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February 28, 2007

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Re: The NYCLA Task Force on Corporate Governance's Report regarding the New York State Bar Association's Proposed Code of Conduct for its Association Leaders

To the NYSBA:

The New York County Lawyers' Association ("NYCLA") Task Force on Corporate Governance ("Task Force") submits the following report on the New York State Bar Association's ("NYSBA") proposed code of conduct ("NYSBA Code") for its leadership. We understand that the comment period expires on March 10, 2007, and appreciate the opportunity that the NYSBA has given the Task Force to share its views.

I should also note that I serve as member of the House of Delegates along with my colleagues, Edwin David Robertson, NYCLA's President, and Catherine Christian, NYCLA's President-Elect.

INTRODUCTION

By way of background, the Task Force comprises NYCLA members who are attorneys in private practice and self-regulatory organizations[1] and corporate in-house counsel.

[1] Members of the Task Force employed by self-regulatory organizations, federal and state government agencies, other regulatory agencies or private law firms express no opinion regarding any of the proposed rules. Individual members of the Task Force may have views that differ from those presented. Moreover, this comment is solely that of the Task Force, has not been approved by NYCLA's Board of Directors ("Board"), and does not necessarily represent the views of the Board.

This report has three distinct sections. Initially, we discuss the findings and NYSBA Code as it is found in the Report of Special Committee on Sarbanes-Oxley Issues - Proposed Code of Conduct for Association Leaders, dated February 5, 2007 ("Code Report"). To aid in the reader's review, our discussion mirrors the headings contained in the Code Report. Next, we discuss potential areas of concern and merit regarding the NYSBA Code.

Finally, we suggest certain changes that the NYSBA may consider before adopting the NYSBA Code.

THE CODE REPORT

Below is our analysis of the Code Report:

Chapter Five

A Code of Conduct Governing Association Leaders

I. A Code of Conduct for Association Leaders

A. Introduction

This section addresses the necessity of a code of conduct because the professional code of ethics does not cover a structure such as the NYSBA. As such, a code of conduct is needed to "fit" the structure of the NYSBA, and the code of conduct must be distinct from a code of ethics.

B. SOX, NYSE, Nasdaq and A Code of Conduct

This section discusses the regulatory history of codes of conduct and their relation to the Sarbanes-Oxley Act of 2002 ("SOX") as well as NYSE and Nasdaq rules. SOX requires a "code of ethics" for senior management and Financial officers of publicly traded companies. The NYSE and Nasdaq Rules require such codes for these individuals as well as all directors, officers and employees. Nasdaq rules also require prompt enforcement of any violation of these codes.

Under these frameworks, the codes, generally, address conflicts of interest;

corporate opportunities; confidentiality; fair dealing; protection and proper use of company assets; compliance with laws, rules and regulations; illegal or unethical behavior reporting; disclosure requirements; and enforcement mechanisms. These different policies may apply to different sectors of the organizations, and there maybe more than one code.

C. A Code of Conduct and NonProfits

This section discusses the history of non-profit sector regulatory investigations. Regulatory investigations have occurred for a variety of reasons, and there have been many different regulatory responses to these inquiries.

For example, the New York State Attorney General ("NYSAG") proposed a version of SOX for New York non-profit entities; the United State Senate held hearings; and the IRS proposed a five-year review of tax-exempt status for non-profits. The American Bar Association ("ABA") also reviewed this matter it its Guide to Nonprofit Governance in the Wake of Sarbanes Oxley. The ABA report, in particular, recognized that non-profits share similar concerns regarding codes of conduct as public companies. However, the report stressed that any conduct code must "fit" the organization.

D. The New York Code of Professional Responsibility

This section initially discusses the make up of the NYSBA as lawyers admitted to practice law in New York and subject to the New York Code of Professional Responsibility ("NYCPR").

The NYCPR addresses the relationship between lawyers and clients. However, the duties owed to the NYSBA are different in that the NYCPR does not govern the relationships between the NYSBA and its leaders or members.

Nonetheless, the Code Report recognizes that the NYCPR provides a standard for the NYSBA. The Code Report also discusses the Report and Recommendation of the NYSBA's Committee on Standards of Attorney Conduct ("COSAC"). COSAC suggested revisions to the NYCPR as well as a new proposed Rule 6.4 (codified as EC 8-4). Rule 6.4 would address disclosure of interests to clients that may affect the attorney-client relationship. Such disclosure may be required of NYSBA members where there is a potential shared or conflicting interest between a NYSBA position and the client.

Of course, the report states any NYSBA Code would be subordinate to the NYCPR. Interestingly, the Code Report points out that some NYSBA members (e.g., law students) are not subject to the NYCPR. However, the Code Report assumes that the NYSBA members would be subject to the same regulations as an attorney admitted to practice in New York.

E. The Bylaws and Rules of the Association

The Code Report stresses that the NYSBA is governed by its Bylaws and rules adopted by the House of Delegates and other NYSBA entities. Any Code must, therefore, be consistent with these provisions. In particular, these provisions relate to the House of Delegates' rules relating to its operation; NYSBA commenced litigation; and criteria for NYSBA filed amicus curiae briefs. Further, the NYSBA policies regarding sexual harassment, employee business conduct and document retention would also fall in this category if certain ones were to exist. (The business conduct and document retention policies have not been issued, and the Code Report suggests other NYSBA entities should address these issues).

