

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

So Far

At our recent and highly successful Annual Meeting, it was the pleasurable duty of the Section to honor the distinguished achievements of worthy judges and practitioners, to bring them together for better understanding of one another and the law. It was an occasion to note the important role that the Section serves as a breeding and nesting ground for productive relationships between and among litigation colleagues, civil adversaries, prospective and current clients, and an incubator for bright ideas to help improve the administration of justice.



Lesley F. Rosenthal

The Commercial and Federal Litigation Section relishes its duties both as an advocate for justice and a celebrant of it. Recently we marked the ascension of five new chief judges in the federal courts in New York. Not long before that, we honored the 10th anniversary of the Commercial Division of the Supreme Court of the State of New York, and the judges who have served the Division.

Over the years, the Section has publicized and explicated important commercial decisions of the Court of Appeals, District Courts, Magistrate Judges, and Bankruptcy Courts through interviews, reports, and articles published in this *Newsletter* and in our Section’s flagship publication, *NYLitigator*.

At this time of attacks on the independence of the bench, we offer to the state and federal judiciary, and

Inside

Conversations with the Long Island Commercial Division.....3
(Vincent J. Syracuse)

PRO BONO CORNER

Helping New Yorkers in Need: Lenor C. Marquis5
(Michael D. Sant’Ambrogio)

Save the Dates: Spring Meeting on May 4-6, 20076

Changing of the Guard: Section Celebrates New and
Outgoing Commercial Division Justices in Erie County7

New Committee Chairs.....8

Section Launches Summer Fellowship in Commercial
Litigation for 1L Law Students of Color.....9

Brown Whitmer Cuomo & Kaplan—Not a New Firm but a
Lot of New Ideas: The Section’s Annual Meeting.....10
(Kyana R. McCain)

In Appreciation: Stephen Rackow Kaye14
(Claire P. Gutekunst)

Section Sponsors “Meet and Greet” Luncheon for Queens
County Commercial Division Judges17
(Peter A. Mahler)

Section Presents March 15th Event Serving Litigation
Attorneys of Color19
(Lesley F. Rosenthal)

Updates on Rules

Section Recommends Clarifying Amendment to Rule 45
of the Federal Rules for Subpoenas of Evidence in
Possession of Federal Agencies.....20

2006 and 2007 Amendments to the Uniform Rules for
Supreme and County Courts, Rules Governing Appeals,
and Certain Other Rules of Interest to Civil Litigators....20

CPLR Amendments: 2006 and 2007 Legislative Sessions21

Notes of the Section’s Executive Committee Meetings22

the courts they lead, our fellowship, and our partnership, in protecting, preserving, and enhancing the true administration of justice. We rally to the defense of judges unfairly pilloried (and sometimes even physically threatened) for unpopular decisions. We offer our full-throated support to initiatives to increase judicial pay for both federal and state judges. Isn't it ironic that one of the world's wealthiest women in entertainment is "Judge Judy"? While the judges who handle complex and consequential litigations—Judge Carmen, Judge Kimba, Judge Colleen, Judge Karla, Judge Helen, and their other sisters and brothers on the bench—are paid less than first year associates at some of the New York law firms?

We are privileged to include several judges as active members of our Section and its Executive Committee. Chief Bankruptcy Judge Melanie Cyganowski of the Eastern District of New York is a founding member of our Section and one of its longest continuing members, and chairs our nominating committee. Judge Cyganowski has recently announced her imminent return to private practice, following a distinguished tenure on, and considerable contributions from, the Bench.

Our Section is known throughout the State Bar as being one of the most active Sections. This year alone we have provided comments to our State's delegation on ABA proposals; submitted suggested amendments to the Federal Rules of Civil Procedure to the Advisory Committee on Civil Rules; reported on notable splits in the Circuits on important topics such as securities class actions; submitted comments to the Association and to the Office of Court Administration, quite a number of which have found their way into final reports and actions; and cued up a legislative agenda, including building support for the Revised Uniform Arbitration Act in the New York state legislature. On February 8th, five of our former Section Chairs co-led a Commercial Division Bench/Bar Forum at 60 Centre Street.

We are also known for our memorable, timely, and popular CLE programs, many of which offer privileged access or pricing for Section members: the new Electronic Discovery rules in federal court; the ever popular Ethics and Civility Program; and hot topics such as corporate espionage, and parallel civil and criminal investigations against corporations and their executives. Several of these tantalizing topics and others will be discussed at our Spring Meeting, ably organized by our Chair Elect, Carrie Cohen, from May 4th through 6th at the Cranwell Resort & Spa in Lenox, Mass.

We have recently inaugurated two new committees, one for corporate litigation counsel, past and present, and another for white collar practitioners. Also, at the request of the Office of Court Administration, we have agreed to partner with OCA in the publication and dissemination of the Commercial Division Law Reporter. That work is carried out within OCA by Robert C. Meade

and John Werner, and through our Section under the leadership of Paul Sarkozi and Jonathan Lupkin.

Despite all that activity—or perhaps because of it—the Section's finances have never been stronger. For the first time in our Section's history, we have donated part of our surplus to fund summer fellowships in upcoming years for law students of color, through the New York Bar Foundation. The Section Fellow will work as a summer law clerk in chambers in the Commercial Division of New York Supreme, at once providing an opportunity for a deserving student and a helping pair of hands to the Court.

The Section is a professional home for a diverse group of commercial litigators. On March 15th at Lincoln Center, under the leadership of the Honorable Barry Cozier and Carla Miller, the Section hosted a CLE program and networking reception serving litigation attorneys of color. At that event the Section conferred its inaugural George Bundy Smith award upon Judge Smith himself. The Section's first Minority 1L Fellowship was also presented at the event. There was a groundswell of support for this event from the law firms in New York.

The Section serves a geographically diverse constituency as well: on March 9th, under Sharon Porcellio's leadership, we hosted a reception in Buffalo for the new and outgoing Commercial Division Justices in Erie County. Vince Syracuse, Harold Levy, Peter Mahler, and Ed Baum have enabled the Section to host similar bench-bar events on Long Island and Queens County in the Section year.

Next year, 2008, will be the 20th anniversary of the founding of our Section by a group of visionaries, several of whom still serve the Section. More than a few of the founders and past Chairs are in leading positions on the federal bench, as the Presidents of major bar associations, and/or at the very pinnacle of private practice and pro bono service. While past Section activity is not a guaranty of future greatness, it sure doesn't appear to hurt.

I hope that my supremely capable successors will note and plan for the forthcoming anniversary year, gathering in those who have brought the Section to greatness, celebrating the contributions of the Section, and planting seeds for future activity in this complex and ever-changing area of the law.

Please take the opportunity today to invite a colleague—or an adversary—to become a member of the Section. And please consider taking on an even more active role than you play today as a member, to discover the joy, as I have, of serving the profession through a leadership role in such a worthy and collegial group.

As a Section we have come so far—so far.

