

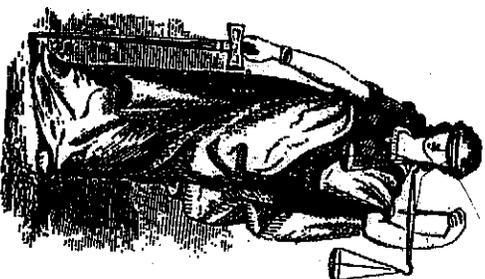
CONTINUING LEGAL EDUCATION

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The Disciplinary Process and How to Defend a Disciplinary Complaint

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INTRODUCTION

The purpose of this CLE is to acquaint attorneys with the disciplinary process in the First Department and assist attorneys in responding to issues that may arise when they receive a complaint letter from the Disciplinary Committee.

The disciplinary procedure will be detailed in lecture format. In view of the various difficulties inherent in the general practice of law, a brief list of related Rules with annotations is attached for review. The purpose of this CLE is not to highlight any particular statute or Disciplinary Rule. However, in order to properly defend a complaint, it is essential that the attorney is mindful of the dangers awaiting the uninformed respondent. Significant in the understanding of the Rules of Professional Conduct is the attorneys' comprehension of the definitions and terminology found in Rule 1.0. A copy of the terminology is appended for your reference.

Ms. Scalise, Mr. Lipkansky and Mr. Raskin encourage questions at any time during the program. It is neither rude nor impertinent for the attendees to make inquiries during the presentation.

On April 1, 2009, the new Rules of Professional Conduct replaced the old Code of Professional Responsibility. In particular the new Rules of Professional Conduct have adopted a number of the Ethical Considerations previous included in the Code of Professional Responsibility. While under the old Code, the Ethical Considerations were aspirational, under the new Rules of Professional Responsibility a number of the prior Ethical Considerations have been adopted as Rules of Professional Conduct. All the Rules designate mandatory conduct imposed upon the attorney.

22 NYCRR PART 1200 - RULES OF PROFESSIONAL CONDUCT
RULE 1.0:
TERMINOLOGY

- (a) "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.
- (b) "Belief or "believes" denotes that the person involved actually believes the fact in question to be true. A person's belief may be inferred from circumstances.
- (c) "Computer-accessed communication" means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, web logs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.
- (d) "Confidential information" is defined in Rule 1.6.
- (e) "Confirmed in writing" denotes (i) a writing from the person to the lawyer confirming that the person has given consent, (ii) a writing that the lawyer promptly transmits to the person confirming the person's oral consent, or (iii) a statement by the person made on the record of any proceeding before a tribunal. If it is not feasible to obtain or transmit the writing at the time the person gives oral consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (f) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.
- (g) "Domestic relations matter" denotes representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support or alimony, or to enforce or modify a judgment or order in connection with any such claim, action or proceeding.
- (h) "Firm" or "law firm" includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.

(i) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction or has a purpose to deceive, provided that it does not include conduct that, although characterized as fraudulent by statute or administrative rule, lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations that can be reasonably expected to induce detrimental reliance by another.

(j) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.

(k) "Knowingly," "known," "know," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(l) "Matter" includes any litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, negotiation, arbitration, mediation or any other representation involving a specific party or parties.

(m) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional legal corporation or a member of an association authorized to practice law.

(n) "Person" includes an individual, a corporation, an association, a trust, a partnership, and any other organization or entity.

(o) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(p) "Qualified legal assistance organization" means an office or organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof.

(q) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer. When used in the context of conflict of interest determinations, "reasonable lawyer" denotes a lawyer acting from the perspective of a reasonably prudent and competent lawyer who is personally disinterested in commencing or continuing the representation.

(r) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(s) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Screened" or "screening" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or the firm is obligated to protect under these Rules or other law.

(u) "Sexual relations" denotes sexual intercourse or the touching of an intimate part of the lawyer or another person for the purpose of sexual arousal, sexual gratification or sexual abuse.

(v) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(w) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(x) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording and email. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**RULE 1.1:
COMPETENCE**

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(c) A lawyer shall not intentionally:

(1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or

(2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules.

**RULE 1.3:
DILIGENCE**

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not neglect a legal matter entrusted to the lawyer.

A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules.

**RULE 1.4:
COMMUNICATION**

(a) A lawyer shall:

(1) promptly inform the client of:

(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(ii) any information required by court rule or other law to be communicated to a client; and

(iii) material developments in the matter including settlement or plea offers.

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with a client's reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**RULE 1.15:
PRESERVING IDENTITY OF FUNDS AND PROPERTY OF OTHERS; FIDUCIARY
RESPONSIBILITY; COMMINGLING AND MISAPPROPRIATION OF CLIENT
FUNDS OR PROPERTY; MAINTENANCE OF BANK ACCOUNTS;
RECORD KEEPING; EXAMINATION OF RECORDS**

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.

(2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by Rule 1.15(b)(1) as an "Attorney Special Account," "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate, provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or the lawyer's firm.

(3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.

(4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

(1) promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest;

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them; and

(4) promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.

(d) Required Bookkeeping Records.

(1) A lawyer shall maintain for seven years after the events that they record:

(i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;

(ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;

(iii) copies of all retainer and compensation agreements with clients;

(iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;

(v) copies of all bills rendered to clients;

(vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed;

(vii) copies of all retainer and closing statements filed with the Office of Court Administration; and

(viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.

(2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance, by one of them or by a successor firm, of the records specified in Rule 1.15(d).

(i) Availability of Bookkeeping Records: Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto, and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this Rule shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the attorney-client privilege.

(j) Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

CASES - NEGLIGENCE - FAILURE TO COOPERATE

RULES 1.1 and 1.3

Matter of Holubar, 84 AD3d 100. On April 20, 2010, based on Respondent's failure to satisfy a judgment and cooperate with the Departmental Disciplinary Committee's investigation regarding claims of professional misconduct, this Court suspended Respondent from the practice of law pursuant to 22 NYCRR 603.4 (e) (1) (i) and (iv) ([2010]). We granted an interim suspension based upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest. The hearing before the Referee concluded on April 19, 2010. Respondent was not present despite being so apprised and the Referee conducted the mitigation hearing in respondent's absence. The Referee concluded that the appropriate sanction for respondent's conduct was disbarment. The Referee issued a report detailing his recommendation, wherein he reiterated that upon respondent's default, all of the charges against him were deemed admitted. Disbarment, the Referee concluded, was the appropriate sanction based on respondent's refusal to cooperate with the Committee's investigation and his failure to appear and contest the charges. The Referee further concluded that disbarment was warranted based on respondent's conversion of client funds and, independently, due to his intentional misrepresentation to the Committee during the course of its investigation into two separate complaints. The report was reviewed by a Hearing Panel, Respondent was again so notified and he nevertheless failed to appear. The Hearing Panel adopted the Referee's recommendation of disbarment. The Committee now petitions this Court for an order pursuant to 22 NYCRR 603.4 (d) and 605.15 (e) (2) and Judiciary Law § 90 (2), confirming the Referee's report and the determination of the Hearing Panel thereby disbarring the respondent. The Court disbarred Respondent.

Matter of Samuel Militello, Esq., 76 AD3d 364. The Respondent is an active criminal practitioner who undertook two (2) civil matters. He neglected to advance the civil lawsuits for an extended period of time and failed to communicate the status of the case with the clients. In submitting an answer Respondent admitted most of the factual allegations and his liability for the neglect. The Referee conducted a hearing and recommended Respondent be publicly censured on condition that he agree not to take any new civil matters and to continue to practice only criminal law and to report to the Committee the status of the current cases for which he accused of neglect. The Hearing Panel recommended three (3) months suspension for the conduct. The Court implied that it would have imposed a Public Censure because of Respondent's cooperation, mitigation and lack of venal intent. However, the Respondent had two (2) prior neglect Admonitions. The Court commented that Respondent's criminal defense work was admirable but did not excuse his neglect of the civil matters. The Court imposed three (3) months suspension.

Matter of Ronald Salomon, Esq., 78 AD3d 115. The Respondent had an active immigration practice. His office handled thousands of immigration cases annually. He was accused, *inter alia* of neglect and engaging in conduct adversely affecting his fitness to practice law. A Hearing Panel confirmed a Referee's finding of various Code violations and recommended a three (3) month suspension. The Respondent seeks a Public Censure and admits to violating the code. In mitigation Respondent submitted his high rate of success, his clients' satisfaction with his services and his work with immigration and asylum seekers. In particularly the Court noted his advocacy on behalf of victims of female genital mutilation (FGM) and his work to have FGM recognized as a basis for seeking asylum. The Court granted Respondent's application for Public Censure.

Matter of Ronald Salomon, 91 AD3d 187. Mr. Salomon was suspended for 6 months by the Committee on Admissions and Grievances (CAG) of the Second Circuit Court of Appeals. The suspension by the Court of Appeals was predicated upon Respondent's failure to submit supporting briefs in accordance with the Court's scheduling orders and other negligence in his immigration practice. In addition to the suspension the Court ordered that Respondent take six (6) hours of CLE in office management and that he submit periodic reports to the CAG regarding the status of his practice. The DDC brought an action for reciprocal discipline requesting a six (6) month suspension. Respondent sought a concurrent suspension with the CAG sanction. The Court held that an elevated sanction of six (6) months was warranted given respondent's pattern of neglect, prior disciplinary history, and misrepresentation to the Committee on the background questionnaire. (See 78 AD3d 115). The Court noted that the Respondent had been censured for similar An elevated sanction of no less than a six-month suspension is warranted, The Court enhanced the Respondent's suspension to six (6) months independent of the CAG suspension.

Matter of Kehinde Jobi, 56 AD3d 158. The Respondent was suspended on an interim basis pursuant to NYCRR 603.04 (e), (1), (i) and (iii). The Respondent failed to produce tax returns and bank statements in effort to thwart the investigation of the DDC. The Respondent further impeded the inquiry through false statements, delays and "outright non-cooperation." The Court held that while Respondent gave limited cooperation by providing some answers to complaints and attending two (2) depositions, she otherwise failed to cooperate by repeatedly refusing to produce bank statements, client files and tax returns which were relevant to the Committee investigation. The Committee motion to suspend on an interim basis was granted by the Court.

At Matter of Jobi, 72 AD3d 285. The Respondents filed an affidavit of resignation where she admitted that she was under investigation for deceit involving conversion of funds held in escrow, giving false testimony and failure to satisfy judgment against her by two (2) clients. Her resignation was accepted.

People v. Jobi, NYLJ 10/25/12, pg.1. (Bronx County Supreme Court Judge Marcus, Indictment Number 862/2010. Jobi was convicted after trial on counts of Grand Larceny and the Unauthorized Practice of Law. Her testimony at the disciplinary hearing was deemed "not compelled" and was admitted against the defendant at her criminal trial. Ms. Jobi was sentenced to 3-9 years in state prison in Bronx Supreme Court on November 29, 2012.

CASES - INTERIM SUSPENSION

22 NYCRR 603.4 (1)(e)

Matter of Bautista, 78 AD3d 75. Respondent failed to cooperate with the Departmental Disciplinary Committee into an investigation of two (2) complaints of misconduct. Respondent did not respond to the Committee's letters and the Committee's investigator failed to reach Respondent through telephone numbers associated with him. In addition, the investigation disclosed that Respondent's listed home address was in fact a UPS store mailbox. Respondent was also delinquent in his attorney registration. He was suspended on an interim basis pursuant to 22 NYCRR 603.4(e) (1) (iii). Respondent was subsequently disbarred when he failed to respond to the interim suspension. 88 AD3d 128.

Matter of Bloodsaw, 87 AD3d 190. The Departmental Disciplinary Committee brought a petition for an interim suspension pursuant to NYCRR 603.4 (e) (1) (i) and (iv) based upon her failure to cooperate with the Committee's investigation and refusal to pay money owed to a client. Respondent did not reply to the DDC inquiry. The Respondent did not comply with the lawful demand of the Departmental Disciplinary Committee and disregarded a juridical subpoena. In the words of the Committee Respondent's, "Demonstrated a strategy of silent entrenchment and calculated refusal to acknowledge repeated Committee inquiries." The Court held that Respondent has committed these acts of misconduct in the face of serious allegations, and accusations of misappropriating large sums of money intended for the care of a mentally incompetent person. The Court held that pursuant to 22 NYCRR 603.4 (e) (iv) that a "willful failure or refusal to pay money owed which debt is demonstrated by admission, judgment or other clear and convincing evidence, can merit suspension. Matter of Holubar, 73 AD3d 214.