F. To Whom Should a Code of Conduct for the Association Apply?

The Code Report specifically suggests that any Code apply to volunteer members who are NYSBA officers and section officers, and members of NYSBA Committees or section committees. All of these individuals are defined as "Association Leaders." The rationale for this aspect of the Code relies upon the fact that these Association Leaders may influence NYSBA policy and positions and, as such, should be guided by the Code.

Supporting this rationale are citations to the NYSBA bylaws and the procedure relating to the issuance of NYSBA statements and reports. The Code Report suggests that the integrity of this process must be preserved. The Code will offer guidance 0n these potential conflict issues.

Other NYSBA members (not Association Leaders) and employees will not be subject to the Code because other NYSBA members will generally not influence NYSBA decisions. The Code Report also suggests that the Code not cover NYSBA employees (generally, not lawyers) because these persons have their own rules or regulations; their functions are different; and the NYSBA Executive Director may issue managerial directives. However, the Code Report recommends that a separate employee

Code of Conduct should be issued and, apparently, NYSBA management has drafted such a code and will review it for consistency with the Code if enacted.

II. Antitrust Compliance

The Code Report discusses various antitrust compliance issues, and recommends that the NYSBA adopt an antitrust compliance policy for Association Leaders and employees to comply with these regulations.

III. A Proposed Code of Conduct for Association Leaders

The proposed Code is divided into subsections entitled: Preamble; Applicability of Code of Conduct; Lawyer Regulations; Participation in Association Activities; Conflicts of Interest; Confidentiality; Antitrust Compliance; Other Compliance; and Administration. The subsections detail the NYSBA's efforts "to avoid any dishonesty, self-dealing or conflicts of interest, and to avoid any action that would adversely affect the reputation of the Association." Preamble at p. 95.

Preamble

As discussed above, the Preamble notes the reasons for the Code and its goals.

Applicability of Code of Conduct

The Code applies to Association Leaders.

Lawyer Regulations

The Code is subordinate to all lawyer regulations, including, but not limited to, the NYCPR.

Participation in Association Activities

Association Leaders must maintain high ethical standards and avoid bringing disrepute upon the NYSBA.

Conflicts of Interest

Association Leaders should avoid both conflicts of interest and the appearance of conflicts of interest. Association Leaders should exercise their judgment objectively regardless of clients' or former clients' interests.

Accordingly, Association Leaders should not knowingly participate in a decision or action:

(1) Where it is incompatible with a client or former clients' interest under any lawyer regulation; or

(2) There is a financial interest for a related family or business person.

Association Leaders should also disclose such interests as well and, if necessary, recusal motions may be made. Further, reports or statements may be reviewed if there is an appearance of a conflict. Finally, the NYSBA President would make a report on all such actions and, if unable to act, such matters would be referred to the President-Elect or the NYSBA Executive Committee.

Confidentiality

Permission is required to disclose confidential or proprietary information.

Antitrust Compliance

All federal and state antitrust laws must be followed, and Association Leaders are prohibited from certain activities relating to, among other things, legal fees, bids or proposals, markets or boycotts. This policy also covers continuing legal education programs or publications; however, it is permissible, under certain circumstances, to jointly sponsor events, programs or publications.

Other Compliance

Association Leaders must comply with all applicable laws and be familiar with the NYSBA's rules, policies and procedures. The Code seems to suggest that SOX is applicable to non-profit organizations. In support of this proposition, the Code authors refer to SOX Sections 802 and 1102 (imposing criminal penalties for the destruction of

certain documents) and Section 1107 (imposing criminal penalties on anyone retaliating against whistleblowers). These SOX provisions actually amend 18 U.S.C. §§§1512, 1513 and 1519. These provisions increase penalties for violations of Section 1107 (§1513) to 10 years and Sections 802 and 1102 (§§1512 and 1519) to 20 years. Technically, these amendments alter current criminal statutes, and the vast majority of SOX provisions solely relate to corporations whose securities are registered pursuant to either the Securities Act of 1933 or the Securities Exchange Act of 1934. As such, nonprofit organizations are not directly covered by SOX.

Administration

The Code may be amended by the House of Delegates. The NYSBA President and Executive Director shall review the Code annually to ensure consistency with any subsequent employee conduct code. Any breach shall be reported to the NYSBA President (or, if a conflict exists, to the President-Elect or Executive Committee). All interpretations of the Code, as well as any sanctions imposed for a breach, shall be made by the NYSBA Executive Committee.

THE CODE'S IMPACT

The NYSBA should be commended for its efforts at implementing a Code of Conduct for its Association Leaders.

The Code stresses the necessity of maintaining the integrity of the NYSBA as an association and the importance of its mission. The Code addresses these concerns in a forthright and appropriate manner. The Code establishes a clear coverage of Association Leaders, and explains its reasons for not being overly expansive to include all NYSBA members and employees. These reasons appear to be cogent and well founded.

