

NEW YORK STATE ASSEMBLY  
STANDING COMMITTEE ON JUDICIARY

PUBLIC HEARING

LEGISLATIVE PROPOSALS ARISING OUT OF THE  
RECOMMENDATIONS OF THE COMMITTEE TO EXAMINE  
LAWYER CONDUCT IN MATRIMONIAL ACTIONS

State Office Building  
Assembly Hearing Room  
11 th Floor  
270 Broadway  
New York, New York

Thursday, September 23, 1993  
10:00 a.m.

**ORIGINAL**

EN-DE REPORTING SERVICES, LTD.  
132 Nassau Street  
New York, New York 10038  
(212) 662-2041

NEW YORK STATE ASSEMBLY  
ASSEMBLY STANDING COMMITTEE ON JUDICIARY  
PUBLIC HEARING

ON

LEGISLATIVE PROPOSALS ARISING OUT OF THE  
RECOMMENDATIONS OF THE COMMITTEE TO  
EXAMINE LAWYER CONDUCT IN MATRIMONIAL ACTIONS

Assembly Hearing Room  
270 Broadway  
11th Floor  
New York, New York

Friday, September 24, 1993  
10:15 A.M.

**ORIGINAL**

EN-DE REPORTING SERVICES, LTD.  
132 Nassau Street  
New York, New York 10038  
(212) 962-2961

1  
2 90 would provide.

3 ASSEMBLYMAN KOPPELL: But  
4 it's terribly frustrating, especially what  
5 you say. You kind of surprise me a little  
6 bit. You say that sometimes you don't  
7 take a case because it's difficult to do?

8 MR. FALES: Yes.

9 ASSEMBLYMAN KOPPELL: Really?

10 MR. FALES: Yes. And you  
11 will find the district attorney does the  
12 same thing, that there are criminal cases  
13 which are not pursued because if you have  
14 so many resources you want to go after  
15 sure convictions, not spend your time on a  
16 50/50 matter.


17 ASSEMBLYWOMAN SINGER: So you  
18 have a triage system.

19 MR. FALES: We are working on  
20 a triage system, and with the amount of  
21 resources that we have, we are compelled  
22 to do that.

23 ASSEMBLYMAN KOPPELL: I am  
24 taken aback. I must say that I never  
25 realized that that would be the case and

1  
2 that's a shocking thing.

3 MR. FALES: Well, we're  
4 working entirely with amateurs, except  
5 that we now have 18 lawyers and a staff of  
6 secretaries and a very few investigators  
7 to back them up, and with 3,000 complaints  
8 a year, you simply have to pursue the  
9 worst ones and the ones that can be proved  
10 with reasonable promptitude.

11 MR. LIEBERMAN: I don't know  
12 why you should be shocked. I mean, we've   
13 been telling you for years that this  
14 system is underfunded.

15 ASSEMBLYMAN KOPPELL: Well, I  
16 realize, I thought it took too long to  
17 resolve the disputes because of the lack  
18 of funding so that cases took a long time  
19 to deal with, but I didn't know you  
20 rejected cases that you thought had merit  
21 because you didn't have the resources. I  
22 don't think that that impression was ever  
23 given to me before.

24 MR. FALES: Well, it's  
25 unfortunately --

1  
2 ASSEMBLYMAN KOPPELL: It was  
3 certainly indicated that there was a  
4 backlog and you couldn't handle the cases  
5 promptly, but not that you didn't handle  
6 them at all.

7 MR. FALES: I think you will  
8 find the same thing with any set of  
9 prosecutors that will level with you.


10 ASSEMBLYMAN KOPPELL: Well,  
11 it's one thing to say that there isn't a  
12 level of evidence to indicate that we can  
13 prove the case, but you're saying some-  
14 thing a little bit different. You're  
15 saying we don't have time to look into the  
16 evidence because it's a conflict of  
17 managing something.

18 MR. FALES: We look into it  
19 very frequently. We always look into it  
20 if the charge is serious, but very fre-  
21 quently it comes down to one party says  
22 this, the other party says that. To  
23 establish what the complainant says would  
24 take more time than the seriousness of the  
25 case warrants, and we just have to move on

1  
2 to the serious cases, and that's the way  
3 the world works, and it works particularly  
4 so in this field where we are so very  
5 definitely underfunded and underpersoned.

