

NEW YORK STATE BAR ASSOCIATION

The Practice of Law in New York State

An Introduction For Newly-Admitted Attorneys

by the NYSBA Committee on Legal Education and Admission
to the Bar and the NYSBA Membership Committee

The views expressed herein are those of the committees and do not necessarily reflect the position of the New York State Bar Association.



The Practice of Law in New York State: An Introduction for Newly-Admitted Attorneys

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Stephen G. Brooks, Esq.
Nancy O. Carpenter, Esq.
Stuart M. Cohen, Esq.
Hope B. Engel, Esq.
Michael J. Novack, Esq.

Mark S. Ochs, Esq.
Timothy J. O'Sullivan, Esq.
Richard A. Reed, Esq.
Barbara F. Smith, Esq.
Sarah Dean Tompkins, Esq.

Samuel H. Younger
and
Kathleen R. Mulligan Baxter, Esq.,
Pamela McDevitt, Esq.
NYSBA Counsels

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Membership Services, NYSBA Staff Liaison

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INTRODUCTION

This pamphlet is designed to assist persons seeking to practice law in New York, as well as newly-admitted attorneys, in learning about the court system, the requirements for admission to the bar, membership in the bar and practice in New York state. The pamphlet also contains a listing of some useful reference works and addresses.

I. Court Systems in New York State*

A. The Courts of New York State

The court system in New York state, organized over 200 years ago, is generally divided along territorial lines. The courts in the state are listed below:

APPELLATE COURTS

Court of Appeals
Appellate Division of Supreme Court
(First, Second, Third and Fourth Judicial Departments)
Appellate Term of Supreme Court
(First and Second Judicial Departments)
County Courts, appellate session
(Third and Fourth Judicial Departments)

TRIAL COURTS

“Superior” Trial Courts

Supreme Court
Court of Claims
Family Court
Surrogate’s Court
County Court

“Inferior” or Local Trial Courts

New York City Courts (Civil Court & Criminal Court)
Other City Courts
District Courts (only in Second Judicial Department, Tenth Judicial District)
Justice Courts (town courts, village courts)

New York courts, with the exception of justice courts, are financed by the state and are administered by the Office of Court Administration under the authority of the chief administrator of the courts on behalf of the chief judge of the state of New York.

COURT OF APPEALS

The Court of Appeals is the highest court in the state, and the court of last resort for most cases. It is generally the ultimate authority on questions of law in New York state. Some very few cases involving a question of federal law or the United States Constitution eventually may be taken to the United States Supreme Court, but these are rare. The Court of Appeals hears both criminal and civil appeals.

This court, which convenes in Albany, consists of six associate judges and one chief judge, who also serves as the chief judge of the state and chief judicial officer of the unified court system. All judges of this court are appointed by the governor to 14-year terms, with the advice and consent of the Senate, from a list prepared by a nonpartisan nominating commission.

Appeals in civil cases are generally taken to the Court of Appeals from the Appellate Division of the state’s Supreme Court. An exception exists in cases where the validity of a statutory provision under the state or federal constitution is the only question presented. These appeals may go directly to the Court of Appeals from the final judgment of the trial court. In cases that come through the Appellate Division, and are finally determined by the Appellate Division order, permission to appeal must be obtained unless two justices of the Appellate Division

* The following is largely a reprint of pages 5-9 of a publication of the Committee on Courts and the Community of the New York State Bar Association (1987) entitled *The Courts of New York State*. (See, also, relevant provisions of the New York State Constitution [especially Article VI]; the Judiciary Law; the Civil Practice Law and Rules and the Criminal Procedure Law [especially about appeals]; the various court acts including the Family Court Act, the Surrogate’s Court Procedure Act, the Court of Claims Act, the New York City Criminal Court Act, the New York City Civil Court Act, the Uniform City Court Act, the Uniform District Court Act, the Uniform Justice Court Act, and relevant court rules.)

dissent on a question of law, a state or federal constitutional question is directly involved in the Appellate Division decision below or, where a new trial is ordered, appellant stipulates to judgment absolute.

Except when a death sentence is involved, criminal cases must be appealed to the Appellate Division, Appellate Term, or County Court first, and permission to appeal must be obtained, before the case may be taken to the Court of Appeals.

In addition to appellate jurisdiction, the state constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or a state court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations of the state Commission on Judicial Conduct. The Court of Appeals also is responsible for approving policy proposed by the chief judge for the administration of the state's court system. Rules governing admission of attorneys to the bar are adopted by the Court of Appeals.

Appellate Division of Supreme Court

The Appellate Division of Supreme Court is the intermediate appellate court of the state. It hears civil and criminal appeals, reviewing the record established at trial. Also, as designated by statute, it has original jurisdiction over certain matters and hears appeals from administrative determinations. There are four Appellate Division departments in the state, each responsible for hearing most appeals from the courts within its geographical area.

Justices of the Appellate Division are designated by the governor from among Supreme Court justices for five-year terms or the unexpired portions of their respective term of office, whichever is less. Depending on the caseload, the number of justices for each Appellate Division department will vary but only five may sit in any case and four are required for a quorum. Each Appellate Division department also is responsible for the admission and discipline of attorneys.

Appellate Term of Supreme Court

The Appellate Term of Supreme Court is unique to the First and Second Judicial Departments (New York City, Nassau, Suffolk, Rockland, Westchester, Putnam, Dutchess, and Orange Counties). The Appellate Term is composed of Justices of the Supreme Court chosen by the chief administrator of the courts with approval of the presiding justice of the Appellate Division to hear appeals from local courts and nonfelony criminal appeals from county courts. Only three may sit in any case and two are required for a quorum.

County Court, appellate session

County Courts are authorized to hold appellate sessions to hear appeals from decisions of the local "inferior" courts in the Third and Fourth Judicial Departments. In civil cases, orders from the county courts' appellate sessions may be appealed as of right to the Appellate Division. In criminal matters, the appeal is to the Court of Appeals and may be taken only by permission of a judge of the Court of Appeals.

Supreme Court

The statewide trial court of the broadest jurisdiction, both criminal and civil, is the Supreme Court. While the practice is to restrict the type of case heard by the Supreme Court, its jurisdiction is almost unlimited. It can hear virtually any type of case brought before it, with the exception of claims against the state, which must be brought in the Court of Claims.

Since the Supreme Court has practically unlimited jurisdiction, attempts are generally made throughout the state to divide the work load among the Supreme Court and the lower courts of limited jurisdiction. For example, outside the city of New York, Supreme Court hears mostly civil matters while the County Courts hear criminal matters. Within the city of New York, Supreme Court sits in both civil and criminal (mostly felony) parts.

However, the Supreme Court must be involved in one area of law — the ending of a marriage, since it is the only court which can grant a divorce, annulment or separation.

Statewide, the Supreme Court is divided into 13 judicial districts. Justices are elected by district for terms of 14 years.

Court of Claims

This court has the sole responsibility for hearing claims brought against the state of New York. Actions against the state may be brought only when the state agrees to permit the lawsuit, as it has in many tort and contract cases. This requirement dates back to an immunity from suit enjoyed by the government under English law.

The judges of the Court of Claims are appointed by the governor with the advice and consent of the state Senate for terms of nine years.

Family Court

The Family Court was established in 1962 to replace the Children's Court and New York City's Domestic Relations Court. The Family Court handles most cases involving youths between the ages of 8 and 16 who are charged with an offense that would be a crime if committed by an adult.

It also hears cases involving family disputes, determines support payments for families, hears child custody cases, handles adoptions (concurrent jurisdiction with Surrogate's Court), and may even determine the parentage of a child through paternity proceedings. It does not hear termination of marriage cases; those are under the exclusive jurisdiction of Supreme Court.

Judges of this court serve for 10-year terms. Outside New York City, they are elected; within the city of New York such judges are appointed by the mayor.

Family Court also has hearing examiners (appointed by the chief administrative judge of the court system) assigned to it to hear support proceedings and uncontested paternity proceedings.

Surrogate's Court

Surrogate's Court is responsible for all matters relating to the property of deceased persons. Matters commonly dealt with in Surrogate's Court include the probate of wills; the appointment and control of executors, administrators, and trustees; adoptions (concurrent jurisdiction with Family Court); and the final settlement of estates. Whether or not a person leaves a valid will, all claims on the estate brought by heirs, legatees or creditors are handled by Surrogate's Court.

Judges of this court are elected in each county for terms of 10 years (14 years in New York City).

County Court

A County Court exists in each county of the state outside New York City. Judges are elected for a 10-year term, with the number of judges varying according to population. County Court judges preside over both criminal and civil cases.

While its jurisdiction over criminal matters is almost unlimited (as is the Supreme Court's), the civil cases that may be brought into County Court are limited. Money claims in cases to be tried in this court may not exceed \$25,000.

* * *

In counties with small populations, a single judge may be responsible for Family, Surrogate's and County Courts. In other counties, two judges may share responsibility for these three courts or may be elected to only one or two of the courts.

However, in the more populous counties outside of New York City, judges are usually elected separately to County Court, Family Court, and the Surrogate's Court.

LOCAL COURTS

New York City Courts

In New York City, two courts have responsibilities different from courts elsewhere in the state. The New York City Civil Court can hear civil matters involving amounts that do not exceed \$25,000. The judges of this court have citywide jurisdiction and are elected for 10-year terms.

There is a housing part of this court to hear landlord-tenant cases and to promote enforcement of housing codes. The part is staffed by judges appointed for five-year terms by the chief administrator of the courts.

A small claims part hears cases brought by private individuals for amounts up to \$3,000. The rules of this part of court provide for informal and simplified procedures. Small claims parts are designed to make it easier for a person to sue for small amounts of money without having to be represented by an attorney. (Similar small claims parts are authorized for the other City, District and Justice Courts in the state).

The New York City Criminal Court has jurisdiction only over criminal matters. It can try all criminal cases except felonies, and may conduct preliminary hearings in felony cases. Criminal Court judges also serve as magistrates and can issue warrants of arrest. They are appointed by the mayor of New York City for 10-year terms.

Other City Courts

Each of the 61 other cities within the state has its own City Court. All these courts have both criminal and civil jurisdiction.

In criminal matters, the City Courts can try cases involving charges of misdemeanors or minor violations and can hear preliminary matters in felony cases. City Courts also can hear civil cases involving amounts that do not exceed \$15,000, as well as landlord-tenant disputes.

Judges of City Courts must be attorneys who have been licensed to practice law in New York state for at least five years. Some are elected by the voters of their respective cities; others are appointed by designated city officials; full-time judges serve for 10-year terms; part-time judges serve for six-year terms.

District Courts

District Courts currently exist only in Nassau and Suffolk Counties, where they have limited jurisdiction over both civil and criminal cases. In criminal matters, District Courts can try all offenses except felonies, and can hear preliminary matters in felony cases. In civil matters, the court is limited to cases involving claims for \$15,000 or less. It also may hear some matters concerning liens on property and landlord-tenant disputes.

Judges of this court, who must be lawyers, are elected by district voters for terms of six years.

Justice Courts

Justice Courts consist of town and village courts. The judges of these courts need not be lawyers, although they must meet special training requirements. They are elected by voters in the locality in which they serve for four-year terms.

Justice Courts can hear both criminal and civil cases, but their jurisdiction in both instances is limited. In criminal matters, Justice Courts can try misdemeanor cases and conduct preliminary proceedings in felony cases.

In civil matters, Justice Courts may hear cases where no more than \$3,000 worth of property or money is in dispute. Also, landlord-tenant cases may be heard there, regardless of the amount of rent involved. A Justice Court may not decide a case involving the title to real property.