Lesley F. Rosenthal

Conversations with the Long Island Commercial Division

By Vincent J. Syracuse

On October 24, 2006, the Commercial and Federal Litigation Section of the New York State Bar Association, in partnership with the Nassau Academy of Law of the Nassau County Bar Association, sponsored a reception for the Long Island Commercial Division at the Nassau County Bar Association in Mineola, New York. The Section has played a very special role in the creation and development of the Commercial Division, which had its genesis in a report issued by the Section in January 1995 that emphasized the need for a separate trial court for commercial litigation that would help maintain New York's place as a center of commerce. Chief Judge Judith Kaye quickly championed the idea and established a Commercial Division in New York and Monroe Counties. The Section has been closely involved in the development and expansion of this concept to nine different Commercial Division venues throughout the State of New York.

The Section regularly hosts gatherings of Commercial Division justices and the commercial litigators who practice before them as part of its mission to further connect the State's leading commercial litigators with one another and with the judges deciding their cases, in order to improve the quality of representation of clients, to provide a forum for the further development of law and procedure in the areas of commercial and federal litigation, and to enhance the administration of justice. The reception for the Long Island Commercial Division, the first of several

regional events that have been planned by the Section and its Commercial Division Committee, attracted a capacity audience of well over 200 representatives of the bench and bar. The evening presented an unprecedented opportunity for commercial litigators in Nassau, Suffolk, and the New York metropolitan area to interact



**Section Chair Lesley F. Rosenthal—
opening remarks**



Conversations on Commercial Litigation with the Justices of the Long Island Commercial Division: On October 24, 2006, the NYSBA's Commercial and Federal Litigation Section, working in conjunction with the Nassau Academy of Law of the Nassau County Bar Association, sponsored a reception in Mineola, New York for the Commercial Division Justices of Nassau and Suffolk Counties. This unprecedented evening attracted a capacity audience and gave commercial litigators from Nassau, Suffolk and the five boroughs of New York City an opportunity to discuss recent developments in commercial litigation and practice in the Long Island Commercial Divisions. L to R: Frank Schellace (Nassau Co. Special Referee), Fred Hirsch (Law Secretary to Justice Austin), Hon. Ira B. Warshawsky (Nassau Co. Commercial Division), Douglas J. Good (President, Nassau Co. Bar Association), Hon. Leonard B. Austin (Nassau Co. Commercial Division), Jeremy R. Feinberg (OCA Liaison to the Commercial Division), Harold J. Levy (Program Moderator), Vincent J. Syracuse (Program Chair and Chair of the Section's Commercial Division Committee), Jeffrey A. Miller (Program Participant), and Hon. Elizabeth H. Emerson (Suffolk Co. Commercial Division).

directly with the Long Island Commercial Division bench and their support staff, which included Law Secretaries Fred Hirsch, Joann Browne, Gregory Spano, and Joan Hannon, and Nassau County Special Referees Frank Schellace and Thomas Dana. Jeremy R. Feinberg, the Office of Court Administration's Special Counsel for Commercial Division, was also present and available to answer questions.

I hosted the event as Program Chair. After a welcome by Nassau County Bar Association President Douglas J. Good and introductory remarks by Section Chair Lesley F. Rosenthal, the microphone was turned over to Harold



Conversations on Commercial Litigation with the Justices of the Long Island Commercial Division. L-R: Program Chair, Vincent J. Syracuse, Esq. (Tannenbaum Helpert Syracuse & Hirschtritt, New York City), Program Moderator, Harold J. Levy, Esq. (Quadrino & Schwartz, Garden City), and Nassau County Special Referee Frank Schellace at the Commercial and Federal Litigation Section's reception for the Justices of the Commercial Divisions of Nassau and Suffolk Counties at the Nassau County Bar Association in Mineola, New York on October 24, 2006. The program, which was co-sponsored by the Nassau Academy of Law, gave the bench and bar a unique opportunity to learn about Commercial Division Practice on Long Island.

J. Levy, who served as moderator for a spirited panel discussion with Nassau County Commercial Division Justices Leonard B. Austin, Stephen A. Bucaria, and Ira B. Warshawsky, Suffolk County Commercial Division Justice Elizabeth H. Emerson, and Jeffrey A. Miller, representing the bar, that included a wide variety of com-



Justices Emerson and Austin discuss Commercial Division Issues

mercial litigation topics and questions from the audience. This panel was the highlight of the evening, and the topics that were discussed included judicial salaries, the need for additional support staff, including a dedicated law clerk program similar to New York County's exceptional pilot program, the need for a special referee in Suffolk County, and the recommendations for improvements in Commercial Division practice recently made in the Office of Court Administration's report on the Commercial Division Focus Groups.



Welcoming Remarks by Nassau County Bar Association President Douglas J. Good

The evening was quite informative and gave practitioners an opportunity to learn about practice in the Long Island Commercial Divisions.

Vincent J. Syracuse is the Treasurer of the Commercial and Federal Litigation Section and the Chair of its Commercial Division Committee. He is a partner in Tannenbaum Helpert Syracuse & Hirschtritt LLP, where he is the Chair of its Litigation Department.

PRO BONO CORNER

Helping New Yorkers in Need: Lenor C. Marquis

By Michael D. Sant'Ambrogio

In 2006, New York State Bar Association President Mark H. Alcott instituted the Empire State Counsel program, which addresses the crisis in legal services for the poor by honoring attorneys who have provided 50 hours of legal services pro bono to the poor during the calendar year. The honorees are given the honorific title "Empire State Counsel," receive a certificate suitable for framing, and have their names listed in the State Bar News and the Association's Journal, among other benefits. I asked one young attorney, Lenor C. Marquis, a commercial litigator at Heller Ehrman LLP, how she qualified to be an Empire State Counsel.

Q *What was the nature of your pro bono work this past year?*

A For several years I have focused my pro bono practice on representing homeless families in need of obtaining public assistance and public housing. I represent homeless mothers and children through a monthly intake clinic at the Icahn House East LLC shelter and over the past year began staffing an intake table once a month for Project FAIR (Fair Hearing Assistance, Information & Referral).

Q *How did you get involved in this work?*

A In 2002, Heller Ehrman adopted the Red Cross Family Respite Center, now Icahn House East LLC. Heller Ehrman attorneys conduct a monthly intake clinic at the homeless shelter and represent needy families in obtaining and retaining public benefits through informal and formal means, including advocating at administrative hearings before the New York State Office of Temporary and Disability Assistance and the New York City Housing Authority. I became involved when I moved to Heller's New York office in 2003. Now, in addition to representing my own clients, I coordinate volunteer attorneys, set up training sessions, distribute cases, review work product, and dispense advice daily to volunteer advocates. The City Bar Justice Center, which supervises the program, estimates that in the past three years we have helped over 550 individuals and successfully restored over \$75,000 in retroactive benefits.

