

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 Chair

A Section of Yea-Sayers

At about one-half of the way through my tenure as Section Chair, I am thrilled—but not at all surprised—by the energy and enthusiasm that our members bring to this enterprise. Just the opposite of the biblical story of Sodom and Gomorrah, in which God’s angels are looking for just a few good men, the Section boasts over two thousand committed members, who are active in scores of projects on dozens of committees and task forces. From new committees such as the White



Lesley F. Rosenthal

Collar Criminal Litigation Committee, co-chaired by Evan Barr and Joanna Hendon; the Corporate Litigation Counsel Committee, co-chaired by Richard Friedman and Carla Miller; and the Commercial Division Law Report Committee, co-chaired by Jonathan Lupkin and Paul Sarkozi, to committees with long and distinguished histories, such as the Federal Judiciary Committee, co-chaired by Jay Safer and John Winter; the Federal Procedure Committee, chaired by Greg Arenson; the CPLR Committee, co-chaired by Jim Bergin and Tom Bivona; the ADR Committee, co-chaired by Debbie Masucci and Carroll Neesemann; and many others, the Section is in a period of unusual activity and growth.

This past fall gave us the opportunity to welcome five new Chief Judges to the federal bench in New York

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State, and for Section members to know the priorities and plans of these foremost jurists as they assume new leadership positions. The event provided a breakthrough in our economic modeling of a successful Section event as well—it was our first-ever event that was free to Section members and wholly underwritten by the generosity of sponsoring law firms, the better to highlight these firms' centrality to the commercial litigation enterprise in New York and to attract new individual members to our Section fold. The result was an event that was a net plus for the Section in every respect: positive in terms of enhancing our members' knowledge of the Chief Judges and one another at a critical moment in New York's judicial history; positive in increasing our membership at a month-over-month rate not seen in recent memory; and—much to the relief of our ever-prudent Treasurer Vince Syracuse—positive in growing our balance sheet for future activities. Rumor even has it that the judges had a good time! It is an experiment we will repeat and refine as we plan our next events.

At our Section's leadership retreat last spring—another experiment that bears repeating—a self-selected group of past, present, and future Section leaders, presided over by then-Chair Stephen P. Younger, gathered at Lincoln Center on a Saturday afternoon to talk about what has drawn us to Section service and what has kept us there. Typically there was an initiator—in many cases the same, very persistent visionary named Bob Haig—who invited,—no, requested,—no, demanded—that particular individuals get involved with specific projects. Once initiated, those requests (or whatever they were) were diligently and vigorously followed up until the job was complete. Second, the projects were always engaging, timely, and further to the interests of commercial jurisprudence or practice in New York, making it that much easier to say yes. The third part of that equation was the part that held the most mystique. I believe it was former Section Chair Cathi Hession who said that it just so happens that she's the kind of person who will tend to say "yes," to answer the call, to pick up the reins of a project that needs doing. Others of us echoed Cathi's

sentiments: we, too, found it more natural to say "yes" than to say "sorry" to exciting, demanding, worthwhile projects, even though we are all in the throes of busy law practices, hectic personal or family schedules, and other community commitments. To this day I don't know what makes some folks say yes when there are so many perfectly good excuses to say no. But the message is clear: we are a Section of yea-sayers, not nay-sayers. Our future rests with those who are similarly minded.

One yea-sayer whose works must be specially acknowledged is Secretary Susan Davies. Perhaps to the dismay of the plants in her garden that entrusted their welfare to her, but much to the collective benefit of the inhabitants of this particular ecosystem, Susan has been deeply involved in every aspect of the Section's affairs: the planning of every Officers' meeting and Executive Committee meeting, the Hail to the Chiefs event, this newsletter, together with its steadfast editor, Mark Davies, and a complete overhaul of our Section's website (which I invite you to visit if you haven't been there recently). The other stewards of this fertile soil, Cecelia Gilchrist of Lincoln Center and Juli Turner of NYSBA, have earned green thumb awards as well.

There is much more to look forward to this landmark Section year: an Annual Meeting being planned by Vice-Chair Peter Brown that focuses on critical trial skills and that honors the accomplishments of a former compatriot of the commercial litigation bar, Hon. Lewis A. Kaplan of the Southern District of New York, with the Stanley H. Fuld Award; the inauguration of a new minority internship for 1L students to hone litigation skills while serving the public interest; a Spring Meeting already far along in the planning by Chair-Elect Carrie Cohen that will be as memorable for its glorious locale in the Berkshires as for an insider's view of ripped-from-the-headlines legal matters.

I look forward to continuing our work together in the coming months.

Lesley F. Rosenthal



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“Hail to the Chiefs”—Section Celebrates Five New Federal Chief Judges in New York State

By Susan M. Davies



Honoree Hon. Lisa Margaret Smith, Chief United States Magistrate Judge, Southern District of New York

On September 29, 2006, the Section hosted a reception at the Walter Reade Theater at Lincoln Center for the Performing Arts in New York City to honor the five new Chief Judges appointed in New York federal courts during 2006. The event also celebrated the long and productive relationship between

the Section and the federal judiciary in New York.

The Chief Judges honored at the event were:

- Hon. Dennis Jacobs, the incoming Chief United States Circuit Judge, U.S. Court of Appeals for the Second Circuit;
- Hon. Kimba M. Wood, Chief United States District Judge, Southern District of New York;
- Hon. Norman A. Mordue, Chief United States District Judge, Northern District of New York;
- Hon. Lisa Margaret Smith, Chief United States Magistrate Judge, Southern District of New York; and
- Hon. Melanie L. Cyganowski, Chief United States Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of New York.

In addition to the honorees, their spouses, family members, and law clerks, the event was attended by many of the honorees' judicial col-



Honoree Hon. Kimba M. Wood, Chief United States District Judge, Southern District of New York

leagues, and approximately 250 other members and friends of the Section, including Bar Association President and former Section Chair Mark A. Alcott of Paul Weiss Rifkind Wharton & Garrison LLP.

Chief Judge Kimba M. Wood and Chief Bankruptcy Judge Melanie L. Cyganowski seized the occasion to call on members of the organized bar to redouble their efforts to provide legal services to the indigent. By volunteering to represent *pro se* parties in cases in the

U.S. District Court for the Southern District of New York that the presiding judge has decided warrant the appointment of counsel “you can help us to do justice,” Chief Judge Wood said. Chief Bankruptcy Judge Cyganowski described a pilot program in the U.S. Bankruptcy Court for the Eastern District of New York to educate *pro se* debtors about the “thicket of hoops and hurdles” created by the Bankruptcy Abuse Prevention & Consumer Protection Act. “As we as a Court embrace



Honorees Hon. Melanie L. Cyganowski, Chief United States Bankruptcy Judge, Bankruptcy Court for the Eastern District of New York; and Hon. Dennis Jacobs, incoming Chief United States Circuit Judge, United States Court of Appeals for the Second Circuit

the challenge of dealing with ever increasing numbers of *pro se* debtors—now averaging over 25% of the debtors who appear before us—it is all the more important for the legal community and the bar to become personally involved and provide *pro bono* services to the indigent persons in need of debt relief,” Chief Bankruptcy Judge Cyganowski said.

