

Commercial and Federal Litigation Section Newsletter

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

A Message from the Chair

As I begin service as Chair of the Commercial and Federal Litigation Section, let me start where we left off. At our Spring Meeting we recognized the work of those who served as chairs before me. Our Section has evolved in its short history since its founding, under the auspices of Bob Haig and others, into a robust Section of over 2,000 members.



Stephen P. Younger

All of our prior chairs have contributed to the success of our organization. Many of them have actively used the role our Section plays in the larger Association, as members of the House of Delegates and the Association’s Executive Committee. One of our early chairs, Mark Alcott, is now President-elect of the Association. All of their work has helped build the strength of our Section so that we now have enough members to be represented by three delegates in the House, a position which we are using to advocate for the needs and interests of all our members.

Most importantly, I would like to recognize the work of our outgoing officers, particularly Lauren Wachtler, who tirelessly strove to include as many members as possible in the day-to-day work of our Section. All of this year’s officers—Lesley Rosenthal, Carrie Cohen, Vincent Syracuse, Michael Sant’Ambrogio, and I—are committed to continuing to build our Section and to involving as many members in our activities as we possibly can. Please contact any of us if you would like to become more involved in a Committee or other Section work.

As a result of the anticipated debate over Supreme Court nominations, I would like to focus all of us on the importance of an independent judiciary to our work as lawyers. There is no principle more critical to a functioning democracy than the rule of law. And the rule of law cannot operate effectively without an independent judiciary. This was brought into perspective this past year by the Terri Schiavo litigation. No matter what political or cultural orientation we each may have, we must all understand that everyone has the right to petition our legislative bodies to enact laws. However, once

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those laws are enacted it is the sworn obligation of our judiciary to determine whether those laws pass constitutional muster. Once our judges make those decisions, we as lawyers should support the judiciary's obligation to decide cases as they deem appropriate.

As lawyers, we should stand up for the judges who labor every day to uphold the rule of law in our country. Whether one agrees or disagrees with particular judicial decisions, it is the respect for our judiciary that has helped make our republic so great. Without this respect, the nation cannot effectively operate under the rule of law. It is thus increasingly important for each of us as lawyers to speak out on behalf of the judiciary when attacks are made in the court of public opinion.

At our Spring Meeting, this point was emphasized by outgoing State Bar President Kenneth G. Standard. Commenting on the attacks made on the judiciary in the wake of the Schiavo litigation, Ken pointed out that our judges are hamstrung in their ability to defend themselves, as their opinions must speak for themselves. He thus called on all lawyers to join him and "stand up for our judiciary, stand up for our government, and stand up for America."

Our keynote speaker at the Spring Meeting, Senator Bob Kerrey, came back to this point in his remarks. He noted that it is unhealthy for our democracy if judges are driven to make decisions by public opinion—as opposed to the ideals of justice. As Senator Kerrey explained, when judges make unpopular decisions, as their roles often require them to do, we should "explain to people that judges are not supposed to decide cases by taking a public opinion poll." He said that he "fear[s]

for our republic if we become so whipped around by public opinion that we are unable to have a functioning democracy."

In his first message to the Association, incoming President A. Vincent Buzard came back to this theme, saying that as lawyers it is our duty "to continually work to increase public comprehension of how vital the legal system is in society and daily life. . . ." He pointed out that "[w]hen the legal system and the profession are attacked"—such as with "charges of judicial activism"—then we as lawyers must be at the forefront "to educate and to debunk [such] myths. . . ."

At our Section's first Executive Committee meeting under my leadership, we voted to endorse a proposed resolution of the Association opposing proposed Congressional resolutions H. Res. 97 and S. Res. 92, which would have continued the public criticisms of the judiciary this past year. These resolutions state their sponsors' views that judicial determinations about U.S. laws ought not to draw guidance from foreign law. Such resolutions would have had the potential to further chill the independence of our judiciary.

As Section Chair, I am committed to carrying this message across the state. Our Committee on the Federal Judiciary, chaired by Jay Safer and Carol Heckman, will continue to monitor these issues. I ask each of you to do what you can to clarify the important role of our judges in our system of democracy whenever you see the judiciary coming under public attack.

I look forward to a successful year together.