Q *What are the responsibilities of volunteer attorneys?*

A Volunteer attorneys at Icahn House run their own cases, develop client relationships, gather and review documentation, prepare witnesses for hearings, negotiate with City and State officials, and gain old-fashioned on-your-feet oral advocacy experience at administrative proceedings. The intake table at Project FAIR has more of an emergency room quality to it, but it is rewarding in that we often reach people right when they need legal advice most desperately.

Q *Tell me about one of your cases.*

A One of my most rewarding experiences on many levels as a young attorney was bringing an Article 78 proceeding on behalf of a client and her young son who had lost their worldly possessions when they entered a shelter. Furniture and other household items are not permitted in homeless shelters, and families evicted from their homes sacrifice these items unless they find someplace to store them. The City is statutorily required to pay a storage allowance so that families are not even further behind when they are able to get out of the shelter system. But in the case of my client, the City stopped paying the statutorily required allowance, and my client's storage facility sold all of her belongings at auction. Even worse, the facility sold the belongings for such a pittance that it did not even cover the debt on her account. Then the City claimed that it did not owe her anything because there was nothing left to store. I was able to negotiate a settlement that secured an additional furniture allowance for my client so that she was able to replace her furniture when she finally moved out of the shelter and into her own apartment.



Lenor C. Marquis

Q *What have you learned from this work?*

A A popular misconception about being on public assistance is that it is somehow easy. In fact, there is a bureaucratic maze that is often difficult to negotiate under even the best of circumstances, let alone when one is struggling to make ends meet. Many of my clients at Project FAIR walk over from housing court, where they face eviction, and have no idea what they have need to do to get back on their feet. They often do not possess the skills necessary to navigate the system or negotiate for themselves. In addition to our legal advocacy, we emphasize the importance of basic skills such as keeping track of papers, writing down the names of people they speak

with, memorializing promises, etc., which can help our clients as they move forward with their lives.

QHow can attorneys looking for pro bono work get involved?

AInterested groups of attorneys or firms may contact Lisa Pearlstein, Director of the Legal Clinic for the Homeless at the City Bar Justice Center, at 212-382-4717 to request a training session on advocating for the homeless or to discuss adopting an intake site. Project FAIR welcomes interested individual attorneys or firms to

contact Christopher Portelli, Director of Project FAIR, at 212-613-5060, to discuss training and participation.

Michael D. Sant’Ambrogio is Co-Chair of the Section’s Pro Bono and Public Interest Committee and an associate at Patterson Belknap Webb & Tyler, LLP, where he represents clients in all aspects of commercial litigation and, in addition, represents individuals in white collar criminal matters.

Save the Dates
Commercial and Federal Litigation Section
Spring Meeting

May 4–6, 2007
Cranwell Resort Spa and Golf Club
Lenox, MA

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

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

During the weekend, the Section also will confer its second annual Award for Excellence in Commercial Brief Writing. Submissions for the brief writing award must be briefs or legal memoranda of no more than 25 pages that were filed in a New York state or federal court during 2006. Submissions should be directed to Section Secretary Susan M. Davies no later than March 19, 2007 at susan.davies@earthlink.net.

Invitations to the 2007 Spring Meeting will be mailed shortly.

Changing of the Guard: Section Celebrates New and Outgoing Commercial Division Justices in Erie County

The Commercial and Federal Litigation Section was pleased to host a special event welcoming the new Commercial Division Justice for Erie County, the Honorable John M. Curran, and thanking the Honorable Eugene M. Fahey for his service in that role for the past two years. Justice Fahey has recently been named an Associate Justice of the Appellate Division, Supreme Court, Fourth Judicial Department.

This celebration was held on March 9, 2007, at Kleinhans Music Hall. It began with a reception at 5:30 p.m., followed by dinner in Livingston Hall, culminating with the Buffalo Philharmonic Orchestra's "A Celtic Celebration." The performance was an enchanting and magical journey through the music and culture of the Emerald Isle.

The Section also invited other members of the state and federal judiciary and members of the Erie County Bar Association's Commercial and Bankruptcy Law Committee. Former Section Chair Sharon M. Porcellio and Section Member and Buffalo Philharmonic Orchestra Board Member John G. Horn were the Co-Chairs of the event, ably assisted by Section Member Lisa Coppola and many others, with a special thanks to our Chair, Lesley Rosenthal, Vice President, General Counsel and Secretary of Lincoln Center for the Performing Arts, Inc., for the fabulous idea. This program followed on a similar outreach effort and event by the Section to the Rochester area commercial litigation bench and bar in recognition of the appointment of Honorable Kenneth R. Fisher to the Commercial Division in the Seventh Judicial District in the spring of 2005.

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New Committee Chairs

Edward J. Henderson

Ed Henderson, a new co-chair of the Section's Construction Litigation Committee, is a partner in the New York office of Torys LLP, where he practices commercial litigation with an emphasis on the resolution of disputes arising in the construction industry. Ed has represented construction clients during all stages of the construction process, from contracting and bidding through final close-out. His clients have included public and private owners, heavy construction contractors engaged in public works construction, and building contractors on private developments. His litigation experience includes mediation, arbitration, and trials before state and federal courts and appeals to the New York State Appellate Courts and the Second Circuit Court of Appeals. He has also served as a party-appointed arbitrator.



Edward J. Henderson

Ed is also a civil engineer. Before attending law school he spent several years working for one of the country's leading tunnel contractors, MacLean-Grove & Company, building subway tunnels for the New York City Transit Authority and the Washington Metropolitan Area Transit Authority.

Ed received a Bachelor of Science in Civil Engineering from Rensselaer Polytechnic Institute in 1974 and a J.D. degree from the Fordham University School of Law, *cum laude*, in 1981. While at Fordham, Ed served as a member of the *Law Review*.

Ed is looking forward to leading the Committee, together with newly appointed co-chair Robert L. Sweeney of Whiteman Osterman & Hanna LLP in Albany.

Hollis L. Salzman

Hollis L. Salzman, new co-chair of the Section's Antitrust Committee, is a partner in the Antitrust Practice Group of Labaton Sucharow & Rudoff LLP. She represents businesses and consumers in cases involving corporate antitrust conspiracies and other antitrust law violations. Ms. Salzman is currently actively engaged in the prosecution of major antitrust class actions pending throughout the United States. She is presently co-lead counsel in many antitrust cases, including: *In re Abbott Labs Norvir Antitrust Litigation* (N.D. Cal.), *In re OxyContin Antitrust Litigation* (S.D.N.Y.), *In re Tamoxifen Antitrust Litigation* (S.D.N.Y.), and *In re Ciprofloxacin Antitrust Litigation* (E.D.N.Y.). She is also actively involved in other pending major antitrust litigations, including *In re Funeral Antitrust Litigation* (N.D. Cal.), *In re Pineapple Antitrust Litigation* (S.D.N.Y.), *In re New Motor Vehicles Canadian Export Antitrust Litigation* (D. Me.), and *County of Suffolk v. Smithkline Beecham Corporation* (E.D. Pa.).