The event was coordinated by Section Chair Lesley Friedman Rosenthal with assistance from the Section's Committee on the Federal Judiciary—Co-Chaired by Jay



Honoree Hon. Norman A. Mordue, Chief United States District Judge, Northern District of New York



From left to right: Section Chair Lesley F. Rosenthal; State Bar President Mark H. Alcott; Hon. Lisa Margaret Smith (Chief United States Magistrate Judge, Southern District of New York); Hon. Norman A. Mordue (Chief United States District Judge, Northern District of New York); Hon. Melanie L. Cyganowski (Chief United States Bankruptcy Judge, Bankruptcy Court for the Eastern District of New York); and Hon. Dennis Jacobs (Chief United States Circuit Judge, Court of Appeals for the Second Circuit)



Jay G. Safer of Lord, Bissell & Brook LLP, former Section Chair and Co-Chair of the Section's Committee on the Federal Judiciary, with Honoree Hon. Melanie L. Cyganowski, Chief Bankruptcy Judge, Bankruptcy Court for the Eastern District of New York and Chair of the Section's Nominating Committee

G. Safer of Lord, Bissell & Brook LLP and John D. Winter of Patterson, Belknap, Webb & Tyler LLP—Section Secretary, Susan M. Davies of the Gregory P. Joseph Law Offices LLC, Juli Turner of the State Bar Association, and Cecelia Gilchrist of Lincoln Center.

The Section wishes to acknowledge the following law firm sponsors who generously underwrote the Hail to the Chiefs event:

Gold Sponsors: Chadbourne & Parke, LLP; Dreier LLP; Farrell Fritz, PC; Flemming Zulack Williamson Zauderer LLP; Getnick & Getnick; Gregory P. Joseph Law Offices



Founding Section Chair Robert L. Haig of Kelley Drye & Warren LLP and State Bar President and former Section Chair Mark H. Alcott of Paul Weiss Rifkind Wharton & Garrison LLP

LLC; Hogan & Hartson LLP; Kelley Drye & Warren LLP; Kramer Levin Naftalis & Frankel LLP; LeBoeuf, Lamb, Greene & MacRae LLP; Morrison & Foerster, LLP; Proskauer Rose LLP; and Skadden, Arps, Slate, Meagher & Flom LLP.



Joseph P. Kubarek of Jaeckle Fleischmann & Mugel, LLP; Section Treasurer Vincent J. Syracuse; and Section Delegate to the State Bar House of Delegates and former Section Chair Sharon M. Porcellio of Lippes Mathias Wexler Friedman LLP

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Hon. Charles L. Brieant, United States District Judge, Southern District of New York; and honoree Hon. Dennis Jacobs, Chief United States Circuit Judge, Court of Appeals for the Second Circuit

Bronze Sponsors: Lewis & Greer, P.C.; and Whiteman Osterman & Hanna LLP.

Susan M. Davies of Gregory P. Joseph Law Offices LLC is Section Secretary.



Former Section Chair Lauren J. Wachtler of Montclare & Wachtler; Paul D. Montclare of Montclare & Wachtler; and Section Chair Lesley F. Rosenthal of Lincoln Center for the Performing Arts



State Bar President and former Section Chair Mark H. Alcott; United States District Judge for the Southern District of New York and former Section Chair Hon. P. Kevin Castel; and Honoree Hon. Melanie L. Cyganowski, Chief United States Bankruptcy Judge, Bankruptcy Court for the Eastern District of New York, and Chair of the Section's Nominating Committee

Commercial and Federal Litigation Section Welcomes New Commercial Division Law Clerks

By Jodie B. Sopher

On September 26, 2006, the Commercial and Federal Litigation Section welcomed the four new Commercial Division Law Clerks at a luncheon and orientation hosted by Weil Gotshal and Manges LLP. The Section conceived of the idea to implement a one- to two-year clerkship program for the Commercial Division, providing the six justices in New York County with a second law clerk to help handle the abundant motion practice prevalent in the Commercial Division. The clerkship program targets top law school graduates interested in working at the center of commercial transactions: New York City. The law clerks work closely with the Commercial Division justices, writing drafts of decisions and orders, researching commercial law issues, hearing oral arguments, conducting status conferences, and helping resolve discovery disputes.

Last year, the launch of the clerkship program coincided with the ten year anniversary of the Commercial Division. The Section celebrated with programs that not only honored the talented justices but also introduced their law clerks to the New York State Bar Association and the active Commercial and Federal Litigation Section. This fall, continuing in its role of fostering close ties with the Commercial Division, the State Court Counsel Committee of the Section organized a welcome orientation luncheon for the new law clerks.

Weil Gotshal & Manges LLP, employer of one of the clerkship "graduates," graciously hosted the event. Representing the law firm, R. Bruce Rich, a partner, and Joanne Ollman, Director of Strategic Associate Programs, welcomed the new law clerks to the legal profession and

reminded them of the opportunities that await them when they conclude their clerkships. The Section's Chair, Lesley Rosenthal, explained to the new law clerks the Section's role in implementing the program and opportunities for involvement in the Section.

The substantive and educational aspect of the orientation included a presentation by Pablo Rivera, Clerk in Charge of Commercial Division Support Office. He informed the attendees of court operations, motion practice, resources available to court attorneys, and the benefits of filing cases electronically. Jeremy Feinberg, as the Statewide Special Counsel for the Commercial Division, offered to meet with the law clerks and discuss the transition between law clerk and law firm associate life, as most law clerks plan to practice litigation in large law firms after they gain the invaluable experience of working with the eminent Commercial Division justices.

The gracious hosts, informative speakers, and, once again, the Commercial and Federal Litigation Section, provided a fantastic welcome for the Commercial Division law clerks as they commence their career in chambers.

Jodie B. Sopher, Co-Chair of the Section's State Court Counsel Committee, is a Commercial Division Law Clerk to the Honorable Helen E. Freedman. Kathy Kass, Co-Chair of the Committee, assisted with the planning of the event.

