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CPLR 3101(d)(2): Appellate Division, Third Department Holds that Surveillance Videotapes May Not Be Discovered Unless Party Seeking Discovery Has a "Substantial Need" and Cannot Obtain "Substantial Equivalent" without "Undue Hardship"

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unconstitutional for the State to encourage childbirth over abortions by paying only for the former. Because the State's interest in protecting potential life cannot outweigh its interest in protecting the life and health of the mother, no compelling reason for promoting childbirth exists when a woman's life or health is endangered by her pregnancy.[38] The New York Court of Appeals should thus uphold the state supreme court's decision and prevent the State from discriminating against underprivileged women who require an abortion to protect their lives or health.

Christopher Vincent Albanese

CIVIL PRACTICE LAW AND RULES

CPLR 3101(d)(2): Appellate Division, Third Department holds that surveillance videotapes may not be discovered unless party seeking discovery has a "substantial need" and cannot obtain "substantial equivalent" without "undue hardship"

New York's liberal standard of discovery, embodied in CPLR 3101(a), seeks to ensure full disclosure prior to trial of all information that is "material and necessary."[1] This rule promotes the

[38] *See* Roe v. Wade, 410 U.S. at 163-64. A state may proscribe abortion in the third trimester to further its interest in protecting fetal life "except when [an abortion] is necessary to preserve the life or health of the mother." *Id.* In *Roe v. Wade*, the Supreme Court acknowledged that the state interest in protecting potential life can never outweigh the superior state interest of protecting the life and health of the mother. *See id.*

The New York State Legislature contends that PCAP is constitutional because the State has a compelling objective in promoting potential life and PCAP is set up only to achieve that objective. *Perales*, 571 N.Y.S.2d at 975. This rationale, however, treats the pregnant woman as a mere incubator whose sole purpose is to produce a healthy baby even if the results are fatal to the woman. Thus, the Legislature is ignoring the State's obligation to promote the health of the pregnant woman. *See id.* at 981. As the *Perales* court stated, "there can be no compelling justification for that medical assistance program which in practice endangers the health and lives of eligible women for whom an abortion is medically necessary, women whom the Legislature has expressly identified as needy in regard to medical care." *Id.* at 982.

[1] *See* CPLR 3101(a) (McKinney 1991). "There shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof . . . ." *Id.* In order to promote full disclosure, courts read the phrase "material and necessary" liberally to include "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." *See* Allen v. Crowell-Collier Publishing Co., 21 N.Y.2d 403, 406, 235 N.E.2d 430, 432, 288 N.Y.S.2d 449,

search for truth and facilitates optimal trial preparation.[2] Under CPLR 3101(e), a party seeking discovery has an absolute right to "obtain a copy of his own statement."[3] However, "materials prepared in anticipation of litigation" are conditionally protected from discovery under CPLR 3101(d)(2).[4] New York courts will compel the disclosure of such materials only if "the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means."[5]

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452 (1968); *see also In re* Comstock's Will, 21 A.D.2d 843, 844, 250 N.Y.S.2d 753, 755 (4th Dep't 1964) (quoting 3 WK&M ¶ 3101.07) ("If there is any possibility that the information is sought in good faith for possible use as evidence-in-chief or in rebuttal or for cross-examination, it should be considered 'evidence material . . . in the prosecution or defense.' "). *See generally* SIEGEL § 344, at 490-93 (discussing CPLR 3101(a)).

[2] *See* Mudge v. Thomas J. Hughes Constr. Co., 16 A.D.2d 106, 107, 225 N.Y.S.2d 833, 836 (1st Dep't 1962) (encouraging liberal discovery to promote trial fairness and further interests of justice). Courts expanded their interpretation of CPLR 3101(a) as the focus of pretrial discovery shifted from the preservation of material for trial toward the full preparation of the case and expedition of the trial. *See* Southbridge Finishing Co. v. Golding, 2 A.D.2d 430, 434, 156 N.Y.S.2d 542, 546 (1st Dep't 1956) (examining witnesses before trial gives both parties opportunity to gather evidence); *see also Allen*, 21 N.Y.2d at 406-07, 235 N.E.2d at 432, 288 N.Y.S.2d at 452 (quoting 3 WK&M ¶ 3101.07) (discovery permitted if matter "sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable"); Barber v. Town of Northumberland, 88 A.D.2d 712, 713, 451 N.Y.S.2d 291, 293 (3d Dep't 1982) (test for disclosure of facts bearing on controversy is 'one of usefulness and reason').