Hollis L. Salzman

Hollis also served as co-lead counsel in several antitrust class actions which resulted in extraordinary settlements for consumers and third-party payors, including *In re Buspirone Antitrust Litigation* (MDL 1413) (S.D.N.Y.) (\$90 million settlement); *In re Lorazepam & Clorazepate Antitrust Litigation* (MDL 1290) (D.D.C.) (\$35.4 million on behalf of third-party payors, and \$100 million on behalf of consumers in conjunction with the Federal Trade Commission and State Attorneys General actions); and *In re Maltol Antitrust Litigation* (99 Civ. 5931) (S.D.N.Y.), and *Continental Seasonings Inc. v. Pfizer, Inc., et al.* (99 Civ. 12055) (S.D.N.Y.) (\$18.45 million on behalf of direct purchasers of chemical food additives). Additionally, she was principally responsible for administering a \$65 million settlement with certain brandname prescription drug manufacturers where their conduct allegedly caused retail pharmacy customers to overpay for their prescription drugs.

Hollis joins longtime committee chair Jay L. Himes of the New York State Attorney General's office.

Section Launches Summer Fellowship in Commercial Litigation for 1L Law Students of Color

By unanimous vote, the Section's Executive Committee determined to make a gift to the New York Bar Foundation of \$10,000 to establish two summer Fellowships. The fellowships, valued at \$5,000 each, will be awarded for summers 2007 and 2008. The fellowships will be presented to a first-year (1L) minority student to work in a litigation position in the public sector in New York State and to be a guest member of the NYSBA Commercial and Federal Litigation Section for one year. For the summer of 2007, the Fellow will be a summer law clerk in the chambers of the Honorable Charles E. Ramos, Supreme Court of the State of New York, Commercial Division.

Section Chair Lesley Friedman Rosenthal said: "The Section is very pleased to provide this Fellowship to encourage law students of color to pursue a career in litigation. It is our hope that this work experience will provide a meaningful lifelong benefit to the students as well as to the profession's efforts to achieve greater diversity, especially among the top ranks of litigation attorneys. The Section is delighted to be the first to establish this type of restricted fund and is grateful for the assistance that the New York Bar Foundation has provided in the implementation of the Fellowship."

John R. Horan of New York (Fox Horan & Camerini LLP), President of the Foundation said, "We are gratified to accept this two-year Fellowship commitment from the Commercial and Federal Litigation Section. This gift demonstrates the ongoing collaborative efforts between the Foundation and the New York State Bar Association as we continue to serve New York's legal profession, the justice system and the community."

The fellowship program goals are to increase the representation of lawyers and students from a diverse range of backgrounds in commercial litigation and to provide students from a diverse range of backgrounds with an opportunity to experience litigation practice. The ultimate goal of the Fellowship is to create a network and forge relationships that will foster greater diversity among commercial and federal litigators throughout the State of New York.

First year minority students enrolled in a law school in the State of New York as of fall 2006 semester were eligible to apply. The Foundation received 18 application packages from first-year law students, who each submitted a complete application form, cover letter, resume, undergraduate transcript, two letters of recommendation, and a writing sample. Each member of the selection committee, which is comprised of Ms. Rosenthal, Hon. Barry A. Cozier, Chair of the Section's Diversity Committee, and Tracee E. Davis, an at-large member of the Section's Executive Committee, independently reviewed and considered the qualifications of each applicant prior to a face-to-face meeting. After a lengthy and in-depth discussion, the committee unanimously selected the winning recipient.

At the Section's program and reception on March 15, 2007, "Smooth Moves: Career Alternatives for Litigators of Color," the Section announced the recipient of the Fellowship—Lina M. Martinez, a first-year student at Fordham Law School.



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

Brown Whitmer Cuomo & Kaplan— Not a New Firm but a Lot of New Ideas: The Section's Annual Meeting

By Kyana R. McCain

On January 24, 2007, the Commercial and Federal Litigation Section of the New York State Bar Association held its Annual Meeting at the New York Marriott Marquis. Over 400 attendees from throughout the State joined the Section for its programs and luncheon. The morning's educational program was titled "Constructing the Winning Presentation with Advanced Jury Techniques." The program was divided into three sections: "Mock Juries: Can They Help You Win?," "Corporate Counsel Discuss Their Litigation Requirements," and "Mock Juries: Do They Create Ethical Issues?"

The first session on "Mock Juries: Can They Help You Win?" included a multimedia presentation of a high stakes patent case that used mock juries and tutorials to focus the litigation strategy and frame arguments. The presenters, Dr. Phillip Anthony, a litigation consultant, and Stephen Davidson, Esq., a litigation partner with Leonard Street & Dienard, outlined how new social science techniques can be used to "educate litigators about how to get their point across to specific persons" when the substantive information in the case is difficult to understand. The presenters described how they used comments from panels of mock jurors and mock judges to identify key areas of their case presentation to modify before trial. This highly engaging presentation resulted in many questions from the audience to the presenters both during and after the presentation.

The mock jury presentation was followed by a panel discussion titled "Corporate Counsel Discuss Their Litigation Requirements." The panel consisted of Irene Chang, General Counsel of the Lower Manhattan Development Corporation, Stuart Cobert, Associate General Counsel for Unilever United States, Inc., and Michael Solender, General Counsel for Bear Sterns, who each had years of experience interacting with both in-house and outside litigation counsel. Peter Brown, the panel moderator, sparked the discussion with questions about the panelists' experiences using mock jury techniques. Though the panelists had varying views on the use of such techniques, they each gave insight on the benefits and drawbacks of using mock juries. The panel then switched subjects to the selection of, and relationship with, outside counsel, giving the group a glimpse of the criteria used by General Counsel in selecting outside counsel.

The final speaker of the morning, Fred Whitmer, addressed "Mock Juries: Do They Create Ethical Is-

ues?" Whitmer is a seasoned litigator with the law firm Thelen Reid Brown Raysman & Steiner LLP. Mr. Whitmer used his knowledge of ethics to lead a dialogue about the ethical problems created when attorneys present the fundamentals of their cases to mock jurors who have no confidentiality requirements. In his talk, Mr. Whitmer addressed concerns about involvement of trial consultants during the jury selection process, the preservation of attorney-client privilege, and treading a sometimes fine line between the duty of zealous advocacy and candor to the tribunal.

Immediately following the morning CLE program, the Section held a sold-out reception and luncheon. The Section was pleased to welcome the newly elected New York Attorney General, Hon. Andrew Cuomo, as guest speaker. Attorney General Cuomo spoke to the group of attorneys and judges about the importance of integrity in State government and the integral role of attorney participation in the public sector.

