

N.Y. Sup. Ct., App. Div., 3rd Dept.

PART 806
CONDUCT OF ATTORNEYS

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§ 806.1 Application.

This Part shall apply to all attorneys who are admitted to practice, reside or have an office in, or who are employed or transact business in, the Third Judicial Department.

§ 806.2 Professional misconduct defined.

Any attorney who fails to conduct himself or herself in conformity with the standards of conduct imposed upon members of the bar as conditions for the privilege to practice law, and any attorney who violates any disciplinary rule of the code of professional responsibility adopted jointly by the Appellate Division of the Supreme Court, effective September 1, 1990, or any other rule or announced standard of the court governing the conduct of attorneys, shall be deemed to be guilty of professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law.

§ 806.3 Third Department grievance program.

(a) Committee on professional standards. This court shall appoint a committee on professional standards for the Third Judicial Department, which shall consist of a chairperson and 20 members, three of whom shall be nonlawyers. Appointment of lawyers shall, as far as practicable, be made equally from practicing attorneys in each of the judicial districts in the Third Judicial Department. Appointments shall be for a term of three years or for such shorter term as the court deems appropriate. No person who has served two consecutive three-year terms shall be eligible for reappointment until the passage of three years from the expiration of his or her second term. Seven members of the committee shall constitute a quorum and the concurrence of six members shall be necessary for any action taken. The chairperson and vice-chairperson shall be named by the court after considering the recommendations of the committee. The chairperson may appoint an executive committee consisting of at least one member of the committee from each judicial district.

(b) Duties of committee on professional standards. The committee shall (1) consider and cause to be investigated all matters called to its attention, whether by complaint or otherwise, involving alleged misconduct by an attorney in the Third Judicial Department, (2) supervise the professional staff in the performance of its duties to the committee, (3) furnish the court quarterly statistical reports concerning the disposition of all matters before the committee and maintain such records as directed by the court, and (4) submit a proposed annual budget to the court for approval.

(c) Defense and indemnification of committee members. Members of the committee on professional standards, as volunteers, are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17 of the Public Officers Law.

(d) Professional staff. The court shall, in consultation with the committee, appoint a professional staff and such supporting staff as shall be necessary. The chief attorney shall be authorized to disburse funds within the amounts appropriated and allocated. The

expenses of the staff and committee shall not exceed the amounts segregated and assigned by the Office of Court Administration, and shall be incurred according to rules and regulations promulgated by that office.

(e) Duties of professional staff. The chief attorney, under the supervision of the committee, shall (1) answer and take appropriate action respecting all inquiries concerning an attorney's conduct and (2) investigate all matters involving alleged misconduct by an attorney in the Third Judicial Department.

§ 806.4 Procedure.

(a) Investigation generally. Investigation of professional misconduct may be commenced by the committee, through the chief attorney, upon receipt of a specific complaint, or by the committee on its own motion. Complaints must be in writing and signed by the complainant, but need not be verified. Prior to initiating an investigation on its own motion, the committee shall file as part of its record a written inquiry, signed by the chief attorney, which inquiry shall serve as the basis for such investigation.

(b) Investigation by chief attorney. Before initiating an investigation of a specific complaint against an attorney, the chief attorney shall determine whether the allegations, if true, are sufficient to establish a charge of professional misconduct. If deemed sufficient, the chief attorney shall forward a copy of the complaint to the attorney, together with a statement of the nature of the alleged professional misconduct and a request that the attorney furnish a written statement concerning the complaint, and shall advise the attorney that a copy of his statement may, in the discretion of the committee, be furnished to the complainant for reply. Attorneys shall be expected to cooperate with all investigations. As part of an investigation, the chief attorney may request an attorney to appear pursuant to written notice to be examined under oath by the chief attorney or a staff attorney, and may, when necessary, apply pursuant to subdivision (e) of this section for a subpoena directing the attorney to appear for such examination. Stenographic minutes of such examination shall be made and a transcript made available to the attorney upon his request and payment of the stenographic fees. If an attorney requests that an examination be conducted before a third person, the chairman of the committee shall designate a member of the committee as the person before whom the examination shall be held. Upon the conclusion of an investigation, the chief attorney shall make a report to the committee. An attorney who fails to comply with a subpoena directing him to appear for examination may, in the court's discretion, be suspended pending his compliance or until further order of the court.