Alternative Methods of Dispute Resolution

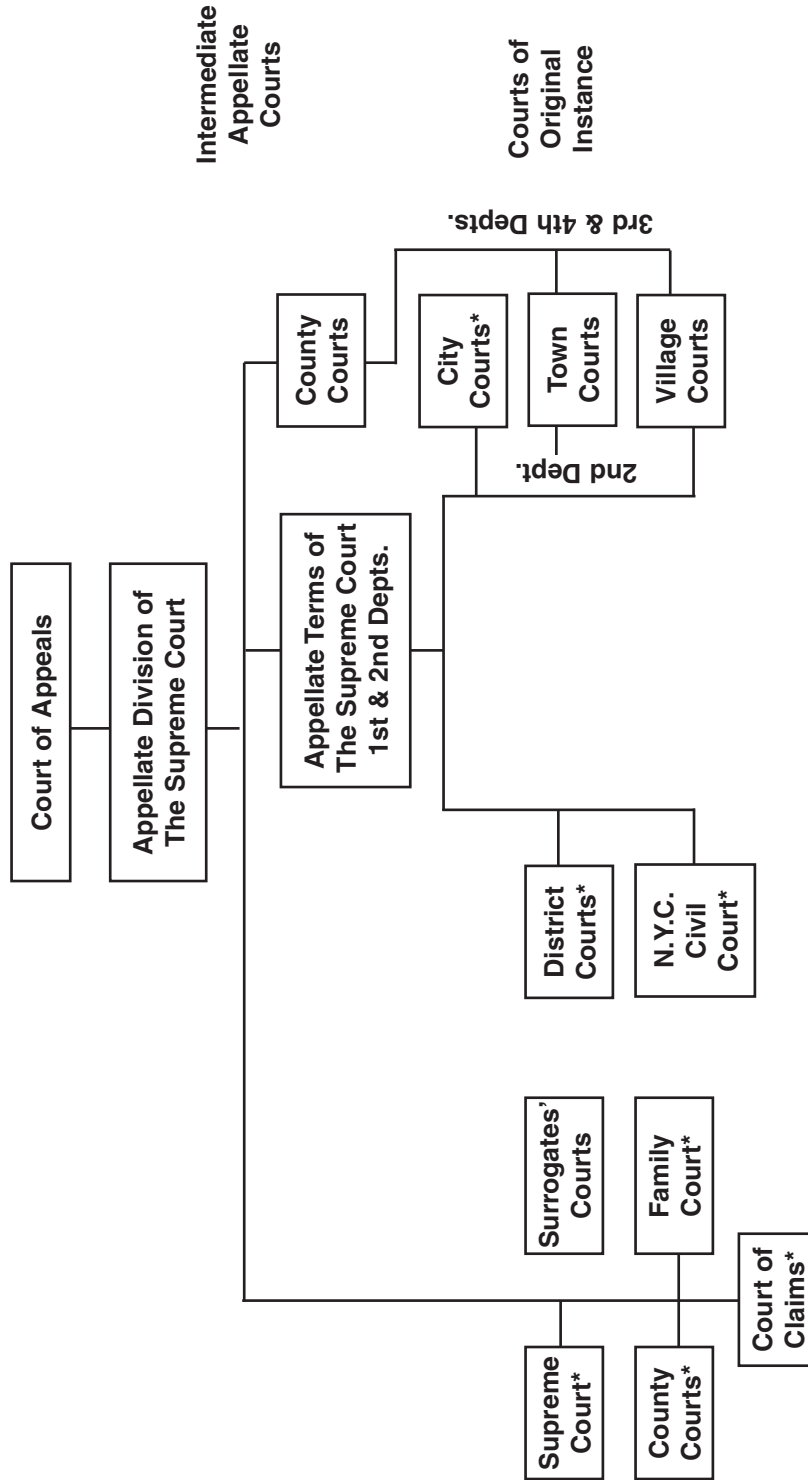
A mandatory arbitration program for the resolution of civil cases in amounts of \$6,000 or less (\$10,000 or less in New York City Civil Court) has been established in all the populous counties in the state. Cases are heard by one or three attorneys. Dissatisfied litigants may demand court trial de novo at the conclusion of the arbitration proceedings, but less than 10 percent have done so since the program was instituted.

In 1981 the New York State Legislature established the "Community Dispute Resolution Centers Program" to provide funds for eligible locally-operated centers where mediators attempt to resolve minor disputes. This program is the first of its kind in the nation and is administered by the Office of Court Administration. Such charges as harassment and criminal mischief and neighbor and landlord-tenant disputes are handled. Dismissal of proceedings pending against a defendant in court may be granted if there is participation in dispute resolution and compliance with any resulting award or settlement.

B. New York State Appellate Structure Charts

The following charts derive from the Office of Court Administration as reprinted in "New York Legal Research Guide" ** by Ellen M. Gibson at pages 127 and 128.

NEW YORK STATE JUDICIAL SYSTEM CIVIL APPEALS STRUCTURE

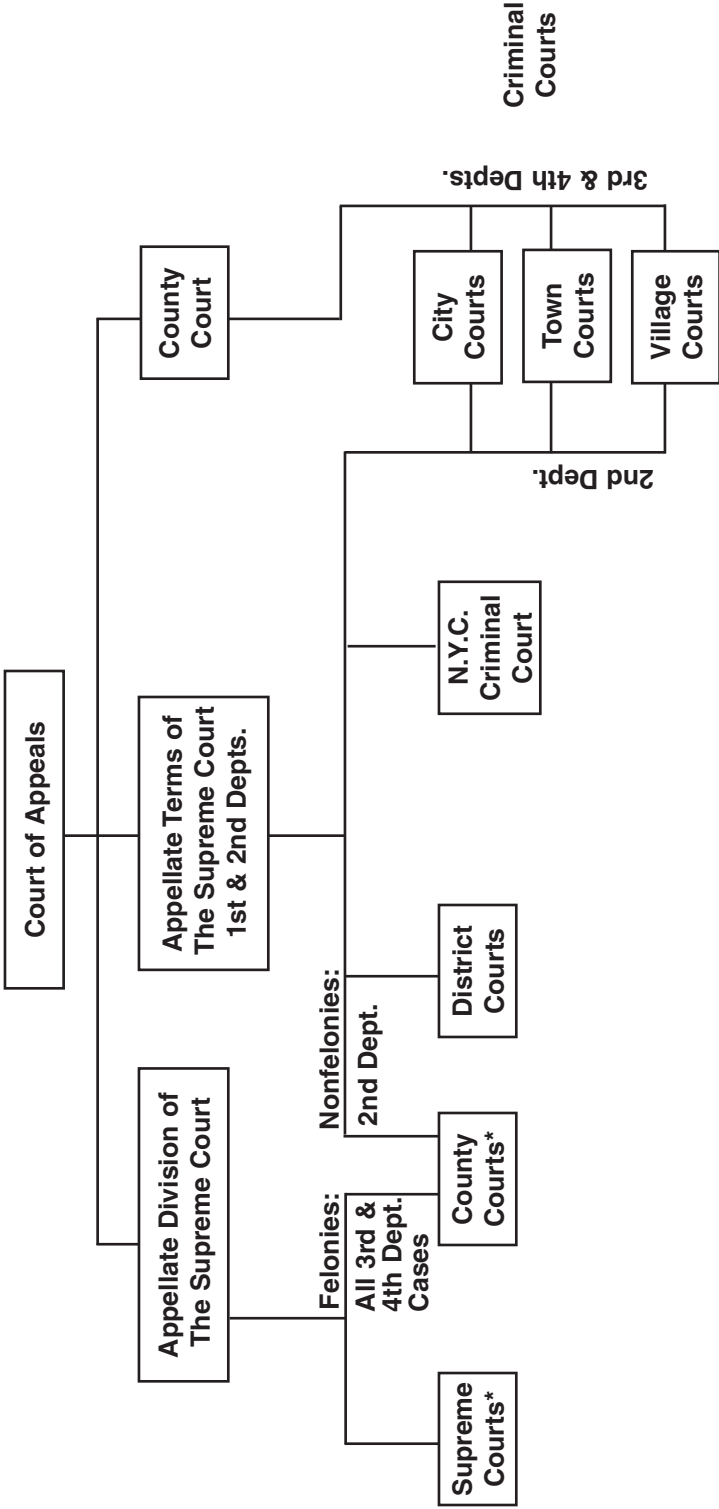


*Appeals from judgments of courts of record of original instance that finally determine actions where the only question involved is the validity of a statutory provision under the New York state or United States Constitution may be taken directly to the Court of Appeals.

Source: State of New York Office of Court Administration.

** Published by William S. Hein & Co., Inc., Buffalo, New York (1988).

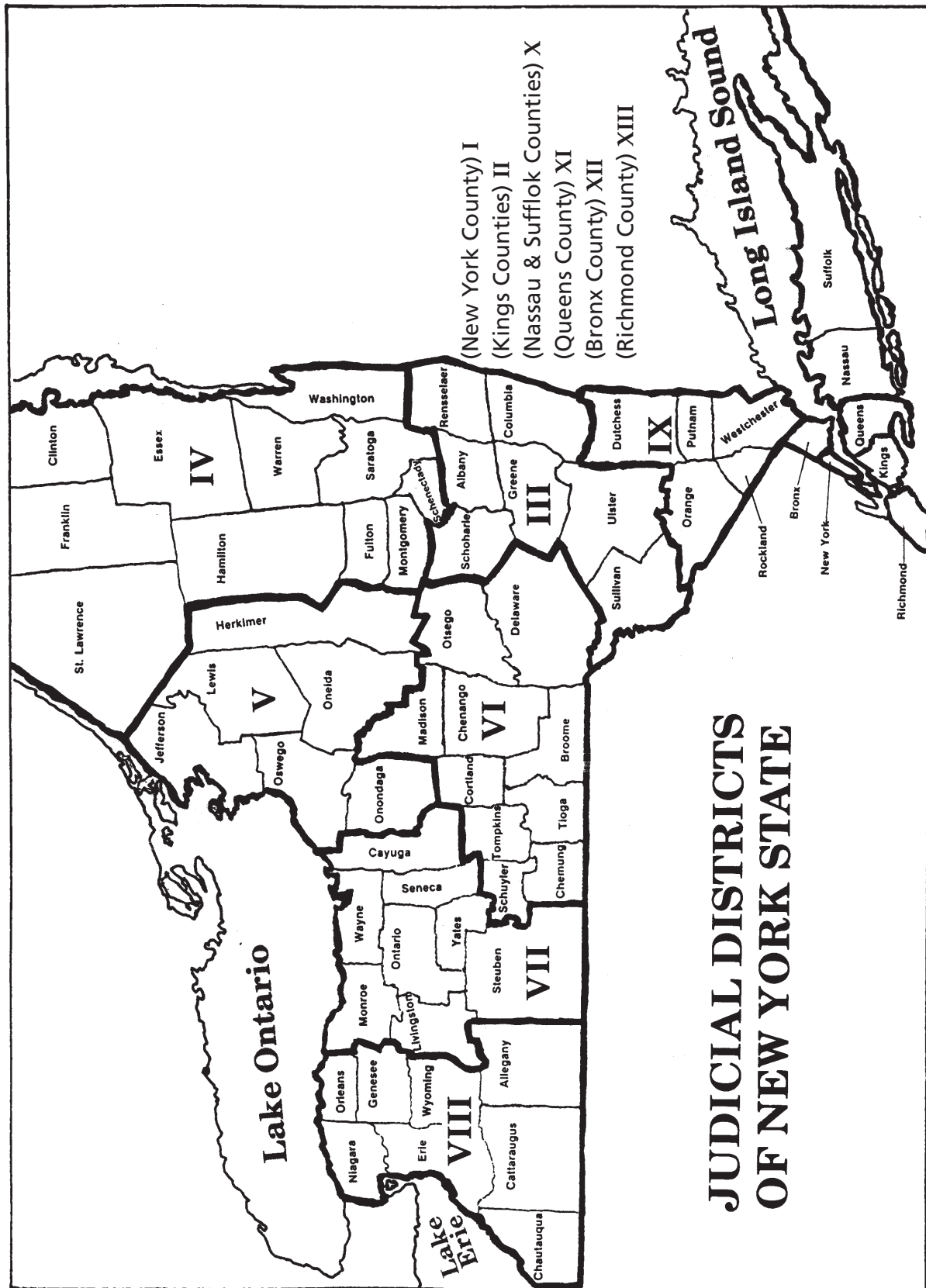
NEW YORK STATE JUDICIAL SYSTEM
CRIMINAL APPEALS STRUCTURE



*Appeals involving death sentences must be taken directly to the Court of Appeals.