Section Chair Lesley Friedman Rosenthal highlighted the Section's accomplishments in the year to date and acknowledged some of the Section's most active members. Ms. Rosenthal expressed special appreciation for the Section's partnership with the federal and state judiciary and the impact of this partnership on the evolution of the Commercial Division in New York Supreme Court. Among many other projects, the Section, through its broadranging committees, made recommendations to the State's delegation on certain ABA proposals, developed proposed amendments to the Federal Rules of Civil Procedure, submitted comments on the new attorney advertising rules, and presented cutting edge CLE programs. Mark H. Alcott, President of NYSBA, also greeted the guests on behalf of the Association.

The highlight of the luncheon was the presentation of the Stanley H. Fuld Award, which recognizes outstanding contributions to commercial law and litigation, to Hon. Lewis A. Kaplan, U.S. District Judge for the Southern District of New York. Judge Kaplan has had a distinguished career as both a commercial litigator and a judge. Judge Kaplan started out as law clerk to the Hon. Edward M. McEntee of the U.S. Court of Appeals for the First Circuit. He went on to become an associate and then a partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP, one of New York's leading commercial litigation firms. Judge Kaplan has served on the federal bench since 1994. The author of many influential decisions, including the recent

U.S. v. Stein decision, Judge Kaplan was presented the Fuld Award by his colleague and friend Judge John F. Keenan, also a U.S. District Judge for the Southern District of New York. In his remarks, Judge Kaplan thanked the Section and asked the audience to consider whether the criminal laws applying to corporations needed reform.

The Annual Meeting luncheon also included the introduction and election of officers for the 2007-2008 term. The following officers were elected: Carrie H. Cohen, Chair; Peter Brown, Chair-Elect; Vincent J. Syracuse, Vice-Chair; Susan M. Davies, Treasurer; and Kyana R. McCain, Secretary. The Section's delegation to the House of Delegates includes Lesley Friedman Rosenthal, Sharon M. Porcellio, and Carrie H. Cohen, with David H. Tennant as the alternate delegate. Melanie Cyganowski, Chief Judge of the United States Bankruptcy Court for the

Eastern District of New York and Chair of the Section's Nominating Committee, announced the slate of new officers and also offered some reflections about public service and the importance of judicial pay increases. Chief Judge Cyganowski recently announced her impending return to private practice as chair of the bankruptcy litigation practice at Greenberg Traurig in New York City, after 14 years of distinguished service on the bankruptcy bench.

Following the luncheon, Section members proceeded to the Presidential Summit, where President Alcott hosted panels on court reform and judicial independence.

Kyana R. McCain is an associate in the Technology, Media, and Communications Department at Thelen Reid Brown Raysman & Steiner LLP and is the incoming secretary of the Section.

NEW YORK STATE BAR ASSOCIATION

***We've Moved
the Date!***

**2008 Annual Meeting
is one week later!**

Mark your calendar for
January 28 - February 2, 2008





Frederick L. Whitmer



Program Chair Peter Brown

**COMMERCIAL
LITIGATION
2007 ANNUAL
JANUARY
NEW YORK MATTER**



**Stuart M. Cobert, Irene Chang, and
Michael S. Solender**



Association President Mark H. Alcott, Treasurer Lesley F. Rosenthal, Treasurer Lewis A. Kaplan, Section Chair and Association Vice-Chair and Annual Meeting Program Chair Peter Brown



N.Y. Attorney General Andrew M. Cuomo with former Section Chair Stephen P. Younger

Rick Kopstein/New York Law Journal



Stephen P. Younger, Peter Brown, Lesley F. Rosenthal, N.Y. Attorney General Andrew M. Cuomo, Association President Mark H. Alcott, Carrie H. Cohen

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24, 2007
RRIOTT MARQUIS



Section Chair Lesley F. Rosenthal addresses Section members at the annual luncheon
Rick Kopstein/New York Law Journal



Hon. Melanie Cyganowski, Chair of the Section's Nominating Committee



Carrie H. Alcott, Section Chair
Chair Vincent Syracuse, Hon.
Chair-Elect Carrie Cohen,
Annual Meeting Program



Dr. Philip K. Anthony and
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Hon. John F. Keenan and
Hon. Lewis A. Kaplan

In Appreciation: Stephen Rackow Kaye

By Claire P. Gutekunst

On October 30, 2006, the New York Bar lost one of its greats: Stephen R. Kaye, a partner at Proskauer Rose, the author of a definitive 645-page treatise on commercial litigation in New York State, and the husband of Chief Judge Judith S. Kaye. Following is the eulogy delivered on November 1 by Steve's partner, friend, and student, Claire P. Gutekunst. The Section joins Claire in mourning the passing of this consummate professional and true friend and in our deepest condolences to his wife, Chief Judge Kaye, his family, and his friends. We shall miss him.

I am deeply honored that Judith asked me to speak today about Stephen, on behalf of myself and as a representative of Proskauer Rose and the myriad Proskauer litigators who Steve trained and mentored during his more than 40 years at our firm. Steve was my dear friend and mentor for 22 years. I worked with him closely on more than half a dozen major cases and shared many trials and triumphs, and a few tears, with him over the years. Other than my parents and my husband, Steve had the greatest influence on my life, both professionally and personally. Many others, including many here today, also were profoundly influenced by Stephen, in the practice of law and the practice of life—he led by example in both areas.

Steve was a great teacher and nurturer of young lawyers. He taught us so many lessons—sometimes later at night than we liked—how to analyze facts and frame a strategy, how to craft a brief or a winning oral argument, how to contribute to a team effort and motivate others to do the same.

The first case I worked on with Steve began in December of my second year as a lawyer and lasted for six years, so I truly learned to be a lawyer at Stephen's knee. From the outset, Steve included me in every phone call and meeting with the client, a Fortune 100 company with a \$65 million case. What an extraordinary opportunity for a young lawyer, but typical of Steve's approach. He believed the client and the associates all benefited from having all the team members understand the whole case and participate in team meetings. He valued and respected other Proskauer litigators at every level as colleagues and was eager to hear our ideas, big or small, for advancing the client's cause.

Several years into that case, I was second-seating Steve in defending the Vice Chairman of our client, whose deposition Arthur Liman was taking. All the depositions were taken before a special referee down at the New York County Courthouse. Partway through the deposition, Steve stood up, said "I need to step out for something. Claire, you take over," and left. Somewhat shocked, I did, and I held my own in tussles over objections before the referee. An hour and a half later, Steve came back. He had left only because he wanted me to have the experience of facing off with Arthur Liman by myself, to show his confidence in me and instill confidence in myself. This was indicative of Steve's careful attention to ensuring that young associates were learning and developing as law-

yers. Many of my colleagues had similar experiences.

Many of the judges and lawyers here today have had the privilege of reading prose that flowed so eloquently on the page of any brief or treatise chapter that Steve authored—and there were many—and of grappling with his elegantly stated arguments. I, and generations of young Proskauer litigators before and after me, had the privilege of participating in creating some of that prose—the excitement of the intellectual debate with Steve on how to approach the issues and craft the argument, the agony of sitting for hours as Steve dictated to Esther or Joan, and the challenge of deciphering his handwritten edits—of which there always were many and which always made the document better—on any draft submitted to Steve. Steve taught generations of us how to frame an argument and write a brief.