Stephen P. Younger



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WWW.NYSBA.ORG/COMFED**

A Recap of CFL's Busy and Productive Year

By Lauren J. Wachtler

The Commercial and Federal Litigation Section has long been recognized for the important contributions it has made and for the many opportunities for its members to become involved in drafting reports that often impact legislation and CLE programs. There are frequent opportunities for members to write articles for our newsletter and the *NYLitigator*, both published quarterly.



Growing Membership

This has been a particularly exciting year for the Section. Our membership has increased to more than 2,300 practicing attorneys and jurists statewide and has been touted as one of the Association's fastest-growing sections.

New Committees

With the addition of two new committees, our Section has 29 active committees. The new Electronic Discovery Committee is chaired by Adam Cohen, whose treatise, "Electronic Discovery: Law and Practice," is the leading comprehensive analysis of case law involving e-discovery. This committee, in conjunction with our Federal Practice Committee, prepared a joint report on the proposed new amendments to the federal rules on electronic discovery, which was presented to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in Washington, D.C., this past January.

We also formed a Bankruptcy Litigation Committee to address issues that commercial litigators who don't routinely practice in bankruptcy courts may encounter.

Statewide Guidelines

This year we have been particularly active with the Commercial Divisions statewide. Section members on the Commercial Division Advisory Committees formed by Chief Administrative Judge Jonathan Lippman and New York County Chief Administrative Judge Jacqueline W. Silberman have been working with Leonard B. Austin, Commercial Division, Nassau County, and other justices to formulate uniform rules and guidelines for Commercial Divisions statewide. Our Section's contributions to the drafting of rules and guidelines recently received recognition in the *New York Law Journal*.

In November and May, we presented seminars to the Commercial Division justices on topics that included electronic discovery, electronic evidence, the impact of the Class Action Fairness Act, trade secrets, and jury instructions for commercial cases. The panels were all comprised of Section members, and all the seminars were attended by

virtually all of the Commercial Division judges and their law secretaries statewide. Section members had an opportunity to interact with the Commercial Division justices and share their thoughts on recent developments in the law.

Achieving Results

One of our significant achievements regarding the Commercial Division this year resulted from a letter drafted with the assistance of Section member David Rosenberg, in which we expressed concern to Judge Lippman about the inordinate amount of time between motion submission and determination in the Commercial Division in New York County. Judge Lippman recently advised us that as a result of our concerns, two new clerkship positions have been created for the Commercial Division in New York County.

Women-Focused CLE

On June 2, 2005, our Section presented in New York a CLE program titled "Women on the Move—Successful Women in the Know," chaired by Bernice K. Leber, the former Section chair and vice president of the First Judicial District of the state bar, and me. The program focused on career paths available to women attorneys entering the job market, and those who are five, ten, and fifteen years out of law school.

Spitzer Gets Fuld Award

Our Section's Annual Meeting and luncheon in January broke all prior records, with 400 attorneys and more than 60 state and federal judges in attendance. Attorney General Eliot Spitzer received our Section's prestigious Stanley H. Fuld Award at the luncheon, which was covered on the front page of the *Law Journal*.

Providing Valuable Input

During the past several months, the Section has provided the state bar's Executive Committee with our comments on the expanded definition of pro bono and on the proposal to repeal the New York law office requirement set forth in Judiciary Law § 470. We also provided the Office of Court Administration with comments regarding the continuation of the FBEM (filing by electronic means) pilot project and have offered our assistance in continuing efforts toward the implementation of a mandatory e-filing program in the state courts, with oversight by OCA to ensure privacy.

We have also submitted to First Deputy Chief Administrative Judge Ann Pfau comments in response to the *Civil Justice Program 2005: Study and Recommendations*. Some of our comments appeared in the *New York Law Journal* earlier this year.

We continue to welcome the participation of all Section members in our many activities, and look forward to new members joining the Section.

Spring Meeting Focuses on the Jury in Commercial Cases

On May 13–15, 2005, at the Gideon Putnam Resort and Spa in Saratoga Springs, New York, the Commercial and Federal Litigation Section and the Corporate Counsel Section co-hosted the Spring Meeting, which focused on the jury in commercial cases. The Spring Meeting was chaired by Stephen P. Younger of Patterson Belknap Webb & Tyler LLP, incoming Chair of the Section, with the assistance of Michael Sant’Ambrogio, incoming Secretary.

