



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2160
FAX: (212) 428-2155

ANN PFAU
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

April 12, 2011

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 3002
Southampton, New York 11969

Dear Ms. Sassower:

In response to your recent Freedom of Information Law ("FOIL") request, addressed to the Disciplinary Committee for the Appellate Division, First Department, enclosed please find a copy of the statement responsive to your request.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Shawn Kerby".

Shawn Kerby
Assistant Deputy Counsel

STATEMENT OF THE DEPARTMENTAL DISCIPLINARY COMMITTEE
APPELLATE DIVISION, FIRST DEPARTMENT

Departmental Disciplinary Committee

The Departmental Disciplinary Committee was established by the Appellate Division, First Department, to assist in the Court's role in the disciplining of attorneys in the First Department, which consists of New York and Bronx Counties. Members of the Committee are appointed by the Appellate Division. There are approximately 80,000 attorneys in the First Department. Roy L. Reardon is Chairman of the Committee. The Committee also receives "hands-on" guidance from the Policy Committee, appointed by the Appellate Division from the members of the Committee. The Policy Committee oversees the general functioning of the Committee and the staff and provides direction on pending issues.

Rules of the Appellate Division

The Appellate Division, First Department, has adopted public rules and procedures governing the Departmental Disciplinary Committee (Part 605), and rules governing the

conduct of attorneys (Part 603). These rules are available to the public, together with the Rules of Professional Conduct, which govern attorney conduct, on the Departmental Disciplinary Committee website, which is part of the Appellate Division website. Also available on the website is information about the Committee, including information concerning how a complaint can be filed. Information about filing a complaint is also available to members of the public who call or visit the Committee's offices. Complaint forms are available in English, Spanish and Chinese.

It is important to note that the purpose of attorney discipline is not to mediate disputes between attorneys and clients or to vindicate the rights of complainants. Such matters can best be handled by the court system. Generally, fee disputes, issues of legal strategy and single incidents of malpractice that might be addressed in a civil matter do not constitute misconduct.

The Appellate Division and the Departmental Disciplinary Committee must devote its limited resources to the limited remedial options within its jurisdiction.

Confidentiality

Pursuant to Section 90, subdivision 10, of the Judiciary Law, all materials concerning an investigation or proceeding concerning an attorney's conduct are sealed until the Appellate Division issues a decision sustaining charges of misconduct concerning an attorney. When the Appellate Division issues a decision sustaining charges of misconduct against an attorney, the record of the proceeding becomes public.

Office of Chief Counsel

The Office of the Chief Counsel to the Departmental Disciplinary Committee is staffed by 23 attorneys. The staff attorneys screen complaints, investigate allegations of misconduct and prosecute cases at hearings. Alan W. Friedberg is the Chief Counsel.

Processing of a Complaint

When a complaint is received at the Departmental Disciplinary Committee of the Appellate Division, First Department, it is immediately assigned to a staff attorney to be screened. Investigations may also be commenced by the Chief Counsel on his own

initiative. Since numerous attorneys have offices in more than one location in the State, the address an attorney lists in registering with the Office of Court Administration determines which disciplinary body exercises jurisdiction over that attorney. Complaints against an attorney who has registered at an address in another Judicial Department are referred to the appropriate disciplinary body. Accordingly, each regional disciplinary agency is able to keep a record of all complaints filed against that attorney. Complaints against judges are referred to the Commission on Judicial Conduct.

The staff attorney who screens the complaint reviews the entire complaint including attachments and may choose to interview the complainant, obtain court documents or obtain documents or information from the attorney who is the subject of the complaint. If the staff attorney believes the allegations are likely to warrant formal charges, he or she refers the matter to the Chief Counsel for immediate assignment. If the Chief Counsel concurs that the allegations are likely to warrant formal charges, the complaint is immediately assigned to a staff attorney for investigation, which may include

obtaining a written response from the respondent attorney, scheduling testimony of the respondent attorney or others and obtaining records including court records and bank records. In cases where there is conclusive evidence of serious misconduct or failure to cooperate with the Committee, the Committee may make a motion seeking an attorney's interim suspension.

If the allegations appear less serious, the screening attorney may determine to seek the written response of the respondent attorney. When a response is obtained, it is sent to the complainant, who is requested to reply to the attorney's response. After obtaining this information, the screening staff attorney may recommend, in writing, dismissal or assignment of the matter to a staff attorney for further investigation. Each recommendation is reviewed by the Chief Counsel, who may determine to assign the matter to a staff attorney for investigation or recommend dismissal of the complaint. If the recommendation of the Chief Counsel is to dismiss the complaint, the Chief Counsel signs the recommendation memorandum and the entire file including the memorandum is

sent to one of the 55 attorney members of the Departmental Disciplinary Committee who must approve the dismissal. If the complainant seeks reconsideration, the matter is sent to another attorney Committee member who must also approve dismissal. The Committee members are appointed by the Appellate Division and include experienced practicing attorneys, former prosecutors and lay members.