2007 Award for Excellence in Commercial Brief Writing Deadline for Submissions is February 28, 2007

The Section's second annual *Award for Excellence in Commercial Brief Writing* will be conferred at the 2007 Spring Meeting, to be held May 4-6, 2007 at Cranwell Resort Spa and Golf Club in Lenox, Massachusetts. Competition for the award is open to Section members, who may submit for consideration a brief or memorandum of law of no more than 25 pages that was filed in a commercial case in a New York State or federal court during 2006. Submissions should be sent, no later than February 28, 2007, to:

Susan M. Davies, Section Secretary
Gregory P. Joseph Law Offices LLC
805 Third Avenue, 31st Floor
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sdavies@josephnyc.com

Online Access to New York State Supreme Court Records and Data

By Robert C. Meade, Jr.

In mid-September 2006, the New York County Supreme Court, implementing the vision of Chief Judge Judith S. Kaye, inaugurated a program that will provide online access to New York State Supreme Court, Civil Branch's records and data. What follows is a brief summary of this project, one of two in the state (Broome County is the other venue).

In the New York County project, a joint effort between the County Clerk of New York County, Hon. Norman Goodman, and the Court (Hon. Jacqueline W. Silbermann, Administrative Judge), County Clerk and Court staff have scanned and posted various civil case records in PDF format on the Court's internet website (www.nycourts.gov/suptctmanh). On that site, through a program created by the Court called the "Supreme Court Records On-Line Library" (or "SCROLL"), attorneys will be able to access, at no charge, case information (County Clerk data and data from the Court's Civil Case Information System (CCIS)) and images of key documents in each case in an integrated format.

Many types of documents will be accessible: the complaint or other initiating papers, the answer and other pleadings, Requests for Judicial Intervention, discovery orders, decisions (unless otherwise ordered), notices of motion and proposed orders to show cause (but not the supporting or opposing papers), notes of issue, jury demands, and judgments. Cases will be available in SCROLL with a few exceptions: documents from Mental Hygiene Law cases, matrimonial cases, and matters in which a sealing order has been issued will not be included.

Four related local court rules have been proposed to assure that certain private information will not be posted on the Internet. In addition to documents in the case categories mentioned, bills of particulars, affidavits, and

memos of law will be excluded. Beyond this, the rules direct attorneys who are filing documents covered by the project to avoid including therein bank account numbers, Social Security numbers, and the like. To the extent that such information must be stated, it should be limited (e.g., only a few digits of a bank account number). The rules further provide that if such information must be set out in full, the filer shall seek a court directive that the document be excluded from the SCROLL system. Also, any party or person who may be adversely affected can request a directive of exclusion (or deletion if the document has already been posted). Persons who wish to make this request can present it in a letter to the assigned Justice or the Administrative Judge (if the case is unassigned).

The public access project will generate a digital file similar to that in the New York Court System's electronic filing program (see Uniform Rule 202.5-b), which is authorized in tort, commercial, and tax certiorari cases in Supreme Court in 16 counties across the state (including Broome and New York), the Court of Claims, and Erie County Surrogate's Court. E-filing, however, will offer benefits to the Bar that the public access project cannot (e.g., online filing, payment of court fees, and service of interlocutory papers) and attorneys may thus find it useful to e-file their cases.

In transmitting to the Section and other Bar groups a Notice to the Bar on this subject (also posted on the Court's website), Administrative Judge Silbermann has invited comments and suggestions. Committees and Sections are welcome to submit them to Judge Silbermann at the courthouse at 60 Centre Street (Room 611).

Mr. Meade is the First Deputy Chief Clerk, Supreme Court, Civil Branch, New York County.



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Section Nominates Vincent J. Syracuse for Association's 2007 Attorney Professionalism Award

The Section has nominated one of its own, Vincent J. Syracuse, for the Association's 2007 Attorney Professionalism Award. Vincent has been a tireless advocate for ethics and civility in New York. His devotion to these principles is remarkable considering the highly competitive environment in which he practices: bet-the-company litigations for powerful commercial clients. He has chaired the State Bar's popular Ethics and Civility CLE program statewide for seven years. Even more, he practices what he teaches.

Mr. Syracuse chairs the litigation department of Tannenbaum Helpert Syracuse & Hirschtritt LLP. Thirty-five years of practice have earned him a reputation as a problem solver, strategizer, tactician, and aggressive advocate for his clients, including major banks, real estate concerns, consumer products companies, and even other lawyers and law firms. He was recognized in 2006 as a New York SuperLawyer.

But in addition to being a tough commercial litigator, Vincent is a consummately ethical professional, as revealed in letters, submitted by the Section in support of his nomination, including from a federal judge and former adversary, who regards Vincent as "a worthy adversary whose word was his bond, who conducted himself at all times with the utmost integrity"; a state Supreme Court Justice, who observed that Vincent "treats all per-

sons with calm decency, courtesy and respect . . . possesses unfailingly good judgment and . . . the highest degree of integrity"; and another adversary, who stated that, "He cared deeply for his client's cause, but equally cared for the integrity and effectiveness of the court system."

As a member of the Advisory Committee for the Commercial Division of the Supreme Court of the State of New York and Chair of the Section's Commercial Division Committee, Vince has helped shape the development of the Commercial Division since its inception. He and the committee he chairs are the liaison between Bench and Bar on many issues of critical importance to the development of business jurisprudence in New York. As Treasurer of the Section, he has prudently managed a large budget and generated surpluses three years in a row. He is a prolific writer and presenter. He is universally well liked. And yet, he greeted news of this nomination with deep humility.

In her letter of nomination, Lesley Rosenthal, Chair of the Section, concluded that "[p]resenting this award to Mr. Syracuse will send just the right message to all of those who know him—judges, colleagues, clients, adversaries, students and many others: that ethics and civility, in the context of excellence, are highly prized by this Association."

New York State Bar Association

ANNUAL MEETING

January 22-27, 2007

COMMERCIAL AND FEDERAL LITIGATION SECTION MEETING

Wednesday, January 24, 2007

New York Marriott Marquis

Online Registration: www.nysba.org/AM2007

Pro Bono Spotlight: Preeta D. Bansal

The *Newsletter* recently caught up with Preeta Bansal, Co-Chair of the Section's Appellate Practice Committee, on her pro bono involvement in a school integration case before the United States Supreme Court.

Q *What was the case you recently handled pro bono in the U.S. Supreme Court?*

A I helped prepare an *amicus curiae* brief for the national organization of the NAACP in the pair of voluntary school integration cases out of the Seattle, Washington, school district and the Louisville, Kentucky, school district being heard this fall in the U.S. Supreme Court.