806.4 (c) **Action by committee.** (1) If, after an investigation, the committee determines that no action is warranted, the complaint shall be dismissed and the complainant and the attorney shall be so notified in writing; or, if the investigation was undertaken on the committee's own motion, the investigation shall be discontinued. If, after an investigation, the committee determines that a complaint warrants action, it may:

(i) direct that a disciplinary proceeding be commenced against the attorney; or

(ii) admonish the attorney, either orally or in writing, or both, if the acts of misconduct have been established by clear and convincing evidence and the committee determines in light of all of the circumstances that the misconduct is not serious enough to warrant commencement of a disciplinary proceeding; or

(iii) issue a letter of caution, if the acts of misconduct have been so established and the committee determines in light of all the circumstances that the misconduct is not serious enough to warrant either commencement of a disciplinary proceeding or imposition of an admonition; or

(iv) issue a letter of education, if the committee determines that the actions of the attorney warrant comment.

(2) Prior to imposition of an admonition, the committee shall give the attorney 20 days' notice by mail of the committee's proposed action. The attorney may request reconsideration of the committee's proposed admonition. Such request shall be made by letter, certified mail, return receipt requested, within 14 days from the date of mailing of the committee's notice. The request shall be considered by the executive committee. If it is determined by a majority of the executive committee that reconsideration is warranted, the matter shall be resubmitted to the committee.

(3) No prior notice to the attorney is necessary for the issuance of a letter of caution. The attorney may, however, request reconsideration of the committee's action in issuing a letter of caution. Such request shall be made by letter, certified mail, return receipt requested, within 14 days from the date of mailing of the committee's letter. The request shall be considered by the executive committee. If it is determined by a majority of the executive committee that reconsideration is warranted, the matter shall be resubmitted to the committee.

(4) Following a request for reconsideration of an admonition or letter of caution, where the committee adheres to its action, or where reconsideration is not sought, the attorney may file a motion with the court for review of the admonition or letter of caution, on notice to the chief attorney, within 30 days from the date of mailing or scheduled issuance of the committee's determination. An attorney who receives a letter of education may similarly file a motion with the court for review thereof, upon a showing that the matter giving rise to the letter involves a fundamental constitutional right. Upon such motion, the court may consider the entire record and may confirm or vacate the admonition, or letter of caution or education, or make whatever other disposition it determines to be warranted under all the circumstances.

(5) When an attorney has been admonished or cautioned, the committee shall promptly notify the complainant that appropriate action has been taken. The committee's records relating to its investigation and sanction shall be confidential. An admonition or letter of caution may be considered by the court and the committee in determining whether to impose discipline and the extent of discipline to be imposed in the event other charges of misconduct are subsequently brought against the attorney.

(d) Protective orders. An attorney aggrieved by any investigation may apply to the court by affidavit, upon notice to the chief attorney in such manner as a justice of the court may direct, for a protective order denying, limiting, conditioning or regulating the use of any information being sought by the chief attorney.

(e) Subpoenas. If it appears that the examination of any person is necessary for a proper determination of the validity of a complaint, the chief attorney or the attorney under investigation may apply to the clerk of this court for issuance of a subpoena for the attendance of the person as a witness and for the production of relevant books and papers. Application for issuance of a subpoena shall be made by setting forth factual allegations showing the relevancy of the testimony, and of any books and papers specified, to the subject matter of the investigation. Subpoenas, which shall be entitled "In the Matter of the Investigation by the Committee on Professional Standards of the Professional Conduct of an Attorney," shall be issued by the clerk in the name of the presiding justice and may be made returnable at a time and place therein specified before the chief attorney or any member of the committee designated to conduct the examination. The committee, or a member thereof designated by the chairman, or the chief attorney or a staff attorney, is empowered to take and cause to be transcribed the testimony of a witness who may be sworn by any persons authorized by law to administer oaths. If the committee is required to obtain a subpoena in order to compel an attorney's appearance for examination, the attorney shall be required to reimburse the committee for the stenographic costs of the examination within 10 days of being advised of the amount of such costs.