The federal courts also encourage broad disclosure. *See, e.g.*, Martin v. Long Island R.R., 63 F.R.D. 53, 54-55 (E.D.N.Y. 1974) (settlement discussions, authentication practices, and trial preparation facilitated by discovery of surveillance videotapes).

[3] CPLR 3101(e) (McKinney 1991).

[4] *See* CPLR 3101(d)(2) (McKinney 1991); *see also* Dunning v. Shell Oil Co., 57 A.D.2d 16, 17-18, 393 N.Y.S.2d 129, 130-31 (3d Dep't 1977) (objective of CPLR 3101(d)(2) served by discovery of expert reports prepared for litigation); Pinn v. Supermarkets Gen. Corp., 104 Misc. 2d 1112, 1115, 430 N.Y.S.2d 211, 213 (Dist. Ct. Nassau County 1980) (permitting discovery of accident report where defendant could not demonstrate it was prepared solely for litigation). *See generally* SIEGEL § 348, at 499-503 (discussing CPLR 3101(d)(2)).

There are three specific exceptions to the liberal discovery rule: "(1) privileged matter (CPLR 3101, subd. [b]); (2) attorney's work product (CPLR 3101, subd. [c]); and (3) material prepared for litigation (CPLR 3101, subd. [d])." *Barber*, 88 A.D.2d at 713, 451 N.Y.S.2d at 293.

[5] CPLR 3101(d)(2) (McKinney 1991). Courts label these materials conditionally immune because they are discoverable only upon satisfaction of the two statutory criteria. *See, e.g.*, Puntoriero v. Johnson, 115 A.D.2d 229, 229-30, 496 N.Y.S.2d 125, 125 (4th Dep't 1985) (requiring defense to show that investigative reports prepared solely for defense cannot be duplicated and without them party will be prejudiced); Greene v. Lee, 112 A.D.2d 140, 141, 490 N.Y.S.2d 830, 832 (2d Dep't 1985) (disallowing discovery of accident scene photographs where substantial equivalent available); Austin v. Coastal Indus., 112 A.D.2d 123, 124, 491 N.Y.S.2d 53, 54 (2d Dep't 1985) (no undue prejudice where requesting party had ample opportunity to photograph device in question after incident); Rosado v. Mercedes-Benz, 90

The classification of surveillance tapes—surreptitious videotapes of plaintiffs alleging personal injury—under these two provisions of the CPLR has divided New York's judicial departments.[6] This division stems from the parties' competing interests in the surveillance tapes. The defendant seeks to keep the contents of the tapes secretive, in hopes of impeaching the plaintiff's testimony, while the plaintiff desires to expose manipulative filmmaking techniques employed by the defendant by reviewing the tapes prior to trial.[7] In *Marte v. W.O. Hickok Manufacturing Co.*,[8] the Appellate Division, First Department, citing inter alia CPLR 3101(e), permitted the discovery of surveillance tapes, but delayed disclosure until the defendant "had the opportunity to depose fully the opposing party, thereby memorializing that individual's testimony so it can be utilized for impeachment purposes."[9] In *Di Michel v. South Buffalo Ry.*,[10] the Appellate Division, Fourth Department, also permitted the discovery of surveillance tapes, but rejected the First Department's analogy to CPLR 3101(e).[11] According to the *Di Michel* court, surveillance tapes must be analyzed under CPLR 3101(d)(2).[12] However, the Third Department reasoned that the plaintiff had a substantial need for discovery because films are subject to alteration and manipulation and "[f]or that same reason, it is impossible for [the] plaintiff to obtain the substantial equivalent of the surveillance materials by other means."[13] The court concluded that surveillance tapes were by their very nature discoverable under CPLR 3101(d)(2).[14] Recently, in *Careccia v.*

A.D.2d 515, 515, 454 N.Y.S.2d 759, 760 (2d Dep't 1982) (plaintiff who hired expert to inspect automobile and then junked it not entitled to defendant's reports based on subsequent tests).

[6] *See Departmental Dispute on Whether Surveillance Video Tapes of Personal Injury Plaintiff Are Discoverable*, N.Y. ST. L. DIG. (N.Y.S.B.A., David D. Siegel ed.), Mar. 1992, at 1-2 [hereinafter *Departmental Dispute*].

[7] *See* CPLR 3101 commentary at 70 (McKinney 1991).