Source: State of New York Office of Court Administration.

C. Map and Chart of New York State Judicial Districts*



**JUDICIAL DISTRICTS
OF NEW YORK STATE**

* This map and chart are reprinted from page 57 of the 2009 New York Lawyers Diary and Manual.

New York State Counties by Judicial Department and District

FIRST DEPARTMENT

First Judicial District

New York

Twelfth Judicial District

Bronx

SECOND DEPARTMENT

Second Judicial District

Kings

Ninth Judicial District

Dutchess

Orange

Putnam

Rockland

Westchester

Tenth Judicial District

Nassau

Suffolk

Eleventh Judicial District

Queens

Thirteenth Judicial District

Richmond

THIRD DEPARTMENT

Third Judicial District

Albany

Columbia

Greene

Rensselaer

Schoharie

Sullivan

Ulster

Fourth Judicial District

Clinton

Essex

Franklin

Fulton

Hamilton

Montgomery

Saratoga

Schenectady

St. Lawrence

Warren

Washington

Sixth Judicial District

Broome

Chemung

Chenango

Cortland

Delaware

Madison

Otsego

Schuyler

Tioga

Tompkins

FOURTH DEPARTMENT

Fifth Judicial District

Herkimer

Jefferson

Lewis

Oneida

Onondaga

Oswego

Seventh Judicial District

Cayuga

Livingston

Monroe

Ontario

Seneca

Steuben

Wayne

Yates

Eighth Judicial District

Allegany

Cattaraugus

Chautauqua

Erie

Genesee

Niagara

Orleans

Wyoming

D. Auxiliary Programs and Court-Related Agencies*

APPELLATE AUXILIARY OPERATIONS

State Reporter
State Board of Law Examiners
Candidate Examination Program
Candidate Fitness Program
Attorney Discipline Program
Assigned Counsel Program
Law Guardian Program
Mental Hygiene Legal Service Program

COURT-RELATED AGENCIES

Commissioners of Jurors and New York City County Clerks
Supreme and County Court Libraries
Lawyers' Fund for Client Protection
IOLA Fund of the State of New York
New York State Lawyer Assistance Trust
Judicial Conduct Commission
New York State Judicial Institute

Appellate Auxiliary Operations

The Appellate Auxiliary Operations include the State Reporter, State Board of Law Examiners, Candidate Fitness Program, Assigned Counsel Program, Law Guardian Program, Attorney Discipline Program and the Mental Hygiene Legal Service Program. With the exception of the State Reporter and the State Board of Law Examiners, which are operated under the direction of the Court of Appeals, all of the above programs are administered under the supervision of the presiding justices of each of the Appellate Division.

State Reporter

The State Reporter is the chief executive officer of the New York State Law Reporting Bureau which operates under the general supervision of the Court of Appeals. Pursuant to statutory mandate, the New York State Law Reporting Bureau edits and headnotes the decisions of the New York courts, and supervises their publication in weekly Advance Sheets, bound volumes, an online computer retrieval database, and computer searchable CD-ROM in the Official New York Law Reports. The New York State Law Reporting Bureau makes available all opinions and memoranda decisions handed down by the Court of Appeals and Appellate Divisions, and publishes selected opinions of the nisi prius courts which contain holdings of precedential significance or address matters of public interest [go to www.nycourts.gov/reporter where unpublished trial court writings are available, or call (518) 474-8211]. The State Reporter also prepares the *Official New York Law Reports Style Manual* which sets forth citation guidelines for use in judicial opinions and in legal writings submitted to the New York courts.

State Board of Law Examiners

The State Board of Law Examiners runs the Candidate Examination Program under the general supervision of the Court of Appeals. The board determines, by examination or credential review, whether a candidate for the bar is qualified to practice law in New York state. The board insures that only competent persons, sufficiently learned in the law, are permitted to practice in New York state. For more information, see page 21 of this booklet, or go to the State Board of Law Examiners Web site www.nybarexam.org.

Candidate Fitness Program

The Candidate Fitness Program determines whether candidates possess the demonstrated ethical character required in order to be admitted to the bar. The Candidate Fitness Program is administered by the Appellate Division Departments, in conjunction with their Committees on Character and Fitness.

Attorney Discipline Program

Through the Attorney Discipline Program, appointed committees conduct investigations of alleged attorney misconduct, impose confidential discipline (which, depending on the Judicial Department, may include letters of caution, and oral and written admonitions) and, in more serious cases, prosecute charges before the Appellate Division, which proceedings may result in public censure, suspension or disbarment of the attorney. The purpose of the program is to protect the public, deter attorney misconduct, and preserve the reputation of the bar.

* The following is largely taken from *Structure of the Courts* (1986) produced by the State of New York Unified Court System.

The following programs provide services, including counsel, to those unable to obtain such services themselves.

Section 35 of the Judiciary Law - Assigned Counsel Program

Section 35 of the Judiciary Law established an Assigned Counsel Program which provides legal services to persons alleged to be mentally ill, mentally defective, narcotics addicts or children in certain custody proceedings; provides indigents before the courts with medical and psychiatric examination services, and provides legal services to indigents in certain kinds of proceedings when such services cannot be provided through other sources. (Public defender and legal service agencies also provide legal services for persons accused of crimes and others; see also County Law article 18B and other provisions such as Family Court Act § 261, Surrogate's Court Procedure Act § 403-a, and Civil Practice Law and Rules § 1102).

Law Guardian Program

The general purpose of the Law Guardian Program is to provide counsel to minors in certain proceedings in Family Court, such as juvenile delinquency, persons in need of supervision, and child protective proceedings. In addition, the court has the discretion to appoint a law guardian in any proceeding when such representation will serve the purposes of the Family Court Act.

Mental Hygiene Legal Service Program

The Mental Hygiene Legal Service Program (MHLS) ensures that mentally disabled persons who are under care that restricts their freedom are afforded due process of the law. In carrying out this responsibility, the MHLS provides or procures legal counsel for patients in judicial proceedings concerning confinement, care and treatment.

Court-Related Agencies

Commissioner of Jurors and New York City County Clerks

The Commissioner of Jurors' Offices are responsible for supplying the trial courts with prospective jurors and for the management of a variety of functions related to discharging this responsibility, including summoning and qualification of citizens for jury services, the maintenance of juror service records, and the operation of juror assembly rooms.

In New York City, the five county clerks serve as commissioners of jurors and also perform a variety of non-jury functions including among others, the maintenance of Supreme Court case records, the qualification of notary publics and commissioners of deeds, the filing of corporation and business certificates, and the processing of passports. Outside the city of New York, county clerks are elected county-paid officials, who, in addition to many non-court functions, maintain County Court and Supreme Court records.

Supreme and County Court Law Libraries

The law libraries serve as major legal research centers and often serve as the only legal resources available to the local bench, bar and public.

Lawyers' Fund for Client Protection*

The Lawyers' Fund for Client Protection — previously the Clients' Security Fund — is a state agency financed principally by a \$60 share of each lawyer's \$350 biennial registration fee. The Fund receives no revenues from the IOLA program, or from state tax revenues.

The Fund is administered pro bono publico by a board of trustees appointed by the judges of the state Court of Appeals. There are seven trustees: currently five lawyers and two business executives.

The trustees are authorized to reimburse law clients for money or property that is misappropriated by a member of the bar in the practice of law. Since the Fund's inception in 1982, the Fund has restored more than \$132 million to victims of dishonest conduct in the practice of law.

To qualify for reimbursement, the loss must involve the misuse of clients' money or property in the practice of law. The trustees cannot settle fee disputes, compensate clients for malpractice or neglect, or reimburse losses from activities unrelated to an attorney-client relationship. Awards of reimbursement are generally made after a lawyer's disbarment, and where it appears that the lawyer cannot make restitution.

Typical losses reimbursed by the Fund include the theft of estate and trust assets; down payments and the proceeds in real property transactions; debt collection proceeds; personal injury settlements; and money embezzled from clients in investment transactions arising from an attorney-client relationship and the practice of law.

* See Section on Client Funds (infra) for more information on the Lawyers' Fund for Client Protection and IOLA.

Financial sanctions against attorneys during litigation or imposed by court rules for engaging in frivolous conduct are made payable to the Fund. The Fund is also provided notice of any dishonored checks drawn upon an attorney's trust, escrow or special account.

The Fund's governing statutes are sections 97-t of the State Finance Law and 468-b of the Judiciary Law. The trustees' regulations are published in 22 NYCRR Part 7200. By Appellate Division rules and the trustees' regulations, lawyers who assist claimants before the Fund cannot charge legal fees.

The Fund's offices are located at 119 Washington Avenue, Albany, New York 12210. Telephone (518) 434-1935, or (800) 442-3863. The Fund's Web site, www.nylawfund.org, contains information about the Fund, frequently asked questions about the Fund and its procedures; the trustees' regulations; reimbursement claim forms; recent annual reports; and consumer and lawyer publications.

IOLA

IOLA is the acronym for "Interest on Lawyer Accounts." Pursuant to State Finance Law § 97-v and Judiciary Law § 497, lawyers and law firms are required to establish interest-bearing trust accounts for clients' funds that are nominal in amount, or are expected to be held for a short period of time making it impractical to account for income on individual deposits. The interest earned will be forwarded directly by the financial institutions to the IOLA Fund for the following purposes: (a) to award funds to organizations providing legal assistance to the poor throughout the state; and (b) to grant awards to programs for the improvement of the administration of justice in New York state. More information (and enrollment forms) can be obtained by writing to Interest On Lawyer Account Fund of the State of New York, 11 East 44th Street, Suite 1406, New York, NY 10017, or telephoning (646) 865-1541 or (800) 222-IOLA. Web site address: www.iola.org.

New York State Lawyer Assistance Trust

The New York State Lawyer Assistance Trust was formed in 2001 as a permanent entity within the Unified Court System. The Trust provides statewide leadership and financial assistance to existing programs for the prevention and treatment of alcohol and substance abuse and mental health concerns among lawyers, judges and law students, and it encourages the development of new lawyer assistance programs and bar association committees to accomplish those goals. Under the direction of a board of trustees appointed by the New York State Court of Appeals, the trust is responsible for promoting education and early intervention, funding local lawyer assistance programs, creating special educational programs designed specifically for law students, practicing lawyers and judges, and recommending modifications to existing court rules and procedures to facilitate early detection, intervention and referral. The trust is financed by the legal profession through a portion of the current biennial \$350 attorney registration fee. Creation of the trust was a key recommendation of the Commission on Alcohol and Substance Abuse in the Legal Profession, which was formed by former Chief Judge Kaye and chaired by former Court of Appeals Judge Joseph Bellacosa. The Lawyer Assistance Trust's offices are located at 54 State Street, Suite 802, Albany, NY, 12207-1002, (518) 285-4545, www.nylat.org.

Judicial Conduct Commission

The state constitution provides for a Commission on Judicial Conduct with authority to determine discipline, from admonition to removal, of judges and justices of state and local courts and to retire them for disabilities, subject to review by the Court of Appeals. Contact information: 61 Broadway, New York, NY 10006, (646) 386-4800, scjc@scjc.state.ny.us. Web site address: www.scjc.state.ny.us.

New York State Judicial Institute

The Judicial Institute provides a forum for judicial scholarships, including continuing education and seminars, as well as programs with other state and federal judicial systems. Contact information: 84 North Broadway, White Plains, NY 10603, (914) 824.5800.

E. Overview of Administrative Structure of Court System

The following description of court administration is taken, in large part, from pages 136-138 of the *New York Legal Research Guide* by Ellen M. Gibson (published by William S. Hein & Co., Inc., Buffalo, NY, 1988).