Kenneth G. Standard, outgoing President of the New York State Bar Association, kicked off the meeting by criticizing the recent attacks on the judiciary, saying, “Juries without an independent judiciary system are not worth very much. So I want us to all focus on what we can do to help safeguard our independent judiciary and our judges.”

The Keynote Speaker for the Friday Night event was Dennis J. Drasco, Chair of the Section of Litigation of the American Bar Association and Co-Chair of the American Jury Project. The American Jury Project’s goals are to increase jury understanding of the facts and law in every case and to encourage juror participation and satisfaction. Drasco touched on several aspects of the Principals and Standards adopted by the ABA in February, including juror questions during trial and jury discussion of the evidence prior to closing arguments. Drasco suggested that juror note-taking and juror questions help jurors feel more a part of the trial process. This leads to greater juror satisfaction and better-reasoned decisions. Drasco described a successful pilot program in New Jersey in which jurors submitted questions to the judge. The judge then heard objections from counsel outside the presence of the jury and had the discretion whether to ask the questions, modify the questions, or allow the lawyers to ask the questions. Drasco argued that structured juror discussion of the evidence before the conclusion of the evidence creates safeguards that ensure that such discussion takes place at the appropriate times with the full jury rather than in small groups over coffee or in the rest room, which appears to occur frequently despite the prohibition against such discussions. By improving their understanding of the facts and law, Drasco suggested, juries would make better decisions and restore confidence in our system of justice.

Saturday morning’s program began with a panel on “How Juries Perceive Corporations,” which was chaired by Saul B. Shapiro of Patterson Belknap Webb & Tyler LLP. Panelists included Charles T. Lee of Paul, Hastings, Janofsky & Walker LLP, who represented the State of Connecticut in the *Connecticut v. Forstmann* jury trial;

Paul R. Grand of Morvillo, Abramowitz, Grand, Iason, & Silberberg P.C., who recently represented the former CFO of Adelphia in a highly publicized criminal trial; John Hartje, Chief Counsel, Corporate Litigation, International Paper Company; Brandy Bergman of Citigate Sard Verbinnen, a specialized financial public relations firm; and Steven Lybrand of DOAR Communications, Inc., one of the program sponsors. The panelists debated the extent to which jurors’ perceptions of corporations have changed in the wake of the rash of corporate scandals in recent years.

The second panel was chaired by Stephen P. Younger and addressed “How to Select a Jury in a Commercial Case.” Panelists included Hon. Anthony V. Cardona, Presiding Justice, Appellate Division, Third Department, which includes Saratoga Springs; Hon. David N. Hurd, U.S. District Judge, Northern District of New York; Mark C. Zauderer, DLA Piper Rudnick Gray Cary US LLP, and Chair of the New York Commission on the Jury; and Richard Sheehy, DOAR Communications, Inc. The panelists discussed the varying ways that juries are selected in different courts and different regions, how lawyers can get the most out of the jury selection process, and how to avoid “problem” jurors.

The Saturday morning program concluded with a “Mock Jury in a Commercial Case,” which was organized by Steven Lybrand and Richard Sheehy of DOAR Communications, Inc. The case involved an employment discrimination claim under Title VII and a whistleblower claim under Sarbanes-Oxley, both brought by Wendy Whistle against her former employer, Kana Daran Company. Sharon M. Porcellio of Lippes Mathias Wexler Friedman LLP argued on behalf of the defendant company, and Heather D. Diddel of Whiteman, Osterman & Hanna LLP argued on behalf of the plaintiff former-employee. The mock jury, which was comprised of spouses and guests attending the meeting, conducted a lively deliberation regarding the case and the arguments presented by counsel. The audience was able to hear the deliberations and consider both the thought process used by the jurors and the group dynamic that developed. Steven Lybrand and Richard Sheehy analyzed the jury deliberations in depth on Sunday morning.

Sunday morning’s panel delved into “Electronic Techniques for Communicating to Juries,” which was chaired by Peter A. Mahler of Farrell Fritz, P.C. Panelists included Hon. Ira B. Warshawsky, Commercial Division, Nassau County; Michael E. Kreitman of Federated Department Stores, Inc.; Stephanie Weiner of BDO Seidman, LLP; Jeffrey T. Kern of DOAR Communications, Inc.; and S. Robert Schrager of Bondy & Schloss LLP.

