

The Survey of New York Practice Table of Contents

Editorial Board

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In this third issue of Volume 67, *The Survey* analyzes several recent developments in New York law. First, in *Wieder v. Skala*, the New York Court of Appeals carved out a new exception to the common-law doctrine of at-will employment. The plaintiff attorney had been discharged for his insistence that the law firm for which he worked report the unethical behavior of a colleague. Re-

* *The Survey* uses the following abbreviations:

New York Civil Practice Law and Rules (McKinney)	CPLR
New York Civil Practice Act	CPA
New York Criminal Procedure Law (McKinney)	CPL
New York Code of Criminal Procedure	CCP
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Law (McKinney)	EPTL
General Business Law (McKinney)	GBL
General Municipal Law (McKinney)	GML
General Obligations Law (McKinney)	GOL
David Siegel, <i>New York Practice</i> (1991)	SEIGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1989)	WK&M
<i>The Survey of New York Practice</i>	<i>The Survey</i>

versing the lower courts, the Court of Appeals unanimously held that a cause of action for breach of contract existed because Disciplinary Rule 1-103(A), which requires an attorney to report another attorney's ethical violations, created an implied obligation among the parties that one would not prevent another from adhering to the rules of professional responsibility.

Second, the Appellate Division, Third Department, recently diverged from the other departments' interpretation of the marital proceedings provision of New York's long-arm statute. In *Levy v. Levy*, the court held that the CPLR 302(b) requirement that New York State be "the matrimonial domicile of the parties before the separation" should be read expansively, not with the limitation of "within the recent past" as two other departments had read the statute. The court, perhaps stretching the limits of due process, justified its ruling as in furtherance of the protection of abandoned spouses and children, the purpose contemplated in the section's enactment.

Finally, in *Matter of Cooperman*, the Appellate Division, Second Department, categorically refused to recognize the propriety of a nonrefundable retainer. The court found the nonrefundable fee arrangement inherently inconsistent with Disciplinary Rule 2-110(A)(3), which requires a discharged attorney to promptly refund any unearned fee.

The members of Volume 67 hope that this review of recent New York case law will be of interest to both bench and bar.