Matter of Bloodsaw, 95 AD3d 226. The Departmental Disciplinary Committee petitioned the Court for an order pursuant to 22 NYCRR 603.4 (g) disbarring Respondent on the grounds that she had been suspended under 22 NYCRR 603.4 (e) (1) (i)(iv) and has not appeared or applied in writing to the Committee or the Court for a hearing or reinstatement for six (6) months from the date of the Order of Suspension. The Respondent was disbarred as a result of his failure to respond to the Committee or seek reinstatement.

Matter of John J. O'Brien, 98 AD3d 60. The Respondent was convicted in Federal Court of four (4) misdemeanors to wit: Two (2) counts of willfully failing to pay income taxes and two (2) counts of failing to file United States Income Tax Returns. All charges were misdemeanors. After he pled guilty he was sentenced to a period of incarceration of twenty eight (28) months followed by one (1) year of supervised release. The DDC petitioned the Court for an Order determining Respondent had been convicted of serious crimes as defined by judiciary law Section 90 (4) (d) and requesting he be suspended from the practice of law pursuant to Judiciary Law Section 90 (4) (f) and directing a hearing before Hearing Panel of the Committee or Referee as the appropriate sanction. The Court held that even though these crimes were not felonies they include language indicating a willful failure to file Income Tax Returns. The Court granted the Committees application to immediately suspend Respondent using a strict interpretation of Judiciary Law Section 90(4)(f) and further stating that it is the policy of the Court to suspend an attorney who is serving a term of criminal probation or is incarcerated. The motion for interim suspension was granted.

CASES - FIFTH AMENDMENT

Matter of Kapchan, 86 AD3d 110. (Respondent Invokes Fifth Amendment Privilege)

Respondent acted as an attorney title closer and/or settlement agent in numerous real estate closings. Some of his responsibilities were to insure that the mortgage lenders instructions have been followed, to receive and disburse funds and to accurately complete a HUD-1 Settlement Statement (an itemized list of cost and fees associated with the closing and disbursement of loan proceeds). Respondent was being investigated by the Suffolk County District Attorney's Office. He began to cooperate and was offered immunity. He testified in the grand jury and subsequently testified at trial. He was also under investigation by the United States Attorneys' Office from the Southern District of New York in connection with similar conduct and therefore invoked his Fifth Amendment right against self-incrimination when he appeared before the Disciplinary Committee. The Court noted that during Respondent's testimony at one of the state trials he conceded that he knowingly prepared and submitted false information on the HUD-1 forms. The Committee moved for an interim suspension pursuant to 22 NYCRR 603.4 (e) (1). The Court held that the DDC demonstrated through Respondent's prior substantial admissions under oath that he committed acts of professional misconduct posing an immediate threat to the public interest. The Court also drew an adverse inference as a result of Respondent's invocation of his Fifth Amendment privilege against self-incrimination during the deposition. The Court held that merely invoking one's Fifth Amendment right against self-incrimination would not serve as a separate ground for interim suspension. However, when coupled with other misconduct which formed the basis of uncontroverted evidence of professional misconduct, an interim suspension would be granted. The Court granted an interim suspension. See also Matter of Harris, 97 AD3d 96 (failure to cooperate respecting escrow investigation).

Matter of Bryan Reis, 96 AD3d 53. The DDC opened up a Sua Sponte investigation into Respondent's professional conduct as a result of being advised by the Lawyers Fund for Client Protection that a \$2,000.00 check from his escrow account had been dishonored. Furthermore, an attorney filed a disciplinary complaint against Respondent allegedly conversion of \$125,000.00 from the Respondent's escrow account. Subsequently, additional complaints were filed against Respondent. The DDC issued subpoenas and obtained bank records from the Respondent. Respondent was notified to appear for a deposition and informed Staff that he was going to invoke his Fifth Amendment Right against self-incrimination. The Court held that an attorney cannot be suspended on an interim basis solely for asserting his Fifth Amendment right against self-incrimination See Matter of Kapchan, 86 AD3d 110 at Pg. 112. In this case the Court drew an adverse inference from Respondent's invocation of his Fifth Amendment privilege and found that his failure to produce records and documents required to be maintained pursuant to the New York Rules of Professional Conduct constituted additional evidence against him. Accordingly, pursuant to 22 NYCRR 603.4 (e), (1), (i) and (ii), the respondent was immediately suspended.

CASES - RETAINER / FEES / OVERRILLING

RULE 1.5

Matter of Schne, 61 AD3d 198 (2nd Dept.). Respondent employed a retainer containing a provision rendering a client's initial payment non-refundable. This is a violation of: 22 NYCRR 1400.4; Rule 1.15 (d)(4) 22 NYCRR 1200.15 (a)(3); (b)(4); 1200.11 (a). The Respondent was also found to have neglected this client's case by not filing and following up after he prepared court papers on behalf of the client. The Respondent was admitted for 43 years with no prior disciplinary history. In mitigation, he argued that his wife was gravely ill during the pendency of this case and he was preoccupied with caring for her. The Court publicly censured Respondent. See also Matter of Cooperman 187 AD2d 56; affirmed with opinion at 83 NY2d 465; 22 NYCRR 1400.4.

Matter of Dominick Barbara, 81 AD3d 127. (Second Department). The Respondent was charged with, *inter alia*, failure to provide a client in a domestic relations matter with an itemized bill on regular basis; failing to adequately supervise the conduct of attorneys and non-attorneys in his law firm (DR-1-104 (c)), (d)(2); failing to refund a portion of a legal fee paid in advance which had not been earned (DR-2-110 (a)(3); and failing to adequately communicate with his client and new counsel in violation of DR-1-102 (a)(7). The referee sustained all four (4) charges. The Second Department noted in determining in appropriate measure of discipline that the Respondent had received nine (9) Letters of Caution, nine (9) Admonitions and two (2) Advisements. The prior discipline history was for conduct similar to that which is brought by the instant charges. The Respondent's attempt to mitigate his disciplinary history purported that most of the avalanche of Grievance Committee sanctions were caused by health problems and by a sabotage of his law practice by disloyal associates. The Court suspended the Respondent for 18 months.

Matter of Shearer 94 AD3d 128. The Respondent filed a retainer agreement for malpractice action after being referred the matter by a Maryland attorney. The Respondent and the Maryland attorney entered into a fee agreement under which Respondent was to participate as co-counsel in the action to be prosecuted in New York. The agreement specifically required Respondent to prepare and file documents to enable the referring to be admitted pro hac vice and a fee split of 50% for his participation. After settlement a bitter fee dispute ensued. During the civil proceedings the Respondent was fined by Bronx Supreme Court for being less than candid with the Court and directed to pay money to the Funds For Client Protection and reimburse referring counsel. At the discipline stage the Respondent made egregious misrepresentations regarding the proceedings, and failed to accept responsibility for his conduct. The original client unequivocally testified in contrast to Respondent's testimony before the Committee. In addition to the false notarization, the Court found that the Respondent testified falsely before the Court, the Committee and the Referee as to the existence of a retainer agreement and made the same claim in documents filed with the Appellate Court and OCA. Respondent also sought an infant's compromise order without informing the Court of the legal fee dispute or giving the referring counsel notice of the hearing. The Court suspended the Respondent for 2½ years noting in mitigation that this was his first conflict with the Disciplinary Committee.

ESCROW VIOLATIONS – PRESERVING THE IDENTITY OF FUNDS

The First Department has uniformly held that disbarment is the appropriate sanction for misappropriation of client funds, absent extremely mitigating circumstances. Matter of Pape, 31 AD3d 156; Matter of Neufeld, 268 AD2d 1; Matter of Harley, 298 AD2d 49; Matter of Rivera, 230 AD2d 74. In addition, absent extraordinary mitigating circumstances, intentional conversion of escrow funds requires disbarment. Matter of Squitieri, 88 Ad3d 380; Matter of Kirschenbaum, 29 AD3d 96.

Attorney Respondents who have converted escrow funds, failed to maintain a ledger and were unable to account for escrow transactions are guilty of professional misconduct immediately threatening the public interest and suspended immediately on an interim basis pursuant to 22 NYCRR 603.4 (e) (1) (iii): Matter of Kennedy, 87 AD3d 107; Matter of Caro, 40 AD3d, 43; Matter of Tannenbaum, 16 AD3d 66; Matter of Pape, 10 AD3d 40; Matter of Jobi, 56 AD3d 866.

Disbarment

Matter of Almando Crescenzi, 51 AD3d 230. Respondent was charged by the DDC with improper use of his IOLA account by distributing the funds for personal use. He was Suspended in November of 2004 (Matter of Crescenzi, 12 AD3d 74). Formal charges were brought against the Respondent in 2005. In a pre-hearing stipulation Respondent admitted that he intentionally converted a clients' funds, failed to maintain the client funds in his escrow account and submitted a false answer to the DDC. A hearing on liability proceeded where the Respondent testified as did two (2) character witnesses and a medical expert. The Respondent interposed a defense in mitigation that he was a crack addict. The Respondent concluded that it was an extremely unusual mitigating circumstance that warranted a suspension instead of disbarment. The panel noted that the Respondent appeared at his deposition before DDC under the influence of cocaine. The committee stressed that within the First Department in order for drug addiction or alcohol abuse to constitute mitigation, it must be established that the addiction was causally linked to the misconduct. The court held that defendant's lack of cooperation and intentional conversion of client funds was not rebutted by a causal relationship with the drug addiction. Respondent was disbarred.

Matter of Jerrold Weinstein, 70 AD3d 256. The complainant accused the Respondent of never sending her portion of a \$15,000.00 insurance settlement awarded for injuries she suffered in a car accident. The Respondent appeared before the Committee for a deposition but did not bring the bank statements subpoenaed alleging that they had been stolen by his landlady when he was evicted from his apartment. Subsequent to the deposition the Respondent submitted an answer for the first time alluding to a number of serious personal problems which led him to withdraw from the practice of law. Respondent did however perform some work per diem for a law firm. Respondent maintained that he had written a check to the client for her \$10,000.00 share of the settlement. The Committee reviewed the bank records of Respondent and found that there was no \$10,000.00 check issued to the complainant. The Committee also found a large number of cash withdrawals from the account which the Respondent could not justify. The record also revealed that Respondent paid rent and utility bills out of his escrow account. Based upon Respondent's admissions made during the deposition as well as substantial documentary evidence of his mishandling and misappropriation of client funds the Appellate Division immediately suspended Respondent from the practice of law pursuant to 22 NYCRR 603.4 (e), (1), (ii) and (iii). Subsequently, the Respondent was disbarred pursuant to 22 NYCRR 603.4 (g), because he did not appear or apply in writing for a hearing or reinstatement within six (6) months from the Order of Suspension. Matter of Jerrold Weinstein, 87 AD3d 56.

Matter of Squitieri, 88 AD3d 380. The Respondent was charged with comingling and misappropriating client funds in violation of DR 9102 (a). The Respondent was also charged with a violation of DR1-102(a) (4) alleging that he engaged in conduct adversely reflecting on his fitness to practice law. Respondent admitted the charges which alleged various bookkeeping violations and neglect of a client matter. However, with respect to the charge of comingling he denied misappropriating client funds. Respondent alleged that because of his psychiatric disorders and alcoholism triggered by his divorce he could not have formed the venal intent necessary to sustain the charge. The Court held that in order to sustain a violation of DR1-102 (a) (4) and the necessary venal intent the Court requires evidence that the attorney knowingly withdrew IOLA or escrow funds without permission or authority and that he used said funds for his own purposes. Whether an attorney intended to repay, or actually repays, converted funds does not negate a finding of venal intent. Matter of Kirschenbaum, 29 AD3d 96. In addition, the Court held that while defendant's alcoholism and impaired mental health contributed to his behavior, his cognitive ability was not so adversely impacted by the impending divorce and alcoholism as to render him incapable of making reasoned intelligent decisions. The Defendant was disbarred.

Matter of Stephen Kennedy, 99 AD3d 75. The Respondent was suspended in 2011 for his admitted conversion and misappropriation of escrow funds, his failure to maintain a ledger and inability or unwillingness to account for escrow account transactions at Matter of Kennedy, 87 AD3d 107. In this case, the Respondent misappropriated \$155,000.00 of client funds for his personal use over a two 2 year period. The Respondent failed to set forth any extremely unusual mitigating circumstances to justify departing from the usual penalty of disbarment. The Court rejected Respondent's claim that Respondent believed he would be able to replenish the converted funds with the imminent receipt of legal fees. The Court disbarred Respondent finding no extremely unusual mitigating circumstances.

