counsel program or pro bono opportunities, contact the Co-Chairs of the Section's Committee on Pro Bono and Public Interest, Michael D. Sant'Ambrogio at mdsantambrogio@gmail.com or Robert L. Becker at beckerraffbecker.com, or visit www.nysba.org/probono. Qualified Section members are encouraged to register as 2008 Empire State Counsel by completing the electronic verification form at www.nysba.org/probono.

CPLR Amendments: 2008 Legislative Session

(Chapters 1-492)

CPLR §	Chapter (§)	Change	Eff. Date
205(a)	156	Requires court to set forth specific conduct showing general pattern of delay in neglect to prosecute dismissal	7/7/08
214-b	143	Extends deadline for commencing revived agent orange actions to June 16, 2010	6/30/08
302(d)	66(3)	Grants personal jurisdiction to NYS courts over certain plaintiffs in foreign country defamation judgment actions	4/28/08
3001	388(1)	Authorizing declaratory judgment action directly against insurer of other party pursuant to Insur. Law § 3420(a)(6) in personal injury or wrongful death action	1/17/09
3408	472(3)	Mandates settlement conferences in certain residential foreclosure actions	8/5/08
5241(e)	94	Requires that in supreme court applications for mistake of fact determinations be made by motion, not by special proceeding	5/27/08
5304(a)(8)	66(2)	Requires that, to be conclusive, foreign country defamation judgment had to apply law providing at least as much free speech and press protection as U.S. and NYS constitutions	4/28/08
8012(b)(2)-(5)	441	Provides for poundage on judgment or settlement amount and attorneys fees and court costs to sheriff	8/5/08
8019(f)(5)	223(7)	Provides for actual cost of reproducing non-paper record pursuant to Pub. Off. Law § 87(1)(c)	8/6/08
8021(a)(4)(a)	288	Authorizes county to increase fee for recording, entering, indexing, and endorsing a certificate on any instrument	7/7/08

Notes: (1) The pilot program for commencement of civil actions and proceedings by fax or email has been expanded to include all cases in Supreme Court, Erie County. 2008 N.Y. Laws ch. 95.

2008 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(N.Y. Orders 1-15 of 2008)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.5-b	Sup.	Revises the procedure for e-filing in Supreme Court
207.4-a	Surr. Ct.	Establishes pilot program for e-filing in Surrogate's Court
208.4-a	NYC Civ. Ct.	Establishes pilot program for e-filing in NYC Civil Court

Note that the court rules published on the Office of Court Administration's Web site include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.



You're a New York State Bar Association member.

You recognize the value and relevance
of NYSBA membership.

For that, we say thank you.

The NYSBA leadership and staff extend thanks to you and our more than 74,000 members — from every state in our nation and 109 countries — for your membership support in 2008.

Your commitment as members has made NYSBA the largest voluntary state bar association in the country. You keep us vibrant and help make us a strong, effective voice for the profession.

Bernice K. Leber
President



Patricia K. Bucklin
Executive Director

Notes of the Section's Executive Committee Meetings

February 13, 2008

Guest speakers James Sample and Jeremy Crieland from the Brennan Center for Justice and Executive Committee member Preeta Bansal discussed the United States Supreme Court's decision in *New York State Bd. of Elections v. Lopez Torres*, 128 S. Ct. 791 (2008). The Committee on Class Action and the Committee on Professionalism presented a joint Report on Contact by Counsel with Putative Members of a Class Prior to Class Certification. The Executive Committee agreed that the Section should discuss the issue with the applicable New York City Bar Committee before voting on the Report.

March 12, 2008

Guest speaker the Hon. Richard J. Sullivan, United States District Judge, United States District Court for the Southern District of New York, discussed the importance of the rule of law and the positive perception of the U.S. judicial system abroad. The Executive Committee discussed planning for the 2008 Spring Meeting, the 2008 Hon. George Bundy Smith Award, and Smooth Moves MCLE program.



April 9, 2008

Guest speaker the Hon. Eileen Branstetter, Supreme Court of the State of New York, New York County, Commercial Division, discussed the practical issues involved in taking over Justice Moskowitz's caseload in the Commercial Division and her personal practices. The Executive Committee recommended approval of the Report of the CPLR Committee on Amending CPLR 3213. The Executive Committee also adopted a Report of the Committee on Electronic Discovery on metadata and approved the Joint Report of the Committee on Class Action and the Committee on Professionalism on Contact by Counsel with Putative Members of a Class Prior to Class Certification.