(f) Suspension of attorneys pending consideration of disciplinary charges.

(1) An attorney who is the subject of an investigation into allegations of misconduct and who has been examined by the committee under oath or who is the subject of a disciplinary proceeding commenced in this court pursuant to a petition filed under section 806.5 of this Part, or pursuant to a notice service under section 806.19(b) of this Part, may be suspended from the practice of law pending consideration of disciplinary charges against the attorney upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. Such a finding shall be based upon:

(i) the attorney's default in responding to the petition or notice;

(ii) a substantial admission under oath to commission of an act or acts of such professional misconduct; or

(iii) other uncontroverted evidence of the misconduct.

(2) The suspension shall be made upon application of the committee to this court, after written notice of such application has been given to the attorney, and shall commence upon service on the attorney of an order of this court granting the application. The court shall briefly state the reasons for the suspension which shall continue until such time as the disciplinary matter has been concluded and until further order of the court.

(3) An order of suspension together with any decision issued pursuant to the provisions of this subdivision shall be deemed a public record. The papers submitted in connection with the application therefor shall be deemed confidential until such time as the disciplinary matter against the attorney has been concluded and the charges are sustained by the court.

(g) Diversion program.

(1) During the course of an investigation or disciplinary proceeding, when the attorney raises alcohol or other substance abuse or dependency as a mitigating factor, or upon recommendation of the committee, the Court may, upon application of the attorney or committee, stay the investigation or disciplinary proceeding and direct the attorney to complete a monitoring program sponsored by a lawyers' assistance program approved by the Court. In determining whether to divert an attorney to a monitoring program, the Court shall consider (i) whether the alleged misconduct occurred during a time period when the attorney suffered from alcohol or other substance abuse or dependency; (ii) whether the alleged misconduct is related to such alcohol or other substance abuse or dependency; (iii) the seriousness of the alleged misconduct; and (iv) whether diversion is in the best interests of the public, the legal profession, and the attorney.

(2) Upon submission of written proof of successful completion of the monitoring program, the Court may direct discontinuance or resumption of the investigation or disciplinary proceeding, or take other appropriate action.

(3) In the event the attorney is not accepted into or fails to successfully complete the monitoring program as ordered by the Court, or the attorney commits additional misconduct after diversion is directed pursuant to this subdivision, the Court may, upon notice to the attorney affording him or her an opportunity to be heard, rescind the order diverting the attorney to the monitoring program and reinstate the investigation or disciplinary proceeding, or take other appropriate action.

(4) Any costs associated with the attorney's participation in a monitoring program pursuant to this subdivision shall be the responsibility of the attorney.

§ 806.5 Disciplinary proceedings.

Upon determining that a disciplinary proceeding should be instituted, the committee shall file with the court the original and one copy of the notice of petition and petition of charges with proof of service of a copy upon the attorney. Service of the notice and petition shall be made either personally or by certified mail. If service is made by certified mail and the attorney shall fail to answer or respond within the time specified by the notice, a copy of the notice and petition shall be served upon the attorney personally. The court shall refer issues of fact to a judge or referee to hear and report. If no factual issue is raised, the court may, upon application of either party, fix a time at which the attorney may be heard in mitigation or otherwise, or the court may refer the matter for such purpose.

§806.6 County Bar Association Grievance Committees and Mediation Programs

(a) County Bar Association Grievance Committees.

(1) A county bar association which receives a complaint against an attorney shall initially refer the complaint to the committee.

(2) If the chief attorney, or the committee after investigation, determines that the complaint is a matter involving undue delay in rendering legal services not constituting neglect, a fee dispute to which Part 137 of the Rules of the Chief Administrator does not apply, or inadequate representation not constituting professional misconduct, the complaint may be referred back to the county bar association for resolution. A complaint submitted directly to the committee may also be referred by the committee or chief attorney to the county bar association in the first instance.