Failure to Safeguard Client Funds - Lesser Sanctions (Escrow Violations)

Matter of Samuel Racer, 56 AD3d 125. The DDC brought charges against Respondent for inadequate bookkeeping in connection with his escrow account and failure to cooperate with their investigation. The Respondent was charged with misappropriation of client funds. He was not charged with intentional conversion but rather, using one client's funds for the benefit of another client or third party. In addition, the Respondent wrote checks payable to cash and used a debit card to withdraw funds from his escrow account. A hearing was conducted and the referee found that the Respondent failed to preserve the identity of client funds when he used funds belonging to one client to pay other clients and third parties. This was a violation of DR9-102 (B). The referee also found against Respondent for his failure to maintain proper bookkeeping records in violation of DR9-102 (D) and for writing checks form his escrow account payable to cash in violation of DR9-102 (E). The referee found no mitigating factors. The Courts sustained the hearing panel's recommendation and noted that the Respondent's disciplinary history was not unblemished. The court noted that Respondent had an admonition from 1995 for similar misconduct. Respondent was suspended for four years.

Matter of Salo, 77 AD3d 30. The Respondent was accused of converting escrow funds in the sum of approximately \$32,000.00 and using personal funds to replenish the amount over drawn. There was no question before the Referee with respect to the misappropriation. The primary issue before the court was whether respondent's conversion of escrow funds was done without intent in light of the post-traumatic stress disorder (PTSD) and depressions for which he suffered at the time. Respondent argued that he acted under the influence of the aforementioned psychological maladies and without venal intent and the sanction should be limited to a Public Censure. Respondent introduced evidence that he sought psychological treatment and descended into alcohol abuse following 911 before the DDC investigation opened. The DDC expert concurred with much of the Respondents' doctor's report. The Referee found, based upon the expert reports, that PTSD played a substantial role in bringing about the misconduct. The Referee recommended by reason of the "extremely unusual mitigating circumstances" that there be a one year suspension rather than disbarment which was recommended by the DDC. The Court held that Respondent inadvertently transferred the funds without specifically intending to misappropriate the money as a result of PTSD from which he suffered at the time. The Court held that the DDC did not prove by a preponderance of the evidence that Respondent had the venal intent required for finding that he willfully and knowingly converted third party funds. The intent to defraud was not proven. Matter of Altonerianos, 160 AD2d 96. The court imposed a one year suspension on the Respondent.

In the Matter of Peter J. Galasso, 19 NY3d 688; October 23, 2012. This decision modifies Matter of Galasso, decided by the Second Department in February of 2012 at 94 AD3d 30. In this complicated matter the Grievance Committee brought charges against Respondent alleging that he breached his fiduciary duty by failing to safeguard funds in his escrow account even though the funds were monitored by his brother, who has since pled guilty and been sentenced to state prison. A total of ten (10) charges comprised the complaint. A two (2) year suspension had been imposed by the Second Department at 94 AD2d 30. In essence the charges accused Respondent of violating Rule 5.3 (b) (2) (i) and (ii) and Rule 1.15 (Preserving the Identity of Funds and Properties of Others. The Court of Appeals held that "It is the ethical responsibility of the attorney-not the book keeper, the office manager or the accountant-to safeguard client funds." While the court held that respondent is not responsible for the criminal behavior of his brother, they concluded that Respondent attorney's own individual breach of his fiduciary duty and failure to properly supervise his employee that resulted in the loss of the client funds in trusted to him. Accordingly, disciplinary action was warranted. In this case Respondent was also charged with failure to timely comply with the Grievance Committee's lawful demands for information pursuant to Rule 8.4 (d) (h). The Court of Appeals held that Respondent was generally cooperative with the investigation and his level of compliance is inconsistent with sustaining a charge for failure to cooperate. The Court of Appeals remitted the case to the Appellate Division after a dismissal of the "Non-cooperation Charge" to reconsider the previously imposed two (2) year suspension.

Matter of Galasso, 101 AD3d 1002. The Second Department, after remand from the Court of appeals maintained the two (2) year suspension of Mr. Galasso stating that the circumstances under which Mr. Galasso was disciplined and the extent of the sanction depend on:

1. The subject attorney's partnership status and the level of experience;
2. The presence or absence of "early warning signs," the financial improprieties, whether such signs were ignored, and if so, for how long;
3. Whether the proper authorities was notified of the defalcations upon their discovery;
4. The presence or absence of monetary loss to clients and the magnitude thereof;
5. Whether the attorney attempted to reimburse the client losses caused by another.

The Court went on to note that there has been no reimbursement of client losses caused by the respondent's brother. The Court reiterated language from the Court of Appeals and held, "The most fundamental obligation of attorneys entrusted with client funds is the duty to safe guard those funds. That duty is crystal clear and a reasonable attorney familiar with The Code and its ethical strictures would have notice of what conduct is proscribed. In conclusion, the Court held that Respondent failed to maintain appropriate vigilance over his firm's banks account resulting in actual and substantial harm to clients. (Note: The Chief Judge stayed the second Galasso Suspension pending full Court review. The full Court declined to rehear case.)

NON-LEGAL CONDUCT

Bigamous Marriage

Matter of John Rosenzweig, 2013 NY Slip Op 1220. The Respondent had an affair with a woman who he married in Jamaica during a brief vacation. Respondent had known the woman for many years and had they carried on an affair for a number of years before the Jamaican marriage. At the time Respondent married his girlfriend in Jamaica he was legally married in New York. Prior to the marriage in Jamaica Respondent falsely informed a Jamaican Government official that he was a “bachelor” and executed marriage documents indicating that he was unmarried. The DDC charged Respondent’s conduct adversely reflected his honesty, trustworthiness and fitness as a lawyer in violation of the Rules of Professional Conduct. Respondent admitted all the factual allegations and liability to the charges but denied that he intended to enter to an illegal marriage in Jamaica or that he intended to violate Jamaica law. According to Respondent his Jamaican wife understood that their purported marriage was not a legal union and that they had no plans to cohabit after the Jamaican ceremony. The Referee sustained the charges and recommended public censure. The Hearing Panel recommended a six (6) month suspension. The Respondent argued that a public censure was appropriate since, *inter alia*, he engaged in misconduct which was aberrational and entirely unrelated to the practice of law. The Court, noting that the Respondent was a part time Administrative Law Judge for the New York City Environmental Control Board, suspended the Respondent for six (6) months. The Court opined that Respondent made a willful misrepresentation to government officials or courts even though the Respondent misconduct involved his personal life.

Failure to File Tax Returns

Matter of Gerald Eppner, 62 AD3d 151. The Respondent was a well-respected partner in a major New York law firm. On December 13, 2006, he plead guilty in New York City Criminal Court to two counts of failure to file income tax returns for the years 2003 and 2004 in violation of New York Tax Law Section 1801(a), a Class A Misdemeanor. He was sentenced to a Conditional Discharge and \$20,000.00 fine. At the disciplinary hearing Respondent admitted that although he plead guilty to failing to file state tax returns for 2003 and 2004, he also failed to file both New York State and federal returns for the years 2001, 2002 and 2005. Since the entry of his plea Respondent acknowledged that he filed all delinquent federal and state tax returns and made considerable efforts to repay the outstanding tax liability. Respondent presented mitigation including unexpected family expenses, the financial effects of the 9/11 attack, and an informal retirement policy at his law firm which he interpreted as compelling his retirement. The Hearing Panel recommended a Public Censure. They found various forms of mitigation including Respondents 40 year legal career, acceptance of responsibility, affiliations with several well respected New York law firms, his immediate actions to rectify his misconduct and the fact that his misconduct did not involve the misuse of client funds. The Hearing Panel also noted in aggravation, the Respondent’s failure to file tax returns in addition to those upon which his plea was predicated. The Court held that tax violations generally require sanctions ranging from private Admonition to Suspension. The Court accepted the general mitigation expressed by the Respondent and recommended a Public Censure.

Matter of Ronald Goldman, 71 AD3d 9

and

Matter of John J.P. Howley, 70 AD3d 218

In both cases the Respondent plead guilty to failing to file a New York State tax return in violation of New York State Tax Law Section 1801(a). These are A Misdemeanors. Both defendants were sentenced in separate and distinct cases to a Conditional Discharge and a \$10,000.00 fine and/or community service. Both the respondents had failed to pay State Income Tax for periods ranging from nine (9) to ten (10) years. The Hearing Panels recommended six (6) and seven (7) months suspensions respectively. The Court suspended each attorney for one (1) year. The Court held that while it has imposed penalties of a Public Censure in some tax cases there must be extenuating mitigating factors to warrant a lenient sanction. The Court found the aggravating factors in these cases vastly more compelling than the mitigation. The Court found as an aggravating factor that both Respondents earned substantial income and failed to pay taxes without justification.

New York State Supreme Court
Appellate Division
New Department

Departmental Disciplinary Committee

Part 603. Conduct Of Attorneys

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Part 603

§ 603.1 Application

- a. This Part shall apply to all attorneys who are admitted to practice, reside in, commit acts in or who have offices in this judicial department, or who are admitted to practice by a court of another jurisdiction and who practice within this department as counsel for governmental agencies or as house counsel to corporations or other entities, or otherwise, and to all legal consultants licensed to practice pursuant to the provisions of subdivision 6 of section 53 of the Judiciary Law. In addition, any attorney from another state, territory, district or foreign country admitted pro hac vice to participate in the trial or argument of a particular cause in any court in this judicial department, or who in any way participates in any

- action or proceeding in this judicial department shall be subject to this Part.
- b. This Part shall apply to any law firm, as that term is used in the Rules of Professional Conduct (22 N.Y.C.R.R. Part 1200), that has as a member, employs, or otherwise retains an attorney or legal consultant described in subdivision (a) of this section.
 - c. Neither the conduct of proceedings nor the imposition of discipline pursuant to this Part shall preclude the imposition of any further or additional sanctions prescribed or authorized by law, and nothing herein contained shall be construed to deny to any other court or agency such powers as are necessary for that court or agency to maintain control over proceedings conducted before it, such as the power of contempt, or to prohibit bar associations from censuring, suspending or expelling their members from membership in the association; provided, however, that such action by a bar association shall be reported to the Departmental Disciplinary Committee appointed pursuant to section 603.4(a) of this Part, and provided further that such action by a bar association shall not be a bar to the taking of other and different disciplinary action by the court or such Departmental Disciplinary Committee.

§603.2 Professional Misconduct Defined

- a. Any attorney who fails to conduct himself both professionally and personally, 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 provision of the rules of this court governing the conduct of attorneys, or with respect to conduct on or after April 1, 2009, the Rules of Professional Conduct, (22 N.Y.C.R.R. Part 1200), or with respect to conduct on or before March 31, 2009, any disciplinary rule of the former Code of Professional Responsibility, as adopted by the New York State Bar Association, effective January 1, 1970, as amended, or any of the special rules concerning court decorum, shall be guilty of professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law.
- b. Any law firm that fails to conduct itself in conformity with the Rules of Professional Conduct (22 N.Y.C.R.R. Part 1200) with respect to conduct on or before March 31, 2009 shall be guilty of professional misconduct within the meaning of subdivision 2 of section 90 of the Judiciary Law.

§603.3 Discipline of Attorneys for Professional Misconduct in Foreign Jurisdiction

- a. Any attorney to whom this Part shall apply, pursuant to section 603.1 of this Part who has been disciplined in a foreign jurisdiction, may be disciplined by this court because of the conduct which gave rise to the discipline imposed in the foreign jurisdiction. For purposes of this Part, foreign jurisdiction means another state, territory or district.
- b. Upon receipt of a certified or exemplified copy of the order imposing such discipline in a foreign jurisdiction, and on the record of the proceeding upon which such order was based, this court, directly or by the Departmental Disciplinary Committee, shall give written notice to such attorney pursuant to subdivision 6 of section 90 of the Judiciary Law, according him the opportunity, within 20 days of the giving of such notice, to file a verified statement setting forth evidentiary facts for any defense to discipline enumerated under subdivision (c) of this section, and a written demand for a hearing at which consideration shall be given to any and all such defenses. Such notice shall further advise the attorney that in default of such filing such discipline or such disciplinary

action as may be appropriate will be imposed or taken. When a verified statement setting forth evidentiary facts for any defense to discipline and a demand for hearing have been duly filed, no discipline shall be imposed without affording the attorney an opportunity for hearing. The Court may conduct the hearing or it may appoint a Referee to conduct the hearing and further refer the matter to the Departmental Disciplinary Committee. In the event the committee or the attorney desires further action by this court, a petition may be filed in this court together with the record of the proceedings before the committee.

c. Only the following defenses may be raised:

1. that the procedure in the foreign jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duties, accept as final the finding in the foreign jurisdiction as to the attorney's misconduct; or
 3. that the misconduct for which the attorney was disciplined in the foreign jurisdiction does not constitute misconduct in this jurisdiction.
- d. Any attorney to whom these rules shall apply pursuant to section 603.1 of this Part who has been disciplined in a foreign jurisdiction shall promptly advise this court of such discipline.
- e. Whenever the Departmental Disciplinary Committee learns that an attorney to whom these rules shall apply, pursuant to section 603.1 of this Part, has been disciplined in a foreign jurisdiction, it shall ascertain whether a certified or exemplified copy of the order imposing such discipline has been filed with this court, and if it has not been filed, such committee shall cause such order to be filed.