June 4, 2008

Guest speaker the Hon. Frank Maas, United States Magistrate Judge, United States District Court for the Southern District of New York, discussed the Magistrate Judge system and settlement conference procedures used by Magistrate Judges. The Executive Committee discussed New York County's new policy on electronic filing.

NYLitigator Invites Submissions

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article in *NYLitigator* is a great way to get your name out in the legal community and advertise your knowledge. Our authors are respected statewide for their legal expertise in such areas as ADR, settlements, depositions, discovery, and corporate liability. MCLE credit may also be earned for legal-based writing directed to an attorney audience upon application to the CLE Board.

If you have written an article and would like to have it considered for publication in the *NYLitigator*, please send it in electronic document format (pdfs are NOT acceptable), along with biographical information to its Editor:

David J. Fioccola, Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, NY 10104
(212) 336-4069
dfioccola@mofo.com

Authors' Guidelines are available on the Section's Web site www.nysba.org/comfed.

Your key to professional success... A wealth of practical resources at www.nysba.org

- Downloadable Forms organized into common practice areas
- Comprehensive practice management tools
- Forums/listserves for Sections and Committees
- More than 800 Ethics Opinions
- NYSBA Reports – the substantive work of the Association
- Legislative information with timely news feeds
- Online career services for job seekers and employers
- Free access to several case law libraries – exclusively for members

The practical tools you need.
The resources you demand.
Available right now.
Our members deserve nothing less.

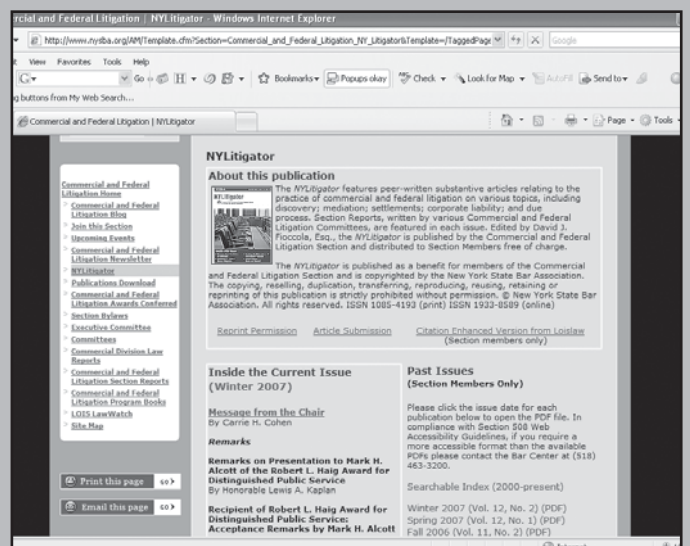
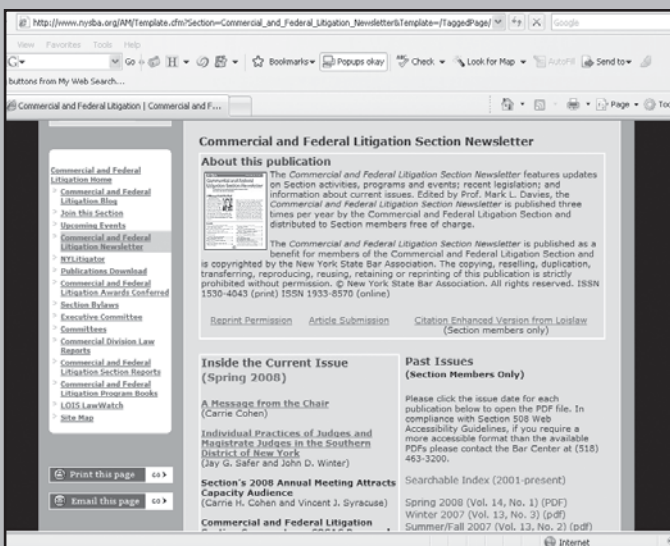
The *Commercial and Federal Litigation Section Newsletter* and the *NYLitigator* are also available online!

Go to www.nysba.org/ComFed to access:

- Past Issues of the *Commercial and Federal Litigation Section Newsletter* (2001-present) and the *NYLitigator* (2000-present)*
- *Commercial and Federal Litigation Section Newsletter* (2001-present) and *NYLitigator* (2000-present) Searchable Indexes
- Searchable articles from the *Commercial and Federal Litigation Section Newsletter* and the *NYLitigator* that include links to cites and statutes. This service is provided by Loislaw and is an exclusive Section member benefit*

*You must be a Commercial and Federal Litigation Section member and logged in to access. Need password assistance? Visit our Web site at www.nysba.org/pwhelp.