But more than that, Steve taught us the importance of approaching a case or an issue strategically and focusing on the big picture, identifying the client's goals and crafting a creative approach to achieving them. He had an uncanny ability to focus on the essential skeleton of an argument, to hone in on the most important points and then to build a winning case around them. His attention to detail was legendary, too. He read all the key documents and knew the facts cold for every case, which paid off in pinning the witness to the wall on so many occasions. Steve also was open to others' views and valued his colleagues' willingness to challenge his views—he told me that one of my greatest strengths was being willing and able to tell him when he was wrong. Steve treated us as members of a team, as we sat around his round table, perfect for fostering a sense of team spirit. Steve taught us that the team included secretaries and legal assistants, whom he always respected and took the time to get to know and in whom he inspired great loyalty and dedication.

Steve also had a passionate curiosity about and enthusiasm for the law—the common law, constitutional law, even statutory construction. For Steve, one of the great joys of being a litigator was constantly learning new fields of



law and tackling the challenges of new legal and factual issues for each new case.

For example, when Steve took on representation of 83 publishers of scientific and technical journals in a landmark case against Texaco for copyright infringement, he had no experience in copyright law. I'm told that the copyright experts were extremely skeptical that a case could be made. But Steve dug into the copyright law and made the case.

That case also illustrates Steve's creative procedural approach to cases. Steve had the idea of making a test case of a few articles, focusing on those few so the case would not spin out of control. It was also Steve's idea to try the fair use defense first, before the rest of the case, an approach my partner Chuck Sims described yesterday as "genius." Equally impressive, Steve convinced the judge and the adversary to adopt his proposed approach, as he so often did. Steve proved the experts wrong and won a great victory for those clients, upheld on appeal.

Tempering his great intellect, Steve also had a great sense of humor—the photo included here captured his laugh and sense of fun. Steve enjoyed laughing at himself, too. Ron Rauchberg told me that when David Goldblatt became a partner around 1970, the associates put on a skit putting David's fitness to be a partner on trial, with the associates playing the roles of the judge and the partners as witnesses. David Stern, now the NBA Commissioner, played Steve. David sported a big toy cigar and a big red bandanna hanging from his pocket—props that were larger than life because, as Ron says, Steve was larger than life. Steve loved it.

Steve was a leader at Proskauer—he was a rainmaker and served as chair and co-chair of the Litigation Department for many years, and more recently as an elder statesman and sage advisor. Stephen used his positions of influence wisely and well. He helped me and many others see the importance not only of devoted service to clients, but also of service to the profession and the broader community.

When I was a mid-level associate and went in to see Steve for my year-end evaluation, he said, "You're doing great work. Now, what bar association work are you doing?" When I responded "Steve, you know how busy I am on our case," he concurred, but did not let me off the hook. When I was offered the opportunity to serve on a New York State Bar Association committee, I grabbed it, so I could check off bar work on Steve's list. But Steve taught me that if something is worth doing, you make the time to do it. Thanks to Steve's initial emphasis on the importance of bar work, I have gone on to chair several committees for the State Bar and serve on its Executive Committee, which has enriched my life immeasurably.

Steve was a champion as well as a teacher for his many mentees, and was a particular champion for women and diversity. I know that I'm a partner at Proskauer

today not only because he taught me to be an excellent lawyer but because he advocated for me to his partners, as I have heard him do so eloquently on behalf of other partnership candidates in partners' meetings since I became a partner. If you showed dedication and loyalty to Steve and his clients, he reciprocated in spades.

Steve trained many attorneys to be great writers, thinkers, and trial lawyers. But more than that, he taught us, by example, to be much better people. He taught us to inspire and motivate others by respecting them, challenging them to do their best, and celebrating their accomplishments. Steve took genuine joy in the achievements of those whose careers he had nurtured—Michael Cardozo, Meg Gifford, Steven Krane and so many other fine attorneys. And Steve celebrated their accomplishments by giving generously of his most precious commodity—his time—traveling to Saratoga for Meg's induction as President of the Women's Bar Association of the State of New York and to Cooperstown for Steven Krane's induction as President of the New York State Bar Association.

Steve was devoted to client service, bringing his creativity and rigorous intellect to bear on the client's problem, "triangulating" the issue (as he would say) and "walking around the statue" to see it from every perspective before resolving on a course of action designed to achieve the client's goals—and working ridiculous hours to get there. He was a counselor at law in the finest sense, and clients and colleagues valued his opinions greatly.

One of Steve's many clients who were also good friends and great fans of Steve sent an e-mail yesterday that sums up the feelings of many others here today, I'm sure. He wrote: "Steve was a great person as well as a great lawyer. As a client, I valued his professional judgment and skill, but even more so I felt privileged to have gotten beyond a merely professional relationship and to have enjoyed Steve's friendship, albeit all too briefly. Steve had a profound effect on me—he was that kind of person. I feel his loss deeply." So do we all, clients, colleagues, judges, friends and, of course, Steve's family.

For many at Proskauer, one of the benefits of working with Steve was getting to know Judith, our brilliant, caring and elegant Chief Judge and the love of Stephen's life for more than 43 years. The many Proskauer attorneys who became her clerks or whom she appointed to various committees or task forces—in my case to several judicial screening committees—gained invaluable insights into the judicial process and a great friend.

Steve had a lot of passions. I don't have time to go into them all, but when I walked into his office yesterday down the hall from my office and looked around, I saw evidence of most of them. Of course, the treatises he was so proud of contributing to. His well-thumbed copy of *Richardson on Evidence*, evidencing his passion for trying cases. A plexiglass-encased copy of the checks for \$59 million that he won for Starrett Housing Corp. in the first

case tried before the U.S.-Iranian Claims Tribunal in the Hague. Photos of Judith and her colleagues on the Court of Appeals and a poster of "Law Through the Ages, the New York County Courthouse."

But Steve's passions reached well beyond the law, and he encouraged the lawyers he worked with to have lives and loves beyond the law. His wall also sports a hockey stick signed by a member of his formerly beloved New York Rangers. The Babe Ruth baseball bat and the World Series hat for his beloved New York Yankees. Mugs with depictions of operas on them.

But most prominent in Steve's office, and by far the most significant in Steve's life, are dozens of photos of his family. What a wonderful example he set for all Proskauer lawyers. Law is great, but family is greater. Closest to his computer is a photo of Judith, on top of a peak in Switzerland. All along the countertop and on the walls are photos of Luisa, Jonathan, and Gordy, in candids and wedding portraits, in hockey gear and bathing suits, supplemented in recent years by lots of photos of all their grandkids. Steve, so proud and loving, holding Sonya and Andie by the hand, beaming under the brim of his trademark hat. Ben and Shirin, sharing a rare quiet moment. His family was Steve's greatest pride and joy.