The types of complaints that are dismissed include those complaints expressing general dissatisfaction with the outcome of a case without an allegation of specific misconduct by an attorney.

The Committee has discretion to defer action concerning possible misconduct by an attorney until litigation in the court system concerning the same issues is resolved.

The exercise of that discretion determination is made on a case by case basis.

If the staff attorney screening the complaint determines that the allegations do not constitute misconduct, the screening attorney may recommend that the complaint be rejected without seeking a response from the respondent attorney. In such a case, the

screening attorney's written memorandum is reviewed by the Chief Counsel, who, if he agrees with the recommendation, signs the memorandum. The entire file, including the memorandum, is then sent to an attorney Committee member who must approve the rejection. If the complainant seeks reconsideration, it is sent to a different attorney Committee member who must also approve rejection.

Following an investigation which may include depositions, subpoena of documents and interviews, the staff attorney assigned to the investigation writes a memorandum recommending action on the complaint. The memorandum must be approved by the Chief Counsel. If the recommendation is for dismissal, the entire file, including the memorandum, is sent to an attorney Committee member who must approve the dismissal. If the complainant seeks reconsideration, it is sent to a different attorney Committee member who must also approve dismissal.

If the recommendation is for an admonition or the filing of formal charges, it must be approved by two separate attorney members of the Policy Committee of the

Departmental Disciplinary Committee, which is composed of nine attorneys and three lay persons. The members review the file including the memoranda of the Committee staff attorneys. If the two members approve an admonition, a confidential admonition is sent to the respondent attorney and the complainant is notified. An admonition, although private, is considered discipline and may be used as aggravation if charges are filed against the attorney in the future. If two attorney members of the Policy Committee, after reviewing the file, approve charges, the Appellate Division appoints a referee, who conducts a hearing to determine if the attorney engaged in misconduct, and what, if any, sanction should be imposed. The rules of evidence are followed at the hearing. The referee's recommendation is then reviewed by a panel of Disciplinary Committee members who make a recommendation to the Appellate Division as to misconduct and possible sanction.

Briefs are then filed with the Appellate Division together with the record of proceedings. If the Court determines that the attorney has engaged in misconduct, it may direct that the Committee issue a private reprimand or it may impose a sanction of public censure, suspension for a period of months or years, or disbarment.

Types of Serious Misconduct

The types of conduct that have resulted in public discipline for attorneys include improprieties concerning client funds being held in escrow, neglect of client matters and misrepresentations to clients or to a court. Attorneys who are convicted of New York State felonies or crimes in other jurisdictions that are equivalent to New York State felonies are disbarred on motion to the Appellate Division. Hearings are held for attorneys convicted of serious misdemeanors to determine appropriate sanctions. Other cases involve attorneys who have aided the unauthorized practice of law in immigration cases.

Lawyers' Fund for Client Protection

The Departmental Disciplinary Committee cooperates with the Lawyers' Fund for Client Protection in its mission to reimburse clients who have been victimized by attorneys.

Statistics

In 2008, the Departmental Disciplinary Committee received approximately 3,300 complaints concerning attorneys. 525 of these complaints were dismissed without seeking responses from the respondent attorneys because the complaints did not describe conduct that violated the rules the Committee enforces. An additional 367 complaints were referred to other disciplinary agencies. Included in that number are complaints against non-attorneys who may be engaged in the unauthorized practice of law which are referred to District Attorneys' offices. In the remaining cases, responses were sought from respondent attorneys, or other forms of investigation were commenced. In 2008, 21 attorneys were disbarred after hearings, eight attorneys submitted disciplinary

resignations, 22 attorneys were suspended, and two were publicly censured. In addition, approximately 1,900 complaints were dismissed by the Committee. 58 attorneys received private admonitions.

Attached is the Departmental Disciplinary Committee's annual report for 2007, which is the most recent annual report issued by the Committee.

Conclusion

The Departmental Disciplinary Committee takes very seriously its responsibility to protect the public interest and to deal fairly with attorneys against whom complaints are made. The Committee must balance the protection of the public including clients of attorneys with the obligation to insure the rights of respondent attorneys. The Committee must work within a framework of confidentiality and limited remedial mechanisms.

Since there are thousands of complainants and the future of professional careers are involved, the Committee understands fully the seriousness and importance of its work.