Court Administration

Court administration is governed by article VI, section 28, of the New York Constitution and sections 210 through 217 of the Judiciary Law. The present administrative structure is the result of constitutional amendments and legislation which went into effect in the 1960's and 1970's.

a) The Chief Judge and the Administrative Board of the Courts. New York has had the framework for "a unified court system" since 1961. The chief judge of the Court of Appeals is the unified court system's chief judicial officer and chair of the Administrative Board of the Courts. In addition to the chief judge, members of the Administrative Board of the Courts are the presiding justices from each judicial depart-

ment. The chief judge, after consultation with the board, establishes standards and administrative policies applicable to the unified court system. These must be approved by the Court of Appeals.

b) The Chief Administrator of the Courts. The chief administrator of the courts is appointed by the chief judge with the advice and consent of the board. If the chief administrator is a judge or justice in the unified court system, he or she holds the title of chief administrative judge. The chief administrator supervises the administration and operation of the unified court system.

The chief administrator's annual report to the governor on the activities of the unified court system is the best source for statistics on the courts and for current descriptions of the court structure and administration. Additional useful information included in the annual report are the number of registered attorneys by county and judicial department, personnel and budgetary information on the court system, a summary of educational and training programs conducted during the year, and a summary of legislation sponsored by the chief administrator. The current series of annual reports covers 1978 to date. Prior to 1978, the above-described annual information on the court system was published in the annual reports of the Administrative Board of the Judicial Conference (1962-1977), the Judicial Conference (1955-1961), and the annual reports of the Judicial Council (1934-1954).

c) Office of Court Administration. The Office of Court Administration (OCA) was established in 1974. The OCA assists the chief administrator in the operation of the unified court system. Its responsibilities include budget preparation and management of the unified court system, attorney registration, and administration of the Community Dispute Resolution Centers Program. The OCA counsel's office has an important legislative role. Its legal staff assists the legislative advisory committees on civil practice, criminal law and procedure, the Surrogate's Court, and Family Court.

d) The Judicial Conference. The Judicial Conference is a large advisory body composed of: the chief judge of the Court of Appeals; the presiding Appellate Division justice and one Supreme Court justice from each of the four judicial departments; representative judges from the other courts; and representatives from the state bar. The chairpersons and ranking minority members of the Senate and the Assembly Committees on the Judiciary and Committees on Codes are ex officio members of the Judicial Conference.

The Judicial Conference studies and makes recommendations for changes in laws and rules relating to civil, criminal and family law practice. The Judicial Conference also advises the chief administrator of the courts on education programs for the judicial and non-judicial personnel of the unified court system. When requested to do so, it consults with the chief judge and chief administrator on the operation of the court system. Many of the functions now performed by the Administrative Board of the Courts were performed by the Judicial Council (1934-1954) and the Judicial Conference (from 1955-1977).

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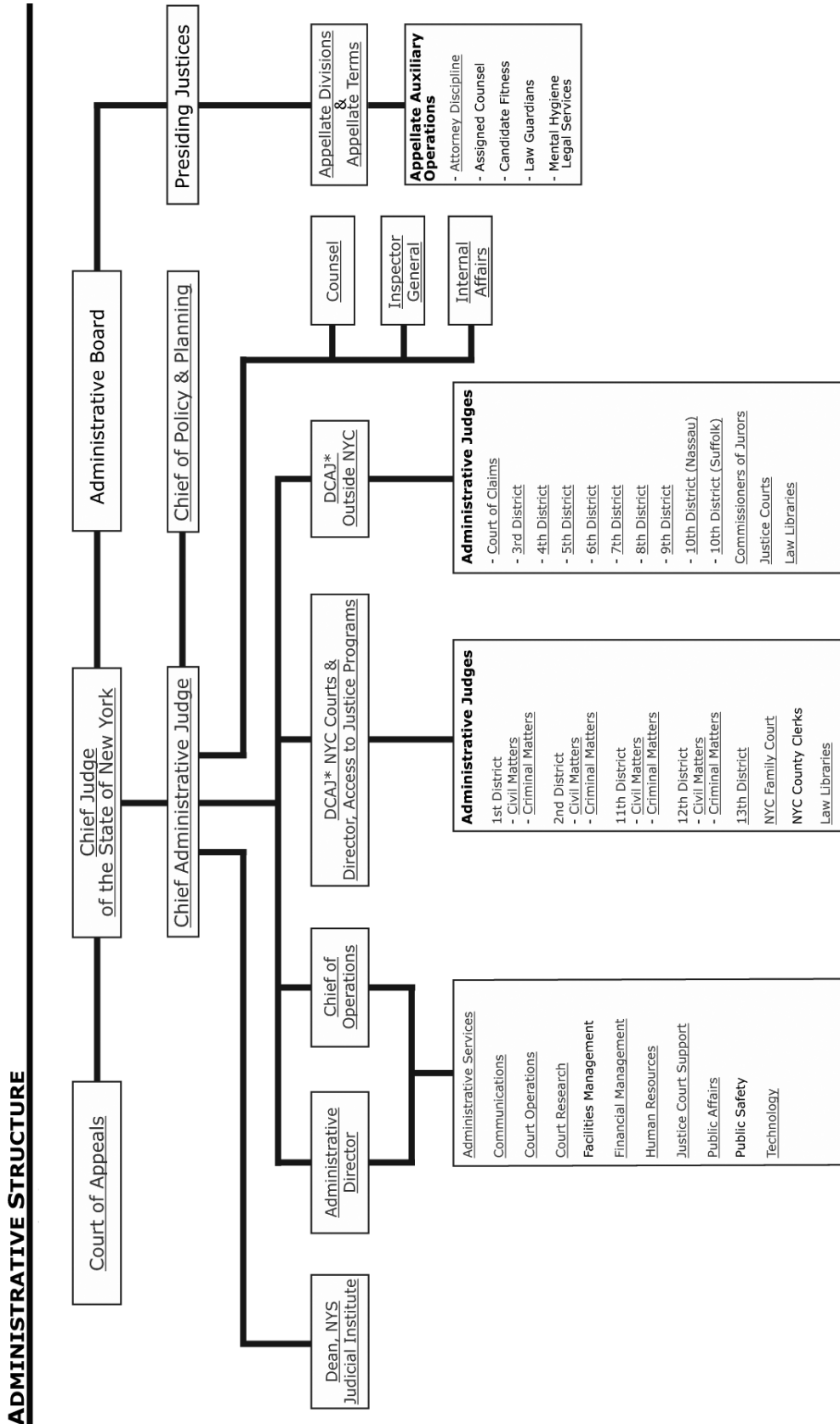
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The chart below provides a general overview of the administrative structure of the Court System. **



Source: nycourts.gov/admin/adminstructure.pdf

*DCAJ - Deputy Chief Administrative Judge

**Chart provided by Office of Court Administration.

F. Federal Court

There are four United States District Courts in New York state as follows:

Southern District

United States District Court Southern District of New York U. S. Courthouse Foley Square, 40 Centre St. New York, NY 10007-1581 (212) 805-0136	<i>and</i> U. S. Courthouse 500 Pearl Street New York, NY 10007-1312 (212) 805-0136
---	---

also

U. S. Courthouse
300 Quarropas St.
White Plains, NY 10601
(914) 390-4100

The Southern District covers the counties of Bronx, New York, Dutchess, Orange, Putnam, Rockland, Sullivan and Westchester.

Eastern District

United States District Cour Eastern District of New York U. S. Courthouse 225 Cadman Plaza East Brooklyn, NY 11201 (718) 613-2285	<i>and</i> Long Island Federal Courthouse 100 Federal Plaza Central Islip, NY 11722 (631) 712-6000
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The Eastern District covers the counties of Kings, Queens, Nassau, Suffolk and Richmond.

Western District

United States District Court Western District of New York U. S. Courthouse 68 Court Street Buffalo, NY 14202-3406 (716) 551-4211	<i>and</i> U. S. Courthouse 100 State Street Rochester, NY 14614 (585) 613-4000
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The Western District covers the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates.

Northern District

United States District Court
Northern District of New York
James T. Foley U. S. Courthouse
445 Broadway
Albany, NY 12207-2974
(518) 257-1800

and these other seven locations (8 total)

Old Post Office & Courthouse
157 Genesee Street, 2nd Floor
Auburn, NY 13021
(315) 252-6555

Federal Building &
U.S. Courthouse
15 Henry Street
Binghamton, NY 13902-2723
(607) 773-2893

U.S. Courthouse
Lewis Avenue
Fort Drum, NY 13602
(315) 234-8500

55 Court Street
Plattsburgh, NY 12901-2834
(518) 561-6274

U. S. Courthouse
100 S. Clinton Street, P.O. Box 7367
Syracuse, NY 13261-7367
(315) 234-8500

Alexander Pirnie Federal Building
10 Broad Street
Utica, NY 13501
(315) 793-8151

Jefferson County Courthouse
Dulles State Office Building
317 Washington Street - 10th Floor
Watertown, NY 13601
(315) 779-8935

The Northern District covers the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren and Washington.

* * *

The United States Court of Appeals for the Second Circuit, covering Connecticut, New York and Vermont, is located in the United States Court House, 40 Foley Square, New York, New York 10007.

Both the United States Court of International Trade and the United States Tax Court also have courtrooms in New York City. The United States Bankruptcy Court sits in numerous locations throughout New York state; it is territorially divided along lines similar to the United States District Courts.

II. Admission to the New York State Bar*

A. Admission on Examination**

In general, after graduating from an approved law school, you must gain admission to the New York State Bar in order to practice law. Such applicants for admission are required to possess good moral character and fitness and successfully complete a written examination.

The written exam in New York state is administered by the State Board of Law Examiners and is given twice each year, in February and July.

The two-day examination includes the Multistate Bar Examination which is a multiple-choice, day-long test that covers subjects applicable in all states. Another part is a full-day exam consisting mainly of essay questions which require application of New York state law to a series of complex fact patterns. One Multistate Performance Test (MPT) question (a national exam) has been added in lieu of one of the former six essay questions. In addition to the New York State Bar Exam, an applicant must also take and pass the Multistate Professional Responsibility Examination (MPRE), which deals with professional responsibility issues. The MPRE can be taken prior to or after graduation from law school.

* Admission to the New York State Bar is generally governed by the following statutes and court rules: Judiciary Law §§ 53, 56, 90, 460-468-a, 478, 484; CPLR article 94; Rules of the Court of Appeals, 22 NYCRR Part 520; Rules of the Appellate Divisions: First Department: Part 602; Second Department: Part 690, 692; Third Department: Part 805; Fourth Department: § 1022.9, 1022,34; Part 1029.

**The following is largely reprinted from *Law as a Career in New York State* (1989) published by the New York State Bar Association.

For more information about the New York bar examination see the Web site of the State Board of Law Examiners: www.nybarexam.org.

Following passage of the bar exam, the applicant is certified for admission to a Committee on Character and Fitness in one of the four Departments of the Appellate Division of State Supreme Court. He or she must file an application for admission to the bar with the appropriate Appellate Division Department.

Each applicant has a personal interview with the Character and Fitness Committee. After the Character and Fitness Committee recommends to the Appellate Division that the applicant be admitted to the practice of law in New York state, upon approval by the court, formal swearing-in ceremonies are then conducted by a Department of the Appellate Division.

B. Admission Without Examination

In general, to be admitted to the New York state bar without examination, an applicant must:

1. Be currently admitted to the bar of at least one other jurisdiction which would similarly admit a New York state attorney to its bar without examination;
2. Have actually practiced, for at least five of the seven years immediately preceding the application, in one or more jurisdictions where admitted to practice;
3. Be over 26 years of age;
4. Have the necessary legal education to qualify applicant for admission without examination (have an approved American law school juris doctorate degree); (the legal education must be certified by the State Board of Law Examiners; \$400 fee); and
5. Satisfy the Appellate Division that he or she possesses the character and general fitness requisite for an attorney and counselor-at-law by submitting an application to the appropriate Appellate Division Committee on Character and Fitness; also requires an interview by the Committee on Character and Fitness.

For further information on the legal education requirement, see the Web site of the State Board of Law Examiners: www.nybarexam.org. For further information on the other requirements, contact the admissions office of the appropriate Department of the Appellate Division. In general, each Appellate Division Department handles the applications of persons having residence or full-time employment within the geographical boundaries of the department; the Third Judicial Department (which is centered in Albany) also is responsible for applicants who neither reside in nor have full-time employment in New York state.