The panelists discussed the presentation of evidence and demonstratives through various high-tech mediums; the advent of the “wired” courtroom; why lawyers may or may not want to use technological tools in trying cases; and the costs involved in doing so.

Presentation of the Haig Award to Hon. Robert Kerrey

On Saturday evening, the Commercial and Federal Litigation Section presented its Robert L. Haig Award for Distinguished Public Service to Hon. Robert Kerrey, President of the New School University. The award is named for its first recipient, Robert L. Haig, the Section’s founder and its first Chair. Sen. Kerrey was honored for his lengthy service to the public in the military, as Governor of Nebraska for four years, as Senator from Nebraska for twelve years, as President of the New School University since 2000, and as Co-Chair of the 9/11 Commission. William D. Zabel of Schulte Roth & Zabel LLP presented the award to Sen. Kerrey. In his remarks, Sen. Kerrey spoke about the importance of supporting an independent judiciary that looks to the United States Constitution for its guidance rather than to public opinion.

The Section Updates Members on Developments in Antitrust Litigation

The bulk of the Sunday morning was devoted to a panel on “Developments in Antitrust Litigation,” which was chaired by Aidan Synnott of Paul, Weiss, Rifkind, Wharton & Garrison LLP. The panelists included Thomas Barnett, Deputy Assistant Attorney General, U.S. Department of Justice; Professor Daniel A. Crane, Cardozo Law School; Stacey Anne Mahoney of Constantine Cannon, P.C.; Joseph J. Simon of Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Dr. Christine Meyer of National Economic Research Associates (NERA). The panelists provided an update on legal developments in antitrust litigation, focusing on new issues that the commercial litigator and in-house counsel should be aware of in the antitrust field, including bundled pricing, exclusionary conduct, extra-territorial reach, and cross-border discovery.

When Section members were not attending panel programs at the Gideon Putnam, they were able to explore the 2,200-acre Saratoga Spa State Park and nearby Saratoga Springs. Section members and their spouses and families took advantage of the beautiful 18-hole championship golf course, the Roosevelt Baths and Spa, the Saratoga Auto Museum, and other local attractions.

The Section is grateful to BDO Seidman LLP, DOAR Communications, and Greenhouse Reporting for their sponsorship of the Spring Meeting.

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Book Review

Commercial Litigation in New York State Courts, Second Edition

Robert L. Haig, Esq., Editor-in-Chief, Thomson-West, Eagan, Minn., five volumes, 6,444 pages

Almost ten years ago, in November 1995, the New York State Supreme Court inaugurated its first Commercial Divisions, in New York and Monroe Counties. Today, there are Commercial Divisions of the State Supreme Court in eight counties: Albany, Erie, Kings, Monroe, Nassau, New York, Suffolk, and Westchester.

The Commercial Divisions of the Supreme Court have been an unqualified success—one of the most significantly successful improvements in the administration of justice in our time. They have been largely responsible for the noticeable shift in commercial litigation back to the New York State courts from the Federal courts, the courts of other states, and various forms of alternative dispute resolution. The burgeoning of commercial litigation in the New York State courts has created the need for an authoritative guide for practitioners engaged in such litigation.

That need has been met by Robert L. Haig, who was largely responsible for the creation of the Commercial Divisions. Under Bob Haig's guidance as Editor-in-Chief, the first edition of *Commercial Litigation in New York State Courts* was published in 1995. Its three volumes contained 68 chapters written by 64 judges and lawyers, covering the procedural steps in commercial litigation from jurisdiction and venue through judgments and appeals, and also covering many of the recurrent subject matters of commercial litigation. The hallmark of the work was its intensely practical approach, combining summaries of procedural and substantive law with strategic and tactical advice, checklists of issues that practitioners should consider, and model jury instructions.