However, the Code is lacking because it relies upon yet unfinished and unapproved policies and procedures. For example, NYCLA has instituted the policies and procedures that the NYSBA has yet to complete, i.e., the employee business conduct and document retention policies. As a courtesy, we attach NYCLA's policies regarding these areas, and we look forward to the NYSBA formulating these additional procedures and circulating them for comment.

The proposed Code also clearly explains the elements constituting a breach of the Code and the procedures for reporting. There are, nonetheless, inadequacies contained in

the reporting, interpretation and/or sanctioning provisions. Too much power is placed in the NYSBA President. A more tailored approach with multiple reporting mechanisms seems to make more sense for the NYSBA.

Similarly, great power is vested in the Executive Committee to interpret the Code as well as sanction anyone for a breach. Such power should not, initially, be placed in the Executive Committee, but with a select committee acting in its name. By way of example, NYCLA has established such a function in its independent Audit Committee. The reserving of such power in an independent Audit Committee finds support in the use by for-profit corporations of special select committees of the board of directors where those committees primarily consist of independent directors. The NYSBA may also consider creating a disinterested committee of past presidents who would be "above the fight." This mechanism would be similar to SOX's Qualified Legal Compliance Committee ("QLCC"). Either change would ensure that any potential abuses would be checked.

Additionally, the disclosure required pursuant to proposed Model Rule 6.4 seems to apply to all members, officers and directors. Proposed Rule 6.4 apparently covers officers, directors and members -- a group that is broader that the NYSBA Code's definition of Association Leaders. We believe that those provisions should be clearly set forth in the NYSBA Code because the NYSBA Code (as it already suggests and is indicated in the Code Report) should never be interpreted to relieve anyone from the obligations of other lawyer regulations.[2] Further, we suggest that there be some prominent "reminder" to the NYSBA House of Delegates members that they are *de facto* directors, and would be covered by this potential NYSBA Code.

Further, the NYSBA may consider more clearly defining what and when a position advanced by an Association Leader becomes advocating for one's clients. There are many situations where certain advocacy groups such as the criminal defense bar or the real estate developer bar will urge their clients' interests, and one would not find this conduct to be troubling. For example, members of the criminal defense bar routinely advocate for expanding criminal defendants' rights or more money for various legal aid programs, while members of the real estate developer bar generally support proposals that advance such developer interests as a whole regardless of any particular client's position.

There also may be some confusion regarding the "recusal motions" mentioned as

[2] Although some may suggest that the NYSBA Code is not necessary if such a model rule were to be enacted, these persons would be incorrect because the Code would: (a) remind people of their obligations; (b) supplement those requirements; and (c) provide a detailed mechanism for satisfying those requirements that are promulgated in a more abstract form of a model rule or rules.

the manner to remove an Association Leader with a conflict. As a matter of corporate governance, recusal is not required; generally, the conflicted person will have to make a full disclosure, and a majority of non-interested. persons would then have to affirm that person's participation. Such an event is rarely a problem for NYSBA or NYCLA. However, recusal may be appropriate where there is a failure or inability to make disclosure (i.e., the disclosure itself would harm a client's interests). This situation is a rare possibility and, as such, specific guidance should be provided to the Association Leaders to respond to this potential problem.

Finally, the inclusion of the antitrust compliance policy seems misplaced. This regulatory area in the Code seems to overwhelm the import and clarity of the other provisions of the Code. A separate antitrust compliance policy document would also highlight its importance.

RECOMMENDATIONS

NYCLA's Task Force recommends that the following actions be taken:

1. The NYSBA should seek approval at the June 2007 Meeting of the House of Delegates for policies relating to an employee code of conduct, document retention, ethics and whistleblower protection. For the benefit of the NYSBA, we attach NYCLA's policies regarding these areas for your review.

2. The Code should contain a specific reference that it applies to members of the Executive Committee and the House of Delegates as Association Leaders.

3. The antitrust compliance policy should be separated from the Code and promulgated as a distinct policy.

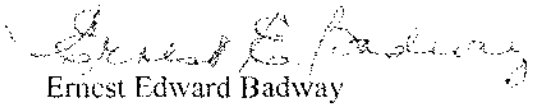
4. The interpretive and sanctions functions should be shifted from the Executive Committee to a specialized sub-committee of that entity or a separate functioning "past presidents" committee as detailed above.

5. The Code should be amended to broaden the reporting circle beyond the NYSBA President.

CONCLUSION

NYCLA's Task Force congratulates the NYSBA for its efforts in establishing the Code. As the NYSBA Code Report acknowledges, some additional work remains to be done. We believe that our suggested recommendations advance the Code's mission of maintaining the NYSBA's integrity. We thank the NYSBA for the opportunity to respond to these proposals. If you should have any questions, please do not hesitate to contact Ernest E. Badway at (212) 461-2323.

Respectfully submitted,



Ernest Edward Badway
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Task Force on Corporate Governance

Enclosure(s)

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CODE OF CONDUCT[3*]

A director, officer or employee of the New York County Lawyers' Association (NYCLA), when acting on behalf of NYCLA, must comply with the law, act in an ethical manner, and avoid conflicts of interest or the appearance of conflicts of interest. Specific guidance applicable to financial matters and employees is contained in the Audit Committee Charter, the Employee Personnel Manual and the Policies and Procedures Manual. This Code of Conduct applies to directors, officers and employees of NYCLA.