**§ 603.4 Appointment of Disciplinary Agencies;
Commencement of Investigation of Misconduct; Complaints;
Procedure in Certain Cases**

- 3.
1. This court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys who, and law firms that, are subject to this Part, and to impose discipline to the extent permitted by section 603.9 of this Part. This court shall, in consultation with the Departmental Disciplinary Committee, appoint a chief counsel to such committee and such assistant counsel, special counsel and supporting staff as it deems necessary.
 2. This court shall appoint as members of the Departmental Disciplinary Committee attorneys in good standing with the Bar of the State of New York and persons who are not attorneys but reside or have a principal place of business in the City of New York. Special counsel may be appointed as members of the committee. At least two-thirds of the committee shall be attorneys. Appointment to the committee shall be for a three-year term. Except for special counsel, a member who has served for two consecutive terms is not eligible for reappointment for at least one year following the expiration of the second term. (The membership of the Departmental Disciplinary Committee shall be appointed by this court for a term of three years, except members who have been appointed to complete unexpired terms, in which case such members may be reappointed for three-year or shorter terms. At least two-thirds of the members of the Departmental Disciplinary Committee shall be members of the Bar of the State of New York in

- good standing, each of whom shall reside or have an office in the City of New York, and up to one-third of such members shall be persons who are not members of the Bar, each of whom shall reside or have a principal place of business in the City of New York. The court may appoint special counsel who shall be full members of the committee. Appointments to the Departmental Disciplinary Committee may be made from lists of nominees submitted by the Association of the Bar of the City of New York, the New York County Lawyers' Association, and the Bronx County Bar Association, and by such other means which the court deems in the public interest. With the exception of Special Counsel appointed by the Court, a member of the Bar who has served two consecutive terms shall not be eligible for reappointment until one year after the expiration of the second term. The appropriate committees of the Association of the Bar of the City of New York, the New York County Lawyers' Association, and the Bronx County Bar Association may be designated to investigate and prosecute matters involving alleged misconduct of attorneys. Upon such designation, references in sections 603.3, 603.4(a)(3), (b)(c) and (d), 603.5, 603.6, 603.9, 603.11, 603.12(a) and (e), 603.15 and 603.16 of this Part to the Departmental Disciplinary Committee with respect to the matter or matters to which such designation applies shall mean the Committee of the Association of the Bar of the City of New York, the New York County Lawyers' Association or the Bronx County Bar Association so designated.)
3. The members of the Departmental Disciplinary Committee for the First Judicial Department, 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.
 - b. The rules for the conduct of the proceedings and business of the Departmental Disciplinary Committee, set forth in Part 605 of this Title, apply to matters involving alleged misconduct by attorneys and law firms. The Departmental Disciplinary Committee may act through its chairperson, acting chairperson, subcommittees or hearing panels.
 - c. Investigation of professional misconduct may be commenced upon receipt of a specific complaint by this court, or by the Departmental Disciplinary Committee or such investigation may be commenced sua sponte by this court or by the Departmental Disciplinary Committee. Complaints must be in writing and subscribed by the complainant but need not be verified. Whenever the Departmental Disciplinary Committee concludes that the issue involved upon the complaint is a fee dispute and, accordingly, dismisses the complaint, the chief counsel to the committee or his assistant shall advise the complainant and the respondent that the dispute might be satisfactorily resolved by referring it for conciliation to the Joint Committee on Fee Disputes organized and administered by the Association of the Bar of the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association and with permission of both the complainant and respondent, will forward the file to said committee headquartered at the New York County Lawyers' Association, 14 Vesey Street, New York, N.Y.
 - d. When the Departmental Disciplinary Committee, after investigation, determines that it is appropriate to file a petition against an attorney in this court, the committee shall institute disciplinary proceedings in this court and the court may discipline an attorney on the basis of the record of hearings before such committee, or may appoint a referee, justice or judge to hold hearings.
 - e.
 1. An attorney who is the subject of an investigation, or of charges by the Departmental Disciplinary Committee of professional misconduct, or who is the subject of a disciplinary proceeding pending in this court against whom a petition has been filed pursuant to this section, or upon whom a notice has been served

- pursuant to section 603.3(b) of this Part, may be suspended from the practice of law, pending consideration of the 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, or the attorney's failure to submit a written answer to pending charges of professional misconduct or to comply with any lawful demand of this court or the Departmental Disciplinary Committee made in connection with any investigation, hearing, or disciplinary proceeding, or
 - ii. a substantial admission under oath that the attorney has committed an act or acts of professional misconduct, or
 - iii. other uncontested evidence of professional misconduct, or,
 - iv. the attorney's willful failure or refusal to pay money owed to a client, which debt is demonstrated by an admission, a judgment, or other clear and convincing evidence.
2. The suspension shall be made upon the application of the Departmental Disciplinary Committee to this Court, after notice of such application has been given to the attorney pursuant to subdivision six of section 90 of the Judiciary Law. The court shall briefly state its reasons for its order of suspension which shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded, and until further order of the court. Following a temporary suspension under this rule, the Departmental Disciplinary Committee shall schedule a post-suspension hearing within 60 days of the entry of the court's order.
 - f. Disciplinary proceedings shall be granted a preference by this court.
 - g. An application for suspension pursuant to section 603.4(e)(1) may state that an attorney who is suspended and who has not applied in writing to the Committee or the Court for a hearing or reinstatement for six months from the date of an order of suspension may be disbarred. If an application does state the foregoing, and the respondent does not appear or apply in writing to the Committee or the Court for a hearing or reinstatement within six months of the suspension date, the respondent may be disbarred without further notice.

§ 603.5 Investigation of Professional Misconduct on the Part of an Attorney; Subpoenas and Examination of Witnesses Under Oath

- a. Upon application by the Departmental Disciplinary Committee, or upon application by counsel to such committee, disclosing that such committee is conducting an investigation of professional misconduct on the part of an attorney, or has commenced proceedings against an attorney, or upon application by an attorney under such investigation, or who is a party to such proceedings, the clerk of this court shall issue subpoenas in the name of the presiding justice for the attendance of any person and the production of books and papers before such committee or such counsel or any subcommittee or hearing panel thereof designated in such application at a time and place therein specified.
- b. The Departmental Disciplinary Committee, or a subcommittee or hearing panel thereof, or its counsel, is empowered to take and cause to be transcribed the evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

§ 603.6 Investigation of Persons, Firms or Corporations

Unlawfully Practicing or Assuming to Practice Law

- a. Upon application by the Departmental Disciplinary Committee, or of a committee of a recognized bar association authorized to inquire into possible cases of the unlawful practice of the law, disclosing that there is reason to believe that a person, firm or corporation is unlawfully practicing or assuming to practice law, and that such committee is conducting an investigation into such matter, or upon application by any such person, firm or corporation under such investigation, the clerk of this court shall issue subpoenas in the name of the presiding justice for the attendance of any person and production of books and papers before such committee, or any subcommittee or hearing panel thereof designated in such application, at the time and place therein specified.
- b. Each committee referred to in subdivision (a) of this section or a subcommittee or hearing panel of any of the foregoing, or its counsel, is empowered to take and cause to be transcribed the evidence of witness who may be sworn by any person authorized by law to administer oaths.

4

§ 603.7 Claims or Actions for Personal Injuries, Property Damage, Wrongful Death, Loss of Services Resulting From Personal Injuries and Claims in Connection With Condemnation or Change of Grade Proceedings

- a. Statements as to Retainers; Blank Retainers.
 1. Every attorney who, in connection with any action or claim for damages for personal injuries or for property damages or for death or loss of services resulting from personal injuries, or in connection with any claim in condemnation or change of grade proceedings, accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in such action, claim or proceeding, whereby his compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof, shall, within 30 days from the date of any such retainer or agreement of compensation, sign personally and file with the Office of Court Administration of the State of New York a written statement of such retainer or agreement of compensation, containing the information hereinafter set forth. 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--Statements
Post Office Box No. 2016
New York, New York 10008

Statements filed by mail must be accompanied by a self-addressed stamped postal card, containing the words "Retainer Statement", the date of the retainer and the name of the client. The Office of Court Administration will date stamp the postal card, make notation thereon of the code number assigned to the retainer statement and return such card to the attorney as a receipt for the filing of such statement. It shall be the duty of the attorney to make due inquiry if such receipt is not returned to him within 10 days after his mailing of the retainer statement to the Office of Court Administration.

2. A statement of retainer must be filed in connection with each action, claim or proceeding for which the attorney has been retained. Such statement shall be on one side of paper 8-1/2 inches

by 14 inches and be in the following form and contain the following information:

Retainer Statement For office use:
TO THE OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK

1. Date of agreement as to retainer
2. Terms of compensation
3. Name and home address of client
4. If engaged by an attorney, name and office address of retaining attorney
5. If claim for personal injuries, wrongful death or property damage, date and place of occurrence
6. If a condemnation or change of grade proceeding:
 - a. Title and description
 - b. Date proceeding was commenced
 - c. Number or other designation of the parcels affected
7. Name, address, occupation and relationship of person referring the client
Dated:.....N.Y., ... day of....., 20...
Yours, etc.
.....
Signature of Attorney
.....
Attorney
.....
Office and P.O. Address
.....Dist. ... Dept. ... County

NOTE: COURT RULES REQUIRE THAT THE ATTORNEY FOR THE PLAINTIFF FILE A STIPULATION OR STATEMENT OF DISCONTINUANCE WITH THE COURT UPON DISCONTINUANCE OF AN ACTION

3. An attorney retained by another attorney, on a contingent fee basis, as trial or appeal counsel or to assist in the preparation, investigation, adjustment or settlement of any such action, claim or proceeding shall, within 15 days from the date of such retainer, sign personally and file with the Office of Court Administration a written statement of such retainer in the manner and form as above set forth, which statement shall also contain particulars as to the fee arrangement, the type of services to be rendered in the matter, the code number assigned to the statement of retainer filed by the retaining attorney and the date when said statement of retainer was filed.
4. No attorney shall accept or act under any written retainer or agreement of compensation in which the name of the attorney was left blank at the time of its execution by the client.
- b. Closing Statement; Statement Where No Recovery.
 1. A closing statement shall be filed in connection with every claim, action or proceeding in which a retainer statement is required, as follows: every attorney upon receiving, retaining or sharing any sum in connection with a claim, action or proceeding subject to this section shall, within 15 days after such receipt, retention or sharing, sign personally and file with the Office of Court Administration and serve upon the client a closing statement as hereinafter provided. Where there has been a disposition of any claim, action or proceeding, or a retainer agreement is terminated, without recovery, a closing statement showing such fact shall be signed personally by the attorney and filed with the Office of Court Administration within 30 days after such disposition or termination. 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. Such statement may also be filed by ordinary mail addressed to:
The Office of Court Administration -
Statements
Post Office Box No. 2016
New York, New York 10008

Statements filed by mail must be accompanied by a self-addressed stamped postal card containing the words "Closing Statement", the date the matter was completed, and the name of the client. The Office of Court Administration will date stamp the postal card, make notation thereon of the code number assigned to the closing statement and return such card to the attorney as a receipt for the filing of such statement. It shall be the duty of the attorney to make due inquiry if such receipt is not returned to him within 10 days after his mailing of the closing statement to the Office of Court Administration.

2. Each closing statement shall be on one side of paper 8-1/2 inches by 14 inches and be in the following form and contain the following information:

Closing Statement For office use:
TO THE OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK

1. Code number appearing on Attorney's receipt for filing of retainer statement. (If statement filed with Clerk of Appellate Division prior to July 1, 1960, give date of such filing.)
.....

2. Name and present address of client
3. Plaintiff(s)
4. Defendant(s)
- 5.

- a. If an action was commenced, state the date:
.....,20....,.....County.
- b. Was the action disposed of in open court?

If not, and a request for judicial intervention was filed, state the date the stipulation or statement of discontinuance was filed with the clerk of the part to which the action was assigned.

If not, and an index number was assigned but no request for judicial intervention was filed, state the date the stipulation or statement of discontinuance was filed with the County Clerk

6. Check items applicable: Settled () ; Claim abandoned by client () ; Judgment () .
Date of payment by carrier or defendant...day of20..
7. Gross amount of recovery (if judgment entered, include any interest, costs and disbursements allowed) \$....[of which \$.. ... was taxable costs and disbursements].
8. Name and address of insurance carrier or person paying judgment or claim and carrier's file number, if any
9. Net amounts: to client \$.....; compensation to undersigned \$....; names and addresses and amounts paid to attorneys participating in the contingent compensation.
10. Compensation fixed by: retainer agreement () under schedule () ; or by court () .
11. If compensation fixed by court: Name of Judge....Court...Index No.Date of order
12. Itemized statement of payments made for hospital, medical care or treatment, liens, assignments, claims and expenses

on behalf of the client which have been charged against the client's share of the recovery, together with the name, address, amount and reason for each payment.