Q *We've all heard quite a lot about that case in the news lately. Can you give us a brief recap of the issue in the case and your client's take on it?*

A The two cases concern whether public school districts in Seattle and Louisville can voluntarily use race-conscious measures to avoid racial isolation and achieve racial integration in their elementary and secondary schools. Both plans sought to do so by using racial composition of schools as one factor (not even the principal factor, but really more of a tie-breaking factor) in the school assignment system for students within school districts. Petitioners in these cases seek to prohibit school districts from voluntarily implementing mildly race-conscious student assignment policies. The Supreme Court's decision in these cases will clarify what tools are available to school districts committed to the nation's long-standing effort to integrate elementary and secondary schools.

The NAACP's *amicus* brief addressed issues raised uniquely by Florida Governor Jeb Bush in an *amicus* brief he submitted in support of petitioners in these cases. Governor Bush argued that academic achievement is the only legitimate state function with respect to education and that there is no independent state interest in promoting "diversity" among elementary and secondary school students. Using academic achievement measures, he argued that race-neutral plans, such as that adopted by the State of Florida under his administration, do a better job of promoting academic achievement than do race-conscious policies.

The NAACP's *amicus* brief, employing a careful legal and statistical analysis, refuted both notions. It argued, first, that U.S. Supreme Court precedent has long recognized that inculcation of values is an important aspect of public education and that preparing students for citizenship in a diverse society is a legitimate state interest. Indeed, the Florida Legislature itself has recognized this, having required character education as a part of elementary and secondary schooling. Second, analyzing

in different ways the very same statistical set cited by Governor Bush, the brief pointed out that Governor Bush's suggestion—that strictly race-neutral approaches are adequate, or even better equipped than race-sensitive measures, to maximize student achievement—is belied by his own statistics. Examining increasing racial disparities in retention rates, high school completion rates, graduation rates, and access to gifted programs, the brief demonstrates that Florida's race-neutral plans have neither improved educational quality in absolute terms nor educational equity in Florida. Instead, they have had a disparate racial impact on black and brown students. Contrary to the claims of the Florida Governor, the State of Florida is experiencing a significant—and in many respects widening—achievement gap, especially as between African American and white students. It concludes that as much as it would be wonderful to say that we should focus on student achievement across-the-board without regard to race, race unfortunately still matters in this country and educational policies must reflect that reality or else such policies will risk widening the gap, as is happening now in Florida.



Preeta D. Bansal

Q *I have heard that the case is about reconsidering the Michigan affirmative action cases from a few terms ago. Is that true?*

A That is really a red herring, in many ways. These cases are not about affirmative action. They are about *Brown v. Board of Education* and school desegregation. These cases are about traditional K-12 school assignment, not admission to competitive, elite colleges. There is no competitive admissions process or attempt to evaluate students' "merit" in determining student assignment. Moreover, every student will be assigned to a school within the district; the only question is which children will be educated together. Specifically, the choice is whether to pursue integration in student assignment through voluntary transfers and other mechanisms or whether to permit racially isolated schools to exist or persist.

It is also important to remember that the school integration plans at issue in Seattle and Louisville are completely voluntary: they were undertaken by the school districts on their own volition. Petitioners seek to limit local control and to tie the hands of locally elected school boards in ways that likely will result in more racially identifiable and racially isolated schools, not only in these two districts but in others as well. The Seattle and Louisville school districts are simply asking the Supreme Court to reaffirm their traditional authority over local education

matters and to allow them to continue to pursue—in a limited and narrowly tailored way—*Brown's* promise of integrated public schools.

Q *How did you get the case?*

A I am on the national board of the Lawyers' Committee for Civil Rights Under Law, and I was co-counsel with the Lawyers' Committee for the NAACP.

Q *What was the greatest challenge and the greatest reward of the assignment?*

A The greatest challenge was to listen very carefully to my client and to try to express its point of view effectively and cogently. So many times in these kinds of cases, everyone brings their own passions and convictions to the table. I have my own ideas about how one might try to approach these cases, as do many other people, but from the very beginning, I was very, very cognizant that my job was to be a lawyer for the NAACP—an organization which has a very long-standing and important role in these issues—and I was committed to ensuring that the brief reflected the NAACP's viewpoint and approach effectively. The greatest reward for me was working with an outstanding and dedicated group of individuals at my client, the NAACP, as well as at my co-counsel's organization, the Lawyers' Committee for Civil Rights Under Law, and learning from their experiences. Another great

reward was really understanding how statistics can be manipulated to cover up important realities that became obvious only when we took apart the data set and analyzed the cut-up data in different ways.

Q *Is there any relation to your regular practice?*

A Well, yes. I am principally an appellate lawyer and do a lot of U.S. Supreme Court work. In fact, just this week I also submitted two cert petitions to the Supreme Court and spoke at two different panels about the Roberts Court. So certainly there is some overlap with my practice. But this particular project really was a labor of love, and it represented to me all that is great and rewarding about being a lawyer.

Preeta D. Bansal, Co-Chair of the Section's Appellate Practice Committee, is a partner at Skadden, Arps, Slate, Meagher & Flom LLP, concentrating on appellate litigation and complex legal issues in commercial, statutory and constitutional cases. In private practice as well as in her prior role as Solicitor General of the State of New York during New York Attorney General Eliot Spitzer's first term, she has argued cases in the United States Supreme Court, the United States Court of Appeals for the Second Circuit (including en banc), the New York Court of Appeals, and the New York state appellate courts.

Wish you could take a recess?



If you are doubting your decision to join the legal profession, the New York State Bar Association's Lawyer Assistance Program can help.

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Executive Committee Spotlight: Deborah Masucci

Deborah Masucci is Co-Chair of the Section's Arbitration and Alternative Dispute Resolution Committee and a member of the Section's Executive Committee. Deborah is Director of the Office of Dispute Resolution in the Litigation Management Department with the American International Group of Companies (AIG). The Litigation Management Department established the Office of Dispute Resolution in December 2003 as a result of the significance of alternative dispute resolution in the efficient handling of claims. Deborah was selected as its first Director because of her extensive ADR experience.

The Office of Dispute Resolution leverages and supplements the vast experience in ADR that AIG has as an institution by sharing information across specialty areas, collaborating with insureds, networking with counsel, and providing training and education to ensure that AIG claims professionals are up-to-date on the latest ADR techniques.

To this end, the Office of Dispute Resolution is focused on three areas. First, the office is building a framework that reinforces the skills and knowledge already available in the claims organization. The office promotes earlier and strategic use of ADR to reduce the duration of claims as well as defense and indemnity expenses, while supporting its goal to settle claims for the right amount.