Conflicts of Interest

Except with disclosure of the conflict to and consent of NYCLA, a director, officer or employee may not act in carrying out his or her NYCLA responsibilities if he or she may be affected by a conflict of interest. A conflict of interest arises when a personal , business, financial, or, in the case of a lawyer, client interest of the director, officer or employee may affect the objectivity of the director's, officer's or employee's actions on behalf of NYCLA or conflicts with the interests of NYCLA. A personal interest may arise from the director's, officer's or employee's association with another bar association or non-profit corporation. A business interest arises when the director, officer or employee is an employee or consultant to or has another business arrangement with, another public or private concern. A significant financial interest includes an ownership interest in the securities of a public or private concern. A concern in which a director or officer has a personal, business or financial interest is referred to in this Code of Conduct as an "Entity." For purposes of this Code of Conduct, a business or financial interest of the spouse or any family member who lives in the individual director's, officer's or employee's household is attributed to the individual. A business or financial interest of a partner, associate or employer, or a more remote relative, of an individual director, officer or employee, is not automatically attributed to the individual. However, as a matter of

[3*] The Code of Conduct was approved by the Board of Directors of the New York County Lawyers' Association at its regular meeting on November 8, 2004.

good practice, where the individual is aware of such a business or financial relationship that conflicts with the interests of NYCLA, the individual should disclose it to and obtain the consent of NYCLA in order to avoid the potential for subsequent embarrassment.

Situations in which a conflict of interest may arise include, but are not limited to, those where the individual:

1. Approves or recommends the purchase of major equipment, materials or other items for NYCLA from an Entity.
2. Negotiates or influences the negotiation of contracts between NYCLA and the Entity,
3. Accepts gifts, gratuities or special favors from any person or Entity that does or is attempting to do business with NYCLA, other than gifts with a fair market value in any year of $50 or less.
4. Uses his or her position or activities for NYCLA to further the interests of a client or other person or Entity.
5. Espouses a position (by speaking or voting for the position) that the lawyer knows would benefit a client without disclosing such fact (but not necessarily the name of the client).

Misuse of Confidential Information of NYCLA

Except with disclosure to and consent from NYCLA or in furtherance of NYCLA activities in which he or she is authorized to act, a director, officer or employee shall not reveal to any third person or use for his or her own purposes any of NYCLA's proprietary business or financial information, records, results, work product or other information acquired in connection with the director's, officer's or employee's NYCLA activities that is not generally available.

Legal Obligations of Directors and Officers

The obligations of directors and officers to NYCLA is governed by §§ 715-717 of New York's Not-for-Profit Corporation Law ("N-PCL") as well as precedents long established by the New York courts. The statutes and legal precedents establish that the directors and officers owe a fiduciary duty to NYCLA, including the duty of care and the duty of loyalty. Nothing in this Code of Conduct is intended to reduce the duties of disclosure contained in N-PCL 715.

The duty of care, codified in the N-PCL, concerns a director's or officer's competence in performing his or her functions as a director or officer. A director or officer must exercise his or her responsibilities in good faith and with that degree of diligence, attention, care and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

The duty of loyalty owed by a director or officer to a non-profit organization requires that the director or officer act in a manner that does not harm the corporation. The duty of loyalty requires the faithful pursuit by the director or officer of the interests of the corporation rather than the financial or other interests of the director or another corporation he/she serves. It further requires a director or officer to avoid using his or her position to obtain improperly a personal benefit or advantage that might more properly belong to the corporation. To satisfy the duty of loyalty, the director or officer must act in good faith and in a manner he or she reasonably believes to be in the best interests of the corporation.

Preservation of Tax Exemption

Directors and officers should be aware that NYCLA is a charitable organization and that, in order to maintain its federal tax exemption, (i) it must engage primarily in activities that accomplish one or more of its tax-exempt purposes, (ii) it may not allow a substantial part of its activities to consist of carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Internal Revenue Code Section 501(h)), and (iii) it may not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidates for public office.

NYCLA and its Board members shall not be bound by any political statements or activity of any director or officer. No director or officer who makes a political statement or engages in political activity shall state or imply that such statement or activity is on behalf of NYCLA.

Restrictions on Representing NYCLA

Each director, officer or employee when acting as a representative of NYCLA shall conduct himself or herself so as not to adversely affect NYCLA's public image or credibility or hinder the accomplishment of its mission. In any interaction with the public, press or other entities, a director, officer or employee may not speak for NYCLA other

than to repeat explicitly stated Board positions. However, a director, officer or employee who is a member of a NYCLA committee or section may state the views of the committee or section in accordance with the policies of the committee or section or as directed by the Board.

A director, officer or employee of NYCLA may not use NYCLA stationery for personal correspondence or to conduct business or marketing on behalf of his/her law firm, employer or other organization.

Administration of Code of Conduct

Whenever this Code requires a director, officer or the Counsel to make disclosure to and obtain the consent of NYCLA, such disclosure and consent shall be to and such consent from the Board of Directors. Whenever this Code requires an employee to make disclosure to and obtain the consent of NYCLA, such disclosure shall be to and such consent from the Counsel to NYCLA. If a director, officer or employee has reason to believe that another director, officer or employee has an undisclosed conflict or potential conflict of interest or other violation of this Code, he/she should disclose the reason for such belief to the Chair of the Audit Committee, who will, in consultation with legal counsel, advise NYCLA on the existence of a violation.