(3) The county bar association shall complete an investigation and attempt to resolve the complaint within 90 days after receipt of the complaint from the committee or chief attorney. If the county bar association is unable to resolve the complaint within this time period, it shall, upon request of the chief attorney, return its complete file to the committee for further consideration.

(4) The county bar association shall render a quarterly report to the committee within 15 days after the end of each calendar quarter. The report shall contain the names of all attorneys against whom complaints were received or were pending during the preceding quarter. If a county bar association resolves a complaint, it shall forward its complete original file to the committee together with its quarterly report.

(b) County Bar Association Mediation Programs. Upon receipt of a complaint submitted directly to the committee, or following referral of a complaint by a county bar association, the committee or chief attorney, upon determining that the matter is appropriate for mediation, may refer the complaint to a county bar association mediation program pursuant to Part 1220 of the joint rules of the Appellate Divisions.

§ 806.7 Attorneys convicted of a crime.

Upon the filing with this court of a certificate of a felony conviction of an attorney, the court shall issue an order directing the attorney to show cause why an order should not be entered striking his name from the roll of attorneys pursuant to the provisions of subdivision 4 of section 90 of the Judiciary Law. Upon the filing of the record of conviction of an attorney convicted of a serious crime, as defined in subdivision 4 of section 90 of the Judiciary Law, the court shall issue an order suspending the attorney until a further or final order is made. An attorney who has been suspended may apply for reinstatement upon expiration of the period of suspension.

§ 806.8 Resignation of attorneys.

(a) An attorney who is the subject of a disciplinary proceeding or of an investigation into

allegations of misconduct may resign by tendering his resignation to the court, together with an affidavit stating that he wishes to resign and:

(1) that he is acting freely and voluntarily and is fully aware of the consequences of his resignation;

(2) that he is aware of the pending investigation or disciplinary proceeding concerning allegations of misconduct, the nature of which shall be specifically set forth; and

(3) that he does not contest the allegations of professional misconduct and recognizes that his failure to do so precludes him from asserting his innocence of the professional misconduct alleged.

(b) If the court accepts an attorney's resignation, it shall enter an order of disbarment.

§ 806.9 Conduct of disbarred, suspended or resigned attorneys.

(a) Compliance with Judiciary Law. Disbarred, suspended or resigned attorneys shall comply fully with sections 478, 479, 484 and 486 of the Judiciary Law.

(b) Compensation. A disbarred, suspended or resigned attorney may not share in any fee for legal services performed by another attorney during the period of his removal from the bar, but he or she may be compensated on a quantum meruit basis for legal services rendered and disbursements incurred prior to the effective date of removal. In the absence of agreement, the amount and manner of payment of such compensation and disbursements shall be fixed by the court on application of either the disbarred, suspended or resigned attorney or the new attorney, on notice to the other, as well as on notice to the client. Such applications shall be made at special term of the court in which the action is pending, or at a special term of Supreme Court in the county in which the moving attorney maintains his office if an action has not been commenced. In no event shall the combined legal fees exceed the amount the client would have been required to pay had no substitution of attorneys been required.

(c) Notice to clients not involved in litigation. A disbarred, suspended or resigned attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of his disbarment, suspension or resignation and shall advise said clients to seek other legal advice.

(d) Notice to clients involved in litigation.

(1) A disbarred, suspended or resigned attorney shall promptly notify, by registered or certified mail, return receipt requested, each of his clients who is involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment, suspension or

resignation. The notice to the client shall request the prompt substitution of another attorney. The notice to the attorney for an adverse party shall state the residence address of the client of the disbarred, suspended or resigned attorney.

(2) In the event a client does not obtain substitute counsel before the effective date of the disbarment, suspension or resignation, it shall be the responsibility of the disbarred, suspended or resigned attorney to move pro se in the court in which the action is pending, or before the body in which an administrative proceeding is pending, for leave to withdraw from the action or proceeding.

