

§ 1240.10 Resignation While Investigation or Proceeding is Pending

- (a) A respondent may apply to resign by submitting to a Court an application in the form in Appendix A to these Rules, with proof of service on the Committee, setting forth the specific nature of the charges or the allegations under investigation and attesting that:
 - (1) the proposed resignation is rendered voluntarily, without coercion or duress, and with full awareness of the consequences, and that the Court's approval of the application shall result in the entry of an order disbaring the respondent; and
 - (2) the respondent cannot successfully defend against the charges or allegations of misconduct.
- (b) When the investigation or proceeding includes allegations that the respondent has willfully misappropriated or misapplied money or property in the practice of law, the respondent in the application shall:
 - (1) identify the person or persons whose money or property was willfully misappropriated or misapplied;
 - (2) specify the value of such money or property; and
 - (3) consent to the entry of an order requiring the respondent to make monetary restitution pursuant to Judiciary Law §90(6-a).
- (c) Upon receipt of an application for resignation, and after affording the Committee an opportunity to respond, the Court may accept the resignation and remove the respondent from office by order of disbarment pursuant to Judiciary Law §90(2).

Appendix A

Affidavit in Support of Application to Resign While Proceeding or Investigation is Pending

INSTRUCTIONS

An application pursuant to section 1240.10 of these Rules to resign as an attorney and counselor-at-law while a proceeding or investigation is pending shall comply with the following requirements:

- (1) The application shall be submitted in affidavit form, subscribed and sworn to before a notary public or other person authorized to administer an oath, and shall be worded and numbered as set forth below.
- (2) The affidavit shall bear the caption and the docket number, if any, of the proceeding pending before the Court. If no proceeding is pending, the caption shall denominate the Committee conducting the investigation as the petitioner, and the subject of the investigation as the respondent.
- (3) In completing the affidavit, the respondent should not omit any passages.
- (4) Place the moving papers in the following order:
 - a. The respondent's form affidavit;
 - b. The exhibits supporting that form affidavit; and
 - c. An affidavit reflecting service upon the Chief Attorney of the appropriate Committee.

7. I have also been admitted to practice in the following courts or jurisdictions:

- OR -

I attest that I have not been admitted to practice in any other courts or jurisdictions.

8. I am the subject of disciplinary charges pending before this Court in this proceeding, as set forth in the petition dated [date]. I acknowledge that the charges include at least the following acts of professional misconduct: _____.

- OR -

I am currently the subject of an investigation conducted by the [name of applicable Committee] involving allegations of professional misconduct on my part. I acknowledge that the allegations include at least the following acts of professional misconduct:

9. I attest that I cannot successfully defend against the [charges -or- allegations] based upon the facts and circumstances of my professional conduct as described herein.

10. My resignation is freely and voluntarily rendered, without coercion or duress by anyone, and with full awareness of the consequences, including that the Court's acceptance and approval shall result in the entry of an order of disbarment striking my name from the roll of attorneys and counselors-at-law.

11. I hereby consent to the entry of an order by the Court, pursuant to Judiciary Law § 90 (6-a), directing (1) that I make monetary restitution to the following persons in the amounts indicated: [state the name of each person whose money or property was willfully misappropriated or misapplied, and specify the value of such money or property], and (2) that I reimburse the Lawyers' Fund for Client Protection the sum of [specify dollar amount].

- OR -

I attest that the [proceeding -or- investigation] does not include [charges -or- allegations] that I willfully misappropriated or misapplied money or property in the practice of law.

12. This resignation is submitted subject to any future application that may be made by a Committee to any Department of the Appellate Division for an order, pursuant to Judiciary Law § 90 (6-a), directing that I make restitution or reimburse the Lawyers' Fund for Client Protection, and I consent to the continuing jurisdiction of the Appellate Division to make such an order.

13. I acknowledge and agree that pending issuance of an order accepting this resignation, I shall not undertake to represent any new clients or accept any retainers for future legal services to be rendered and that there will be no transactional activity in any fiduciary account to which I have access, other than for payment of funds held therein on behalf of clients or others entitled to receive them.

14. I understand further that, in the event the Court accepts my resignation, the order resulting from this application and the records and documents filed in relation to the aforementioned [charges -or- allegations], including this affidavit, shall be deemed public records pursuant to Judiciary Law

§ 90 (10).

WHEREFORE, I request that the Court accept my application to resign as an attorney and counselor-at-law licensed to practice in the State of New York.

Dated: [city or town, state]

_____, _____, 20__

Subscribed to and sworn to before me

This ____ day of _____, 20__

Notary Public

806.10 Applications to Resign from Practice While Investigation or Proceeding is Pending

- (a) A respondent's application to resign from practice pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.10 shall be in the form of Appendix A to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) part 1240, and shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session, upon no less than 20 days notice to the Committee.
- (b) The Committee may be heard in response to the application by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The respondent may not be heard in reply absent prior authorization by the Court.
- (c) Any application pursuant to this section, any papers filed in response thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").