The development of commercial litigation in the New York State courts over the last decade has been so rapid that it has created the need for a comprehensive revision and enlargement of the original work. *Commercial Litigation in New York State Courts, Second Edition*, published in 2005, answers that need. The Second Edition comprises five volumes containing approximately 6,000 pages and 88 chapters. The 121 authors include three Judges of the New York State Court of Appeals—

Chief Judge Kaye and Associate Judges George Bundy Smith and Robert S. Smith—as well as other distinguished jurists and a broad array of talented and experienced attorneys.

The Second Edition contains new chapters on practical topics of great interest to commercial litigators, including “Case Evaluation,” “Discovery of Electronic Records,” “Practice Before the Commercial Division,” “Techniques for Expediting and Streamlining Litigation,” and “Litigation Management for Corporations.” It also contains 13 new chapters on substantive areas of the law that are often met with in commercial litigation, including “Products Liability,” “Mergers and Acquisitions,” “Securities Litigation,” “Shareholder Derivative Actions,” and “Director and Officer Liability.”

Other treatises exist that cover most of the procedural and subject-matter areas covered by *Commercial Litigation in New York State Courts, Second Edition*. None of them, however, covers all these areas within the confines of a single set of volumes. And few, if any, contain the wealth of practical and strategic insights and advice to be found in the work under review.

It is impossible to pass over without special mention the sequence of chapters by Stephen Rackow Kaye on the trial of a commercial case in the New York State courts. Even experienced trial lawyers can read these chapters with enjoyment and profit, while younger lawyers, most of whose trial experience still lies before them, will find these chapters invaluable.

Commercial Litigation in New York State Courts, Second Edition comes with a CD-ROM disk containing the more than 500 pages of forms and model jury instructions included in the set.

**Guy Miller Struve
Davis Polk & Wardwell¹**

Endnote

1. In the interest of full disclosure, it should be noted that the authors of Chapter 45 of the Second Edition, on “Punitive Damages,” are my partner Amelia T.R. Starr and our colleagues Elizabeth K. Malaspina and Lynn E. Busath.

Women on the Move

By Lauren J. Wachtler

On June 2, 2005, our Section, and co-sponsors Corporate Counsel Section, the Committee on Women, the Young Lawyers Section, the Committee on Diversity and Leadership, and the Committee on Continuing Legal Education of the New York State Bar Association, presented the third annual “Women on the Move” program in New York City. This year, co-chair Bernice Leber and I decided that the program should focus not so much on the traditional issues discussed—“glass ceiling-sticky floor,” balancing home and work, and general gender discrimination—but rather should be a celebration of women who have achieved success outside of the traditional law firm arena. We called our program “Women on the Move: Successful Women in the Know,” with a view towards sharing with participants the experiences of women, at various stages of their careers, who have achieved success beyond or instead of partnership at a law firm.

We commenced our program with a short film of interviews with women who Bernice and I felt serve as role models for women attorneys from the ages of 25 to 75. These included the Honorable Betty Ellerin of the Appellate Division First Department; our own Lesley Rosenthal, Section Chair-Elect and General Counsel to Lincoln Center for the Performing Arts; and Carla Goldstein, Executive Director of Planned Parenthood in New York City. Our interviewees briefly described who they were, where they had come from, and where they envisioned they were going, and shared with us some words of wisdom (Betty Ellerin), words of inspiration (Lesley Rosenthal), and words of advice (Carla Goldstein). After our film we segued into our first panel, appropriately entitled, “Who Are We? Where Did We Come from, and Where Are We Going?”

This panel gave an historical perspective of demographics in the profession, what’s on the horizon for women in the profession, and the kinds of standards and goals we are setting for ourselves as women attorneys. The panel consisted of two educators, and the President of the Association of the Bar of the City of New York, Betsy Plevan, who brought to the panel not only an interesting perspective in her capacity as Bar president, but as a partner at Proskauer, Rose,

The keynote address, given by Dr. Ellen Ostrow, was entitled, “Are You Living the Life You Dreamed

After Law School?” Dr. Ostrow is the president of a company called LawyersLifeCoach.com, which provides counseling services for attorneys seeking a career change at various stages of their professional lives. Dr. Ostrow began her address by asking the audience how many attendees were unhappy with their present situation and were considering a change. Interestingly, more than half of the audience raised their hands. Even more interesting was that in response to Dr. Ostrow’s following question—how many of you have considered leaving the profession altogether—the response was almost the same.