ANTITRUST POLICY FOR STAFF

This Policy was approved at a regular meeting of the Board of Directors of the New York County Lawyers' Association on February 7, 2005.

Background

NYCLA in many of its activities is subject to antitrust law. The principal purpose of antitrust law is to maintain a free enterprise system by prohibiting business activities that unreasonably restrain trade or lessen competition. The laws are based on the proposition that the public benefits by getting the highest quality products at the lowest prices through vigorous competition. As a professional association of attorneys, NYCLA is committed to obeying the letter and spirit of those laws and avoiding even the appearance of impropriety.

Although the goals of the antitrust laws are clear, the laws themselves are broad and their application is sometimes complex. The following Compliance Guidelines have been prepared to help NYCLA employees understand the antitrust laws and to provide guidance for day-to-day business conduct. Even the most experienced employee should become familiar with this document.

Compliance Policy:

It is the obligation of each employee to comply with this policy. In addition, it is the responsibility of each person with supervisory responsibilities to ensure that his or her subordinates are familiar with and comply with this policy. Any employee found to have participated knowingly in a possible antitrust violation or to have failed to adhere to these Guidelines will be subject to dismissal or other disciplinary action.

Consequences of Violations of the Antitrust Laws:

The importance of antitrust compliance cannot be overemphasized. A violation of the antitrust laws can be a serious crime. Criminal violations are felonies. Criminal violations may result in substantial fines and penalties, both for NYCLA and for employees who authorize or participate in improper conduct. Individuals may be imprisoned as well as fined.

Civil antitrust litigation and investigations are notoriously burdensome, expensive and time- consuming for all concerned, even if the outcome ultimately is favorable; having to defend would produce expenses and distractions that NYCLA is in no position to absorb. If NYCLA were ultimately found liable in civil litigation for an antitrust violation, the amount of actual damages sustained by the plaintiff would be automatically trebled, a result that could prove ruinous to NYCLA. Even if no substantial damages were awarded, NYCLA might be enjoined from conduct in a way that would place undesirable restraints on its activities and add burdens and expenses of monitoring compliance. (NYCLA was in the past subject to a U.S. Department of Justice antitrust consent decree).

Finally, the reputation of NYCLA in the legal community and among the public at large may be seriously affected through the adverse publicity that normally accompanies antitrust litigation.

The Guidelines that follow are intended to make employees aware of those areas that involve antitrust risk so that employees will recognize and avoid danger areas. The Guidelines are not intended to make employees antitrust experts.

Because it is important to avoid even the appearance of impropriety in the antitrust area, these guidelines provide somewhat more cautious advice than the law may actually require. It is always important to avoid not only potential antitrust violations but also any behavior that could be construed or interpreted as improper. Antitrust litigation is frequently decided on the basis of circumstantial evidence.

Any employee who has questions about the application of the antitrust laws or these Guidelines to past, present or future conduct should always consult with Counsel to NYCLA before taking action.

Relations with Competitors:

The antitrust laws with which NYCLA is chiefly concerned apply to concerted action or "agreements" between competitors. Generally stated, any agreement or understanding which, in the eyes of the law, unreasonably or unduly restrains trade is illegal. The law distinguishes such joint or collective action from action taken unilaterally and independently of competitors. An illegal agreement can be found, however, without a written agreement; a handshake or even express words indicating agreement. For example, if two competitors discuss prices, and later adopt prices that are similar, a conspiracy to fix prices may sometimes be inferred by the courts even though the competitors never explicitly "agreed" to do anything.

When an agreement is deemed to have been reached with competitors on a forbidden subject such as prices, the agreement is treated as per se illegal, which means that it cannot be justified or explained by good intentions, difficult circumstances or offsetting benefits that may be achieved. Comments made in a social environment - at a reception or during a bar association or professional group dinner or holiday event, for example ~ may be used as proof of concerted action, even though the competitors' subsequent actions actually were taken independently for sound business reasons. Because of the harshness of the per se rule and the risk of concerted agreement being found after the fact, the safest practice is to avoid any discussions with competitors about prices, costs, dues or membership fees, or details about future plans.

The per se illegal category of agreements includes:

1. **Price Fixing.** Arrangements with competitors to fix or influence the prices at which they sell to third parties are among the most serious of all antitrust violations. Similarly, any arrangement to fix the prices that competitors will pay for supplies is illegal. It does not matter whether the aim is to fix maximum or minimum prices, or whether there is an agreement on a specific price or a pricing system.

   Agreements or understandings by or between competitors that indirectly affect prices may also be considered unlawful. These could include:

   a. Understandings regarding other terms of sale or purchase to be offered, such as credit terms or shipping charges;

   b. Arrangements among competitors to limit service, because a likely consequence would be an increase in price;

   c. Agreements among competitors to appoint a common exclusive sales or purchasing agent, because this could permit a single agent to determine prices for otherwise competitive services; and

   d. Understandings among competitors that affect the amount or placement of competitive bids.