- Itemized statement of the amounts of expenses and disbursements paid or agreed to be paid to others for expert testimony, investigative or other services properly chargeable to the recovery of damages together with the name, address and reason for each payment.
- Date on which a copy of this closing statement has been forwarded to the client :....., 20..

NOTE: COURT RULES REQUIRE THAT THE ATTORNEY FOR THE PLAINTIFF FILE A STIPULATION OR STATEMENT OF DISCONTINUANCE WITH THE COURT UPON DISCONTINUANCE OF AN ACTION

Dated:....., N.Y.,day of20...
Yours, etc.

Signature of Attorney

Attorney

Office and P.O. Address

.....Dist.Dept.

County

(If space provided is insufficient, riders on sheets 8-1/2" by 14" and signed by the attorney may be attached).

- A joint closing statement may be served and filed in the event that more than one attorney receives, retains or shares in the contingent compensation in any claim, action or proceeding, in which event the statement shall be signed by each such attorney.

c. Confidential Nature of Statements

- All statements of retainer or closing statements filed 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 filing said statements except upon written order of the presiding Justice of the Appellate Division.
- The Office of Court Administration of the State of New York shall microphotograph all statements filed pursuant to this section on film of durable material by use of a device which shall accurately reproduce on such film the original statements in all details thereof, and shall thereafter destroy the originals so reproduced. Such microphotographs shall be deemed to be an original record for all purposes, and an enlargement or facsimile thereof may be introduced in evidence in all courts and administrative agencies and in any action, hearing or proceeding in place and stead of the original statement so reproduced, with the same force and effect as though the original document were presented.

d. Deposit of Collections: Notice.

- Whenever an attorney, who has accepted a retainer or entered into an agreement as above referred to, shall collect any sum of money upon any such action, claim or proceeding, either by way of settlement or after a trial or hearing, he shall forthwith deposit the same in a special account in accordance with the provisions of section 603.15 of this Part. Within 15 days after the receipt of any such sum he shall cause to be delivered personally to such client or sent by registered or certified mail, addressed to such client at the client's last known address, a copy of the closing statement required by this section. At the same time the attorney shall pay or remit to the client the amount shown by such statement to be due the client, and he may then withdraw for himself the amount so claimed to be due him for compensation and disbursements. For

the purpose of calculating the 15 day period, the attorney shall be deemed to have collected or received or been paid a sum of money on the date that he receives the draft endorsed by the client, or if the client's endorsement is not required, on the date the attorney receives the sum. The acceptance by a client of such amount shall be without prejudice to the latter's right in an appropriate action or proceeding, to petition the court to have the question of the attorney's compensation or reimbursement for expenses investigated and determined by it.

2. Whenever any sum of money is payable upon any such claim, action or proceeding, either by way of settlement or after trial or hearing, and the attorney is unable to locate a client, the attorney shall apply, pursuant to subdivision f-1 of 1200.46 of the Disciplinary Rules of Professional Responsibility, to the court in which such action or proceeding was pending, or if no action had been commenced, then to the Supreme Court in the county in which the attorney maintains an office, for an order directing payment to be made to the attorney of the fees and reimbursable disbursements determined by the court to be due said attorney and to the Lawyers' Fund for Client Protection of the balance due to the client, for the account of the client, subject to the charge of any lien found by the court to be payable therefrom.

e. Contingent Fees in Claims and Actions for Personal Injury and Wrongful Death.

1. 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 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 any schedule of fees adopted by this department is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such scheduled fees shall constitute the exaction of unreasonable and unconscionable compensation in violation of any provision of the Rules of Professional Conduct, effective April 1, 2009, as amended, or of any canon of the Canons of Ethics, as adopted by such Bar Association effective until Dec. 31, 1969, unless authorized by a written order of the court as hereinafter provided.
2. The following is the schedule of reasonable fees referred to in paragraph (1) of this subdivision: either,

- Schedule A
 1. 50 percent on the first \$1,000 of the sum recovered,
 - II. 40 percent on the next \$2,000 of the sum recovered,
 - III. 35 percent on the next \$22,000 of the sum recovered,
 - IV. 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 hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply.

3. 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 of self-insurers or insurance carriers.

4. In the event that claimant's or plaintiff's attorney believes in good faith that Schedule A, above, 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 the justice presiding at the trial term calendar part of the Supreme Court for the county in the judicial department in which the attorney who filed the statement of retainer, pursuant to this section, 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, above, 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.
5. The provisions of subdivision (e) of this section shall not apply to an attorney retained as counsel in a claim or action for personal injury or wrongful death by another attorney, if such other attorney is not subject to the provisions of this section in such claim or action, but all other subdivisions of this section shall apply.
6. Nothing contained in subdivision (e) of 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.
7. Nothing contained in this subdivision shall be deemed applicable to the fixing of compensation for attorneys for services rendered in connection with the collection of first-party benefits as defined by Article XVIII of the Insurance Law.
8. The provisions of paragraph (2) of this subdivision shall not apply to claims alleging medical, dental, or podiatric malpractice. Compensation of claimant's or plaintiff's attorney for services rendered in claims or action for personal injury alleging medical, dental, or podiatric malpractice shall be computed pursuant to the fee schedule in Judiciary Law, § 474-a.
- f. Preservation of Records of Claims and Actions. Attorneys for both plaintiff and defendant in the case of any such claim or cause of action shall preserve, for a period of seven years after any settlement or satisfaction of the claim or cause of action or any judgment thereon or after the dismissal or discontinuance of any action, the pleadings and other papers pertaining to such claim or cause of action, including, but not limited to, letters or other data relating to the claim of loss of time from employment or loss of income; medical reports, medical bills, X-ray reports, X-ray bills; repair bills; estimates of repairs; all correspondence concerning the claim or cause of action; and memoranda of the disposition thereof as well as canceled vouchers, receipts and memoranda evidencing the amounts disbursed by the attorney to the client and others in connection with the aforesaid claim or cause of action and such other records as are required to be maintained under section 603.15 of this Part.
- g. Omnibus Filings in Property Damage Claims or Actions. Attorneys

prosecuting claims or actions for property damages are permitted to make semi-annual omnibus filings of retainer statements and closing statements.

§ 603.8 Compromise of Claims or Actions Belonging to Infants

- a. An application for the approval by the court of a settlement of a claim or cause of action belonging to an infant must be made as provided in CPLR 1207 and 1208.
- b. In the case of a claim or demand belonging to an infant, any sum collected by an attorney shall be deposited in a special account apart from his personal account, in accordance with the provisions of section 603.15 of this Part, and a statement of the amount received shall be delivered personally to the duly qualified guardian of the infant or mailed to such guardian by registered or certified mail addressed to said guardian's last known address. But no payment or withdrawal shall be made from such deposit in the said account to the credit of the infant's claim except pursuant to an order of the court after application as provided in section 474 of the Judiciary Law, upon at least two days' notice to the guardian.

§ 603.9 Discipline by Departmental Disciplinary Committee

- a. 1. The Departmental Disciplinary Committee may issue an admonition or a reprimand in those cases in which professional misconduct, not warranting proceedings before this court, is found. An admonition is discipline imposed without a hearing. A reprimand is discipline imposed after a hearing.
 1. Par.(b) was repealed eff. May 16, 1994.

§ 603.10 Effect of Restitution on Disciplinary Proceedings.

- Restitution made by an attorney or on his behalf for funds converted or to reimburse a person for losses suffered as a result of the attorney's wrongdoing shall not be a bar to the commencement or continuance of disciplinary proceedings.

§ 603.11 Resignation of Attorneys Under Investigation or the Subject of Disciplinary Proceedings

- a. An attorney who is the subject of an investigation into allegations of misconduct or who is the subject of a disciplinary proceeding pending in the court may submit his resignation by submitting to the Departmental Disciplinary Committee an affidavit stating that he intends to resign and that:
 1. his resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting his resignation;
 2. he is aware that there is pending an investigation or disciplinary proceeding into allegations that he has been guilty of misconduct, the nature of which shall be specifically set forth; and
 3. he acknowledges that if charges were predicated upon the misconduct under investigation, he could not successfully defend

- himself on the merits against such charges, or that he cannot successfully defend himself against the charges in the proceedings pending in the court.
- b. On receipt of the required affidavit, such committee shall file it with this court, together with either its recommendation that the resignation be accepted and the terms and conditions, if any, to be imposed upon the acceptance, or its recommendation that the resignation not be accepted.
 - c. This court, in its discretion, may accept such resignation, upon such terms and conditions as it deems appropriate or it may direct that proceedings before the Departmental Disciplinary Committee or before this court go forward.
 - d. This court, if it accepts such resignation, shall enter an order removing the attorney on consent and may order that the affidavit referred to in subdivision (a) of this section be deemed private and confidential under subdivision 10 of section 90 of the Judiciary Law.

§ 603.12 Attorneys Convicted of Crimes; Record of Conviction Conclusive Evidence

- a. Upon receipt by the Departmental Disciplinary Committee of a certificate demonstrating that an attorney has been convicted of a crime in this State, or in any foreign jurisdiction, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, the committee shall determine whether the crime is a serious crime as defined in subdivision (b) of this section. Upon a determination that a crime is a serious crime, the committee shall forthwith file the certificate of conviction with the court. This court shall thereupon enter an order directing the Chairperson of the Departmental Disciplinary Committee to designate a Hearing Panel or appointing a referee, justice or judge, to conduct forthwith disciplinary proceedings. If the committee determines that the crime is not a serious crime as defined in subdivision (b) of this section, it may hear such evidence as is admissible under subdivision (c) of this section and take such other steps as are provided for in Part 605 of this Title.
- b. The term "serious crime" shall include any felony, not resulting in automatic disbarment under the provisions of subdivision 4 of section 90 of the Judiciary Law, and any crime, other than a felony, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, criminal contempt of court, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime".
- c. A certificate of the conviction of an attorney for any crime shall be conclusive evidence of his guilt of that crime in any disciplinary proceeding instituted against him and based on the conviction, and the attorney may not offer evidence inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime except such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.
- d. The clerk of any court within this judicial department in which an attorney is convicted of a crime shall within 10 days of said conviction forward a certificate thereof to the Departmental Disciplinary Committee.
- e. The pendency of an appeal shall not be grounds for delaying any action under this section unless the conviction is from a court which is not a court of record or this court or the Departmental Disciplinary Committee finds there are compelling reasons justifying a delay.
- f. Any attorney to whom these rules shall apply pursuant to section 603.1 of this Part who has been convicted of a crime shall promptly advise the Departmental Disciplinary Committee of that fact.

§ 603.13 Conduct of Disbarred, Suspended and Resigned Attorneys

- a. **Compliance With Judiciary Law.** Disbarred, suspended and resigned attorneys at law shall comply fully and completely with the letter and spirit of sections 478, 479, 484 and 486 of the Judiciary Law relating to practicing as attorneys at law without being admitted and registered, and soliciting of business on behalf of an attorney at law and the practice of law by an attorney who has been disbarred, suspended or convicted of a felony.
- 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. A disbarred, suspended or resigned attorney may be compensated on a quantum meruit basis for legal services rendered and disbursements incurred by him prior to the effective date of the disbarment or suspension order or of his resignation. The amount and manner of payment of such compensation and recoverable disbursements shall be fixed by the court on the 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 in the court wherein the action is pending or at special term of the Supreme Court in the county wherein 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 or suspension or resignation and his consequent inability to act as an attorney after the effective date of his disbarment or suspension or resignation and shall advise said clients to seek legal advice elsewhere.
- d. **Notice to Clients Involved in Litigation.**
 1. A disbarred or suspended or resigned attorney shall promptly notify, by registered or certified mail, return receipt requested, each of his clients whom he is representing in litigated matters or administrative proceedings, and the attorney or attorneys for every other party in such matter or proceeding, of his disbarment or suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment or suspension or resignation. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in his place.
 2. In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension or resignation, it shall be the responsibility of the disbarred or suspended or resigned attorney to move 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.
 3. The notice to be given to the attorney or attorneys for each other party shall state the place or residence of the client of the disbarred or suspended or resigned attorney. In addition, notice shall be given in like manner to the Office of Court Administration of the State of New York in each matter in which a retainer statement has been filed.
- e. **Conduct After Entry of Order.** The disbarred or suspended or resigned attorney, after entry of the disbarment or suspension order, or after entry of the order accepting the resignation, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any

- nature. 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.
- f. Filing Proof of Compliance and Attorney's Address. Within 10 days after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred or suspended or resigned attorney shall file with the clerk of this court, together with proof of service upon the Departmental Disciplinary Committee, an affidavit showing that he has fully complied with the provisions of the order and with these rules. Such affidavit shall also set forth the residence or other address of the disbarred or suspended or resigned attorney where communications may be directed to him.
- g. Appointment of Attorney to Protect Clients' Interests and Interests of Disbarred, Suspended or Resigned Attorney. Whenever it shall be brought to the court's attention that a disbarred or suspended or resigned attorney shall have failed or may fail to comply with the provisions of subdivisions (c), (d) or (f) of this section, this court, upon such notice to such attorney as this court may direct, may appoint an attorney or attorneys to inventory the files of the disbarred or suspended or resigned attorney and to take such action as seems indicated to protect the interests of his clients and for the protection of the interests of the suspended or disbarred or resigned attorney.
- h. [Disclosure of Information]. Any attorney so appointed by this court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of this court.
- i. [Attorney Fees]. This court may fix the compensation to be paid to any attorney appointed by this court under this section. This compensation may be directed by this court to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged in accordance with law.
- j. Required Records. A disbarred or suspended or resigned attorney shall keep and maintain records of the various steps taken by him under this Part so that, upon any subsequent proceeding instituted by or against him, proof of compliance with this Part and with the disbarment or suspension order or with the order accepting the resignation will be available.