While the kids were growing up, associates who worked with Steve knew where he would be between 6 and 8 p.m. every night—at home, eating dinner with his family. (Then he often came back to the office and worked until the wee hours—luckily, Steve did not need a lot of sleep.) He was fiercely devoted to them and made it to every game and school event, for kids and grandkids. And he loved talking about his family—Luisa's brilliant appellate argument, Jonathan's cutting edge company, Steve's trip to Iceland with Gordy's hockey team. But he also regularly asked about *my* husband and kids, genuinely cared about my answers, and understood when I needed to be with them instead of at the office working on a brief with him.

The last time I saw Steve, he was weak but completely alert. He sloughed off my questions about his health to ask me how my son Jason's college applications were coming, seventeen years after Jason had sat in his bouncinette on Steve's dining room table while we had dinner together. While we were talking, Ben came bounding in with pictures he had drawn for Grandpa, of horses racing toward the finish line (another one of Steve's passions that he shared with his kids and grandkids). Steve beamed as he showed them to me and his eyes lit up as he hugged Ben.

Steve has left a legacy in the law and, more importantly, a legacy in life.

Claire P. Gutekunst, a partner in the Litigation Department at Proskauer Rose LLP, is a member-at-large of the Section's Executive Committee.

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Section Sponsors “Meet and Greet” Luncheon for Queens County Commercial Division Judges

By Peter A. Mahler

The Section has played an integral role in the concept, design, and implementation of the Commercial Division of the New York Supreme Court, which had its debut in New York and Monroe Counties eleven years ago. Since then, Commercial Division courts have been established with great success in seven additional counties.

The most recent expansion of the Commercial Division, one year ago, to Queens County, was the occasion for a “Meet and Greet” luncheon co-sponsored by the Section and the Queens County Bar Association on November 16, 2006, featuring Queens Commercial Division Justices Marguerite Grays and Orin Kitzes. The luncheon program was organized by Peter Mahler, co-chair of the Section’s Membership Committee, and was co-chaired by Vincent Syracuse, Section Treasurer and chair of the Section’s Commercial Division Committee.



Queens County Bar Association President John Dietz; Justice Orin Kitzes and Justice Marguerite Grays, Commercial Division, Queens County; Vincent J. Syracuse, Section Treasurer & Chair of Section’s Commercial Division Committee; Peter A. Mahler, Co-Chair of Section’s Membership Committee



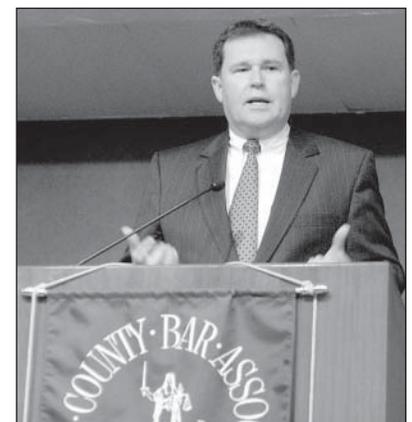
Justice Marguerite Grays; Justice Orin Kitzes; QCBA President John Dietz; Peter A. Mahler; Vincent J. Syracuse

About 50 attendees gathered at the QCBA’s Jamaica headquarters for an hour of informal conversation over lunch, followed by a second hour during which Justices Grays and Kitzes shared their views about Commercial Division operations and answered questions. QCBA Pres-

ident John Dietz gave opening remarks in which he aptly compared the growth of specialized courts to the specialization trend within attorney ranks. Vince Syracuse next gave some interesting background on the Commercial Division and touted its success in attracting cases that otherwise might be brought in federal court. Peter Mahler drew some laughs and a few groans with his proposed ad campaign (“The Commercial Division: More Than the Sum of its Parts”) and then spoke about the need for commercial courts in Queens to accommodate the county’s growing business community.

A lively, open discussion followed introductory remarks by Justices Grays and Kitzes. Several themes emerged. First, most of the 52 cases presently assigned to the Queens Commercial Division were not originally filed as commercial cases. Court Attorney Elizabeth Yablon, who oversees the court’s preliminary conference part, explained how at conference she identifies and refers cases that meet the Commercial Division criteria. Due to the relatively small number of commercial cases, Justices Grays and Kitzes continue to carry a large caseload of noncommercial cases. Both expressed the hope eventually to preside over “pure” commercial parts when the commercial caseload gets large enough.

Second, the routing of commercial cases to a centralized preliminary conference part raised concerns among some attorneys about achieving the case management goals reflected in the Commercial Division’s



QCBA President John Dietz

uniform rules. Leonard Livote, law secretary to Administrative Judge Leach, offered that the court attorneys in the PC Part are familiar with the Commercial Division rules and are prepared to work with counsel on all issues, including electronic discovery.

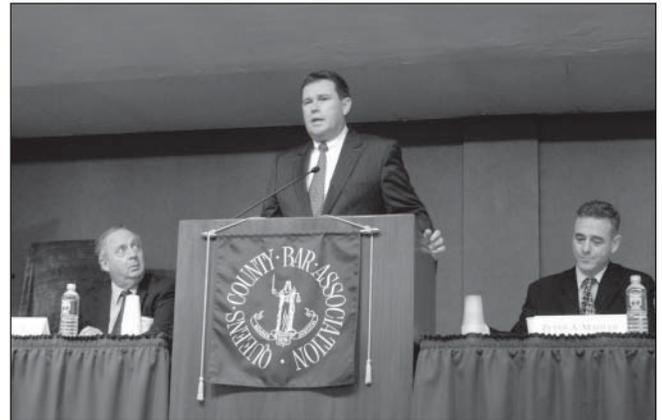
Lastly, Justices Grays and Kitzes emphasized their open-door policy toward lawyers handling commercial cases. They encouraged counsel to contact chambers by telephone or letter to resolve pretrial disputes informally and expeditiously. Jeremy Feinberg, who as Special Counsel for the Office of Court Administration works

closely with the Commercial Division statewide, characterized the Queens Commercial Division as a work in progress. Both he and Mr. Livote, on behalf of Administrative Judge Leach, pledged to continue working with the Justices and the bar to bring out the full potential of the Queens Commercial Division.

Peter A. Mahler is co-chair of the Section's Membership Committee and a partner at Farrell Fritz, P.C., where he concentrates in commercial litigation.