C. Legal Consultants, Pro Hac Vice, Student Legal Practice

Legal consultants are foreign attorneys with offices in New York state licensed to give legal advice on the law of the foreign country in which they have been admitted (see Judiciary Law § 53; Court of Appeals Rules, Part 521). *Pro hac vice* admissions for particular causes are generally reserved to the discretion of the particular court in which the admission is sought (see Court of Appeals Rules, Section 520.11). *Pro hac vice* admissions for specified time periods are also available for certain students and employees of certain legal aid societies and government entities (see also, Court of Appeals Rules, Part 520.11[a] [2]). Student legal practice is governed by Judiciary Law § 478 and 484 and relevant Appellate Division rules.

D. Oath of Office

Upon being admitted to practice in the state of New York, each applicant is required to swear (or affirm) the following constitutional oath of office (see Judiciary Law § 466 and NY Const. art. XIII § I):

I do solemnly swear that I will support the Constitution of the United States, and the New York Constitution, and that I will faithfully discharge the duties of the office of attorney and counselor at law of the Supreme Court of the state of New York according to the best of my ability.

III. Membership in the New York State Bar

Please note that admission to the New York state bar does not constitute membership in the New York State Bar Association, which is a voluntary organization. Unlike some other states, New York state does not have an "integrated bar." However, membership in the New York State Bar Association and other local bar associations is recommended. For further information, please contact New York State Bar Association, Membership Services, One Elk Street, Albany, New York 12207, phone: (518) 487-5577; e-mail: membership@nysba.org.

A. Attorney Registration and Fees

Section 468-a of the Judiciary Law and 22 NYCRR Part 118 of the Rules of the Chief Administrator of the Courts require the biennial registration of all attorneys admitted in the State of New York, whether they are resident or non-resident, active or retired, or practicing law in New York or anywhere else. All attorneys are required to renew their attorney registration every two years, within 30 days after the attorney's birthday. The fee for this registration is \$350.00 (of which \$60.00 is earmarked to support the Lawyers' Fund for Client Protection, \$50.00 is deposited in the Indigent Legal Services Fund, and the remainder in the Attorney Licencing Fund). No fee is required from an attorney who certifies that he or she is "retired" from the practice of law (see, section III F, *infra*).

New York does not have an inactive status as may be available in other jurisdictions and attorneys who fail to comply with the registration requirements are subject to referral for disciplinary action by the Appellate Division.

Newly-admitted attorneys are required to file an initial registration and pay a \$350 fee prior to taking the constitutional oath of office. Information and forms are provided to new attorneys in conjunction with the admission process. Thereafter, the Office of Court Administration automatically sends the necessary forms to enable attorneys to comply with the requirement after the initial registration. For further information contact the Attorney Registration Unit at the Office of Court Administration, P.O. Box 2806, Church Street Station, New York, New York 10008; via e-mail to attyreg@nycourts.gov; or by phone at (212) 428-2800.

B. Address Changes and Name Changes

Attorneys admitted to the New York state bar are required to inform the Attorney Registration Unit, Office of Court Administration, P.O. Box 2806, Church Street Station, New York, NY 10008, attyreg@nycourts.gov, of address changes within 30 days of the change.

Name changes must be made at the Appellate Division department of admission. For instructions, contact the court directly: 1st Department (NYC) (212) 340-0400; 2nd Department (Brooklyn) (718) 875-1300; 3rd Department (Albany) (518) 471-4777; and 4th Department (Rochester) (585) 530-3100.

C. Retirement or Resignation

There is no provision for an "inactive" or out-of-state status in the attorney registration rules which would excuse an attorney from filing a biennial registration. All attorneys admitted to the New York state bar whether they are resident or non-resident, active or retired, or practicing law in New York or anywhere else must file a registration every two years, and if actively practicing law anywhere, pay the biennial fee. No fee is required for attorneys who can certify that they are "retired" from the practice of law. Part 118.1(g) of the Rules of the Chief Administrator, as follows, defines for the purposes of registration both the "practice of law" and the term "retired." The definition of "retired" also includes full-time judges and attorneys engaged only in pro bono legal activities:

(g) Each registration statement filed pursuant to this section shall be accompanied by a registration fee of \$350. No fee shall be required from an attorney who certifies that he or she has retired from the practice of law. For purposes of this section, the "practice of law" shall mean the giving of legal advice or counsel to, or providing legal representation for, particular body or individual in a particular situation in either the public or private sector in the State of New York or elsewhere, it shall include the appearance as an attorney before any court or administrative agency. An attorney is "retired" from the practice of law when, other than the performance of legal services without compensation, he or she does not practice law in any respect and does not intend ever to engage in acts that constitute the practice of law. A retired attorney who participates without compensation in an approved pro bono legal services program may be designated as an "attorney emeritus." For purposes of section 468-a of the Judiciary Law, a full-time judge or justice of the Unified Court System of the State of New York or of a court of any other state or of a federal court, shall be deemed "retired" from the practice of law.

Part 118.1(g) was amended in January 2010 to include an additional status of Attorney Emeritus. This program has been established by the Unified Court System, in cooperation with the organized bar, legal services providers and other members of the legal community, to encourage retired attorneys to volunteer their legal skills on a pro bono basis to assist low-income New Yorkers who cannot afford an attorney.

To be eligible as an Attorney Emeritus you must be an attorney in good standing who is at least 55 years of age and has practiced law for a minimum of 10 years. By enrolling as an Attorney Emeritus you indicate your willingness to perform a minimum of 30 hours of pro bono legal services each year under the auspices of a qualified legal services organization in New York.

Because filing a biennial registration is required whether you are resident or non-resident, active or retired, or practicing law in New York or anywhere, the only way avoid this obligation is to "resign" from the New York State bar, in which case the attorney would no longer be entitled to practice law in New York state or hold him or herself out as a member of the New York state bar. Resignation applications should be made to the Appellate Division Department of admission. Attorneys who are the subject of disciplinary proceedings may be able to resign but such resignations result in orders of disbarment, removal, or striking the attorney's name from the roll of attorneys; each Appellate Division Department has rules governing such "disciplinary" resignations.*

* Rules of the Appellate Division, First Department (§ 603.11), Second Department (691.9), Third Department (806.8), and Fourth Department (1022.25).

D. Certificates of Good Standing

Upon admission to the bar, the Appellate Division does not furnish an "ID card," nor does New York have "bar numbers," like some other jurisdictions. However, if the need arises for an attorney to obtain documentation of admission to the bar and/or of good standing, each Appellate Division can provide a "certificate of good standing" to attorneys admitted to the bar of the State of New York, provided that the attorney is registered and is in "good standing" (i.e., not under disciplinary sanction). The attorney seeking such a certificate should contact the Appellate Division Department of admission.

There is, however, an ID card program administered by the Unified Court System (Secure Pass) that allows holders to enter New York State courthouses without having to pass through magnetometers. Secure Pass ID cards are available to any New York attorney. Program guidelines can be viewed at: <http://www.nycourts.gov/attorneys/registration/securepass.shtml>.

Secure Pass applications can be picked up at any trial-level New York state court house.

E. Continuing Legal Education is Mandatory in the State of New York

The Administrative Board of the Courts approved a Mandatory Continuing Legal Education (MCLE) requirement, which became effective December 31, 1998 for all attorneys admitted to the New York Bar.

For newly-admitted attorneys (those within their first two years of admission to the Bar), each attorney must complete a minimum of 32 hours of accredited transitional continuing legal education (CLE) courses during the first two years after admission — at least 16 in each year. Of the 16 hours of annual credit, 3 credit hours must be in the ethics and professionalism category, 6 credit hours in skills, and 7 credit hours in law practice management and/or areas of professional practice.

All attorneys admitted to the New York Bar more than two years, and who practice law in New York, are required to complete a minimum of 24 hours of accredited CLE courses every two years, of which at least 4 hours must be in the area of ethics and professionalism. All members of the New York Bar are presumed to be practicing law in New York unless otherwise shown; the burden of proof is on the individual attorney. Lawyers who practice outside of New York will be required to certify compliance with the CLE requirements, if any, of the jurisdiction in which they practice.

New York attorneys must certify to their CLE compliance at the time of their biennial attorney registration, and must keep their certificates of attendance for at least four years from the date of a course, in case of audit.

Copies of the CLE program rules and CLE Board regulations and guidelines can be downloaded from the Unified Court System Web site at: www.nycourts.gov/attorneys/cle, or obtained by calling the New York State Continuing Legal Education Board at: (212) 428-2105, or for callers outside of New York City, toll-free at: (877) NYS-4CLE. Questions about CLE requirements may also be directed to the CLE Board via e-mail at: cle@nycourts.gov.

The New York State Bar Association is certified by the New York State Continuing Legal Education Board as an accredited provider of Continuing Legal Education in the State of New York. The state bar association offers more than 200 for-credit live CLE seminars each year, held in locations throughout the state, and more than 40 live programs in five days at the state bar association's Annual Meeting.

NYSBA members attend the Association's CLE programs at discounted prices. For more information on NYSBA CLE seminars, including pricing, call: (800) 582-2452 or (518) 463-3724. Access our Web site at: www.nysba.org and point to the CLE navigation button.

F. Pro Bono Activities

The Rules of Professional Conduct (Part 1200 Joint Rules of the Appellate Divisions), adopted on April 1, 2009, now contain the following:

RULE 6.1:

Voluntary Pro Bono Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

- (1) provide at least 20 hours of pro bono legal services each year to poor persons; and
- (2) contribute financially to organizations that provide legal services to poor persons.

(b) Pro bono legal services that meet this goal are:

- (1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) Appropriate organizations for financial contributions are:

(1) organizations primarily engaged in the provision of legal services to the poor; and

(2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

(d) This Rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

IV. Practice in New York State

A. Conduct of Attorneys

1. *Rules of the Appellate Divisions*

In general, the conduct of attorneys is overseen by the Appellate Division Departments and the disciplinary committees. Each Appellate Division has its own relevant rules ** and attorneys are advised to direct questions concerning the rules to them. In general, if you practice within geographical boundaries of, or were admitted by, a particular Appellate Division, you are subject to that department's jurisdiction for conduct and disciplinary purposes.

2. *The New York Rules of Professional Conduct*

The New York Rules of Professional Conduct have been adopted by the Appellate Divisions of the New York State Supreme Court and are published in the Joint Rules of the Appellate Division (22 NYCRR 1200.0). The Appellate Divisions have not adopted the Preamble, Scope and Comments, which are published solely by the New York State Bar Association to provide guidance for attorneys in complying with the Rules. Where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

Copies of the New Rules of Professional Conduct (with Comments) are available (\$12.00/ per hardcopy, discounts on bulk orders of 100 or more) from the New York State Bar Association, One Elk Street, Albany, New York 12207. To place an order, you may call the Association's CLE Department at: (800)582-2452. You may also download the Code for free on NYSBA's Web site, simply go to: www.nysba.org and point to the For Attorneys navigation button. The following is the preamble and scope as adopted by the New York State Bar Association and a listing of the Rules.

PREAMBLE:

A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibility for the quality of justice. As a representative of clients, a lawyer assumes many roles, including advisor, advocate, negotiator, and evaluator. As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.

[2] The touchstone of the client-lawyer relationship is the lawyer's obligation to assert the client's position under the rules of the adversary system, to maintain the client's confidential information except in limited circumstances, and to act with loyalty during the period of the representation.

[3] A lawyer's responsibilities in fulfilling these many roles and obligations are usually harmonious. In the course of law practice, however, conflicts may arise among the lawyer's responsibilities to clients, to the legal system and to the lawyer's own interests. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Nevertheless, within the framework of the Rules, many difficult issues of professional discretion can arise. The lawyer must resolve such issues through the exercise of sensitive professional and moral judgment, guided by the basic principles underlying the Rules.

** Rules of the Appellate Division, First Department, Part 603; Second Department, Part 691; Third Department, Part 806; Fourth Department, Part 1022.

[4] The legal profession is largely self-governing. An independent legal profession is an important force in preserving government under law, because abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice law. To the extent that lawyers meet these professional obligations, the occasion for government regulation is obviated.