(e) Conduct after entry of order. A disbarred, suspended or resigned attorney, after entry of the disbarment or suspension order or after entry of the order accepting a resignation, shall not accept any new retainer or engage in any new case or legal matter of any nature as attorney for another. However, during the period between the entry date of the order and its effective date, he may wind up and complete, on behalf of any client, all matters which were pending on the entry date. After the effective date, the use of the name of a disbarred, suspended or resigned attorney, who is a member of a partnership or professional corporation, in the name of said partnership or professional corporation, shall be discontinued. The disbarred, suspended or resigned attorney shall not share in any income generated by the firm or professional corporation with which he was associated after the date of disbarment or resignation or during the period of suspension.

(f) Filing proof of compliance and attorney's address. Within 30 days after the effective date of the disbarment, suspension order or the order accepting a resignation, the disbarred, suspended or resigned attorney shall file with the clerk of this court an affidavit reporting that he has fully complied with the provisions of the order and with these rules and that he has served a copy of such affidavit upon the chief attorney. Such affidavit shall also set forth the residence or other address to which communications may be directed to the disbarred, suspended or resigned attorney.

(g) Required records. A disbarred, suspended or resigned attorney shall keep and maintain records of the steps taken by him to comply with this section so that, on any subsequent proceeding instituted by or against him, proof of compliance with this section and with the disbarment or suspension order, or with the order accepting the resignation, will be available.

§ 806.10 Mental incapacity of attorney; protection of clients of disbarred and suspended attorneys.

(a) Proceeding to determine alleged incapacity of attorney. Whenever, during the investigation of a complaint of professional misconduct or the prosecution of a disciplinary proceeding against an attorney, it shall appear that the attorney is incapacitated from continuing to practice law by reason of mental illness, drug addiction or alcoholism, or is otherwise mentally irresponsible, it shall be the duty of the chief attorney to petition the court to take appropriate action for determination of the attorney's mental condition, including examination by such qualified medical experts as the court shall designate. If the

court is satisfied from the evidence that the attorney is so incapacitated, it shall suspend him from practice for such mental incapacity indefinitely and until further order, and any pending proceedings against him shall be held in abeyance. The court may appoint counsel to represent the attorney, if he lacks adequate representation.

(b) Procedure when respondent claims disability during course of disciplinary proceeding. If during the course of a disciplinary proceeding, respondent contends that he is suffering from a disability by reason of mental infirmity or illness, or because of addiction to drugs or intoxicants which makes it impossible for him adequately to defend himself, the court thereupon shall enter an order suspending respondent from continuing to practice law until a determination is made of the respondent's capacity to do so.

(c) Expenses of proceedings. The court may fix the compensation of any attorney or medical expert appointed pursuant to this section and direct that payment be made as an incident of the expenses of a disciplinary proceeding.

§ 806.11 Appointment of attorneys to protect clients' interests.

Whenever an attorney is disbarred or suspended for incapacity, disability or other reason, or whenever there are reasonable grounds to believe that an attorney has abandoned or is seriously neglecting his practice to the prejudice of his clients, the court, upon such notice to him as it may direct, may appoint one or more attorneys to inventory his files and take appropriate action to protect the interests of his clients. An attorney so appointed shall not render legal services to clients of the attorney with respect to any file so inventoried, nor disclose any information contained therein without the consent of the client to whom such file relates, except as may be necessary to carry out the provisions of the order which appointed him. Whenever necessary, an attorney so appointed may apply to the court for appropriate instructions for the proper discharge of his duties.

§ 806.12 Reinstatement.

(a) An attorney who has been disbarred or whose name has been struck from the roll of attorneys pursuant to subdivision (4) of section 90 of the Judiciary Law may not apply for reinstatement until the expiration of at least seven years from the effective date of the disbarment or removal. An attorney who has been suspended may apply for reinstatement upon expiration of the period of suspension. An attorney suspended pursuant to section 806.10 of this Part who applies for reinstatement shall waive any doctor-patient privilege which would otherwise exist regarding medical or psychiatric care during his or her disability, and shall submit a list of the persons by whom and the facilities at which treatment was received, together with authorizations for the release of records relating thereto. The court may direct the appointment of medical experts to examine the attorney at his or her own expense.