**Justice Orin Kitzes,
Commercial Division, Queens County**



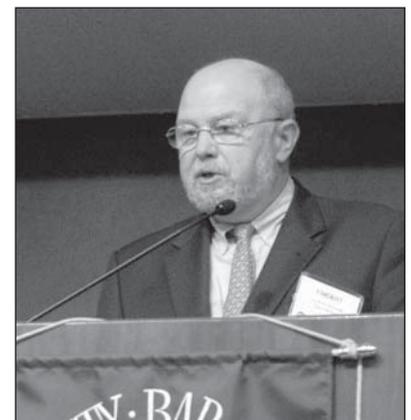
**Justice Orin Kitzes; QCBA President John Dietz;
Peter A. Mahler**



Peter A. Mahler



**Justice Marguerite Grays,
Commercial Division
Queens County**



Vincent J. Syracuse

Section Presents March 15th Event Serving Litigation Attorneys of Color

By Lesley F. Rosenthal

As this Newsletter went to press, on March 15th at Lincoln Center, the Section, through its Diversity Committee, was scheduled to present "Smooth Moves: Career Alternatives for Litigators of Color." The program will open with a CLE program highlighting the legal and professional skills necessary to successfully navigate the myriad career alternatives available to litigators, in general, and litigators of color, in particular.

Panelists will focus on substantive knowledge, client-relations skills, and communication abilities associated with transitioning between and among high-level positions within private law firm practice, the federal and state prosecutorial systems and other governmental offices, the judiciary, the corporate sector, academia, and the literary arts. The program will also highlight the ethical considerations associated with each such transition. Panelists will discuss the higher ethical duties to which prosecutors are held while performing that function, as well as the ethical constraints on former prosecutors when they enter private practice, and on law firm lawyers who may be appointed to special prosecutorial duties. In-house counsel will discuss when the attorney-client privilege does and does not apply, as in-house attorneys are frequently asked to contribute to business decisions. Panelists also will discuss the special challenges faced, and circumstances requiring recusal, when private practice lawyers are appointed to the judiciary.

The program panelists include:

- The Honorable Denny Chin (United States District Court for the Southern District of New York)
- The Honorable Peter C. Harvey (Former Attorney General for the State of New Jersey, currently a partner at Patterson, Belknap, Webb & Tyler LLP)
- Lawrence Otis Graham, Esq. (Attorney and celebrated author and *New York Magazine* columnist)
- Jose Maldonado, Esq. (Vice President, Operations, AmeriChoice Corporation)
- Marsha Sells, Esq. (Assistant Vice President, Planning & Program Development, Columbia University)

The moderator for the CLE program is The Honorable Carol Robles-Roman, Deputy Mayor for the City of New York.

Following the CLE program, the Section will inaugurate the Hon. George Bundy Smith Pioneer Award. Kenneth G. Standard, past President of the Association, will present the award to Judge Smith as the inaugural recipient. The Section, through a grant to the New York

Bar Foundation, will also present its inaugural summer 1L fellowship in commercial litigation to a minority law student. A networking reception and entertainment will follow.

The event is co-chaired by Hon. Barry A. Cozier of Epstein Becker & Green P.C., former Associate Justice of the Appellate Division, Second Department, New York Supreme Court, the Chair of the Section's Diversity Committee; and Carla M. Miller, Senior Director and Litigation Counsel, Universal Music Group, who co-chairs the Section's Corporate Litigation Counsel Committee. The program is co-sponsored by the NYSBA Committee on Minorities in the Profession and the NYSBA Committee on Diversity and Leadership Development.

This event represents a significant outreach effort to attorneys of color by the Section, serving members' professional development goals and further supporting the goals of strengthening and diversifying the Section.

The generous sponsorship of the following law firms will help ensure that the event will be open to the widest possible audience at minimal or no cost (list current as of February 28):

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Updates on Rules



Section Recommends Clarifying Amendment to Rule 45 of the Federal Rules for Subpoenas of Evidence in Possession of Federal Agencies

On November 28, 2006, Gregory K. Arenson, Chair of the Section's Committee on Federal Procedure, submitted to the advisory committee on the Federal Rules of Civil Procedure, at the Section's request, a Section report entitled, "Treating the Federal Government Like Any Other Person: Toward a Consistent Application of Rule 45." The report proceeded from a June 16, 2006, decision of the U.S. Court of Appeals for the D.C. Circuit that overturned lower federal court decisions holding that an agency of the federal government could not be subpoenaed as a "person" under Fed. R. Civ. P. 45 to produce documents in cases to which the government was not

a party. Analyzing the grounds asserted by the government for its immunity from such subpoenas, the Report concluded that no presumption of sovereign immunity applies to Rule 45, that the Discretionary Act of 1947 is inapplicable, and that under ordinary rules of statutory construction Rule 45 includes the federal government. In conclusion the Section report called for the amendment of Rule 45 or the Advisory Committee notes or both to make explicit that the federal government may be subpoenaed under the standards of Rule 45 to provide documents or testimony as a third party to cases pending in federal courts.

2006 and 2007 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators (N.Y. Orders 1-31 of 2006; N.Y. Orders 1-3 of 2007)

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

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

CPLR Amendments
2006 Legislative Session (Chapters 1-750)
2007 Legislative Session (Chapter 1)

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

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

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

Notes of the Section's Executive Committee Meetings

October 18, 2006

Guest speaker Hon. Stephen C. Robinson, United States District Judge for the Southern District of New York, discussed his concerns about increasing incivility between attorneys in the courtroom.

The Executive Committee approved a proposal by the Chair of the Section, Lesley F. Rosenthal, for the Section to make a gift of \$10,000 to the New York Bar Foundation to fund a summer internship in a litigation-oriented position at a public interest organization for minority 1L students for two years. The Executive Committee also adopted a report by the Ethics and Professionalism Committee entitled, "A Review of *HF Management Services LLC v. Pistone*: Does an Underwriter's Due Diligence Counsel Have a Fiduciary Duty to an Issuer?" With revisions, the Executive Committee adopted a report by the Commercial Division Committee on the Commercial Division Focus Groups Report.

November 14, 2006

Guest speakers Aileen Leventon of QLex Consulting and Susan Sneider of New Vistas Consulting discussed management of a litigation practice, including client and business development and marketing.



The Executive Committee approved a revised report of the Federal Procedure Committee on the service of Rule 45 subpoenas on government agencies. The Executive Committee approved comments by the Section's CPLR Committee on the NYSBA CPLR Committee's proposed amendment to CPLR 3101(a)(4). The Executive Committee also approved a report by the Class Action Committee on the Appellate Division's recent rulings in *Klein v. American Gourmet Food*.

December 13, 2006

Guest speaker Ira M. Millstein of Weil, Gotshal & Manges LLP and Senior Associate Dean for Corporate Governance, Yale School of Management, discussed an Interim Report of the Committee on Capital Markets.

Constance Boland, Co-Chair of the Electronic Discovery Committee, reported on the status of the proposed Fed. R. Evid. 502, which relates to e-discovery and problems associated with the potential waiver of the attorney-client privilege. The Class Action Committee presented a report on the split between the Second and Fifth Circuits in the application of Fed. R. Civ. P. 23(c)(4)(A). The Executive Committee approved, as modified, a report by the Pro Bono and Public Interest Committee on proposed New York Rule of Professional Responsibility 6.1.



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