[5] The relative autonomy of the legal profession carries with it special responsibilities of self governance. Every lawyer is responsible for observance of the Rules of Professional Conduct and also should aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves. Compliance with the Rules depends primarily upon the lawyer's understanding of the Rules and desire to comply with the professional norms they embody for the benefit of clients and the legal system, and, secondarily, upon reinforcement by peer and public opinion. So long as its practitioners are guided by these principles, the law will continue to be a noble profession.

SCOPE

[6] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These Rules define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules. The Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action.

[7] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[8] The Rules provide a framework for the ethical practice of law. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.

[9] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[10] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide whether to agree to a settlement or to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and in their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[11] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[12] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, because the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[13] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

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Advice on Ethical Questions

An attorney may obtain ethical guidance regarding questions concerning the attorney's OWN professional conduct by writing to the: New York State Bar Association, Committee on Professional Ethics, One Elk Street, Albany, NY 12207, (518) 487-5694 fax, ethics@nysba.org e-mail. Opinions of the committee are advisory and are rendered only to attorneys concerning their own conduct, not the conduct of another attorney. The committee does not pass upon questions of law or on matters which are in litigation — such matters are within the authority of the court to determine. The committee does not consider hypothetical inquiries nor questions which have also been presented to another bar.

The committee's determinations are either in the form of an informal letter response, which is sent to the inquiring attorney only, or a formal advisory opinion which is published.

If emergency guidance on an ethical question is needed, an attorney may telephone (518) 487-5691. Following appropriate screening to insure the committee has not previously rendered a formal opinion on the issues, an attorney may then be referred for telephone guidance to a member of the committee for an informal, non-binding opinion.

An attorney who works for state government in any capacity is also bound by Public Officers Law §§73, 73-a and 74, which govern business and professional activities, require financial disclosure, and set a code of ethics for state employees. These standards apply in addition to the New York Rules of Professional Conduct. An attorney may obtain ethical guidance about the application of the Public Officers Law ethics provisions by writing to the New York State Commission on Public Integrity. If the question is one of first impression, the commission will issue a formal advisory opinion acted upon by the full commission, which opinion will be published with identifying detail omitted. Otherwise, an informal opinion letter will be supplied. Inquiries should be forwarded to the New York State Commission on Public Integrity: 540 Broadway, Albany, NY 12207, (518) 408-3976, cpi@nyintegrity.org e-mail.

Published Ethical Opinions

All of the formal opinions issued by the Committee on Professional Ethics, together with an index, are available on the Association's Web site: www.nysba.org under "For Attorneys."

* * *

3. *Client Funds*

The following is a partial reprint of "A Practical Guide to Attorney Trust Accounts and Recordkeeping" available from The Lawyers' Fund for Client Protection.

What are a lawyer's ethical obligations regarding client funds?

A lawyer in possession of client funds and property is a fiduciary.¹ The lawyer must safeguard and segregate those assets. This obligation applies, as well, to money and property of non-clients coming into a lawyer's possession in the practice of law. They must be preserved, and cannot be commingled with the lawyer's personal and business assets.

1. Rules of Professional Conduct [22 N.Y.C.R.R. 1200.0] rule 1.15.

A lawyer is also obligated to notify a client when client funds are received by the lawyer; provide appropriate accountings; and disburse promptly all funds and property to which the client is entitled.

Non-cash property belonging to a client should be clearly identified as trust property and secured in the lawyer's safe or safe deposit box.

What is an attorney trust account?

It is a "special" bank account, usually a checking or savings account, for clients' money and other escrow funds that a lawyer holds in the practice of law. A lawyer may have one account, or several, depending on need.

Attorney trust accounts must be maintained in banks and trust companies located within New York state. Out-of-state banks may be used only with the prior and specific written approval of the client or other beneficial owner of the funds.

In all cases, lawyers can only use banks that have agreed to furnish dishonored check notices to the Lawyers' Fund for Client Protection pursuant to statewide court rules. (22 NYCRR Part 1200, Rule 1.15 (b) (1). The Dishonored Check Notice Reporting Rules are reported at 22 NYCRR Part 1300.)

An attorney trust account should never be overdrawn and should not carry overdraft protection.

Withdrawals from an attorney trust account must be made to named payees, and not to cash. And only members of the New York bar can be signatories on an attorney trust account.

The trust account must be specially designated with one of three required titles: Attorney Trust Account, Attorney Special Account, or Attorney Escrow Account. These required titles may be further qualified with other descriptive language. For example, an attorney can add "IOLA Account" or "Closing Account" below one of the required titles.

These accounts must be maintained separately from the lawyer's personal and business accounts, as well as from other fiduciary accounts, like those maintained for estates, guardianships, and trusts.

What is the purpose of an attorney trust account?

To safeguard clients' funds from loss, and avoid the appearance of impropriety.

The attorney trust account is a depository for all funds belonging to clients and other persons in the practice of law.

Funds belonging partly to a client and partly to a lawyer, presently or potentially, must also be deposited in the trust account. The lawyer's portion may be withdrawn when due, unless the client disputes the withdrawal. In that event, the funds must remain intact until the dispute with the client is resolved.

What about bank service charges?

A lawyer may deposit funds into the attorney trust account which are necessary to maintain the account, and to pay bank service charges.

Should interest-bearing accounts be used?

It depends on the size of the clients' funds, how long the funds will be held, interest rates, bank fees, and administrative costs, among other things. See the discussion about IOLA accounts on following page.

What about large amounts that will be held a long time?

Where the amount and expected holding period of a client's funds make it obvious that the interest that will be earned will exceed the administrative costs (both bank fees and reasonable costs incurred by the lawyer in the connection with administering the account), a lawyer may have a fiduciary obligation to invest.¹ In that circumstance, the lawyer should consult with the client, and invest the funds in the manner directed by the client. Preferably, the client should execute a writing that will make it clear exactly what fees and costs will be charged against the interest earned.

If client funds are invested, lawyers may use a separate interest-bearing account for each client, or pooled accounts in banks which have the capability to credit interest to individual client sub-accounts. Lawyers may also allocate interest on an attorney trust account to individual clients and other beneficial owners, and may charge the beneficial owners the reasonable cost of doing so, but neither legal nor administrative fees may be measured by the interest earned on a client's money.² Again, it would be prudent to have the arrangements set forth in writing.

A lawyer should be mindful of income tax reporting requirements, and consider using the client's social security or federal tax identification number on the account.

1. See NYSBA, Comm. on Prof. Ethics, ops. 554 (1983), 575 (1986); Assoc. Bar, NYC, Comm. on Prof. & Jud. Ethics, op. 1986-5 (1986).

2. NYSBA op. 532 (1981).

What about small deposits, or ones held briefly?

Client funds that cannot earn net interest for the client are called “qualifying funds” and ones that can earn net interest for the client are called “non-qualifying funds.” By statute and regulation, lawyers enjoy a safe harbor for the determination of whether client funds are “qualifying.” Client funds are “qualifying” if, in the sole discretion and judgment of the attorney or law firm, they are too small in amount, or are reasonably expected to be held for too short a time, to earn income for a client or third person in excess of the costs incurred to secure such income.³ Lawyers may not be held liable in damages or to answer for a charge of professional misconduct if they deposit money into an IOLA account in their good faith judgment that they are qualified funds.⁴

What is IOLA?

IOLA is the acronym for The New York Interest On Lawyer Account Fund. IOLA uses interest on attorney trust accounts (which interest could not otherwise be available to clients), to fund non-profit agencies in New York which provide civil legal services to low-income persons and programs to improve the administration of justice.

Attorney participation in IOLA is mandatory in two senses. First, every lawyer who handles client funds must maintain an IOLA account. Second, the lawyer must use an IOLA account for qualifying funds, unless he or she uses an account which will generate, compute and pay net interest to the client.⁵ A New York lawyer may not place qualifying funds in a non-IOLA account that does not pay net interest to the client.

A lawyer’s participation in IOLA has no income tax consequences for the lawyer, or for the client. In addition, IOLA assumes the cost of basic bank service charges and fees on the account, but not charges or fees for special banking services.

IOLA’s offices are located at: 11 East 44th Street, Suite 1406, NY, NY, 10017, telephone: (646) 865-1541, or (800) 222-IOLA. Web site: www.iola.org

Can lawyers retain interest on attorney trust accounts?

No. A lawyer, as a fiduciary, cannot profit on the administration of an attorney trust account. All interest earned on the account belongs to the law clients and persons whose money generated the interest.⁶

Are there special rules for down payments?

Yes. A buyer’s down payment, entrusted with a seller’s attorney pending a closing, generally remains the property of the buyer until title passes. The lawyer/escrow agent serves as a fiduciary, and must safeguard and segregate the buyer’s down payment in a special bank account.

The purchase contract should make provision for depositing the down payment in a bank account, the disposition of interest, and other escrow responsibilities.

A 1991 statute⁷ codifies the fiduciary obligations of lawyers and realtors who accept down payments in residential purchases and sales, including condominium units and cooperative apartments.

The statute requires that the purchase contract identify the escrow agent and the bank where the down payment will be deposited pending the closing. It also permits a lawyer to use an IOLA account in appropriate transactions.

Are other bank accounts needed?

Yes. A practitioner needs a professional business account as a depository for legal fees, and to pay operating expenses. A typical designation is *Attorney Office Account*. Lawyers also need special accounts when they serve as fiduciaries for estates, trusts, guardianships and the like.

Where are advance legal fees deposited?

This depends upon the lawyer’s fee agreement with the client. If the advance fee becomes the lawyer’s property when it is paid by the client, the fee should be deposited in the firm’s business account, and not in the attorney trust account.

If, on the other hand, the advance fee is to remain client property until it is earned by the lawyer, it should be deposited in the attorney trust account, to be withdrawn by the lawyer as it is earned.⁸

3. 21 N.Y.C.R.R. § 7000.2(e).

4. Judiciary Law § 497(5); 21 N.Y.C.R.R. § 7000.8(b).

5. Judiciary Law § 497(4); 21 N.Y.C.R.R. § 7000.8(a).

6. NYSBA, ops. 532 (1981), 582 (1987); NYC, Op. 81-86 (1981).

7. General Business Law, Article 36-C, §§ 778, 778-a.

8. Rules of Professional Conduct rule 1.16(e) (22 N.Y.C.R.R. 1200.0).

In either event, a lawyer has a professional obligation to refund unearned legal fees to a client whenever the lawyer completes or withdraws from a representation, or the lawyer is discharged by the client.⁹

And advances from clients for court fees and expenses?

This also depends upon the lawyer's fee agreement with the client. If the money advanced by the client is to remain client property until it is used for specific litigation expenses, it should be segregated and preserved in the attorney trust account, or a similar special account.

How are unclaimed client funds handled?

If a lawyer cannot locate a client or another person who is owed funds from the attorney trust account, the lawyer should seek a judicial order to fix the lawyer's fees and disbursements, and to deposit the client's share with the Lawyers' Fund for Client Protection.¹⁰

What happens when a sole signatory dies?

The Supreme Court has authority to appoint a successor signatory for the attorney trust account. The procedures are set forth in court rules adopted in 1994.¹¹

What accounting books are required?

No specific accounting system is mandated by court rule, but a basic trust accounting system for a law firm consists of a trust receipts journal, a trust disbursements journal, and a trust ledger book containing the individual ledger accounts for recording each financial transaction affecting that client's funds.

At a minimum, each client's ledger account should reflect the date, source, and a description of each item of deposit, as well as the date, payee, and purpose of each withdrawal.

Many practitioners find that the so-called "one-write" or "pegboard" manual systems provide an efficient and economical method of trust accounting.¹² There are also approved computer software packages for law office trust accounting.¹³

Whether it be an attorney trust account or the lawyer's operating account, each should be maintained daily and accurately to avoid error. All source documents like duplicate deposit slips, bank statements, cancelled checks, checkbooks and checkstubs must be preserved for seven years.

Internal office controls are essential. It is good business practice to prepare a monthly reconciliation of the balances in the trust ledger book, the lawyer's trust receipts and disbursements journals, the account checkbook, and bank statements.