Second, once a claim is selected for ADR, it is vital that the claims professional is familiar with ADR advocacy techniques that go beyond positional bargaining. Effective advocacy involves understanding the interests, strengths, and weaknesses of the parties to the claim. It is also essential that one selects the right neutral and prepares for the ADR process by compiling the appropriate team for resolution and by defining respective roles and responsibilities.

Third, the Office of Dispute Resolution develops and delivers ADR training programs as well as resources and tools tailored for the AIG Companies to increase effective ADR practices.

Ms. Masucci has over twenty years of ADR experience. Prior to joining AIG she was associated with JAMS, the Resolution Experts, where she was Vice President of the East/Central Region and responsible for professional

development and training nationwide. Prior to working for JAMS, she was a Vice President at the National Association of Securities Dealers, where for 17 years she led their ADR program, developing rules and policies to ensure the fair and expeditious resolution of securities claims.

Ms. Masucci has served as an adjunct professor, teaching numerous courses and programs, including a Mediation Clinic at New York Law School in the fall of 2004. She was the Director of the Securities Arbitration Clinic at Brooklyn Law School during the 2003-2004 academic year and taught a segment in Securities Arbitration for the ADR Certificate Program at Hamline Law School's Dispute Resolution Institute. Ms. Masucci is a member of the Board of Editors for the *Securities Arbitration Commentator* and the *Journal of Investment Compliance*.

In November 2005, Deborah delivered the inaugural L. Randolph Lowry Lecture entitled "The Absolute Mediator," at the Southern California Mediators' Association Annual Meeting. She also delivered the Stephen Weiss Memorial Lecture at Parsons The New School for Design in February 2006. That lecture was entitled "Successful Negotiation: How Gender and Cultural Differences Affect the Negotiation Process."

In addition to her service to the Section, Ms. Masucci is the former Chair of the Arbitration Committee for the Association of the Bar of the City of New York and served on their International Commercial Dispute Committee. She is a member of the Arbitration Committee, the Insurance Committee, and the Executive Committee for the International Institute for Conflict Prevention and Resolution (CPR). She is a board member for Access ADR, an organization founded to increase the diversity of mediators and arbitrators. In addition, she is a member of the American Bar Association's Dispute Resolution Section, Litigation Section, and Business Law Section. She is a Council Member and was conference Co-Chair for the Dispute Resolution Section's Annual Meeting in April 2005 and 2006. She also is a member of the ABA Dispute Resolution Committee's Public Service Institute. She was a Board member for the Association for Conflict Resolution for Greater New York.



COMMITTEE REPORTS

Commercial Division Law Report Committee

By Jonathan D. Lupkin and Paul D. Sarkozi

We are pleased to have been selected by Section Chair Lesley Rosenthal to lead the newly formed Commercial Division Law Report Committee. Our Committee's mission is to advance New York's role as a leader in business transactions and commercial law by working closely with the Commercial Division of the Supreme Court of the State of New York, the Office of Court Administration, and our Section's Committee on Commercial Division, to provide critical resources and discussion fora for commercial law practitioners. More specifically, at the request of John F. Werner of the Office of Court Administration, the Section, through our Committee, is partnering with Robert C. Meade, Jr. to draft, edit, publish, and disseminate the Commercial Division's publication, *The Law Report*. We also intend to ensure that *The Law Report* is published on a regular basis and is presented in a way that helps practitioners identify significant developments. Over time, we hope to enhance the internet searching capacity of Commercial Division cases included in *The Law Report*. Finally, in addition to our Committee's work on *The Law Report*, we will be working closely with the Section's Committee on Commercial Division, as well as the Justices of the Division itself, to assemble and publish additional resources of value to practitioners and the Court, including pattern jury instructions geared uniquely to commercial cases.

Jonathan D. Lupkin is a litigation partner in Fleming Zulack Williamson Zauderer LLP. He served for five years as Editor-in-Chief of *NYLitigator*, the Commercial and Federal Litigation Section's flagship journal, and is a former Notes and Comments Editor for the *Columbia Law Review*.

Paul D. Sarkozi is a litigation partner in Hogan & Hartson LLP's New York City office. He is a frequent writer on legal topics for leading trade publications and an honors graduate of Harvard Law School and Yale College.

White Collar Criminal Litigation Committee

The Section Chair has recently formed a new White Collar Criminal Litigation Committee, co-chaired by Evan T. Barr and Joanna C. Hendon. Following are the mission statement of the Committee, a description of upcoming Committee projects, and brief biographies of Evan and Joanna.

Mission Statement

The number of lawyers engaged in white collar criminal litigation has grown dramatically in recent years, as the priorities of the regulators have shifted and as the number and nature of the regulators vying to regulate white collar crime have expanded and changed.

The White Collar Criminal Litigation Committee seeks (1) to educate its members about important developments in federal and state criminal law and related regulatory matters; (2) to provide a forum for members to share questions and experiences; and (3) to encourage discussion between the white collar bar and the regulators concerning a range of issues, from trends in enforcement to the impact of new judicial decisions or congressional activity. From time to time, the Committee may study and make recommendations on legal, ethical, or policy issues of importance to the white collar bar in New York State.

Upcoming Projects

The White Collar Criminal Litigation Committee anticipates sponsoring several presentations at the Section's 2007 Spring Meeting, under the leadership of Program Chair Carrie Cohen. First, the Committee will present a panel on Privacy, Technology, and the Law. One man's vice may be another man's virtue, but certain vices can result in an indictment, state or federal. This program will explore cutting-edge developments in the areas of privacy and technology, such as those flowing from the recent Hewlett-Packard "pretexting" scandal and the Hollywood wiretapping indictments; the Department of Justice's initiative against online purveyors of hardcore adult pornography, anti-spam and identity theft crimes; and the recent targeting by the government of offshore Internet gambling operations doing business with U.S. residents. Faculty for the program will include members of the defense bar, in-house lawyers, current prosecutors, and law enforcement authorities.

The Committee will also be partnering with the Corporate Litigation Counsel Committee to present a panel on parallel civil and criminal proceedings. Increasingly, practitioners find their clients under both grand jury and civil investigation by the SEC, the New York AG's office, or other authorities. This program will address the special challenges—practical, legal, ethical—presented in such cases and how to defend them successfully.

White Collar Criminal Litigation Committee Co-Chair Bios

Evan T. Barr

Evan T. Barr is a partner in the New York office of Steptoe & Johnson LLP, where he concentrates on white-collar criminal defense and complex regulatory matters. Evan has represented individuals and corporations in investigations and prosecutions by the Department of Justice, the SEC, the Internal Revenue Service, the New York State Attorney General, the New York Stock Exchange, and the Manhattan District Attorney's Office, in cases involving allegations of accounting fraud, tax evasion, securities law violations, obstruction of justice, public corruption, and money laundering.