For questions or log-in help, call (518) 463-3200.



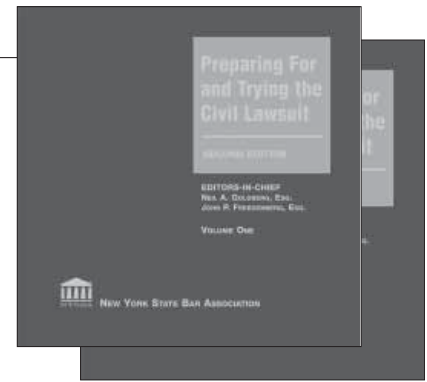
For more information on these and many other resources go to www.nysba.org



NYSBABOOKS

Preparing For and Trying the Civil Lawsuit

Second Edition



"This publication should be on the desk of every litigator, young and old alike. . . . It thoroughly examines the litigation process from the pleading state to post-trial motions . . ."

Henry G. Miller, Esq.
Clark, Gagliardi & Miller, White Plains, NY

Thirty of New York State's leading trial practitioners and other experts reveal the techniques and tactics they have found most effective when trying a civil lawsuit.

- Ethical Considerations
- Pleadings and Motions
- Disclosure
- Investigation of Case and Use of Experts
- Conduct of Depositions—State and Federal Guidelines
- Expert Discovery, Depositions and Motions to Exclude Experts
- Motions *in Limine*; Opening Statements
- Witness Examination
- Motions *in Limine* to Preclude Expert Testimony
- Reliability of Testimony
- Use of Demonstrative Evidence During Trial
- Summation
- Jury Instructions
- Settlement
- Role of Alternative Dispute Resolution
- *and more . . .*

2004 • 1,302 pp., looseleaf,
2 vols. • PN: 41953

List Price: \$225
Mmbr. Price: \$175

To order call **1-800-582-2452** or visit us
online at **www.nysba.org/pubs**

Mention code: PUB0331 when ordering.



New York State Bar Association

Section Committees and Chairs

ADR

Carroll E. Neesemann
Morrison & Foerster, LLP
1290 Avenue of the Americas
New York, NY 10104-0012
cneesemann@mofo.com

Deborah Masucci
AIG Litigation Management Department
80 Pine Street, 38th Fl.
New York, NY 10005-1702
deborah.masucci@aig.com

Antitrust

Jay L. Himes
NYS Attorney General's Office
120 Broadway, 26th Fl.
New York, NY 10271
jay.himes@oag.state.ny.us

Hollis L. Salzman
Labaton Sucharow LLP
140 Broadway, 34th Fl.
New York, NY 10005
hsalzman@labaton.com

Appellate Practice

Preeti D. Bansal
Skadden, Arps, Slate, Meagher & Flom
Four Times Square
New York, NY 10036-6522
pbansal@skadden.com

David H. Tennant
Nixon Peabody LLP
1100 Clinton Square
Rochester, NY 14604
dtennant@nixonpeabody.com

Bankruptcy Litigation

Douglas T. Tabachnik
Law Offices of Douglas T. Tabachnik, PC
63 West Main Street, Suite C
Freehold, NJ 07728
dtabachnik@dtlaw.com

Civil Practice Law and Rules

James Michael Bergin
Morrison & Foerster, LLP
1290 Avenue Of The Americas
New York, NY 10104-0012
jbergin@mofo.com

Thomas C. Bivona
Milbank Tweed Hadley & McCloy LLP
One Chase Manhattan Plaza, 45th Fl.
New York, NY 10005-1413
tbivona@milbank.com

Civil Prosecution

Neil V. Getnick
Getnick & Getnick
620 Fifth Avenue
New York, NY 10020
ngetnick@getnicklaw.com

Richard J. Dircks
Getnick & Getnick
620 Fifth Avenue
New York, NY 10020
rdircks@getnicklaw.com

Class Action

Ira A. Schochet
Labaton Sucharow LLP
140 Broadway, 34th Fl.
New York, NY 10005
ischochet@labaton.com

Commercial Division

Vincent J. Syracuse
Tannenbaum Helpert Syracuse
& Hirschtitt LLP
900 Third Avenue
New York, NY 10022-4728
syracuse@thshlaw.com