   Any exchange of information with or among competitors regarding price, costs or pricing practices is itself risky. Indeed, enforcement authorities now claim that the concept of price fixing embraces conduct called “signaling,” which involves no direct contact between the competitors.

   In many price-fixing cases, the jury is asked to infer an agreement to fix prices from a pattern or general conversations among competitors about “the state of the market,” “the need for responsible pricing,” the impact of “discounting,” and similar topics bearing some relationship to price.

   NYCLA prices for membership and services must be determined independently, in light of NYCLA’s costs, market conditions and NYCLA's own financial condition and overall plans and objectives. While competitive prices are a legitimate consideration, such competitive prices should always be obtained only

from information previously disseminated to members or users by a competitor or publicly announced by the competitor.

2. **Allocation of Markets or Services.** Competitors may not agree to divide markets by geographic areas, product lines, customers, rotation of times or seasons when services are made available, etc. Arrangements to "rig" bids, for example, are illegal whether they involve fixing bid prices or simply rotation of companies to bid or not bid on individual projects. Similarly, an agreement by CLE providers to allocate types of courses offered or rotate certain courses among providers from year to year could eliminate consumer choice and be illegal. Competitors should also not agree to limit the volume or types of services they provide.

3. **Group Boycotts.** The antitrust laws generally do not interfere with the right of a business unilaterally to select the customers or suppliers with whom it will do business. However, an agreement of competitors not to do business with a customer or supplier, to do business only on certain terms, or otherwise to act together to punish or "send a message" to a competitor or potential competitor may be illegal.

In dealing with competitors or potential competitors, NYCLA employees and representatives must conform to these rules:

- ALWAYS exercise independent judgment when setting terms and prices for services; avoid even the appearance of collusion or agreement with competitors by avoiding any discussion of these matters.

- ALWAYS make all pricing decisions independently of competitors.

- NEVER enter into any discussion with competitors concerning the following subjects:

    - prices or discounts

    - terms or conditions of sale (including credit terms)

    - costs or profit margins

    - bids or intention to bid

- allocation of territories, customers or services, or times in which services will be offered

- limitation of types or scope of service

- exchange of business plans or other confidential information.

- NEVER remain at meetings with competitors (including professional meetings or social gatherings, however informal) at which prices or any of the foregoing subjects are discussed. Make your leaving as conspicuous as possible and report the incident immediately to Counsel to NYCLA.

- ALWAYS confine the discussion at trade association or professional meetings to topics directly involved in the purpose of the meeting and which are on a written meeting agenda.

- NEVER obtain information about a competitor's business (particularly price lists or other pricing information) from the competitor itself other than what may be available on public websites or in publicly available documents.

- NEVER discuss NYCLA's prices, future plans or other competitive information with a competitor.

- ALWAYS document the source of information obtained about competitors; for example, name the source of competitive information in an email or document in which the information is discussed or on a document you have received because it is publicly available.

Guidelines on Documents and E-mail:

The treatment of documents and e-mail is important because under modem discovery procedures, all business-related documents, including electronic documents, other than limited categories of privileged materials, are subject to inspection and copying by governmental and private litigants. Note that the documents subject to production are "business related" documents and not just "company forms" or "corporate files." This may require the production of "personal" files, handwritten notes, diaries, appointment books, or any other written materials maintained in connection with work, including

computer-transmitted messages.

Sometimes, due to ambiguity, or even exaggeration, interoffice memoranda and e-mails may convey the erroneous impression that there has been contact with competitors with respect to prices or other matters of antitrust sensitivity. All such notes should be written clearly and carefully to avoid misinterpretation. The following are guidelines to keep in mind when writing or reading correspondence and memoranda:

- Do not use words suggestive of guilty or surreptitious behavior, such as "please destroy after reading."

- Do not overstate the significance of an expected competitive position or action: "we'll own the market" or "this will cripple the competition." Express what is meant in terms of its quality or utility to members and prospective members: "we'll have the most highly sought and well regarded program" or "the value of our programs to members and attorneys will be unmatched."

- Do not speculate on the legality of business conduct.

- Do not describe as undesirable or objectionable the competitive activities of competitors or others. Customers or members are lost, not "stolen"; price-cutting is not "unethical"; and persons who charge higher or lower prices than NYCLA are not "bandits" or "mavericks."

- Do use the newspaper test: how would you feel if language in the document or e-mail appeared on the front page of the *New York Post* or *New York Times*?

NEW YORK COUNTY LAWYERS' ASSOCIATION

RECORD RETENTION POLICY

This Policy was approved by the Board of Directors of the New York County Lawyers' Association at its regular meeting on February 5, 2007.

The New York County Lawyers' Association ("NYCLA") is a not-for-profit bar association comprising over 8,000 members located in and around New York City, and is incorporated in the State of New York. NYCLA's governance is subject to numerous statutes and regulations that require the retention of certain business records, including,

but not limited to, the New York State Not-for-Profit Corporation Law, Uniform Commercial Code, Internal Revenue Code, Employment Income Security Act and the Regulations of the New York State Attorney General. As a bar association, NYCLA has several programs such as Continuing Legal Education, Fee Dispute Resolution and Complaint Mediation that are also governed by the rules and policies of the Office of Court Administration or other court-based oversight bodies. Further, although the Sarbanes-Oxley Act of 2002 ("SOA") is only applicable to for-profit corporations, the SOA provides a standard for document disposal that has a persuasive effect upon not-for-profit corporations.