Prior to joining Steptoe in 2005, Evan was Chief of the Major Crimes Unit at the U.S. Attorney's Office for the Southern District of New York, where he supervised approximately 25 federal prosecutors investigating and prosecuting a wide array of large-scale white-collar crimes. Evan also served in the Office's Securities and Commodities Fraud Task Force, Public Corruption Unit, and Asset Forfeiture Unit. During almost ten years as a federal prosecutor, Evan was lead counsel in eleven federal district court trials and briefed and argued numerous cases before the Court of Appeals for the Second Circuit. In addition, he participated in the prosecutions of several senior officials at WorldCom, and the investigation of the presidential pardon of Marc Rich. Evan also briefed and argued the landmark Second Circuit case *United States v. An Antique Platter of Gold*, in which a \$1 million antiquity belonging to a Manhattan collector was ordered forfeited and later returned to the Republic of Italy. Mr. Barr received the John Marshall Award and the Director's Award for Superior Performance as an Assistant U.S. Attorney.

Evan has spoken on various topics in criminal and civil litigation. His publications include: "Insider Trading: Making Punishment Fit the Crime," *New York Law Journal*, December 12, 2005; "Fix the Hyde Amendment," *National Law Journal*, June 13, 2005; and "Second Circuit Says Government Lawyers Covered By Privilege," *New York Law Journal*, March 23, 2005. Mr. Barr has also provided legal commentary for the *New York Times*, *Wall Street Journal*, *Washington Post*, and *Crain's New York Business*.

Evan served as a law clerk to the Honorable Edmund V. Ludwig, United States District Judge in Philadelphia, Pennsylvania. Evan received his J.D. degree in 1989 from Harvard Law School and his undergraduate degree, *magna cum laude* and Phi Beta Kappa, from Harvard College in 1985.

Joanna C. Hendon

Joanna C. Hendon is currently a member of Merrill Lynch's Office of General Counsel, where she is responsible for coordinating the firm's response to criminal inquiries. Joanna has broad experience with criminal and regulatory matters. Before joining Merrill Lynch, Ms. Hendon was a partner at Kronish Lieb Weiner & Hellman in New York, where she represented individuals and corporations before the Department of Justice, the SEC, the NYSE, and the New York Attorney General's Office. Joanna's cases have involved allegations of late trading and market timing of mutual fund securities, tax evasion, insider trading, accounting fraud, and extortion. Joanna has also represented indigent criminal defendants in the Southern District of New York, as a member of the panel of attorneys appointed pursuant to the Criminal Justice Act.



Between 1995 and 2001, Joanna prosecuted numerous securities fraud and other cases as an Assistant United States Attorney in the Southern District of New York, where she tried nine cases. During her last three years in the office, Joanna was a member of the Securities and Commodities Fraud Task Force. In 2000, Joanna received the Attorney General's John Marshall award for excellence, for the trial of four New Square men (whose sentences were later commuted by President Clinton) on charges of fraud and tax evasion. Before joining the U.S. Attorney's office, Joanna was a litigator at Paul, Weiss, Rifkind, Wharton & Garrison.

Joanna served as a law clerk to the Honorable M. Coffin, on the U.S. Court of Appeals for the First Circuit. She graduated from Yale Law School in 1991 and received her undergraduate degree from the University of British Columbia in Vancouver, Canada, in 1987.

Commercial and Federal Litigation Section Programs

Section Sponsors CLE Programs on the New Federal E-Discovery Rules

A continuing legal education program on the sweeping changes to the Federal Rules of Civil Procedure concerning electronic discovery was scheduled to be presented on December 6, 2006, at the Radisson Martinique on Broadway in New York City, and on December 8, 2006, at the New York State Nurses Association in Albany.

The Section's Electronic Discovery Committee, under the leadership of Constance Boland and Adam Cohen, and the Committee on Continuing Legal Education offered this timely, half-day seminar to help practitioners understand how the new rules affect the practice of and preparation for e-discovery. The presentation began with a bonus/optional session providing a primer on technical issues related to electronic discovery for the "non-techie." Three additional panels discussed various issues, such as the potential sources of electronic data, timing and scope of electronic document preservation obligations, tips for drafting a document retention policy, handling disputes regarding the discoverability of electronic data, navigating the new spoliation "safe harbor," and dealing with privilege and waiver issues.

The distinguished panel included Magistrate Judge James C. Frances of the United States District Court for the Southern District of New York; Magistrate Judge William D. Wall of the United States District Court for the Eastern District of New York; Anahaita Kotval, Managing Director and Deputy General Counsel of Greenwich Capital Markets, Inc.; Evan Charkes, Managing Director/Global Regulatory Risk at Citigroup Global Markets, Inc.; James Batson of Liddle & Robinson, who was counsel for plaintiff in the *Zubulake v. UBS Warburg* case; Thomas Y. Allman of Mayer, Brown, Roe and Maw; Adam Cohen of FTI Consulting and David Lender of Weil, Gotshal & Manges, co-authors of *Electronic Discovery: Law and Practice*; Gregory McPolin of Applied Discovery; Steven Bennett of Jones Day; Eric Friedberg of Stroz Friedberg; Constance Boland of Nixon Peabody; and others.

2007 Annual Meeting Program: "Constructing the Winning Presentation with Advanced Jury Techniques"

In high-stakes litigation, many lawyers now practice their best arguments before "mock juries." Once a rarely used technique, the use of "mock juries" in bet-the-company litigation has become routine. The Commercial and Federal Litigation Section's program at the Annual Meeting of the New York State Bar Association on January 24, 2007, will discuss the advantages and pitfalls of using "mock juries," the expectation of in-house counsel, and the ethical issues arising from this evolving technique.

Presenting a unique combination of lecture and video demonstrations will be litigator Stephen J. Davidson, a partner at Leonard, Street and Deinard, Minneapolis, and Dr. Philip K. Anthony, CEO of DecisionQuest, a jury consulting firm. They will demonstrate how "mock juries" and panels of "mock judges" were used in shaping the winning arguments in a major intellectual property litigation. They will also discuss how use of these techniques disclosed critical problems in everything from presentation of evidence to the styles of individual litigators.

The use of these techniques in high-stakes litigation will be discussed by distinguished in-house counsel Irene Chang, General Counsel of the Lower Manhattan Development Corporation; Michael S. Solender, General Counsel of Bear Stearns; and Stuart M. Cobert, Associate General Counsel, Litigation, of Unilever. The discussion and the program overall will be chaired by Peter Brown, Vice-Chair of the Section. The panel will also discuss what in-house counsel expects of litigation counsel with respect to communication, strategic planning, and budgeting.