(b) An application for reinstatement may be granted by this court only upon a showing by the applicant (1) by clear and convincing evidence that applicant has fully complied with the provisions of the order disbarring or suspending applicant, or striking applicant's name from

the roll of attorneys, and that applicant possesses the character and general fitness to resume the practice of law and (2) that, subsequent to the entry of such order, applicant has taken and attained a passing score on the Multistate Professional Responsibility Examination described in section 520.9(a) of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, the passing score thereon being that determined by the New York State Board of Law Examiners pursuant to section 520.9(c) of such rules. A copy of an application for reinstatement shall be served on the committee on professional standards and written notice thereof shall be provided by applicant to the Lawyers' Fund for Client Protection. The committee shall inquire into the merits of, and may be heard in opposition to, the application. The application may be referred to the appropriate committee on character and fitness or to a judge or referee for a hearing and report to the court.

(c) The court in its discretion may direct that an applicant pay the necessary expenses incurred in connection with an application for reinstatement.

§ 806.13 Contingent fees in claims and actions for personal injury and wrongful death.

(a) In any claim or action for personal injury or wrongful death, other than one alleging medical, dental or podiatric malpractice, whether determined by judgment or settlement, in which the compensation of claimant's or plaintiff's attorney is contingent, that is, dependent in whole or in part upon the amount of the recovery, the receipt, retention or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than that contained in the schedule of fees in subdivision (b) of this section is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such schedule of fees shall constitute the exaction of unreasonable and unconscionable compensation, unless authorized by a written order of the court as provided in this section. Compensation of claimant's or plaintiff's attorney for services rendered in claims or actions for personal injury alleging medical, dental or podiatric malpractice shall be computed pursuant to the fee schedule in Judiciary Law, section 474-a.

(b) The following is the schedule of reasonable fees referred to in subdivision (a) of this section: either,

SCHEDULE A

- (1) 50 percent on the first \$1,000 of the sum recovered,
- (2) 40 percent on the next \$2,000 of the sum recovered,
- (3) 35 percent on the next \$22,000 of the sum recovered,
- (4) 25 percent on any amount over \$25,000 of the sum recovered; or

SCHEDULE B

A percentage not exceeding 33 1/3 percent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure provided in this section for making application for additional compensation because of extraordinary circumstances shall not apply.

(c) Such percentage shall be computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or self- insurers or insurance carriers.

(d) In the event that claimant's or plaintiff's attorney believes in good faith that Schedule A, of subdivision (b) of this section, because of extraordinary circumstances, will not give him adequate compensation, application for greater compensation may be made upon affidavit with written notice and an opportunity to be heard to the client and other persons holding liens or assignments on the recovery. Such application shall be made to the justice of the trial part to which the action had been sent for trial; or, if it had not been sent to a part for trial, then to the justice presiding at the trial term calendar part of the court in which the action had been instituted; or, if no action had been instituted, then to a special term of Supreme Court in the judicial district in which the attorney has an office. Upon such application, the justice, in his discretion, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent, may fix as reasonable compensation for legal services rendered an amount greater than that specified in Schedule A, of subdivision (b) of this section; provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the client and the attorney. If the application be granted, the justice shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the application.

(e) Nothing contained in this section shall be deemed applicable to the fixing of compensation for attorneys representing infants or other persons, where the statutes or rules provide for the fixation of such compensation by the court.

(f) Nothing contained in this section shall be deemed applicable to the fixing of compensation of attorneys for services rendered in connection with collection of first-party benefits as defined in article XVIII of the Insurance Law.

§ 806.14 Attorney's affidavit in agency and private placement adoptions.