[8] 154 A.D.2d 173, 552 N.Y.S.2d 297 (1st Dep't 1990).

[9] *Id.* at 177, 552 N.Y.S.2d at 300.

[10] ___ A.D.2d ___, 579 N.Y.S.2d 788 (4th Dep't 1991).

[11] *Id.* at ___, 579 N.Y.S.2d at 788.

[12] *Id.*

[13] *Id.*

[14] *Id.*; *see also* Prewitt v. Beverly-50th St. Corp., 145 Misc. 2d 257, 258, 546 N.Y.S.2d 815, 816 (Sup. Ct. N.Y. County 1989) ("[T]he requisite substantial need is established by the plaintiff's need to examine and perhaps test the films as to authenticity, and . . . the hardship in obtaining a substantial equivalent is manifest."); Jenkins v. Rainner, 350 A.2d 473, 477 (N.J. 1976) (procurement of substantial equivalent poses manifest hardship because videotapes are unique pieces of evidence that cannot be recreated).

Enstrom,[15] the Appellate Division, Third Department, rejected the reasoning of the First and Fourth Departments and prohibited discovery of surveillance tapes because the party requesting discovery failed to demonstrate both an inability to duplicate the tapes and a substantial need as required under CPLR 3101(d)(2).[16]

In *Careccia*, a motorcyclist brought suit against Rockland County to recover for injuries sustained in a collision allegedly caused by the county's negligent maintenance of an intersection.[17] Following commencement of the action, surveillance films of the injured plaintiff were recorded at the behest of the defense counsel.[18] The plaintiff sought to obtain these videotapes, but the defendant refused to release them.[19] The Supreme Court, Rockland County, granted the plaintiff's motion to compel the defendant to release the videotapes, and the defendant appealed.[20]

The Appellate Division, Third Department, reversed the Supreme Court's order on the grounds that surveillance tapes, made

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[15] 174 A.D.2d 48, 578 N.Y.S.2d 678 (3d Dep't 1992).

[16] *Id.* at 50-51, 578 N.Y.S.2d at 679-80. Regarding *Marte*'s analogy to CPLR 3101(e), the *Careccia* court held that "it is doubtful that the [*Marte*] holding was premised on that provision which 'enables a party to *unconditionally* obtain a copy of his or her own statement.'" *Id.* at 50, 578 N.Y.S.2d at 679 (quoting Sands v. News Am. Publications, 161 A.D.2d 30, 40, 560 N.Y.S.2d 416, 422 (1st Dep't 1990)). Regarding *Di Michel*'s presumption of discoverability, the *Careccia* court stated that it was "unwilling to conclude that the elements necessary for an order for production under CPLR 3101(d)(2) are inherent in the very nature of the visual evidence." *Id.* at 51, 578 N.Y.S.2d at 680.

The dispute in *Careccia* arose in the Second Department, but was transferred to the Third Department pursuant to a program that was recently implemented to ease the Second Department's case load. *See Departmental Dispute*, *supra* note 6, at 1. An interesting question of law arising out of such transfers is whether the transferee court should apply the law of its own department or the law of the transferor's department. *See id.* at 1-2; David D. Siegel, *The Second Department's Transferred Cases: Whose Law Applies in a Conflict?*, N.Y.L.J., Apr. 23, 1990, at 1.

[17] Careccia v. Enstrom, 171 A.D.2d 928, 928, 566 N.Y.S.2d 976, 977 (3d Dep't 1991). The plaintiff, while operating his motorcycle, collided with defendant Enstrom at the hazardous intersection. *Id.* at 928, 566 N.Y.S.2d at 977.

[18] *Careccia*, 174 A.D.2d at 49, 578 N.Y.S.2d at 679. Although the exact contents of these videotapes were not revealed, it can be presumed that the films were intended to refute the extent of the plaintiff's alleged injuries. *See* Marte v. Hickok Mfg. Co., 154 A.D.2d 173, 176, 552 N.Y.S.2d 297, 299 (1st Dep't 1990). "The primary reason for offering visual reproductions of a plaintiff is to impeach his or her credibility and to undermine plaintiff's claims regarding the physical injuries suffered . . . ." *Id.*; *see also* Olszewski v. Howell, 253 A.2d 77, 78 (Del. Super. Ct. 1969) (surveillance videotapes are needed to protect "against a possible exaggerated claim, [or] even false claim[s], of personal injury"); Bogatay v. Montour R.R., 177 F. Supp. 269, 270 (W.D. Pa. 1959) (surveillance films can be used as substantive evidence of injury or as impeachment material).