§ 603.14 Reinstatement

- a.
1. Unless the Court directs otherwise, any attorney who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon an order of the Court. No more than thirty days prior to the expiration of the term of suspension the attorney must file with the Court and serve upon the chief counsel an affidavit stating that the attorney has fully complied with the requirements of the suspension order and has paid any required fees and costs. Upon receipt of the affidavit, the chief counsel shall serve a copy of it upon each complainant in the disciplinary proceeding that led to the suspension and give notice to the complainant(s) that they may submit a response opposing or supporting the lawyer's affidavit. Such response must be filed with the chief counsel within twenty days of the date of the notice. Within thirty days of the date on which the affidavit was served upon the chief counsel, or within such longer time as the Court may allow, the chief counsel may file an affidavit in opposition.
2. Any attorney who has been disbarred after a hearing, or whose name has been stricken from the roll of attorneys pursuant to

- section 90(4) of the Judiciary Law or section 603.11 of this part, may not petition for reinstatement until the expiration of seven years from the effective date of the disbarment or removal.
3. Any attorney suspended under the provisions of this part for more than six months shall be entitled to petition the Court for reinstatement upon the expiration of the period of suspension.
 - b. A petition for reinstatement may be granted only if the petitioner establishes by clear and convincing evidence that:
 1. the petitioner has fully complied with the provisions of the order of disbarment, removal or suspension;
 2. the petitioner possesses the requisite character and general fitness to practice law;
 3. not more than six (6) months prior to the filing of the petition for reinstatement, the petitioner has retaken and attained a passing score on the Multistate Professional Responsibility Examination described in section 520.8(a) of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, the passing score being that determined by the New York State Board of Law Examiners pursuant to section 520.8(c) of such rules.
 - c. In reviewing an application for reinstatement, the court may consider the misconduct for which petitioner was originally disbarred, removed or suspended and any other relevant conduct or information which may come to the attention of the court.
 - d. A petition for reinstatement shall be verified and shall be accompanied by a completed questionnaire as outlined in subdivision (m) of this section.
 - e. A petitioner shall serve a copy of the petition for reinstatement upon the Departmental Disciplinary Committee and upon the Lawyers' Fund for Client Protection. The Court may refer the matter to the Departmental Disciplinary Committee and either direct the Chairperson of the Committee to designate a Hearing Panel or appoint a Referee, or the Court may refer the matter to the Committee on Character and Fitness, to inquire into the facts submitted in support of the petition and all other relevant facts. In its discretion, the Court may require the petitioner to
 1. submit additional sworn proof,
 - ii. submit to a sworn examination,
 - iii. produce records and other papers in connection with the application,
 - iv. provide proof of compliance with all disciplinary orders, and
 - v. submit to medical or psychiatric examinations by qualified experts.
 - f. The Disciplinary Committee may be heard in opposition to the petition for reinstatement.
 - g. If the court determines that the petition for reinstatement satisfies the provisions of subsection (b) of this rule, the court may grant the petition, or may refer the petition to the Departmental Disciplinary Committee and direct the Chairperson of the Committee to designate a Hearing Panel or appoint a Referee, or the Court may refer the matter to the Committee on Character and Fitness to conduct a hearing. At such hearing, both petitioner and counsel for the Disciplinary Committee may present evidence bearing upon all relevant issues raised by the petition.
 - h. At the conclusion of the hearing, the Committee that conducted it shall submit a written report and recommendation to the court; the report may include a recommendation that the court condition reinstatement upon compliance with such additional orders as are deemed appropriate, including but not limited to the payment of restitution to any person harmed by petitioner's misconduct.
 - i. In the event that the court approves the application for reinstatement of an attorney who has resigned, been disbarred, or been suspended and whose petition for reinstatement is made seven or more years after the effective date of his suspension, the petition may thereupon be held in abeyance for a period of not more than two years. It may be a condition of the granting of the petition that petitioner take and attain a passing

score on the New York State Bar Examination described in Section §20.7 of the Rules of the Court of Appeals within the said two year period. Upon proof of successful completion of the said Bar Examination, and in the absence of further misconduct by petitioner, the petition for reinstatement shall be granted.

j. A petition for reinstatement shall not be accepted for filing within two years following entry of this court's order denying a previous petition for reinstatement filed by or on behalf of the petitioner, unless the order denying the previous petition provides otherwise.

k. The court may direct the notice of any reinstatement petition be published in one or more newspapers in the First Department pursuant to Section 601.1 of these rules.

l. Petitions for reinstatement under these rules shall be accompanied by payment of a fee of \$315, unless waived or modified by the court upon a showing of hardship.

m. Petition for reinstatement

(Applicant's Last Name) _____ (Date) _____

TO: THE APPELLATE DIVISION OF THE SUPREME COURT,
FIRST JUDICIAL DEPARTMENT.
STATE OF NEW YORK
COUNTY OF _____)

I, _____, hereby apply, pursuant to Judiciary Law, Section 90, and 22 N.Y.C.R.R. Section 603.14, for reinstatement as an attorney and counselor-at-law licensed to practice in all the courts of the State of New York. In support of my application I submit this petition, the form of which has been prescribed by this Court. Inapplicable provisions have been stricken and initialed by me.

1. My full name is _____. I have also been known by the following names: _____. (If change of name was made by court order, including marriage, a certified copy of that order is attached.)

2. I was born on (date) at (city-state-county).

3. I reside at _____ (If you reside in more than one place, state all places in which you reside.)

My home telephone number is _____.
My office telephone number is _____.

4. On _____ I was admitted as an attorney and counselor-at-law by the Appellate Division of the Supreme Court of the State of New York, _____ Judicial Department.

5. By order of this Court, dated _____, I was disciplined to the following extent: _____. A certified copy of this Court's order is attached; this Court's opinion was published in the _____ volume, page _____ of the official reports (2d series) for the Appellate Divisions. My use of the term "discipline" hereafter refers to the action of this Court by the order here referred to.

6. Since the effective date of my discipline, I have resided at the following addresses: _____.

7. The discipline imposed upon me was predicated upon, or arose out of, my misappropriation or misuse of the real or personal property of others. Attached to this application is a full listing of each property, its dollar value, the name of the true owner, and the extent to which I have yet to make full restitution. Where I still owe a party under this section, I have also attached a copy of a restitution agreement, signed by that owner and myself, setting forth the terms of my repayment obligations.

8. On the date of my discipline, the following matters, which were not the basis of that order, were pending against me before the Departmental Disciplinary Committee: _____.

9. On the effective date of discipline, I was also admitted to practice in the following Courts/Jurisdictions: _____.

10. Based upon this Court's discipline of me, I also have been

- disciplined in the following way(s): _____.
11. In addition, dating back to my original admission to the bar up until the present, I have also been disciplined for other actions or activities, in the following ways: _____.
 12. Prior to my discipline, my law practice involved the following areas of law: _____.
 13. Since the effective date of my discipline, I have engaged in the practice of law in other jurisdiction(s), on the date(s) and in the manner specified: _____.
 14. Since the effective date of my discipline, I have been engaged in the following legal-type or law-related activities: _____.
 15. Since the effective date of my discipline I have had the following employment or been engaged in the following business (set forth names, dates, addresses) _____.
 16. I am attaching copies of all Federal, state and local tax returns filed by me for the past two years.
 17. At the time of my discipline, I took the following affirmative steps to notify my clients of my inability to continue representing them: _____.
 18. Pursuant to 22 N.Y.C.R.R. Section 603.13(f), I filed an affidavit of compliance on (date): _____.

-or-

- I did not file an affidavit of compliance, as required by this Court's rules, because _____.
19. Since the date of my discipline, I have maintained the following bank accounts and brokerage accounts _____.
 20. There presently exist the following unpaid judgments against me or a partnership, corporation or other business entity of which I am an employee or in which I have an ownership interest _____.
 21. Since my discipline, I, or a partnership, corporation or other business entity in which I have an ownership interest, have/has been involved in the following lawsuits, to the extent indicated _____.
 22. I, or a partnership, corporation or other business entity in which I have an ownership interest, petitioned to be adjudicated a bankrupt on (date) to (court): _____.
 23.
 - a. Since my discipline, I applied for the following license(s) which required proof of good character: _____.
 - b. These applications resulted in the following action(s) _____.
 24. Since my admission to the bar, I have had the following licenses suspended or revoked for the stated reason(s), unrelated to this Court's order of discipline: _____.
 25. Since my discipline, on the date(s) specified I have been arrested, charged with, indicted, convicted, tried, and/or have pleaded guilty to the following violation(s), misdemeanor(s) and/or felony (ies): _____.
 26. Since my discipline, I have been the subject of the following governmental investigation(s) on the specified date(s), which resulted in the charge or complaint indicated being brought against me: _____.
 27. Other than the passage of time and the absence of additional misconduct, the following facts establish that I possess the requisite character and general fitness to be reinstated as an attorney in New York: _____.
 28. I have made the following efforts to maintain or renew my general fitness to practice law, including continuing legal education and otherwise, during the period following my disbarment, removal, or suspension: _____.
 29. I was treated for alcoholism and/or drug abuse on the date(s) and under the circumstances here set forth: _____.
 30. The following fact(s), not heretofore disclosed to this Court, are relevant to this application and might tend by any degree to induce

the Court to look less favorably upon this application: _____ I understand I also have a continuing obligation to provide additional information to supplement or correct this petition.

I UNDERSTAND THAT THE DEPARTMENTAL DISCIPLINARY COMMITTEE, THE COMMITTEE ON CHARACTER AND FITNESS, OR OTHER ATTORNEY AUTHORIZED BY THE COURT, MAY TAKE ADDITIONAL INVESTIGATIVE STEPS DEEMED APPROPRIATE IN ACTING UPON THIS APPLICATION FOR REINSTATEMENT. I WILL FULLY COOPERATE WITH ANY REQUEST FOR INFORMATION AND MAKE MYSELF AVAILABLE FOR SWORN INTERVIEWS OR HEARINGS, AS REQUIRED.

(Signature of Applicant)

Sworn to before me this _____ day of _____, 20____

(STATE OF NEW YORK)
COUNTY OF)

I, _____, being duly sworn, say: I am the petitioner in the within action; I have read the foregoing petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Sworn to before me this _____ day of _____, 20____

§ 603.15 Random Review and Audit

- a. Availability of Bookkeeping Records; Random Review and Audit.
The financial records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct, as jointly adopted by the Appellate Divisions of the Supreme Court, or by any other rule of this Court, shall be made available for inspection, copying and determination of compliance with court rules, to a duly authorized representative of the court pursuant to the issuance, on a randomly selected basis, of a notice or subpoena by the Departmental Disciplinary Committee.
- b. Confidentiality. All matters, records and proceedings relating to compliance with 1.15 of the Rules of Professional Conduct and this section, including the selection of an attorney for review hereunder, shall be kept confidential in accordance with applicable law, as and to the extent required of matters relating to professional discipline.
- c. Regulations and Procedures for Random Review and Audit.
Prior to the issuance of any notice or subpoena in connection with the random review and audit program established by this section, the Departmental Disciplinary Committee shall propose regulations and procedures for the proper administration of the program. The court shall approve such of the regulations and procedures of the Departmental Disciplinary Committee as it may deem appropriate, and only such regulations and procedures as have been approved by the court shall become effective.
- d. Biennial Affirmation of Compliance. Any attorney subject to this court's jurisdiction shall execute that portion of the biennial registration statement provided by the Office of Court Administration, affirming that the attorney has read and is in compliance with Rule 1.15 of the Rules of Professional Conduct, as jointly adopted by the Appellate Divisions of the Supreme Court, and with this section. The affirmation shall be available at all times to the Departmental Disciplinary Committee.