Dr. Ostrow’s words of advice, and the questions we should be asking ourselves about our career designs and desires, were outstanding; and in fact more than several of the attendees requested additional information about Dr. Ostrow and how they might get in touch with her for counseling.

The final panel, entitled, “Where Can You Go with Your Law Degree and How Can You Get There?,” met with rave reviews from the attendees. The panelists included Lis Wihel, Fox News Channel legal analyst and author of “Winning Every Time: How to Use the Skills of a Lawyer in the Trials of Your Life”; Executive Committee member and counsel to the Metropolitan Opera Sharon Grubin; Anita Lermont, Senior Vice President of Empire Estate Development Corp.; Joan McGivern, C.E.O. of ASCAP; Sarah Peterson, counsel and manager of insured litigation for Bechtel Corporation in San Francisco; and Margaret Shaw of JAMS.

Bernice Leber did a fabulous job moderating an informal discussion among the panelists, who shared some of their experiences, including the pleasures and pitfalls encountered on their various career paths, and the impact of their careers on their personal lives, as well as some advice on using their skills as lawyers to achieve success in their fields.

The program was attended by 164 women and one male, whose presence engendered a great deal of speculation until it was disclosed that it was my partner, Paul Montclare. Paul gave the program rave reviews.

Due to the success of the event, we have been asked to hold the program again next year in New York City.



SCENES FROM
2005 SPRING MEETING
MAY 13-14
GIDEON PUTLANDER
SARATOGA COUNTY

FROM THE
ANNUAL MEETING

SEPTEMBER 15, 2005

GIDEON PUTNAM HOTEL
SPRINGS, NY



CPLR Amendments 2005 Legislative Session (Chapters 1-431)

(Chapters 1-3, 110, 149, 214, 239, 243, 262, 284, 342, 356, 392, 394, 410 are not yet available.)

Note: This list will be updated throughout the legislative session as additional CPLR amendments are enacted.

CPLR §	Chapter (§)	Change	Eff. Date
1101(d), (f)	56(18)	Extends expiration of amendments provisions relating to inmates until 9/1/07	4/1/05
6515	387(1)	Changes action "to foreclosure a mortgage" to "foreclosure action" as defined in CPLR 6516(b)	8/2/05
6516 [new]	387(2)	Provides for successive notices of pendency	8/2/05

2005 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals in the Court of Appeals and the Appellate Division, and Certain Other Rules of Interest to Civil Litigators

22 N.Y.C.R.R. §	Court	Subject (Change)	Eff. Date
Part 500	Ct. of App.	Replaces Part 500, governing appeals in Ct. of Appeals, with a new Part 500	9/1/05
670.22(b)	A.D., 2d Dep't	Increases certain fees of the clerk	12/8/04

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

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Shareholder Litigation Program

The Committees on Securities Litigation and Class Actions jointly sponsored a program entitled, "Recent Developments in Shareholder Litigation and Related Government Enforcement Initiatives," held in New York City on June 10.

The panelists included representatives of both the plaintiff and defense bars; Judge Chin of the Southern District; Vice Chancellor Strine of the Delaware

Chancery Court; a representative of National Economic Research Associates; and attorneys from the SEC Enforcement Division and the New York County District Attorney's Office. The six panels presented a series of lively exchanges on a number of current issues facing publicly held companies. Feedback from the NYSBA staff indicates the program was very well received by the attendees.

AttorneyAve.com Launches Free "Ask a Mentor" Program

AttorneyAve.com (<http://www.AttorneyAve.com>), which describes itself as "a user friendly, multifaceted website [that] caters exclusively to the legal community . . . , offer[ing] services which can enhance your career, expand your network, market your business and further develop your area of legal expertise," has launched an "Ask a Mentor" program that seeks to provide an online forum for attorneys to brainstorm with their peers regarding case-specific legal issues.

"Ask a Mentor" is a free service. Members can begin seeking assistance from other attorneys immediately upon registration. According to the company, legal ques-

tions, both substantive and procedural, are often answered within minutes. Unlike other lawyer e-mail exchange lists, "Ask a Mentor" enables its members to ask questions regarding virtually any area of law, specific to any state.

Editor's note: The above website was brought to our attention by the company. We encourage readers to contact us with other legal websites that provide not substantive legal materials, such as cases and opinions, but rather attorney interaction.