The NYCLA Record Retention Policy provides a schedule for business record retention, a policy concerning the disposal of documents no longer governed by NYCLA's record retention guidelines, and procedures for NYCLA's staff to follow to obtain additional information about these policies.

RECORD RETENTION SCHEDULE

Definition of Records

NYCLA's records are defined to include any document, writing, printing, inscription, electronic, video or magnetic taping that its Board of Directors, officers, Executive Committee, sections, committees and any subcommittee thereof, staff, vendors, or its members create, devise or invent in the course of their duties, responsibilities and activities to and regarding NYCLA.

Permanent Records

Some (but not all) of NYCLA's permanent records include cancelled checks for taxes, purchases of property, special contracts (checks should be filed with the papers pertaining to the underlying transaction); bank records and statements; investment and brokerage account statements, confirmations and instructions; cash books; chart of accounts; correspondence for legal and important matters; deeds, mortgages and bills of sale; contracts and leases; end-of-year financial statements and audited reports of Certified Public Accountants; general ledgers; insurance records, current accident reports and claims policies; journals; minute books of directors meetings; by laws and charter; property records, including appraisals, costs, depreciation reserves, end-of-year balances, depreciation schedules, blueprints, plans and computational records related to property records; tax exemption determinations from federal, state and local agencies; tax returns,

worksheets, IRS reports and other documents relating to the determination of income tax liability; letters, pledges, bequests and other related communications from and with donors; wiring schematics and drawings; copyrights; trademarks.

Seven Years

Joint Fee Dispute Program records; accident reports and claims of settled cases; accounts payable/voucher register; accounts receivable ledgers and trial balances; bank statements, including bank reconciliations; cancelled checks except for the exceptions listed under permanent records; cash receipts and disbursement records; expired contracts and leases; employee personnel records after termination (if a retirement plan was in effect, regardless of whether the employee was a plan participant); expense analyses and expense distribution schedules; inventory records; invoices from vendors; notes receivable ledgers and trial balances; payroll records and summaries, including payments to pensioners; pension and/or welfare plan returns and reports (from the filing date of such returns and reports; pension and/or welfare plan accounting records; purchasing department copy of purchase orders; scrap and salvage records; employee time records; voucher register and trial balances; vouchers for payments to vendors, employees, etc. (including allowances and reimbursement of employees, officers, etc. for travel and entertainment expenses); product guarantees and warranties.

Five Years

Complaint Resolution Program records (complaints referred by the Departmental Disciplinary Committee, First Department).

Four Years

Continuing Legal Education Program records for each program, including attendance lists, sample certificate of attendance, evaluation questionnaires, timed agenda, course brochure or advertisement and course materials; duplicate deposit tickets; employee personnel records after termination (except for records described above requiring retention for seven years); employment applications; general correspondence; expired insurance policies; internal audit reports, including working papers (in some situations, longer retention periods may be desirable); petty cash vouchers; sales records and summaries; miscellaneous internal reports; quotes for major purchases.

Two Years

Registered/insured mail logs.

One Year

Chits, correspondence of an unimportant nature with customers or vendors; receiving sheets; requisitions; stockroom withdrawal forms; postal records and stamp requisitions; telephone records, including installation and leases.

Administration of the Procedure

The NYCLA Executive Director is responsible for the administration of the record retention policy, including consulting with the auditors or other appropriate authorities when questions arise as to coverage or schedules. In the event the NYCLA Executive Director is either absent or otherwise unavailable or the position is vacant, any questions concerning this policy should be directed to the Counsel to NYCLA.

DOCUMENT DISPOSAL POLICY

NYCLA acknowledges its responsibility to preserve information relating to criminal or civil litigation, audits and investigations. The SOA makes it a crime to alter, cover up, falsify or destroy any document to prevent its use in an official proceeding. Further, several other federal and New York statutes make such conduct a crime as well.

Accordingly, as soon as any NYCLA staff member becomes aware of any potential or actual criminal or civil litigation, audit or investigation, that staff member should report such matters to the NYCLA Executive Director. Upon learning of such an event, the NYCLA Executive Director shall cause NYCLA to immediately suspend its Record Retention Policy as it applies to those documents covered by the breadth and scope of the potential or actual criminal or civil litigation, audit or investigation. The suspension should be interpreted broadly, and continue until the NYCLA staff receives specific instructions from either internal or outside counsel Such a suspension will include any automatic electronic or voicemail deletion programs currently operating. The Executive Director shall also immediately inform the Counsel to NYCLA and the NYCLA President about the event and the actions taken to suspend the Record Retention Policy.