No affirmation of compliance shall be required from a full-time judge or

justice of the Unified Court System of the State of New York, or of a court of any other state, or of a federal court.

§ 603.16 Proceedings Where Attorney Is Declared Incompetent or Alleged to Be Incapacitated

- a. Suspension Upon Judicial Determination of Incompetency or an Involuntary Commitment. Where an attorney subject to this Part pursuant to the first sentence of section 603.1 of this Part has been judicially declared incompetent or incapable of caring for his property or has been involuntarily committed to a mental hospital, this court, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of the law, effective immediately and for an indefinite period and until the further order of this court. A copy of such order shall be served upon such attorney, his committee or conservator and/or director of mental hospital in such manner as this court may direct.
- b. Proceeding to Determine Alleged Incapacity and Suspension Upon Such Determination.
 1. Whenever the Departmental Disciplinary Committee shall petition this court to determine whether an attorney is incapacitated from continuing to practice law by reason of physical or mental infirmity or illness or because of addiction to drugs or intoxicants, this court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including examination of the attorney by such qualified experts as this court shall designate. If, upon due consideration of the matter, this court is satisfied and concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending him on the ground of such disability for an indefinite period and until the further order of this court and any pending disciplinary proceedings against the attorney shall be held in abeyance.
 2. This court may provide for such notice to the respondent-attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent, if he is without adequate representation.
- c. Procedure When Respondent Claims Disability During Course of Proceeding.
 1. If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of physical or mental infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent adequately to defend himself, this court thereupon shall enter an order suspending the respondent from continuing to practice law until a determination of the respondent's capacity to continue the practice of law is made in a proceeding instituted in accordance with the provisions of subdivision (b) of this section.
 2. If, in the course of a proceeding under this section or in a disciplinary proceeding, this court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.
- d. Appointment of Attorney to Protect Clients' and Suspended Attorney's Interests.
 1. Whenever an attorney is suspended for incapacity or disability, this court, upon such notice to him as this court may direct, may appoint an attorney or attorneys to inventory the files of the suspended attorney and to take such action as seems indicated to protect the interests of his clients and for the protection of the interests of the suspended attorney.

2. Any attorney so appointed by this court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of this court.
- e. Reinstatement Upon Termination of Disability.
 1. Any attorney suspended under the provisions of this section shall be entitled to apply for reinstatement at such intervals as this court may direct in the order of suspension or any modification thereof. Such application shall be granted by this court upon showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, this court may take or direct such action as it deems necessary or proper for a determination as to whether the attorney's disability has been removed, including a direction of an examination of the attorney by such qualified experts as this court shall designate. In its discretion, this court may direct that the expense of such examination shall be paid by the attorney.
 2. Where an attorney has been suspended by an order in accordance with the provisions of paragraph (a) of this section and thereafter, in proceedings duly taken, he has been judicially declared to be competent, this court may dispense with further evidence that his disability has been removed and may direct his reinstatement upon such terms as are deemed proper and advisable.
- f. Burden of Proof. In a proceeding seeking an order of suspension under this section, the burden of proof shall rest with the petitioner. In a proceeding seeking an order terminating a suspension under this section, the burden of proof shall rest with the suspended attorney.
9. Waiver of Doctor-Patient Privilege Upon Application for Reinstatement. The filing of an application for reinstatement by an attorney suspended for disability shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since his suspension and he shall furnish to this court written consent to each to divulge such information and records as requested by court-appointed experts or by the clerk of this court.
- h. Payment of Expenses of Proceedings.
 1. The necessary costs and disbursements of an agency, committee or appointed attorney in conducting a proceeding under this section shall be paid in accordance with subdivision 6 of section 90 of the Judiciary Law.
 2. This court may fix the compensation to be paid to any attorney or expert appointed by this court under this section. This compensation may be directed by this court to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged in accordance with law.

§ 603.17 Combining or Grouping of Claims

- No attorney for a claimant or plaintiff shall for the purpose of settlement or payment combine or group two or more claims or causes of action or judgments therefor on behalf of separate clients, and each such demand or action shall be settled or compromised independently upon its own merits and with regard to the individual interest of the client. No attorney for a defendant shall participate in the settlement of any such claims or actions on the basis directly or indirectly of combining or grouping claims or actions belonging to different persons.

§ 603.18 Champerty and Maintenance

- No attorney shall by himself, or by or in the name of another person, either before or after action brought, promise, give, or procure, or permit to be promised or given any valuable consideration to any person as an inducement to placing in his hands, or in the hands of another person, any claim for the purpose of making a claim or bringing an action or special proceeding thereon, or defending the same; nor shall any attorney, directly or indirectly, as a consideration for such retainer, pay any expenses attending the prosecution or defense of any such claim or action.

§ 603.19 Attorneys Assigned by the Court as Counsel for a Defendant in a Criminal Case

- No attorney assigned by a court as counsel for a defendant in any criminal case shall in any manner demand, accept, receive or agree to accept or receive any payment, compensation, emolument, gratuity or reward, or any promise of payment, compensation, emolument, gratuity or reward or any money, property or thing of value or of personal advantage from such defendant or from any other person, except as expressly authorized by statute or by written order of the court duly entered upon its minutes.

§ 603.20 Prohibition Against Gratuities

- No attorney shall give any gift, bequest, favor or loan to any judge or any employee of any court or any member of his family residing in his household or to any member, officer, or employee of any governmental agency or any member of his family residing in his household, where such attorney has had or is likely to have any professional or official transaction with such court or governmental agency.

§ 603.21 Practice of Law by Non-Judicial Personnel

- a. An attorney who is employed as a public officer or employee in any court in this judicial department shall not maintain an office for the private practice of law, alone or with others, hold himself out to be in the private practice of law, or engage in the private practice of law; such attorney shall not participate, directly or indirectly, as attorney or counsel in any action or proceeding, pending before any court or any administrative board, agency, committee or commission of any government, or in the preparation or subscription of briefs, papers, or documents pertaining thereto.
- b. By special permission secured from the presiding justice of this judicial department as to each professional engagement, a person referred to in subdivision (a) of this section may engage in the private practice of law as to matters not pending before a court or governmental agency, in uncontested matters in the Surrogate's Court, uncontested accountings in the Supreme Court, and other ex parte applications not preliminary or incidental to litigated or contested matters. Such approval, which shall continue only to the completion of the particular engagement for which permission was obtained, shall be sought by application in writing to the presiding justice of this judicial department (processed through the

- Immediate supervisor and the administrative judge or other head of the court or agency in which applicant is employed for his comment and recommendation including restrictions, if any), which shall state the position occupied, all pertinent information as to the matter to be handled (including the name of the client engaging such attorney and the prior relationship, if any, between such client and said attorney) and that in the event of litigation the applicant will immediately withdraw as attorney and notify his administrative judge or other head of the court or agency thereof.
- c. A person referred to in subdivision (a) of this section shall not engage in any other practice of law which is incompatible with or would reflect adversely upon the performance of his duties.

§ 603.22 [Rescinded]

- Former §603.22, Section, relating to advertising by attorneys was rescinded effective Sept. 1, 1990. See, now DR 2-101 set out following § 1040, post.

§ 603.23 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, an 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, New York 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.

§ 603.24 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.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Amendment of the Rules of the
Appellate Division, First Department

ORDER

The Appellate Division of the Supreme Court of the State of New York, First Department hereby amends the following rule of the Court, effective immediately.

605.6 Investigations and Informal Proceedings

605.6(c) Recommendation of the Office of Chief Counsel. Following completion of any Investigation of the Compliant (including consideration of any statement filed by the Respondent pursuant to section 605.6(d) of this Part), the Office of Chief Counsel shall recommend one of the following dispositions:

- (1) referral to another body on account of lack of territorial jurisdiction;
- (2) dismissal for any reason (with an indication of the reason therefor); *dismissal with guidance (with an indication of the reason therefor);* and referral to another body if appropriate;
- (3) admonition; or
- (4) formal proceedings before a hearing panel.

New material in underlined italics.

Dated: New York, New York
January 18, 2013

For the Court:


Luis A. Gonzalez
Presiding Justice

New York State Supreme Court
Appellate Division
First Department

Departmental Disciplinary Committee

**Part 605. Rules And Procedures Of The Departmental
Disciplinary Committee**

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| <p><u>§ 605.1 Title, Citation and Construction of Rules</u></p> <p><u>§ 605.2 Definitions</u></p> <p><u>§ 605.3 Location of Office of Chief Counsel</u></p> <p><u>§ 605.4 Grounds for Discipline</u></p> <p><u>§ 605.5 Types of Discipline: Subsequent Consideration...</u></p> <p><u>§ 605.6 Investigations and Informal Proceedings</u></p> <p><u>§ 605.7 Review of Recommended Disposition of Complaint</u></p> <p><u>§ 605.8 Final Disposition Without Formal Proceedings</u></p> <p><u>§ 605.9 Abatement of Investigation</u></p> <p><u>§ 605.10 Resignations, Restatements, Convictions of Crimes</u></p> <p><u>§ 605.11 Formal Proceedings: Preliminary Provisions</u></p> <p><u>§ 605.12 Formal Proceedings.</u></p> | <p><u>§ 605.13 Conduct of Referee Proceedings</u></p> <p><u>§ 605.13-a Conduct of Hearing Panel Proceedings Directed by the Court</u></p> <p><u>§ 605.14 Conduct of Hearing Panel Proceedings Following the...</u></p> <p><u>§ 605.15 Action by the Departmental Disciplinary Committee</u></p> <p><u>§ 605.16 Resopening of Record</u></p> <p><u>§ 605.17 Subpoenas, Depositions and Motions</u></p> <p><u>§ 605.18 Membership, Committees, Officers and Office of Chief Counsel</u></p> <p><u>§ 605.19 Meetings of the Departmental Disciplinary Committee</u></p> <p><u>§ 605.20 Office of Chief Counsel</u></p> <p><u>§ 605.21 Policy Committee</u></p> <p><u>§ 605.22 Referees; Hearing Panels</u></p> <p><u>§ 605.23 Committee Chairperson and Secretary</u></p> <p><u>§ 605.24 Confidentiality</u></p> |
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Part 605

§ 605.1 Title, Citation and Construction of Rules

- a. These Rules shall be known, and may be cited, as the Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department (hereinafter called the Committee).
- b. These Rules are promulgated for the purpose of assisting the Office of Chief Counsel, the Respondent and the Committee to develop the facts relating to, and to reach a just and proper determination of, matters brought to the attention of the Office of Chief Counsel or the Committee. The Committee will not hold action of a Referee or a Hearing Panel invalid

- c. The use of the term attorney in this Part shall apply to a law firm where a firm is the object of an investigation or prosecution of alleged violation of the Code of Professional Responsibility.

§ 605.2 Definitions

- a. Subject to additional definitions contained in subsequent provisions of these Rules which are applicable to specific sections, subsections or other provisions of these Rules, the following words and phrases, when used in these Rules, shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:
 - 1. Admonition. Discipline administered without hearing, by letter issued by the Committee Chairperson, in those cases in which misconduct in violation of a Disciplinary Rule is found, but is determined to be of insufficient gravity to warrant prosecution of formal charges.
 - 2. Answer. A formal pleading filed by the Respondent in answer to a Notice of Charges.
 - 3. Chief Counsel. The Chief Counsel appointed by the Court or, in the absence of such Chief Counsel, the Deputy Chief Counsel in the case of vacancy in office, or disability of such Chief Counsel, the Deputy Chief Counsel as designated by the Court.
 - 4. Code of Professional Responsibility. The Code of Professional Responsibility as adopted by the New York State Bar Association effective January 1, 1970, as the same may from time to time be amended.
 - 5. Committee Chairperson. The Chairperson of the Committee.
 - 6. Complainant. A person communicating a Grievance to the Committee or to the Office of Chief Counsel, whether or not set forth in a complaint.
 - 7. Complaint. A written statement of the nature described in Section 605.6 of this Part with respect to a Grievance concerning an attorney communicated to the Committee or to the Office of Chief Counsel.
 - 8. Court. The Appellate Division of the Supreme Court of the State of New York, First Judicial Department.
 - 9. Deputy Chief Counsel. The Deputy Chief Counsel appointed by the Court, or in the absence of such Deputy Chief Counsel, the Principal Attorney designated by the Chief Counsel to serve as Deputy Chief Counsel; in the case of vacancy in office, or disability of such Deputy Chief Counsel, the Principal Attorney as designated by the Court.
 - 10. Disciplinary Rule. Any provision of the rules of the Court governing the conduct of attorneys, any Disciplinary Rule of the Code of Professional Responsibility, and any Canon of the Canons of Professional Ethics as adopted by the New York State Bar Association.
 - 11. First Department. The First Judicial Department of the State of New York.
 - 12. Formal Proceedings. Proceedings subject to Sections 605.11 through 605.14 of this Part.
 - 13. Grievance. An allegation of misconduct.
 - 14. Hearing Panel. A Hearing Panel established under Section 605.18 of this Part.
 - 15. Hearing Panel Chairperson. The member of the Committee designated as chairperson of a Hearing Panel under Section 605.18 of this Part.
 - 16. Investigation. Fact gathering under the direction of the Office of

- Chief Counsel with respect to alleged misconduct.
17. Investigator. Any person designated by the Office of Chief Counsel to assist it in the investigation of alleged misconduct.
 18. Notice of Charges. A formal pleading served under §605.12 of this Part by the Office of Chief Counsel requesting action by the Committee.
 19. Office of Chief Counsel. The Office of Chief Counsel provided for by § 605.20 of this Part.
 20. Parties. The Office of Chief Counsel and the Respondent.
 21. Policy Committee. The Policy Committee established under §605.21 of this Part.
 22. Reprimand. Discipline administered after a hearing, by the Committee through the Hearing Panel Chairperson, in those cases in which misconduct in violation of a Disciplinary Rule is found.
 23. Respondent. An attorney or legal consultant described in Section 603.1 of this Title who, or a law firm that, has been named in a complaint or notice of charges.
 24. Reviewing Member. The member or members of the Committee designated under Section 605.6(f) of this Part to review the disposition of a Complaint recommended by the Office of the Chief Counsel.
 25. Rules. The provisions of these Rules and Procedures.
 26. Staff Counsel. The attorneys (including the Chief Counsel) constituting the Office of Chief Counsel, and where appropriate the attorney or attorneys of the Office of Chief Counsel, or such special counsel as may be appointed by the Committee Chairperson with the approval of the Policy Committee, assigned to a particular investigation or proceeding.