**THE NEW YORK STATE BAR ASSOCIATION ANNOUNCES
A MAJOR NEW PUBLICATION**

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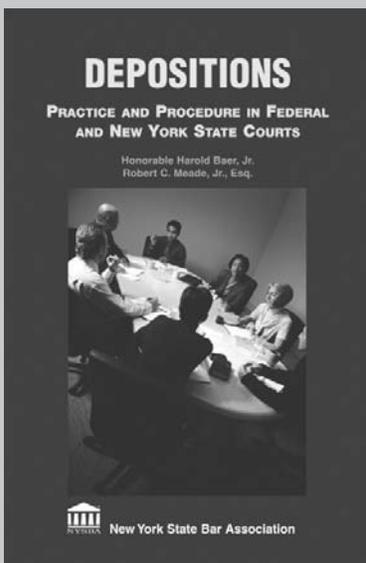
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Raymond J. Dowd, Esq.
Dowd & Marotta LLC
New York City

"This book is an invaluable resource for any attorney starting out on his or her own, or the seasoned practitioner, who will find it an enormously useful tool as a quick refresher or guide through the State and federal discovery processes."

Lauren J. Wachtler, Esq.
Montclare & Wachtler
New York City



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New York State Supreme Court

The authors, a United States District Judge for the Southern District of New York and the chief attorney clerk and director for the New York State Supreme Court, Commercial Division, New York County, incorporate their wealth of knowledge and experience into valuable practical guidance for conducting depositions.

This publication details deposition rules and procedures and highlights the differences between federal and state practice in New York. Topics include pre-trial discovery schedules, rules regarding number and recording method of depositions, appropriate and inappropriate conduct at depositions, objections, motions for protective orders, orders to compel and sanctions and others.

The book also contains over 40 forms used in federal and state deposition practice, which makes this a very practical and informative publication.

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Notes of the Section's Executive Committee Meetings

February 17, 2005

Guest speaker Hon. Jed S. Rakoff, United States District Court, Southern District of New York, discussed his opinion in *U.S. v. Quinones*, 205 F. Supp. 2d 256, *rev'd*, 313 F.3d 49 (2nd Cir. 2002), which held that the Federal Death Penalty Act (18 U.S.C. §§ 3591–3598) was unconstitutional.

The Executive Committee voted to oppose a proposal to repeal the law office requirement under Judiciary Law § 470(b), unless the proposed amendment includes language which requires out-of-state attorneys to consent to service by facsimile. The Executive Committee approved the report of the Class Action Committee recommending adoption of Model Rule of Professional Conduct 1.8(e).

March 17, 2005

Guest speaker Hon. Robert S. Smith, Court of Appeals, State of New York, discussed the Court's procedures for deciding cases and drafting opinions.

The Executive Committee approved the Pro Bono and Public Service Committee's "Report No. 2 on Proposals to Enlarge the Definition of Pro Bono Services." The Executive Committee voted to have the Appellate Practice Committee convert its report on "Judicial Ethics and the Internet: May Judges Search the Internet in Evaluating and Deciding a Case" into a report commenting



on the ABA's proposal to amend the Model Code of Judicial Conduct to restrict judges from accessing the Internet under proposed Rule 2.09.

April 14, 2005

Guest speaker, Hon. Jonathan Lippman, Chief Administrative Judge, State of New York, discussed electronic filing, judicial salary increases, the Commercial Division Fellowship program, and the new Uniform Commercial Division Rules.

The Executive Committee approved the submission of comments to Honorable Ann Pfau, First Deputy Chief Administrative Judge, on the "Comprehensive Civil Justice Program 2005: Study and Recommendations." The Executive Committee authorized the Chair to send a letter to OCA endorsing the extension of the pilot e-filing program but urging that OCA consider safeguards to protect litigants' privacy and determined to submit a report on the issue. The Executive Committee also voted to support a recommendation by the Study Committee of the National Conference of Commissioners on Uniform State Laws (NCCUSL) to appoint a Drafting Committee to draft a Uniform Interstate Depositions Act. The Executive Committee approved a recommendation of the Arbitration and ADR Committee to endorse the passage of New York's Revised Uniform Arbitration Act.



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