Paul D. Sarkozi
Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022-6225
pdsarkozi@hhlaw.com

Commercial Division Law Report

Paul D. Sarkozi
Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022-6225
pdsarkozi@hhlaw.com

Jonathan D. Lupkin
Fleming Zulack Williamson
Zauderer LLP
One Liberty Plaza, 35th Fl.
New York, NY 10006
jlupkin@fzwz.com

Complex Civil Litigation

Edward A. White
Hartman & Craven LLP
488 Madison Avenue, 16th Fl.
New York, NY 10022
ewhite@hartmancraven.com

Corporate Litigation Counsel

Carla M. Miller
Universal Music Group
1755 Broadway, 4th Fl.
New York, NY 10019
carla.miller@umusic.com

Creditors' Rights and Banking Litigation

S. Robert Schragger
Hodgson Russ, LLP
60 East 42nd Street, 37th Floor
New York, NY 10165
rschragger@hodgsonruss.com

Michael Luskin
Luskin, Stern & Eisler LLP
330 Madison Avenue, Suite 3400
New York, NY 10017
mluskin@lse-law.com

Diversity

Barry A. Cozier
Epstein Becker & Green, P.C.
250 Park Avenue
New York, NY 10177
bcozier@ebglaw.com

Electronic Discovery

Constance M. Boland
Nixon Peabody LLP
437 Madison Avenue, 23rd Fl.
New York, NY 10022
cboland@nixonpeabody.com

Adam I. Cohen
FTI Consulting, Inc.
3 Times Square
New York, NY 10036
adam.cohen@fticonsulting.com

Employment and Labor Relations

Gerald T. Hathaway
Littler Mendelson, PC
885 Third Avenue, Suite 1600
New York, NY 10022
ghathaway@littler.com

Edward Hernstadt
Hernstadt Atlas LLP
11 Broadway, Suite 615
New York, NY 10004
ed@heatlaw.com

Ethics and Professionalism

James M. Wicks
Farrell Fritz PC
EAB Plaza
14th Floor, West Tower
Uniondale, NY 11556
jwicks@farrellfritz.com

Anthony J. Harwood
Labaton Sucharow LLP
140 Broadway, 34th Fl.
New York, NY 10005
aharwood@labaton.com

Evidence

Lauren J. Wachtler
Mitchell, Silberberg & Knupp LLP
Tower 49, 12 East 49th St., 30th Fl.
New York, NY 10017
ljw@msk.com

Michael Gerard
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104
mgerard@mofo.com

Federal Judiciary

Jay G. Safer
Locke Lord Bissell & Liddell LLP
885 Third Avenue, 26th Fl.
New York, NY 10022
jsafer@lockelord.com

John D. Winter
Patterson Belknap Webb & Tyler
1133 Avenue of the Americas, Suite 3500
New York, NY 10036-6710
jwinter@pbwt.com

Federal Procedure

Gregory K. Arenson
Kaplan Fox & Kilsheimer LLP
850 Third Avenue, Suite 1400
New York, NY 10022-7237
garenson@kaplanfox.com

Immigration Litigation

Michael D. Patrick
Fragomen, Del Rey, Bernsen & Loewy, PC
7 Hanover Square, 10th Fl.
New York, NY 10004-2756
mpatrick@fragomen.com

Clarence Smith Jr.
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
csmith@connellfoley.com

International Litigation

Ted G. Semaya
Eaton & Van Winkle LLP
Three Park Avenue, 16th Fl.
New York, NY 10016
tsemaya@evw.com

Internet and Intellectual Property Litigation

Stephen Joseph Elliott
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022
selliot@kayescholer.com

Peter J. Pizzi
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
ppizzi@connellfoley.com

Membership

Peter Andrew Mahler
Farrell Fritz PC
370 Lexington Avenue, Room 500
New York, NY 10017
pmahler@farrellfritz.com

Edwin M. Baum
Proskauer Rose LLP
1585 Broadway
New York, NY 10036
ebaum@proskauer.com

Nominations

Melanie L. Cyganowski
Otterbourg, Steindler, Houston & Rosen
230 Park Avenue
New York, NY 10169
mcyganowski@oshr.com

Pro Bono and Public Interest

Robert L. Becker
Raff & Becker, LLP
470 Park Avenue South
3rd Floor North
New York, NY 10016
beckerr@raffbecker.com