What bookkeeping records must be maintained?

Every lawyer and law firm must preserve, for seven years after the events they record, copies of all:

- books of account affecting all attorney trust and office operating accounts;
- client retainer and fee agreements;
- checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips;
- statements to clients showing disbursements of their funds;
- bills and statements rendered to clients;
- records showing payments to other lawyers or non-employees for services rendered; and
- retainer and closing statements filed with the Office of Court Administration.

In the event that a law firm dissolves, appropriate arrangements must be made for the maintenance of the firm's records, either by a former partner or the successor law firm. In the absence of an agreement, the local Appellate Division has the authority to impose an arrangement.¹⁴

9. Rules of Professional Conduct rule 1.15(f) (22 N.Y.C.R.R. 1200.0).

10. Rules of Professional Conduct rule 1.15(g) (22 N.Y.C.R.R. 1200.0).

11. Rule 1.15(g); 22 NYCRR § 1200.15(g).

12. Vendors include Eastern Systems, Inc., Safeguard Business Systems, Inc., and McBee One-Write Bookkeeping Systems.

13. Contact the NYSBA Law Practice Management Department, One Elk Street, Albany, NY 12207, (800) 699-5636, or the ABA's Legal Technology Resource Center, 321 N. Clark St., Chicago, Ill. 60654, (312) 988-5465 for guidance on resources in these areas.

14. Rules of Professional Conduct rule 1.15(h) (22 N.Y.C.R.R. 1200.0).

How are these rules enforced?

All records required to be maintained by the rules of the Appellate Division Departments may be subpoenaed in a disciplinary proceeding under section 90 of the Judiciary Law.

Lawyers are also required to certify their familiarity and compliance with Rule 1.15 as part of the biennial registration form filed with the Office of Court Administration.

What are the consequences of noncompliance?

A lawyer who does not maintain the accounts and records required of Rule 1.15 is subject to disciplinary action under section 90 of the Judiciary Law.

What losses are covered by the Lawyer's Fund?

The New York Lawyers' Fund for Client Protection — previously the Clients' Security Fund — is financed by a \$60 share of each lawyer's \$350 biennial registration fee. The fund receives no revenues from the IOLA program or from state tax revenues.

The fund is administered pro bono publico by a board of trustees appointed by the state Court of Appeals.¹⁵ Since the fund's inception in 1982, the trustees have restored more than \$91 million to victims of dishonest conduct in the practice of law.

The fund is authorized to reimburse law clients for money or property that is misappropriated by a member of the bar in the practice of law. Awards are generally made after a lawyer's disbarment and where it appears that the lawyer cannot make restitution.

To qualify for reimbursement, the loss must involve the misuse of law clients' money or property in the practice of law. The trustees cannot settle fee disputes, or compensate clients for malpractice or neglect.

Typical losses reimbursed include the theft of estate and trust assets; down payments and the proceeds in real property transactions; debt collection proceeds; personal injury settlements; and money embezzled from clients in investment transactions.

The fund's offices are located at 119 Washington Avenue, Albany, New York 12210. Telephone (518) 434-1935 or (800) 452-3863. Web site: www.nylawfund.org

Another valuable resource available from the New York State Bar Association's CLE Department is the book entitled *Attorney Escrow Accounts— Rules, Regulations and Related Topics* (2010, Third Edition), (800) 582-2452, www.nysba.org/CLE.

* * *

4. Advertising and Solicitation

Attorneys should be aware of and consult the provisions of the New York Rules of Professional Conduct that pertain to advertising, publicity, professional notices, letterheads, offices, signs, and solicitation, and the relevant provisions of article 15 of the Judiciary Law. (See, also, General Business Law § 337 [advertising to procure divorces]; and Not-for-Profit Corporation Law § 301 [5] [use of the word "lawyer" in corporate name].)

5. Compensation of Attorneys

The most basic statutory statement of attorney compensation is found at Judiciary Law § 474:

"The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restricted by law." Attorneys should also be aware of and consult the remainder of Judiciary Law § 474 and other relevant provisions of article 15 of the Judiciary Law, General Obligations Law § 5-701(10), and relevant provisions of the New York Rules of Professional Conduct.

Reasonable contingency fees for attorneys in cases involving a personal injury or wrongful death, other than medical, dental or podiatric malpractice, are found in: 22 NYCRR _603.7, 22 NYCRR _691.20(e), 22 NYCRR _806.13 and _1022.31. Judiciary Law § 474-a details the fee schedule which must be used for contingent fee cases in claims for medical, dental or podiatric malpractice cases.

6. Mandatory Letter of Engagement

Attorneys should be aware that as of March 4, 2002, they must provide a letter of engagement or written retainer agreement where the fee to be charged is \$3,000 or more. (22 N.Y.C.R.R. pt. 1215). These rules do not apply to domestic relations matters covered by 22 N.Y.C.R.R. pt. 1400 or to cases "where the attorney's services are of the same general kind as previously rendered to and paid for by the client." The letter of engagement must explain the scope of the representation, the fees and expenses to be charged and provide notice of the client's right to arbitration. [22 N.Y.C.R.R. § 1215.1(b).]

15. Judiciary Law § 468-b; State Finance Law § 97-t.

Attorneys employed in a contingent fee matter must, promptly after employment, "provide the client with a writing stating the method by which the fee is to be determined," including percentages and how expenses are to be deducted. Upon conclusion of the matter, the attorney is to provide the client with a further written statement setting forth the recovery, the remittance and method of determination. [Rules of Professional Conduct rule 1.5(c); see 22 N.Y.C.R.R. §§ 603.7(e), 691.20(e), 806.13, 1022.31.]* For attorneys practicing in the 1st and 2nd Departments, retainer and closing statements in contingency fee matters must also be filed with OCA.

A sample letter of engagement is available on NYSBA's Web site: go to www.nysba.org and point to For Attorneys.

7. Attorney-Client Fee Dispute Resolution Program

Many bar associations in New York have long provided for arbitration and mediation of attorney-client fee disputes. Part 137 of the Rules of the Chief Administrator establishes a statewide Attorney-Client Fee Dispute Resolution Program which is administered by bar associations and district administrative judges' offices throughout the state. Local fee dispute resolution programs are approved by the Board of Governors and the appropriate Presiding Justice of the Appellate Division. Arbitration under Part 137 is mandatory for an attorney if requested by a client. Awards are final and binding unless de novo review is sought as provided by the rule. It applies where representation commenced on or after January 1, 2002, to attorneys who undertake to represent a client in most civil matters. Although the rules provide for arbitration as a primary means of resolving fee disputes, mediation is also available. For more information: Web: www.nycourts.gov/feedispute; Email: feedispute@nycourts.gov; Toll-free: (877) 333-7137 or Mail: Board of Governors, Office of Court Administration, 25 Beaver Street, Room 885, New York, NY 10004.

8. Judiciary Law § 470

Attorneys practicing in New York state should be aware of Judiciary Law § 470, which states:

A person, regularly admitted to practice as an attorney and counselor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counselor, although he resides in an adjoining state.

For further explanation of this statute, attorneys should read the decided cases which have interpreted it (see, also, Brennan, "Repeal Judiciary Law § 470," *NYSBA Journal*, January 1990).

9. Standards of Civility

Preamble

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules to be enforced by sanction or disciplinary action, nor are they intended to supplement or modify the Rules Governing Judicial Conduct, the New York Rules of Professional Conduct and its Disciplinary Rules, or any other applicable rule or requirement governing conduct. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course. The standards are divided into four parts: lawyers' duties to the court and court personnel; judges' duties to lawyers, parties and witnesses; and court personnel duties to lawyers and litigants.

As lawyers, judges and court employees, we are all essential participants in the judicial process. That process cannot work effectively to serve the public unless we first treat each other with courtesy, respect and civility.

Lawyers' Duties to Other Lawyers, Litigants and Witnesses

1. Lawyers should be courteous and civil in all professional dealings with other persons.
 - A. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
 - B. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.
 - C. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.
2. When consistent with their clients' interest, lawyers should cooperate with opposing counsel in an effort to avoid litigation that has already commenced.

* Paragraph largely reprinted from page 22, *Pitfalls of Practice* (2d ed. 2002) published by the New York State Bar Association.

- A. Lawyers should avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with other counsel whenever it is practicable to do so.
 - B. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.
3. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of their client's interests.
 - A. In the absence of a court order, a lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.
 - B. Upon request coupled with the simple representation by counsel that more time is required, the first request for an extension to respond to pleading ordinarily should be granted as a matter of courtesy.
 - C. A lawyer should not attach unfair or extraneous conditions to extensions of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize, and may request, but should not unreasonably insist on, reciprocal scheduling concessions.
 - D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.
 - E. A lawyer should notify other counsel and, if appropriate, the court or other persons at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed.
 4. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.
 5. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.
 - A. Papers should not be served in a manner designed to take advantage of an opponent's known absence from the office.
 - B. Papers should not be served at a time or in a manner designed to inconvenience an adversary.
 - C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.
 6. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.
 - A. A lawyer should avoid discovery that is not necessary to obtain facts or perpetuate testimony or that is designed to place an undue burden or expense on a party.
 - B. A lawyer should respond to discovery requests reasonably and not strain to interpret the request so as to avoid disclosure of relevant and non-privileged information.
 7. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.
 - A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
 - B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.
 - C. A lawyer should not obstruct questioning during a deposition or object to deposition questions unless necessary.
 - D. Lawyers should ask only those questions they reasonably believe are necessary for the prosecution or defense of an action. Lawyers should refrain from asking repetitive or argumentative questions and from making self-serving statements.
 8. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.
 9. Lawyers should not mislead other persons involved in the litigation process.

- A. A lawyer should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
- B. A lawyer should not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.
- C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

10. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public. Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

Lawyers' Duties to the Court and Court Personnel

- 1. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.
 - A. Lawyers should always speak and write civilly and respectfully in all communications with the court and court personnel.
 - B. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
 - C. Lawyers should not engage in conduct intended primarily to harass or to humiliate witnesses.
 - D. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.
- 2. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

Judges' Duties to Lawyers, Parties and Witnesses

- 1. A judge should be patient, courteous and civil to lawyers, parties and witnesses.
 - A. A judge should maintain control over the proceedings and insure that they are conducted in a civil manner.
 - B. Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.
 - C. Judges should, to the extent consistent with the efficient conduct of litigation and other demands on the court, be considerate of the schedules of lawyers, parties and witnesses when scheduling hearings, meetings or conferences.
 - D. Judges should be punctual in convening all trials, hearings, meetings and conferences; if delayed, they should notify counsel when possible.
 - E. Judges should make all reasonable efforts to decide promptly all matters presented to them for decision.
 - F. Judges should use their best effort to insure that court personnel under their direction act civilly toward lawyers, parties and witnesses.

Duties of Court Personnel to the Court, Lawyers and Litigants

Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the courts.

- A. Court employees should respond promptly and helpfully to requests for assistance or information.
- B. Court employees should respect the judge's directions concerning the procedures and atmosphere that the judge wishes to maintain in his or her courtroom.

10. Assistance Available

If you, or a colleague in the legal community, suffer from depression or substance abuse (alcohol or drugs) to a degree significant enough to adversely affect your work and those about you, there is help available. For the New York State Bar Association's lawyer assistance program, call (800) 255-0569; for the lawyer assistance program of the Association of the Bar of the City of New York, call (212) 302-5787. Their advice is free and confidential. Several county bar associations offer similar services.

B. Unauthorized Practice

At present, there is no single place to turn in New York state for a definition of the practice of law and what may constitute the unauthorized practice of law in New York state. However, attorneys are referred to the provisions of article 15 of the Judiciary Law (especially §§ 478 and 484). Investigation and prosecution of allegations of unauthorized practice are handled by the Attorney General's office (Judiciary Law §§ 476-a to 476-c). Unauthorized practice may subject the violator to misdemeanor prosecution (Judiciary Law § 485) or contempt of court (Judiciary Law § 750[b]). (See, also, Judiciary Law §§ 16, 250).