[19] *See Careccia*, 171 A.D.2d at 928, 566 N.Y.S.2d at 977.

[20] *Careccia*, 174 A.D.2d at 49, 578 N.Y.S.2d at 679.

after the commencement of a lawsuit, are conditionally protected from discovery in that they are clearly "materials prepared for litigation."[21] The court rejected the plaintiff's argument that videotapes are absolutely discoverable under CPLR 3101(e) and maintained that surveillance videotapes are more akin to the report of an investigator hired by defense counsel and, therefore, protected from discovery under 3101(d)(2).[22] The court also disagreed with the *Di Michel* court's presumption of discoverability for surveillance tapes, "for such a conclusion would effectively rewrite the statute to create another exception to the rule governing material prepared for litigation, which is the function of the Legislature, not the courts."[23] Justice Casey, writing for a unanimous court, concluded that the party seeking discovery failed to carry the burden of proving that he had a "substantial need" for the materials and that he could not obtain their "substantial equivalent" without undue hardship.[24]

It is submitted that the court's refusal to rely on CPLR 3101(e) and not to presume surveillance tapes discoverable under

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[21] *Id.* at 50-51, 578 N.Y.S.2d at 680. Photographs and similar devices are within the scope of "materials" prepared for litigation. *See, e.g.*, O'Connell v. Jones, 140 A.D.2d 676, 676, 529 N.Y.S.2d 19, 20 (2d Dep't 1988) (photographs are "material prepared for litigation and conditionally immune from disclosure"); Saccente v. Toterhi, 35 A.D.2d 692, 692, 314 N.Y.S.2d 593, 594 (1st Dep't 1970) (CPLR 3101(d) analysis applies to photographs taken by plaintiff of defendant after accident). *But see* Murdick v. Bush, 44 Misc. 2d 527, 528, 254 N.Y.S.2d 54, 55 (Sup. Ct. Onondaga County 1964) (photographs of accident scene not protected by work product doctrine because not "product of the lawyers mind") (citation omitted).

[22] *Careccia*, 174 A.D.2d at 50, 578 N.Y.S.2d at 680 (rejecting *Marte* court's analogy of photographs taken with party's permission).

The court determined that no correlation existed between the surveillance tapes and CPLR 3101(e). *See id.* Those courts that have deemed photographs "party statements" ignored work product arguments and concluded that an absolute right to discovery of this material existed. *See, e.g., Saccente*, 35 A.D.2d at 692, 314 N.Y.S.2d at 594 (where infant plaintiff allowed defendant to photograph him before retaining counsel court compelled discovery deeming photograph equivalent to plaintiff's own statement).

[23] *Careccia*, 174 A.D.2d at 51, 578 N.Y.S.2d at 680 (citation omitted).

[24] *Id.* at 51, 578 N.Y.S.2d at 680. The court stated:

> The record in this case contains nothing to show that a pretrial examination or testing of the videotapes would reveal anything relevant to their authenticity or accuracy that could not be revealed through ordinary trial tactics, such as *voir dire* and cross examination of the person who made the videotapes. Nor is there anything in the record to show that when the request for the videotapes was made plaintiff's condition had changed to such a degree that he could no longer produce a videotape that would be a substantial equivalent of those obtained by defendant.

Id. (citations omitted).

CPLR 3101(d)(2)[25] is a warranted departure from previous decisions. Regarding CPLR 3101(e), a surveillance videotape more closely resembles testimony of a third party witness observing a plaintiff's activities than a plaintiff's own statements.[26] Videotapes, therefore, should be treated as third party reports acquired at the request of defense counsel and thus subject to the conditional protection of materials prepared for trial.[27]

Regarding CPLR 3101(d)(2), the argument that the nature of surveillance tapes inherently prevents the plaintiff from obtaining their "substantial equivalent" and inherently creates a "substantial need" is equally tenuous.[28] Such an interpretation would constitute an unnecessary rewriting of the statute by the judiciary.[29] The reason posited by the requesting party for discovering the surveillance tapes—to test their validity and avoid later delay—clearly does not rise to the level of "substantial need."[30] Similarly, it should not be presumed that the party petitioning for discovery cannot create the "substantial equivalent" of surveillance films; the party requesting the material may be able to testify as to his or her own physical condition and to produce witnesses to attest to his or her daily activities.[31] It is further asserted