6 MR. LIEBERMAN: The analogy  
7 would be the police simply don't investi-  
8 gate thefts of car radios. It goes on all  
9 the time but you can't get a policeman to  
10 investigate it. We know that there are  
11 things that go on, but we have to make  
12 choices, Mr. Koppell. If you can give us  
13 the resources and we'll investigate car  
14 thefts.

15 ASSEMBLYMAN KOPPELL: But  
16 quite frankly, I don't want to get into a  
17 debate with you, but I would say that the  
18 public has a right to know that, and if  
19 you ask the police and you say are you  
20 going to put resources into doing car  
21 radios and they've got to be honest and  
22 say no, but not say, well, we're not going  
23 to tell you why when we're just saying no.

24 MR. LIEBERMAN: We don't have  
25 the resources to tell it. You think you 

1  
2 can get the police to tell you? We don't  
3 have the resources.

4 ASSEMBLYMAN KOPPELL: The  
5 police will tell you we don't have the  
6 resources to send out a fingerprint person  
7 for the theft of a car radio. They will  
8 tell you that. You're now saying that you  
9 just sort of tell people we rejected your  
10 complaint, but the person doesn't know  
11 whether it was rejected because it was an  
12 illegitimate complaint or it was rejected  
13 because you didn't have time to look into  
14 it.

15 MR. LIEBERMAN: That's not  
16 what we're saying. We do, because we have  
17 letters that we send to complainants. I  
18 think the process should be explained more  
19 carefully. There are different letters  
20 that are sent depending on the reasons for  
21 the rejection. There are also individual  
22 letters that are sent when we think it's  
23 warranted, when there is a need for it.

24 If a complainant is upset  
25 with the result, the complainant, not a

1  
2 lawyer, the complainant is upset with the  
3 results, the complainant can write in and  
4 say I would like to reconsideration, and  
5 we have a process for reconsidering the  
6 complainant's complaint where it's  
7 reviewed, the final is reviewed by another  
8 member of the disciplinary committee, who  
9 is a lay person. The lay person member of  
10 the disciplinary committee -- don't  
11 forget, in the First Department, one-  
12 fourth of our members are laypeople --  
13 will review the file and frequently will  
14 say the file should remain closed.  
15 Occasionally the person will say it should  
16 be reopened and reinvestigated and that  
17 happens, so there is a process.

18 ASSEMBLYWOMAN SINGER: I just  
19 want to ask you. If the complainant, does  
20 the complainant know? Is there something  
21 that's stated on paper that the complai-  
22 nant may say that they are not satisfied  
23 with what has happened and ask for recon-  
24 sideration?

25 MR. LIEBERMAN: No, it



1  
2 doesn't say that.

3 ASSEMBLYWOMAN SINGER: So  
4 then how is the complainant made aware of  
5 this.

6 MR. LIEBERMAN: Complainants  
7 just do it. They just ask for consider-  
8 ation. The false statement that's been  
9 suggested here is that the complainants  
10 are not communicated with. The comp-  
11 lainants are communicated with at least  
12 twice in the process. First they get a  
13 card acknowledging their complaint. Then  
14 they get a letter explaining what the  
15 status of their complaint is, if it's  
16 going to be dismissed or rejected because  
17 it's frivolous.

18 Then they have the right to -  
19 - and they do very frequently -- seek  
20 reconsideration, and then they get a  
21 further letter informing them of that.  
22 There may be additional phone calls in-  
23 between and, in fact, the complainants  
24 frequently call up and ask for informa-  
25 tion about their complaints. So, the fact

1  
2 is we do a lot of communication with a  
3 very limited staff.

4 ASSEMBLYWOMAN SINGER: But  
5 why doesn't the initial letter say that if  
6 you are dissatisfied with what occurs and  
7 a complaint is dismissed, that you have  
8 the right for reconsideration.

9 MR. LIEBERMAN: You want to  
10 know? Because if you wrote that in you'd  
11 get 3,000 complaints a year and 2,000  
12 requests for reconsideration, and we don't  
13 have the staff.

14 ASSEMBLYMAN KOPPELL: Well, I  
15 only would observe that for years the  
16 First Department did affirm no opinion and  
17 then after some criticism they now write  
18 opinions, and I think you ought to think  
19 about it.

20 Steven Gassman, Chair of the  
21 Family Law Section from the State Bar  
22 Association.

23 MR. GASSMAN: Good morning.  
24 The Family Law Section of the State Bar,  
25 as you know, represents over 3,000 lawyers