Michael D. Sant Ambrogio
New York Lawyers Assistance Group
450 West 33rd Street
New York, NY 10001
midsantambrogio@nylag.org

Real Estate and Construction Litigation

David Rosenberg
Marcus Rosenberg & Diamond, LLP
488 Madison Avenue, 17th Fl.
New York, NY 10022
dr@realtylaw.org

Robert L. Sweeney
Whiteman Osterman Hanna LLP
99 Washington Avenue, 19th Fl.
Albany, NY 12210
rsweeney@woh.com

Edward Henderson
Torys LLP
237 Park Avenue
New York, NY 10017
ehenderson@torys.com

Securities Litigation and Arbitration

James D. Yellen
Yellen Arbitration and Mediation Services
156 East 79th Street, Suite 1C
New York, NY 10021
jamesyellen@yahoo.com

Jonathan L. Hochman II
Schindler Cohen & Hochman LLP
100 Wall Street, 15th Fl.
New York, NY 10005
jhochman@schlaw.com

State Court Counsel

Kathy M. Kass
Law Department, Supreme Court
60 Centre Street
New York, NY 10007
kkass@courts.state.ny.us

Deborah E. Edelman
60 Centre Street, Room 615
New York, NY 10007
dedelman@courts.state.ny.us

State Judiciary

Charles E. Dorkey III
McKenna Long & Aldridge LLP
230 Park Avenue, Suite 1700
New York, NY 10169
cdorkey@mckennalong.com

White Collar Criminal Litigation

Joanna Calne Hendon
Merrill Lynch
222 Broadway, 16th Fl.
New York, NY 10038
joanna_hendon@ml.com

Evan T. Barr
Steptoe & Johnson LLP
750 Seventh Avenue, Suite 1900
New York, NY 10019
ebarr@steptoe.com

Task Force on the State of Our Courthouses

Gregory K. Arenson
Kaplan Fox & Kilsheimer LLP
850 Third Avenue, Suite 1400
New York, NY 10022
garenson@kaplanfox.com

Melanie L. Cyganowski
Otterbourg, Steindler, Houston & Rosen
230 Park Avenue
New York, NY 10169
mcyganowski@oshr.com

Sharon M. Porcellio
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, NY 14203
sporcellio@lippes.com

Former Chairs

Robert L. Haig
Michael A. Cooper
Hon. Shira A. Scheindlin
Harry P. Trueheart, III
Hon. P. Kevin Castel
Mark H. Alcott
Gerald G. Paul
Mark C. Zauderer
Bernice K. Leber
John M. Nonna

Jack C. Auspitz
Sharon M. Porcellio
Jay G. Safer
Cathi A. Hession
Lewis M. Smoley
Lauren J. Wachtler
Stephen P. Younger
Lesley F. Rosenthal
Carrie H. Cohen

This *Newsletter* is distributed to members of the New York State Bar Association's Commercial and Federal Litigation Section without charge. The views expressed in articles in this *Newsletter* represent only the author's viewpoint and not necessarily the views of the Association, the Section or its Officers.

© 2008 by the New York State Bar Association
ISSN 1530-4043 (print) ISSN 1933-8570 (online)

WWW.NYSBA.ORG/COMFED

COMMERCIAL AND FEDERAL LITIGATION SECTION NEWSLETTER

Editor

Mark L. Davies
11 East Franklin Street
Tarrytown, NY 10591
mldavies@aol.com

Section Officers

Chair

Peter Brown
Baker & Hostetler LLP
45 Rockefeller Plaza, 11th Floor
New York, NY 10111
pbrown@bakerlaw.com

Chair-Elect

Vincent J. Syracuse
Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
syracuse@thshlaw.com

Vice-Chair

Jonathan D. Lupkin
Flemming Zulack Williamson Zauderer LLP
One Liberty Plaza, 35th Floor
New York, NY 10006
jlupkin@fzwz.com

Secretary

Victoria Zaydman
Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022
vzaydman@hhlaw.com

Treasurer

Susan M. Davies
Shalov Stone Bonner & Rocco LLP
485 Seventh Avenue, Suite 1000
New York, NY 10018
sdavies@lawssb.com



NEW YORK STATE BAR ASSOCIATION
COMMERCIAL AND FEDERAL LITIGATION SECTION
NYSBA One Elk Street, Albany, New York 12207-1002

ADDRESS SERVICE REQUESTED

NON PROFIT ORG.
U.S. POSTAGE
PAID
ALBANY, N.Y.
PERMIT NO. 155