(a) Every attorney appearing for an adoptive parent, a natural parent or an adoption agency in an adoption proceeding in the courts within this judicial department, shall, prior

to the entry of an adoption decree, file with the Office of Court Administration of the State of New York, and with the court in which the adoption proceeding has been initiated, a signed statement, under oath, setting forth the following information:

(1) name of attorney;

(2) association with firm (if any);

(3) business address;

(4) telephone number;

(5) docket number of adoption proceeding;

(6) court where adoption has been filed;

(7) the date and terms of every agreement, written or otherwise, between the attorney and the adoptive parents, the natural parents or anyone else on their behalf, pertaining to any compensation or thing of value paid or given or to be paid or given by or on behalf of the adoptive parents or the natural parents, including but not limited to retainer fees;

(8) the date and amount of any compensation paid or thing of value given, and the amount of total compensation to be paid or thing of value to be given to the attorney by the adoptive parents, the natural parents or by anyone else on account of or incidental to any assistance or service in connection with the proposed adoption;

(9) a brief statement of the nature of the services rendered;

(10) the name and address of any other attorney or attorneys who shared in the fees received in connection with the services or to whom any compensation or thing of value was paid or is to be paid, directly or indirectly, by the attorney. The amount of such compensation or thing of value;

(11) the name and address of any other attorney or attorneys, if known, who received or will receive any compensation or thing of value, directly or indirectly, from the adoptive parents, natural parents, agency or other source, on account of or incidental to any assistance or service in connection with the proposed adoption. The amount of such compensation or thing of value, if known;

(12) the name and address of any other person, agency, association, corporation, institution, society or organization who received or will receive any compensation or thing of value from the attorney, directly or indirectly, on account of or incidental to any assistance or service in connection with the proposed adoption. The amount of such compensation or thing of value;

(13) the name and address, if known, of any person, agency, association, corporation,

institution, society or organization to whom compensation or thing of value has been paid or given or is to be paid or given by any source for the placing out of, or on account of or incidental to assistance in arrangements for the placement or adoption of the adoptive child. The amount of such compensation or thing of value and the services performed or the purposes for which the payment was made; and

(14) a brief statement as to the date and manner in which the initial contact occurred between the attorney and the adoptive parents or natural parents with respect to the proposed adoption.

(b) Names or other information likely to identify the natural or adoptive parents or the adoptive child are to be omitted from the information to be supplied in the attorney's statement.

(c) Such statement may be filed personally by the attorney or his representative at the main office of the Office of Court Administration in the City of New York, and upon such filing he shall receive a date-stamped receipt containing the code number assigned to the original so filed. Such statement may also be filed by ordinary mail addressed to:

Office of Court Administration--Adoption Affidavits
Post Office Box No. 2016
New York, NY 10008

(d) All statements filed by attorneys shall be deemed to be confidential, and the information therein contained shall not be divulged or made available for inspection or examination to any person other than the client of the attorney in the adoption proceeding, except upon written order of the presiding justice of the Appellate Division.

§ 806.16 Compensation of attorneys representing claimants against Lawyers' Fund for Client Protection.

No attorney shall charge a fee for or accept compensation for representation of claimants against the Lawyers' Fund for Client Protection of the State of New York, except as approved by the trustees of the fund.

§ 806.17 Examiners of reports of guardians, committees and conservators pursuant to article 81 of the Mental Hygiene Law.

(a) Appointment. Annually in the month of December, the presiding justice shall appoint examiners of the reports of guardians, as well as of committees and conservators appointed prior to April 1, 1993, in accordance with section 81.32(b) of the Mental Hygiene Law.

(b) Duties of examiners.

(1) The examiner appointed by the presiding justice shall examine initial and annual

reports within the times and in the manner required by section 81.32(a) of the Mental Hygiene Law.

(2) The examiner shall file a report, with regard to an initial report of a guardian, within 60 days after the filing of such report. With respect to an annual report filed in the month of May, the examiner's report shall be filed on or before September 15th of the same year. When a court has authorized the filing of an annual report at any other time, the examiner's report shall be filed within 90 days thereafter. Examiner's reports shall be in the form prescribed by the order appointing the examiner.