C. Partnerships and Professional Corporations

In addition to the "solo" practice of law, attorneys form partnerships and professional corporations to engage in the practice of law. In New York state, attorneys forming such entities should consult, at least, New York's Partnership Law (New York has adopted the Uniform Partnership Act) and Article 15 (Professional Service Corporations) of the Business Corporation Law. Contact information: Department of State Division of Corporations, State Records and Uniform Commercial Code, 99 Washington Avenue, 6th Floor, Albany, NY 12231, www.dos.state.ny.us/corps/mission.html.

D. Judiciary Law Article 15

Because of the frequency of references to Judiciary Law article 15 in this pamphlet, its sections are listed below (outline from Book 29, Judiciary Law, McKinney's Consolidated Laws of New York, Annotated):

- 460. Examination and admission of attorneys.
- 460-a. Disclosure with respect to loans made or guaranteed by the New York state higher education services corporation.
- 460-b Applications for special arrangements.
- 461. Compensation of state board of law examiners; appointment and compensation of employees.
- 462. Annual account by state board of law examiners.
- 463. Times and places of examinations.
- 464. Certification by state board of successful candidates.
- 465. Fee for examinations and for credential review for admission on motion; disposition; refunds; funds.
- 466. Attorney's oath of office.
- 467. Registration of attorneys.
- 468. Official registration of attorneys to be kept by the chief administrator of the courts.
- 468-a. Biennial registration of attorneys.
- 468-b Clients' Security Fund of the State of New York.
- 469. Continuance where attorney is member of legislature.
- [469-a. Renumbered.]
- 470. Attorneys having offices in this state may reside in adjoining state.
- 471. Attorney who is judge's partner or clerk prohibited from practicing before him or in his court.
- 472. Attorney who is surrogate's parent or child prohibited from practicing before him.
- 473. Constables, coroners, criers and attendants prohibited from practicing during term of office.
- 474. Compensation of attorney or counsellor.
- 474-a. Contingent fees for attorneys in claims or actions for medical, dental, or pediatric malpractice.
- 474-b. Attorney retainer statements.
- 475. Attorney's lien in action, special or other proceeding.
- 475-a. [Notice of attorney's lien prior to commencement of action; service and contents.]
- 476. Action against attorney for lending his name in suits and against person using name.
- 476-a. Action for unlawful practice of the law.
- 476-b. Injunction to restrain defendant from unlawful practice of the law.

- 476-c. Investigation by the attorney-general.
- 477. Settlement of actions for personal injury.
- 478. Practicing or appearing as attorney-at-law without being admitted and registered.
- 479. Soliciting business on behalf of an attorney.
- 480. Entering hospital to negotiate settlement or obtain release or statement.
- 481. Aiding, assisting or abetting the solicitation of persons or the procurement of a retainer for or on behalf of an attorney.
- 482. Employment by attorney of person to aid, assist or abet in the solicitation of business or the procurement through solicitation of a retainer to perform legal services.
- 483. Signs advertising services as attorney at law.
- 484. None but attorneys to practice in the state.
- 485. Violation of certain preceding sections a misdemeanor.
- 486. Practice of law by attorney who has been disbarred, suspended, or convicted of a felony.
- 486-a. Conviction for felony of person who is an attorney and counselor at law; notice thereof to be given by clerk to appropriate appellate division of the supreme court.
- 487. Misconduct by attorneys.
- 488. Buying demands on which to bring an action.
- 489. Purchase of claims by corporations or collection agencies.
- 490. Limitation.
- 491. Sharing of compensation by attorneys prohibited.
- 492. Use of attorney's name by another.
- 493. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.
- 494. Attorneys may defend themselves.
- 495. Corporations and voluntary associations not to practice law.
- 496. Statement to be filed by organizations offering legal services.
- 497. Attorneys fiduciary funds; interest-bearing accounts.
- 498. Professional referrals.
- 499. Lawyer assistance committees.

V. Some Useful Addresses

The clerk's offices of the Appellate Division departments can provide addresses and telephone numbers and other information about attorney admissions, Committees on Character and Fitness, Committees on Professional Standards (disciplinary committees), the Law Guardian Programs and Mental Hygiene Legal Service Programs.

Office of the Clerk

Appellate Division, **First Department**

27 Madison Avenue
New York, NY 10010
(212) 340-0400

and

Appellate Division, **Second Department**

45 Monroe Place
Brooklyn, NY 11201
(718) 875-1300

and

Appellate Division, **Third Department**

Robert Abrams Building for Law and Justice
Capitol Station, Box 7288
Albany, NY 12224-0288
(518) 471-4777

also

Appellate Division, **Fourth Department**

50 East Avenue
Rochester, NY 14604
(585) 530-3100

Office of Court Administration

25 Beaver Street
New York, NY 10004
(212) 428-2700
www.nycourts.gov
questions@nycourts.gov

Attorney Registration Unit

Office of Court Administration
Church Street Station, Box 2806
New York, NY 10008
(212) 428-2800
www.nycourts.gov
attyreg@nycourts.gov

State Board of Law Examiners

Corporate Plaza, Bldg 3
245 Washington Ave. Ext.
Albany, NY 12203-5195
(518) 453-5990
www.nybarexam.org

Court of Appeals

Court of Appeals Hall
20 Eagle Street
Albany, NY 12207-1095
(518) 455-7700

Court of Claims

Justice Building
Capitol Station, Box 7344
Albany, NY 12224
www.nyscourtofclaims.state.ny.us

New York State Law Reporting Bureau

1 Commerce Plaza, Suite 1750
Albany, NY 12210
(518) 474-8211
www.nycourts.gov/reporter
reporter@courts.state.ny.us

New York State Bar Association

One Elk Street
Albany, NY 12207
(518) 463-3200
www.nysba.org

American Bar Association

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5000
www.abanet.org

Interest on Lawyer Account (IOLA)

Fund of the State of New York
11 East 44th Street, Suite 1406
New York, NY 10017
(646) 865-1541
iola@iola.org
www.iola.org

Lawyers' Fund for Client Protection

119 Washington Avenue
Albany, NY 12210
(518) 434-1935
(800) 442-3863
info@nylawfund.org
www.nylawfund.org

Attorney-Client Fee Dispute Resolution Program

Board of Governors
Office of Court Administration
25 Beaver Street, Room 885
New York, NY 10004
(877) 333.7137
www.nycourts.gov/feedispute

Commission on Judicial Conduct

61 Broadway
New York, NY 10006
(646) 386.4800
www.scjc.state.ny.us
and
Corning Tower, Suite 2301
Empire State Plaza
Albany, NY 12223
(518) 453-4600
also
400 Andrews Street
Rochester, NY 14604
(585) 784-4141

New York State Library

Cultural Education Center
310 Madison Ave., Empire State Plaza
Albany, NY 12230
(518) 474-5355
www.nysed.gov
refserv@mail.nysed.gov

The Governor/Executive Department

Executive Chamber
State Capitol
Albany, NY 12224
(518) 474-8390
www.state.ny.us/governor

Attorney General

Office of the Attorney General
State Capitol
Albany, NY 12224-0341
(518) 474-7330
(800) 788-9898
www.oag.state.ny.us
and
Office of the Attorney General
120 Broadway
New York, NY 10271-0332
(212) 416-8000

New York State Law Schools

Albany Law School

80 New Scotland Avenue
Albany, NY 12208
518-445-2311
www.albanylaw.edu

Brooklyn Law School

250 Joralemon Street
Brooklyn, NY 11201
718-625-2200
www.brooklaw.edu

Cornell University Law School

Myron Taylor Hall
Ithaca, NY 14853-4901
607-255-5141
www.lawschool.cornell.edu

Fordham University School of Law

140 West 62nd Street
New York, NY 10023
212-636-6000
www.law.fordham.edu

New York Law School

185 West Broadway
New York, NY 10013-2921
212-431-2100
www.nyls.edu

Pace University School of Law

78 North Broadway
White Plains, NY 10603
914-422-4205
www.law.pace.edu

University at Buffalo Law School

John Lord O'Brien Hall
Buffalo, NY 14260-1100
716-645-2052
www.law.buffalo.edu

Touro College

Jacob D. Fuchsberg Law Center
225 Eastview Drive
Central Islip, NY 11722
631-761-7000
www.tourolaw.edu

Benjamin N. Cardozo School of Law

55 Fifth Avenue
New York, NY 10003
212-790-0200
www.cardozo.yu.edu

Columbia Law School

435 West 116th Street
New York, NY 10027
212-854-2640
www.law.columbia.edu

CUNY School of Law

65-21 Main Street
Flushing, NY 11367
718-340-4200
www.law.cuny.edu

Hofstra School of Law

121 Hofstra University
Hempstead, NY 11549
516-463-5916
www.law.hofstra.edu

New York University School of Law

40 Washington Square South
New York, NY 10012
212-998-6060
www.law.nyu.edu

St. John's University School of Law

8000 Utopia Parkway
Queens, NY 11439
718-990-2000
www.law.stjohns.edu

Syracuse University College of Law

E. I. White Hall
Syracuse, NY 13244
315-443-2524
www.law.syr.edu

VI. Suggested Reading and Reference Works

A. Periodicals

The National Law Journal (weekly): subscription inquiries call toll free (877) 256-2472, www.nlj.com.

NYSBA Journal (nine times per year): New York State Bar Association, One Elk Street, Albany, NY 12207, (518) 463-3200, www.nysba.org.

New York State Law Digest (monthly): New York State Bar Association, One Elk Street, Albany, NY 12207, (518) 463-3200, www.nysba.org.

New York Law Journal (daily, Monday through Friday, except on court holidays): (877) 256-2472, www.law.com/jsp/nylj.

B. Attorney Ethics

ABA/BNA Lawyers' Manual on Professional Conduct.

New York State Bar Association, The Code of Professional Responsibility; Ethics Opinions

Oceana Publications, Opinions, Committees on Professional Ethics, New York State Bar Association, Association of the Bar of the City of New York, New York County Lawyers Association.

C. History

Bergan, Francis (former Judge, Court of Appeals), *New York State Court of Appeals: 1847-1932*, Columbia University Press (1985).

Chester, A., *Legal and Judicial History of New York*, National Americana Society, New York (1911).

Henke, Jack, *Lawyers and the Law in New York: A Short History*, Charles Evans Hughes Press (a division of The New York Bar Foundation), Albany, New York (1979).

Sobie, Merrill, *The Creation of Juvenile Justice: A History of New York's Children's Laws*, The New York Bar Foundation, Albany, New York (1987).

"*Duely & Constantly Kept*," A History of the New York Supreme Court, 1691-1847, and An Inventory of its Records (Albany, Utica and Geneva Offices), 1797-1847, A Joint Publication of the New York State Court of Appeals and the New York State Archives and Records Administration (1991).

Centennial brochures produced by each Appellate Division Department to mark 1996 centennial and brochure by Court of Appeals to mark 150th anniversary in 1997.

D. References

Gibson, Ellen M., *New York Legal Research Guide*, William S. Hein & Co., Inc., Buffalo, New York (1988).

New York Lawyers' Diary and Manual: Bar Directory of the State of New York (issued annually), P.O. Box 50, Newark, New Jersey 07101 (800-444-4041, www.lawdiary.com, mail@lawdiary.com) (names, addresses, and telephone numbers of courts and offices, government offices, judges, attorneys, bar associations, etc.)

E. Statutes, Caselaw and Regulations

McKinney's Consolidated Laws of New York (Annotated), West Publishing Company, (with practice commentaries).

Official Compilation of Codes, Rules and Regulations (NYCRR), published by Lenz and Riecker, Inc., One Columbia Place, Albany, New York 12207.

Official Reports, New York Reports (Court of Appeals), Appellate Division Reports, Miscellaneous Reports, by State Reporter, published by West Group, 50 Broad Street East, Rochester, New York 14694.



**NEW YORK STATE BAR ASSOCIATION
MEMBERSHIP SERVICES**

One Elk Street, Albany, NY 12207
Phone 518.487.5577/800.582.2452 Fax 518.487.5579
E-mail membership@nysba.org
www.nysba.org
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