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[25] *See id:*

[26] *See id.; accord Di Michel*, ___ A.D.2d at ____, 579 N.Y.S.2d at 788 ("[S]urveillance material does not constitute a statement discoverable pursuant to CPLR 3101(e) . . . ."). *But see* Ancona v. Net Realty Holding Trust Co., N.Y.L.J., April 22, 1992, at 26 (Sup. Ct. Nassau County 1992); Prewitt v. Beverly-50th St. Corp., 145 Misc. 2d 257, 258, 546 N.Y.S.2d 815, 815 (Sup. Ct. N.Y. County 1989) (compelling discovery by analogy to CPLR 3101(e)); *Marte*, 154 A.D.2d at 177, 552 N.Y.S.2d at 299-300 (same). "If the videotapes at issue here can be equated to any type of verbal or written evidence, the equivalent would be the statements or report of an investigator hired by defense counsel to observe plaintiff's daily activities, not the statements of plaintiff." *Careccia*, 174 A.D.2d at 50, 578 N.Y.S.2d at 680.

[27] *See Careccia*, 174 A.D.2d at 50, 578 N.Y.S.2d at 680.

[28] *See id.* at 51, 578 N.Y.S.2d at 680.

[29] *See id.* CPLR 3101(d)(1) discusses the additional discovery permitted when an expert witness testifies at trial. *See* CPLR 3101(d)(1) (McKinney 1991). Surveillance videotapes certainly cannot be classified as "expert witnesses," and according such treatment to videotapes would protect a class of evidence that the Legislature never intended to protect. *See Careccia*, 174 A.D.2d at 51, 578 N.Y.S.2d at 680.

[30] *See Di Michel*, ____ A.D.2d at ____, 579 N.Y.S.2d at 789 (Balio & Lawton, JJ., dissenting). "Although plaintiff expresses concern about the authenticity or accuracy of the tape, those matters may be challenged during voir dire, cross-examination or rebuttal in the manner traditionally used with photographs and recordings." *Id.*

Additionally, it is equally untenable that seeking discovery for the purpose of avoiding an effective cross examination constitutes a "substantial need." *Id.; see also* Mort v. A/S D/S Svendborg, 41 F.R.D. 225, 227-28 (E.D. Pa. 1966) (interrogatories intended to frustrate effective cross-examination need not be answered).

[31] *See Careccia*, 174 A.D.2d at 51, 578 N.Y.S.2d at 680 ("ordinary trial tactics" suffi-

that a rule which presumes that videotapes are inherently discoverable constitutes blind reliance by the judiciary on the *general* proposition of broad discovery,[32] and thus defeats the Legislature's *specific* intent to protect "materials prepared for litigation."

In *Marte*, the First Department compelled disclosure of surveillance videotapes, but delayed their disclosure until the requesting party was fully deposed.[33] The *Careccia* court stated that such a compromise is statutorily precluded.[34] It is suggested, however, that where the requesting party sustains the burden of compelling production, this condition would be proper under CPLR 3103(a), which gives courts the discretion to "make a protective order denying, limiting, *conditioning* or regulating the use of any disclosure device."[35] Allowing the court this discretion with respect to the discoverability of materials effectively balances competing interests thus allowing acquisition of materials by a requesting party while preserving the effectiveness of surveillance films for an adversary.[36] From the defendant's perspective, a prediscovery deposition will

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cient test of authenticity); *see also Di Michel*, ___ A.D.2d at ___, 579 N.Y.S.2d at 789 (Balio & Lawton, JJ., dissenting). The dissent in *Di Michel* noted that a party has access to the substantial equivalent because the

> [p]laintiff is fully aware of the nature of his physical condition and the extent of his disability. He makes no assertion that he lacks expert medical evidence to support his position regarding injuries and disability or that he lacks witnesses who can testify regarding his daily activities and habits.

Id. The burden of proof is on the party requesting the material to demonstrate the elements necessary for the production of these materials. *See* Thibodeau v. Rob Leasing, Inc., 88 A.D.2d 1085, 1086, 452 N.Y.S.2d 722, 724 (3d Dep't 1982) (denying request because requesting party "failed to meet its burden of proof to demonstrate . . . a change occurred sufficient to require discovery"). *But see Prewitt*, 145 Misc. 2d at 258, 546 N.Y.S.2d at 816 (substantial need established by plaintiff's need to examine and test films).