Definition of Documents

Pursuant to NYCLA's Document Disposal Policy, the term "document" or "documents" shall mean any written, typed, printed, recorded or graphic matter, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation all correspondence, electronic or voicemail, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes, lists, calendar and diary entries, letters (sent or received), telegrams, telexes, messages (including, but not limited to, reports of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, bulletins, instructions, papers, files, minutes, other communications (including, but not limited to, inter- and intra-office communications), questionnaires, contracts, memoranda or agreements, assignments, licenses, ledgers, books of account, orders, invoices, statements, bills, checks, vouchers, notebooks, receipts, acknowledgments, data-processing cards, computer-generated matter, photographs, photographic negatives, phonograph records, tape recordings, wire recordings, other mechanical recordings, transcripts or logs of any such recordings, all other data compilations from where information may be obtained, or translated if necessary, and any other tangible thing of a similar nature. Any drafts, preliminary versions, revisions or non-identical copies are expressly included within this definition of "document."

Reporting Procedures

Each employee has an obligation to contact the NYCLA Executive Director about a potential or actual criminal or civil litigation, external audit, investigation or similar proceeding involving NYCLA. This duty supersedes any obligation under the approved record retention schedule.

Disciplinary Actions

Failure on the part of NYCLA staff to follow this policy can result in possible disciplinary action against responsible individuals, up to and including termination of employment.

NEW YORK COUNTY LAWYERS' ASSOCIATION

WHISTLEBLOWER POLICY

This Policy was approved by the Board of Directors of the New York County Lawyers' Association at its regular meeting on February 5, 2007.

General

The New York County Lawyers' Association's ("NYCLA") Code of Conduct requires directors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Directors, officers and employees must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

The objectives of the NYCLA Whistleblower Policy are to establish policies and procedures for:

- The submission of concerns regarding questionable accounting or auditing matters by directors, officers, employees and other stakeholders of the organization, on a confidential and anonymous basis.

- The receipt, retention and treatment of complaints received by the organization regarding accounting, internal controls or auditing matters.

- The protection of directors, officers and employees reporting concerns from retaliatory actions.

Reporting Responsibility

Each director, officer and employee of NYCLA has an obligation to report in accordance with this Whistleblower Policy: (a) questionable or improper accounting or auditing matters and (b) violations and suspected violations of the Code of Conduct, adopted November 8, 2004.

Authority of the Audit Committee

All reported concerns will be forwarded to the NYCLA Audit Committee in accordance

with the procedures set forth herein. The Audit Committee shall be responsible for investigating and making appropriate recommendations to the Board of Directors with respect to all reported concerns.

No Retaliation

The Whistleblower Policy is intended to encourage and enable directors, officers and employees to raise concerns within NYCLA for investigation and appropriate action. With this goal in mind, no director, officer or employee who, in good faith, reports a concern shall be subject to retaliation or, in the case of an employee, adverse employment consequences. Moreover, a director, officer or employee who retaliates against someone who has reported a concern in good faith is subject to discipline up to and including dismissal from the director or officer position or termination of employment.

Reporting Concerns

Employees

Employees should first discuss their concern with their immediate supervisor. If, after speaking with his/or supervisor, the individual continues to have reasonable grounds to believe the concern is valid, the individual should promptly report the concern to the Counsel to NYCLA. In addition, if the individual is uncomfortable speaking with his/her supervisor, or the supervisor is a subject of the concern, the individual should report his/her concern directly to the Counsel to NYCLA, Marilyn Flood, 212-267-6646, ext. 222.

If the concern was reported verbally to the Counsel, the reporting individual, with assistance from the Counsel, shall reduce the concern to writing. The Counsel is required to promptly report the concern to the Chair of the Audit Committee, who has specific and exclusive responsibility to investigate all concerns. If the Counsel, for any reason, does not promptly forward the concern to the Chair of the Audit Committee, the reporting individual should directly report the concern to the Chair of the Audit Committee, John J. Kenney, (212) 541-8140.

Concerns may also be submitted anonymously. Such anonymous concerns should be in writing and sent directly to the Chair of the Audit Committee.

Directors and Officers

Directors and officers should submit concerns in writing directly to the Chair of the Audit Committee.

Handling of Reported Violations

The Audit Committee shall address all reported concerns. The Chair of the Audit Committee shall immediately notify the Audit Committee, the President, the Executive Director and the Counsel of any such report. The Chair of the Audit Committee will notify the sender and acknowledge receipt of the concern within five business days, if possible. It will not be possible to acknowledge receipt of anonymously submitted concerns.

All reports will be promptly investigated by the Audit Committee and appropriate corrective action will be recommended to the Board of Directors, if warranted by the investigation. In addition, action taken must include a conclusion and/or follow up with the complainant for complete closure of the concern.

The Audit Committee has the authority to retain outside legal counsel, accountants, private investigators or any other resource deemed necessary to conduct a full and complete investigation of the allegations.

Acting in Good Faith

Reports of any concerns shall be deemed made in good faith if the director, officer or employee had reasonable grounds for believing that the information disclosed indicates an improper accounting or auditing practice or a violation of the Code of Conduct, even if that belief should later prove to be unsubstantiated. The act of making allegations that prove to have been made maliciously, recklessly or with the foreknowledge that the allegations are false, will be viewed as a serious disciplinary offense and may result in discipline, up to and including dismissal from the director or officer position or termination of employment. Such conduct may also give rise to other actions, including civil lawsuits.

Confidentiality

Reports of concerns and investigations pertaining thereto shall be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Disclosure of reports of concerns to individuals not involved in the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including termination of employment. Such conduct may also give rise to other actions, including civil lawsuits.