The ethical concerns arising from the use of "mock jury" techniques will be examined by Frederick L. Whitmer of Brown Raysman Millstein Felder & Steiner LLP. This critical lecture will deal with the ethical problems of involving third parties, clients, and witnesses in mock trials.

Available on the Web

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***Commercial and Federal
Litigation Section Newsletter***
([www.nysba.org/
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Back issues of the *NYLitigator* and *Commercial and Federal Litigation Section Newsletter* (2000-present) are available on the New York State Bar Association Web Site

Back issues are available in pdf format at no charge to Section members. You must be logged in as a member to access back issues. Need password assistance? Visit our Web site at www.nysba.org/pwhelp. For questions or log-in help, call (518) 463-3200.

***NYLitigator* and *Commercial and Federal Litigation Section Newsletter* Indexes**

For your convenience there are also searchable indexes in pdf format. To search, click "Find" (binoculars icon) on the Adobe tool bar, and type in search word or phrase. Click "Find Again" (binoculars with arrow icon) to continue search.

Save the Dates:

Spring Meeting on May 4-6, 2007

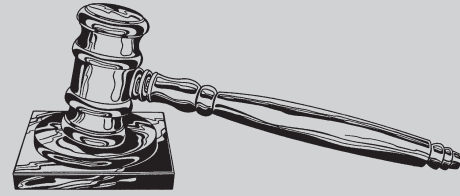
The Section's 2007 Spring Meeting, which will take place on May 4-6, 2007, at the Cranwell Resort Spa and Golf Club in Lenox, Massachusetts, promises to offer Section members a spectacular combination of up-to-the-minute CLE programs, professional networking opportunities, and sporting and cultural activities in the beautiful Berkshires. On the morning of Saturday, May 5, 2007, Section Chair-Elect and Program Chair Carrie H. Cohen, together with the Section's White Collar Criminal Litigation Committee, Corporate Litigation Counsel Committee, and Complex Civil Litigation Committee, will present CLE programs on *Morality, Technology and the Law* (focusing on such hot topics as the Hewlett-Packard corporate espionage, the Pellicano wiretapping scandal, and regulation of offshore Internet gambling) and *The Government as Prosecutor and Civil Plaintiff* (focusing on the practical and ethical issues that arise when government agencies pursue parallel civil and criminal investigations against corporations and their executives). On Sunday morning, the Section's Arbitration and Alternative Dispute Resolution Committee will present a program on current issues in mediation and arbitration.

The Section will confer the 2007 Robert L. Haig Award for Distinguished Public Service on Mark A. Alcott, President of the New York State Bar Association and senior litigation partner at Paul, Weiss, Rifkind, Wharton & Garrison, at a reception and dinner on Saturday evening.

During the weekend, the Section also will confer its second annual Award for Excellence in Commercial Brief Writing. Submissions for the brief writing award must be briefs or legal memoranda of no more than 25 pages that were filed in a New York state or federal court during 2006. Submissions should be directed to Section Secretary Susan M. Davies no later than February 28, 2007 at sdavies@josephnyc.com.

Further details about the 2007 Spring Meeting will be announced shortly.

Updates on Rules



The End of the 60-Day Rule or, at Least, So We Thought!

By Vincent J. Syracuse

October 1, 2006, marked the end of the so-called 60-day rule, which imposed an obligation on counsel for a moving party to notify the court by letter that a motion had remained undecided for 60 days, at least, so we thought. The end of this controversial and unpopular rule took the form of repeal of Section 202.8(h) of the Uniform Civil Rules for the Supreme and County Courts and its replacement with a new rule that requires court administrators to issue a computer-generated notice indicating that 60 days have elapsed since the motion was submitted and that the motion remains undecided. The rule also allows a Justice of the Supreme Court to make an application to have a motion designated as complex, which will result in giving the court 120 days to decide the motion.

The problem is that there is a separate 60-day rule that applies in the Commercial Division that was not repealed. The Rules of the Commercial Division became effective on January 11, 2006, with the enactment of Section 202.70 of the Uniform Civil Rules for the Supreme and County Courts. Section 202.70 includes Rule 23, which is the Commercial Division's own 60-day rule and "technically" has not been repealed, an obvious oversight.

The Commercial and Federal Litigation Section supports the immediate repeal of Rule 23 and hopes that this will take place as quickly as possible. In the interim, "to write, or not to write, that is the question."

New Rule for Conduct of Depositions in New York State Courts

Effective October 1, 2006, the Chief Administrative Judge of the Courts for the State of New York, with the advice and consent of the Administrative Board of the Courts, adopted a new Part 221 of the Uniform Rules for the Trial Courts, relating to the conduct of depositions. The new Part, consisting of three sections, thus applies to depositions taken in all trial courts of the State.

The first rule, 22 N.Y.C.R.R. § 221.1, regulates objections at depositions. Under the rule, no objections may be made at a deposition except those which, pursuant to CPLR 3115(b), (c), or (d), would be waived if not interposed or, in the case of objections to the form of written questions, except in compliance with CPLR 3115(e). All objections made at a deposition must be noted by the officer before whom the deposition is taken, and the answer must be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to CPLR Article 31.

Rule 221.1 also requires that every objection raised during a deposition must be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, must include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by this rule or by CPLR 3115, during the course of the examination persons in attendance may not make statements or comments that interfere with the questioning.

The second rule, 22 N.Y.C.R.R. § 221.2, addresses refusals to answer when an objection is made. Under this rule, a deponent must answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney may not direct a deponent not to answer, except as provided by this rule or by CPLR Rule 3115. Any refusal to answer or direction not to answer must be accompanied by a succinct and clear statement of the basis for the refusal or direction. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

Finally, the third rule, 22 N.Y.C.R.R. § 221.3, regulates communication with the deponent. An attorney may not interrupt the deposition for the purpose of communicating with the deponent, unless all parties consent or unless the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 and, in that event, the reason for the communication must be stated for the record succinctly and clearly.

New Rule Requires Notice of Motions Seeking a TRO

A new rule applicable in Supreme and County Courts has been adopted, effective October 1, 2006, that requires notice of a motion for a TRO. Under the new 22 N.Y.C.R.R. § 202.7(f), upon an application for an order to show cause or motion for a preliminary injunction seeking a temporary restraining order, the application must contain, in addition to the other information required by 22 N.Y.C.R.R. § 202.7, an affirmation demonstrating there will be significant prejudice to the party seeking the

restraining order by the giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date, and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. The new rule does not apply to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law.