[32] *But see Mort*, 41 F.R.D. at 227-28 (arguing that liberal discovery policy not furthered where purpose of disclosing videotapes was to avoid impeachment).

[33] *Marte*, 154 A.D.2d at 177, 552 N.Y.S.2d at 300. Other courts have also adopted this balancing approach. *See, e.g.*, Snead v. American Export-Isbrandtsen Lines, 59 F.R.D. 148, 151 (E.D. Pa. 1973).

[34] *See Careccia*, 174 A.D.2d at 51, 578 N.Y.S.2d at 680.

[35] CPLR 3103(a) (McKinney 1991) (emphasis added). "The court may at any time on its own initiative . . . make a protective order denying, limiting, conditioning, or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." *Id.*; *see also* Altesman v. Eli Lilly & Co., 164 A.D.2d 876, 877, 559 N.Y.S.2d 563, 565 (2d Dep't 1990) (allowing protective order to prevent tailored testimony); Westchester Rockland Newspapers, Inc. v. Marbach, 66 A.D.2d 335, 338, 413 N.Y.S.2d 411, 413 (2d Dep't 1979) (forbidding pretrial dissemination of deposition materials to press to protect parties' interests).

[36] *See* Blyther v. Northern Lines, 61 F.R.D. 610, 611-12 (E.D. Pa. 1973).

eliminate the temptation of the requesting party to alter his or her testimony to conform to the film,[37] and the uncertainty concerning the contents of the films will ensure truthfulness.[38] From the plaintiff's perspective, he or she is benefitted by having the time to test the films prior to trial and thus protect against manipulative filmmaking, or similar chicanery.[39]

Richard W. Viola

CODE OF PROFESSIONAL RESPONSIBILITY

Disciplinary Rule 1-102(A)(7): New York Court of Appeals broadens scope of rule to include attorney criticism of the judiciary

New York's Code of Professional Responsibility (the "Code")[1] has been viewed by the courts as the guidepost in determining the bounds of lawyers' professional conduct.[2] The Code's disciplinary

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[37] *Id.* at 612.

[38] *See* Snead v. American Export-Isbrandtsen Lines, 59 F.R.D. 148, 150 (E.D. Pa. 1973).

[39] *Id.*

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[1] *See* N.Y.S.B.A. CODE OF PROFESSIONAL RESPONSIBILITY (McKinney 1990) [hereinafter CODE]. "The Code . . . points the way [for] the aspiring [attorneys] and provides standards by which to judge the transgressor." *Id.* pmbl. at 354-55; *see also* N.Y.S.B.A. THE LAWYER'S CODE OF PROFESSIONAL RESPONSIBILITY pmbl. at 1 (1990) [hereinafter LAWYER'S CODE]. The Code was first promulgated by the American Bar Association in 1969 and adopted by the New York State Bar Association in 1970 as its official code of ethics. *See* N.Y. JUD. LAW app. at 351 (McKinney 1975). In 1983, the American Bar Association drafted rules of professional conduct. *See* MODEL RULES OF PROFESSIONAL CONDUCT (1983) [hereinafter MODEL RULES]. Although the Model Rules were never adopted by the New York Bar, they did serve as the basis for major revisions in the 1970 Code. *See* LAWYER'S CODE, *supra*, letter insert from the President of the New York State Bar Ass'n, dated September, 1990. These revisions were ultimately adopted by the four judicial departments of the Appellate Division of State Supreme Court, and promulgated as joint rules of the appellate divisions effective September 1, 1990. *See* N.Y. JUD. LAW app. at 108 (McKinney Supp. 1992). The disciplinary committees of the appellate divisions are responsible for the supervision of attorney conduct and the establishment of standards by which to review such conduct. N.Y. JUD. LAW § 90(2) (McKinney 1983); *see also* Grunberg v. Feller, 132 Misc. 2d 738, 741, 505 N.Y.S.2d 515, 517 (N.Y.C. Civ. Ct. N.Y. County 1986) (disciplinary committees of appellate divisions are proper forums for complaints involving attorney misconduct).

[2] *See In re* Hof, 102 A.D.2d 591, 596, 478 N.Y.S.2d 39, 42 (2d Dep't 1984) ("The disciplinary rules and ethical considerations set down in the Code of Professional Responsibility . . . represent the acknowledged standards of the profession . . . ."). The Code consists of Canons, which represent general principles of professional conduct expected of attorneys, Ethical Considerations, which are aspirational and outline the objectives of the profession