(3) Examiner's reports shall, on five days notice to the guardian, committee or conservator, be filed in the office of the clerk of the court which appointed the guardian, committee or conservator. A copy of the examiner's report shall, within five days of the date of such filing, also be filed with the office of the Clerk of the Appellate Division, Third Department.

(4) If a guardian, committee or conservator shall fail to file a report within the time specified by law, or shall file an incomplete report, the examiner shall serve a demand and take the other steps necessary to insure compliance as set forth in section 81.32(c) and (d) of the Mental Hygiene Law.

(5) In his or her discretion, the examiner may examine the guardian, committee or conservator and other witnesses under oath and reduce their testimony to writing.

(c) Compensation.

(1) For examination of an initial report, an examiner shall be entitled to a fee of \$100 and to reimbursement for necessary and reasonable disbursements.

(2) For examination of an annual report, an examiner shall be entitled to reimbursement for necessary and reasonable disbursements and to a fee fixed in accordance with the following schedule:

<u>Closing balance of estate examined:</u>	<u>Fee</u>
Under \$5,000	\$150
5,001 - 25,000	200
25,001 - 50,000	250
50,001 - 100,000	300
100,001 - 150,000	400
150,001 - 225,000	500
225,001 - 350,000	600
350,001 - 500,000	700
500,001 - 750,000	800
750,001 - 1,000,000	900
Over 1,000,000	1,000

The fee shall be computed on the net value of the estate at the end of the calendar year for which the guardian's report has been submitted. A fee in excess of the amount set forth in the above schedule may be awarded upon a showing of extraordinary circumstances.

(3) The fee for examination of annual reports filed for previous years shall be fixed on a quantum merit basis.

(4) The examiner's claim for a fee and disbursements in estates of less than \$5,000 shall be made by standard state voucher and shall be approved by the presiding justice or his or her designee. In estates of \$5,000 or more, the examiner's claim for a fee and disbursements shall be set forth in the examiner's report and shall be approved by order of the presiding justice for payment by the estate.

(5) Within 15 days after receipt of an order directing payment by the estate of the examiner's fee and disbursements, the guardian, committee or conservator may, by written request, upon notice to the examiner, apply to the presiding justice for review and reconsideration of any allowance deemed excessive.

§806.19 Discipline of attorneys for professional misconduct in other jurisdictions.

(a) Any attorney to whom this Part shall apply, who has been disciplined in a jurisdiction other than the State of New York, may be disciplined by the court for the conduct which gave rise to the discipline imposed in the other jurisdiction.

(b) It shall be the responsibility of the attorney to file, within 30 days of the date of the disciplinary order in the other jurisdiction, a copy of said order with the court. The failure of the attorney to do so may be deemed professional misconduct.

(c) Upon the filing by the attorney or the committee of a certified or exemplified copy of the disciplinary order, the court, either directly or upon application of the committee, shall give written notice to such attorney pursuant to subdivision 6 of section 90 of the Judiciary Law, according the attorney an opportunity within 20 days of the giving of such notice to file an affidavit or affirmation setting forth any defense to discipline enumerated in subdivision (d) of this section. The notice shall further advise the attorney that in default of such filing, the court may proceed to impose discipline or take other appropriate action. Upon the filing of such affidavit or affirmation, the court may fix a time at which the attorney can be heard in mitigation or otherwise if the attorney requests such appearance in writing.

(d) The court may impose discipline upon the attorney unless an examination of the papers before it and such other evidence as the court in its discretion may receive, discloses 1) that the procedure in the other jurisdiction deprived the attorney of due process; or 2) that there was such an infirmity of proof establishing the misconduct that the court cannot accept as final the finding of misconduct made in the other jurisdiction; or 3) that the imposition of discipline would be unjust. If the attorney raises either or both of the first two defenses enumerated in this subdivision, it shall be the attorney's responsibility to file with the court a copy of the record of the proceedings in the other jurisdiction. The court may require the attorney to file a copy of said record, or portion thereof, in any case in which such evidence is deemed necessary to determine the issues presented.