2006 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 1-30 of 2006)

22 N.Y.C.R.R. §	Court	Subject (Change)
202.7(f)	Sup./County	Requires that movant seeking TRO show either that he or she made good faith effort to notify respondent of application or that giving notice would result in significant prejudice
202.8(h)	Sup./County	Repeals requirement that counsel for movant alert court by letter when a motion is not decided within 60 days from later of final submission or oral argument and requires Deputy Chief Administrators to notify judges by e-mail when 60 days have elapsed (120 days in motions designated as complex)
202.26(e)	Sup./County	Authorizes court to order parties, insurance carriers, or other persons having an interest in any settlement to attend a settlement conference
202.70	Sup.	Adopts statewide rules for the Commercial Division
Part 221	All Trial Cts.	Adopts uniform rules for the conduct of depositions, including objections, refusals to answer, and communications with deponent
730.2	A.T., 2d Dep't	Establishes a Civil Appeals Management Program for the appellate terms in the Second Department
1000.4(f)(2)	A.D., 4th Dep't	Adds requirement for one-inch margin for briefs
1000.14(a)(4)	A.D., 4th Dep't	Adds provision for certification in lieu of motion for permission to proceed on appeal as poor person and assignment of counsel
Part 1010	A.D., 4th Dep't	Establishes a Civil Appeals Settlement Program

The amendments to the trial court rules are included in the court rules published on the Office of Court Administration's website: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

**CPLR Amendments
2006 Legislative Session**

(Chapters 1-226, 228-290, 292-422, 424-434, 436-521, 523-665, 667-671, 673-729, 731-742)

CPLR §	Chapter (§)	Change	Eff. Date
213-c (new)	3(3)	Adds five-year statute of limitations for claims based on certain sexual conduct	6/23/06
214-b	39	Extends effective date for commencing phenoxy herbicides personal injury actions to 6/16/08	5/31/06
215(8)(b) (new)	3(4)	Adds five-year statute of limitations from termination of criminal action for claims based on certain sexual conduct	6/23/06
302(b)	184(5)	Adds to long-arm jurisdiction of family court	7/26/06
3215(f)	453	Provides for submission of affidavits by attorneys from AG's office in default judgments where state is plaintiff	8/16/06
4317(c)	582	Adds requirement for provision of transcript upon payment of fees	8/16/06
5224(a)(3)	452, 552	Establishes guidelines for information subpoenas	1/1/07
5224(a-1)	257	Subjects persons served with CPLR 5224 subpoena duces tecum to CPLR 5223 disclosure whether materials are inside or outside NYS	8/25/06
5241(g)(2)(D)	335(1)	Provides that penalty is paid to creditor and enforceable in same manner as a civil judgment or in any other manner permitted by law	10/24/06
5252(1)	335(2)	Provides that penalty is paid to creditor and enforceable in same manner as a civil judgment or in any other manner permitted by law	10/24/06
8012(a)	31	Ties the sheriff's mileage fees to the federal IRS mileage reimbursement rate	5/2/06

Notes: (1) Section 1801-A(a) of the Uniform District Court Act has been amended to clarify where the defendant must reside in order for a commercial claim to be brought in a district court (when the defendant resides, or has an office for the transaction of business or a regular employment, within the district in the county where the court is located). 2006 N.Y. Laws ch. 41, effective 5/31/06.

(2) Gen. Bus. Law § 399-cc has been amended to add any judicial proceeding to the list of proceedings for which an attorney requesting a stenographic record bears financial responsibility for the services and costs of the record but permits an attorney to expressly disclaim responsibility for payment in writing at the time of the request. 2006 N.Y. Laws ch. 210, effective 7/26/06, amending 2005 N.Y. Laws ch. 678.

SPRING SECTION MEETING NOTICE

Mark your calendar to join your fellow attorneys on **May 4-6, 2007** for the Section's Spring Meeting. This event will take place at the Cranwell Resort Spa and Golf Club in Lenox, Massachusetts

***To view the save the date information,
go to <http://www.nysba.org/comfedspring>***

Notes of the Section's Executive Committee Meetings

June 14, 2006

Guest speakers Hon. Marguerite A. Grays and Hon. Orin R. Kitzes, both of the Commercial Division of Supreme Court, Queens County, discussed the activities of the Division since beginning operations in January 2006.

The Class Action Committee reported on the Committee's work in crafting a Section position on the proposed Multidistrict Litigation Restoration Act, and the Section adopted the Committee's recommendation that the governing choice of law in such litigation should be that of the original jurisdiction in which the plaintiff files the action. The ADR Committee provided an update on the report on the Revised Uniform Arbitration Act (RUAA).

July 19, 2006

Guest speaker Hon. Lewis A. Kaplan, U.S. District Court Judge for the Southern District, discussed his concerns about the rate of pay for defense counsel appointed to represent indigent criminal defendants; the high cost of criminal defense representation for defendants, even for the middle class, especially in complex white collar cases; the length of complaints in securities cases post-PSLRA; and the use of expert witnesses who act as advocates and who proffer expertise that the fact-finder does not require.

The Executive Committee approved the Pro Bono and Public Interest Committee's report endorsing the Report and Recommendations of the NYSBA Special Committee on Collateral Consequences of Criminal Proceedings, entitled *Re-Entry and Reintegration: the Road to Public Safety*. The Executive Committee also adopted the report of the



CPLR Committee opposing the incorporation into state practice of the ABA Section of Litigation's recommendation that draft expert reports and communications between experts and attorneys not be generally discoverable in federal litigation; the Executive Committee tabled a companion report by the Federal Procedure Committee opposing the ABA proposal as to federal practice. The Executive Committee adopted a report by the Bankruptcy Litigation Committee on Attorney Discipline Amendments to the Federal Rules of Bankruptcy Procedure proposed by the ABA Section of Business Law.

September 13, 2006

Guest speaker Hon. Colleen McMahon, U.S. District Judge for the Southern District of New York, discussed various factors that impair the ability of district court judges to manage their dockets, including expansion of supplemental subject matter jurisdiction, the demise of court-created doctrines of hypothetical standing and hypothetical personal jurisdiction, and increasing federalization of the criminal law.

The Chair reported that the Section's reports on (1) ABA Section of Litigation Proposal on Expert Witness Privilege and (2) Amendments to the Federal Rules of Bankruptcy Procedure proposed by the ABA Section of Business Law—both adopted at the Executive Committee's July 19, 2006 meeting—were presented to the NYSBA delegation to the ABA House of Delegates. The Commercial Division Committee reported that it was preparing a report endorsing the recommendations in the OCA report on the Commercial Division Focus Groups.



Catch Us on the Web at
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