

**Jerome RAPOPORT, Plaintiff,**  
v.  
**DEPARTMENTAL DISCIPLINARY  
COMMITTEE FOR the FIRST JUDICIAL  
DEPARTMENT and the  
State of New York, Defendants.**

**No. 88 CIV. 5781 (MJL).**

United States District Court, S.D. New York.

Nov. 21, 1989.

Spencer Steele, Lake Success, N.Y., for plaintiff  
Jerome Rapoport.

Michael A. Gentile, Chief Counsel, Departmental  
Disciplinary Committee, For the First Judicial  
Department by Hal R. Lieberman, New York City,  
for defendants.

**MEMORANDUM OPINION AND ORDER**

MARY JOHNSON LOWE, District Judge.

**\*1 Plaintiff Jerome Rapoport, brings this action**  
under 42 U.S.C. § 1983 alleging a violation of the  
Fourteenth Amendment to the United States  
Constitution.

Plaintiff was admitted to the Bar of the State of  
New York, in the First Department, on March 30,  
1964. On June 10, 1976 plaintiff was convicted in  
the Federal District Court of various crimes which  
would constitute felonies under New York State  
law. Following conviction plaintiff was disbarred  
on November 30, 1976.

Plaintiff's applications for reinstatement were  
denied without hearings by the Appellate Division,  
First Department in 1985 and 1988. Plaintiff  
alleges that the failure of the Appellate Division to  
accord him a hearing prior to the denial of his  
application for re-instatement violates his Due  
Process Rights under the Fourteenth Amendment.  
His request for relief is that this Court vacate the  
orders of the Appellate Division and direct the State  
Court to hold hearings on his applications for re-  
instatement. Defendants move to dismiss the  
complaint.

Discussion

Plaintiff's complaint has several jurisdictional and  
substantive defects, only one of which needs to be  
addressed.

The United States Supreme Court in *Will v.*  
*Michigan Dep't. of State Police, et al.*, --- U.S. ---,  
57 U.S.L.W. 4677 decided June 15, 1989, held that  
the States of the United States were not "persons"  
subject to suit under 42 U.S.C. § 1983. [FN1] The  
State of New York therefore cannot be named as a  
defendant herein. [FN2]

The same result **pertains when we examine the**  
status of the only named defendant, The  
Departmental Disciplinary Committee of the First  
Judicial Department, which is an arm of the State  
for Eleventh Amendment purposes. [FN3]

In New York State, the power to regulate and  
control the practice of law is vested in the  
Legislature which in turn may delegate that power to  
the courts. In *re Bercu*, 188 Misc. 406, 69  
N.Y.S.2d 730 (1947), rev'd on other grounds, 78  
N.Y.S.2d 209, 273 A.2d 524 (1948). Section 90 of  
the Judiciary Law of the State of New York vests  
the exclusive power to discipline attorneys in the  
various Appellate Division Departments of the State  
Supreme Court. *Matter of Hyatt Legal Servs.*, 97  
A.D.2d 983, 468 N.Y.S.2d 778 (1983), aff'd, 62  
N.Y.2d 777 (1984). The Department Disciplinary  
Committee serves as the investigative and  
prosecutorial instrumentality of the Appellate  
Division in disciplinary matters. The ultimate  
power to discipline an attorney vests solely in the  
Court. *Application of Persky*, 92 A.D.2d 372, 460  
N.Y.S.2d 316 (1983) dissenting opinion of  
Presiding Justice Murphy, 460 N.Y.S.2d at 325.  
The Disciplinary Committee has no separate  
judicial, administrative or legislative identity. It is a  
delegatee of the powers of the Appellate Division as  
an aid to that Court in carrying out its statutory  
functions. The Committee therefore, is a State  
entity, subject to the same Eleventh Amendment  
protection as the State of New York.

The Complaint is dismissed.

**\*2 It Is So Ordered.**

FN1. Section 1983 provides as follows: Every  
person who, under color of any statute, ordinance,

regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. The Will Court held that the Eleventh Amendment bars such an action against a State. It should be noted that State officials may be sued under Section 1983 in their official capacity if the only remedy sought is injunctive relief since "official capacity" suits for prospective relief are not treated as actions against the State. *Kentucky v. Graham*, 473 U.S. 159, 167 (1985).

FN2. The Plaintiff in the instant action named the Departmental Disciplinary Committee and the State of New York as the sole defendants. By stipulation dated September 16, 1988 this action was discontinued with prejudice, against the State of New York.

FN3. The Departmental Disciplinary Committee's status depends upon the nature of the entity created by state law. *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 280 (1977).

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