§ 605.3 Location of Office of Chief Counsel

- The location of the office of Chief Counsel and the office of the Chief Counsel is:

Department Disciplinary Committee of the Appellate Division of the
Supreme Court
61 Broadway
New York, NY 10006

§ 605.4 Grounds for Discipline

- Section 90 of the Judiciary Law of the State of New York, the Disciplinary Rules and decisional law indicate what shall constitute misconduct and shall be grounds for discipline.

§ 605.5 Types of Discipline; Subsequent Consideration of Disciplinary Action

3. Misconduct under Section 90 of the Judiciary Law of the State of New York, the Disciplinary Rules or decisional law shall be grounds for any of the following:
 1. Disbarment - by the Court.
 2. Suspension - by the Court.
 3. Censure - by the Court.
 4. Reprimand - by the Committee after hearing, with or without referral to the Court for further action.

5. Admonition - by the Committee without hearing.
- b. The fact that an attorney has been issued an Admonition (which has not yet been vacated), or that an attorney has been the subject of a Reprimand (with or without referral to the Court), or that an attorney has been the subject of disciplinary action by the Court, may (together with the basis thereof) be considered in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against the attorney subsequently.

§ 605.6 Investigations and Informal Proceedings

- a. Initiation of Investigations. The Office of Chief Counsel shall, except as otherwise provided by subdivision (g) of this section, undertake and complete an investigation of all matters involving alleged misconduct of attorneys within the jurisdiction of the Committee called to its attention by a Complaint filed pursuant to subdivision (b) of this section, by the Court, or by the Committee by written order, and may, on its own initiative, undertake and complete an investigation of any other matter within the jurisdiction of the Committee otherwise coming to the attention of such Office. The Office of Chief Counsel shall use such Investigators as are deemed appropriate by the Chief Counsel.
- b. Contents of Complaint.
 1. General Rule. Each Complaint relating to alleged misconduct of an attorney shall be in writing and subscribed by the Complainant and shall contain a concise statement of the facts upon which the Complaint is based. Verification of the Complaint shall not be required. If necessary the Office of Chief Counsel will assist the Complainant in reducing the Grievance to writing. The Complaint shall be deemed filed when received by the Office of Chief Counsel.
 2. Other Situations. In the case of an allegation of misconduct originating in the Court or the Committee, or upon the initiative of the Office of Chief Counsel, the writing reflecting the allegation shall be treated as a Complaint.
- c. Investigation. The staff of the Office of Chief Counsel shall make such investigation of each Complaint as may be appropriate.
- d. Notification to Respondent of Complaint.
 1. General Rule. No discipline shall be recommended by the Office of the Chief Counsel until the Respondent shall have been afforded the opportunity to state the Respondent's position with respect to the allegations.
 2. Transmission of Notice. Except where it appears that there is no basis for proceeding further, the Office of Chief Counsel shall promptly prepare and forward to the Respondent a request for a statement in response to the Complaint, advising the Respondent of:
 - i. the nature of the Grievance and the facts alleged in connection therewith; and
 - ii. The Respondent's right to state the Respondent's position with respect to the allegations.
- e. Recommendation of the Office of Chief Counsel. Following completion of any investigation of the Complaint (including consideration of any statement filed by the Respondent pursuant to Section 605.6(d) of this Part), the Office of Chief Counsel shall recommend one of the following dispositions:
 1. referral to another body on account of lack of territorial jurisdiction;

Unless a shorter time is fixed by the Committee Chairperson and specified in such notice, the Respondent shall have 20 days from the date of such notice within which to file such a response in the Office of Chief Counsel.

2. dismissal for any reason (with an indication of the reason therefor), and referral to another body if appropriate;
 3. admonition; or
 4. formal proceedings before a hearing panel.
- f. Action Following Recommendation.
1. No Jurisdiction. If the Office of Chief Counsel determines that the Complaint should be referred under paragraph (e)(1) of this section, it shall notify the complainant and the Respondent (if previously notified of the Complaint) of such disposition in writing and close the file on the matter. Whenever possible in cases of lack of jurisdiction, the Office of Chief Counsel shall bring the matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may be able to provide a forum for the consideration of the Grievances, and shall advise the Complainant of such referral.
 2. Other Cases. In the case of recommendations under paragraph (e)(2) of this section, the Committee chairperson shall designate a lawyer member of the Committee to review the recommendations. In the case of recommendations under paragraph (e)(3) of this section, the Committee chairperson (or a member of the Committee designated by the Committee chairperson) and at least one other member of the Committee shall review the recommendations. In the case of recommendations under paragraph (e)(4) of this section, or under Section 605.15(e)(2) of this part, the Committee chairperson shall designate at least two members of the policy committee, at least one of whom is a lawyer, to review the recommendations.
- g. Preliminary Screening of Complaints. Any complaint received by the Office of Chief Counsel against a member of the Committee or Staff counsel involving alleged misconduct shall be transmitted forthwith to the Committee Chairperson, who shall assign it either to the Office of Chief Counsel or to special counsel who shall
1. conduct or direct the appropriate investigation, and
 2. give a written recommendation as to the disposition of the Complaint to the Committee Chairperson, who shall determine the appropriate disposition of the Complaint. Any such Complaint which relates to the Committee Chairperson shall, in the first instance, be transmitted to a Hearing Panel Chairperson, who shall conduct the appropriate investigation and determine the appropriate disposition of the Complaint.

§ 605.7 Review of Recommended Disposition of Complaint

- a. Transmission to Reviewing Member. In the case of recommendations under § 605.6(e)(3) of this part, the chief counsel shall forward the file (including the proposed disposition letter) to the reviewing member designated under §605.6(f)(2) of this part for action. In the case of recommendations under § 605.6(e)(4) of this part, the chief counsel shall forward the file, the proposed charges, and a memo summarizing the evidence adduced in support of the charges to the reviewing policy member designated under § 605.6(f)(2) of this part for action. In the case of recommendations to file a motion to disaffirm under § 605.15(e)(2) of this part, the chief counsel shall forward the hearing panel's report, the proposed motion, and memo of law or other memo summarizing the reasons for the motion, to the reviewing member designated under § 605.6(f)(2) of this part for action.
- b. Action by Reviewing Member.
1. General Rule. The Reviewing Member may approve or modify the recommendation of the Office of Chief Counsel concerning the disposition of a Complaint.

2. Modification. If the Reviewing Member determines to modify the recommendation of the Office of Chief Counsel, the Reviewing Member shall set forth such determination in writing together with a brief statement of the reason therefor. Such determination shall be one of the following:
 1. dismissal of the complaint;
 - ii. further investigation;
 - iii. admonition; or
 - iv. formal proceedings before a hearing panel.
3. Return of File. Upon making such determination, the Reviewing Member shall return the file to the Office of Chief Counsel.
- c. Reconsideration. Upon notification of the dismissal of a complaint pursuant to Section 605.6, the complainant may submit a written application for reconsideration that shall be filed with the Office of the Chief Counsel within 30 days of the date of the notification. The Committee chairperson shall designate to examine a request for reconsideration a member of the Committee other than the member who originally reviewed the recommendation of the Office of the Chief Counsel.

§ 605.8 Final Disposition Without Formal Proceedings

- a. Notification to Respondent of Disposition of Complaint. Upon the approval of the recommendation of the Office of Chief Counsel by the Reviewing Member, the acceptance of the Reviewing Member's modification by the Office of Chief Counsel, or the determination of the appropriate disposition by the Committee Chairperson, then, unless the disposition involves the institution of Formal Proceedings, as appropriate:
 1. The Office of Chief Counsel by means of written notice shall notify the Respondent of the dismissal of the Complaint; or
 2. the Committee Chairperson shall transmit to the Respondent an Admonition (which shall bear the designation "ADMONITION":).
- b. Admonitions.
 1. General Rule. A written record shall be made of the fact of and basis for Admonitions.
 2. Notice of Right to Formal Proceedings. In the Admonition, the Respondent shall be advised of:
 1. the Respondent's right under § 605.8(c) of this Part; and
 - ii. the availability of such records for consideration in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against the Respondent subsequently.
- c. Action Available to Respondent.
 1. General Rule. A Respondent shall not be entitled to appeal an Admonition, but the Respondent may submit a written application for reconsideration which shall be disposed of in accordance with paragraph (3) of this subdivision; or, in the alternative, Respondent may demand as of right that Formal Proceedings be instituted before a Referee, in accordance with subsection (2) of this subdivision.
 2. Formal Proceedings. A demand under paragraph (1) of this subdivision that Formal Proceedings be instituted shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. In the event of such demand, the Admonition shall be vacated and the Referee shall not be bound by its terms, but may take any appropriate action authorized by the Rules of the Committee or the Rules of the Appellate Division, First Department, including a

- Reprimand or referral to the Court.
3. Application for Reconsideration. An application under paragraph (1) of this subdivision for reconsideration shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. As soon as practicable after the receipt of an application, the Office of Chief Counsel shall transmit the application and the file relating to the matter to a member of the Departmental Disciplinary Committee (who shall not be a Reviewing Member designated with respect to such matter under § 605.6(f)(2) of the Part) designated to review the matter by the Committee Chairperson (or, upon general or limited written direction of the Committee Chairperson, by the Chief Counsel). The member so designated shall either confirm or vacate the Admonition or otherwise determine to modify the Admonition under §605.7(b)(2) of this Part.
 4. Notification to Complainant of Disposition of Complaint. The Office of the Chief Counsel, by means of written notice, shall notify the Complainant of the dismissal of a Complaint, or of the issuance of an Admonition. If the complaint has been dismissed pursuant to Section 605.6(e)(2), the notice shall state that the Complainant may seek reconsideration of the dismissal by submitting to the Office of the Chief Counsel a written request within 30 days of the date of the notice.

§ 605.9 Abatement of Investigation

- a. Refusal of Complainant or Respondent to Proceed, etc. Neither unwillingness or neglect of the Complainant to prosecute a charge, nor settlement, compromise or restitution, nor the failure of the Respondent to cooperate, shall, in itself, justify abatement of an investigation into the conduct of an attorney or the deferral or termination of proceedings under these Rules.
- b. Matters Involving Related Pending Civil Litigation or Criminal Matters.
 1. General Rule. The processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not be deferred pending determination of such litigation.
 2. Effect of Determination. The acquittal of a Respondent on criminal charges or a verdict or judgment in the Respondent's favor in a civil litigation involving substantially similar material allegations shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

§ 605.10 Resignations; Reinstatements; Convictions of Crimes

- a. Resignations by Attorneys Under Disciplinary Investigations.
 1. Recommendation to the Court. Upon receipt by the Committee of an affidavit from an attorney who intends to resign pursuant to the rules of the Court, the chief counsel shall review the affidavit and such other matters as the chief counsel deems appropriate and determine either (i) to recommend to the Court that the resignation be accepted and to recommend any terms and conditions of acceptance the chief counsel deems appropriate, or (ii) to recommend to the Court that the resignation not be accepted with the reasons therefor. The chief counsel shall submit the affidavit and the recommendation to the Court, and the proceedings, if any,

- before the Court shall be conducted by staff counsel.
2. Notification of Complainant. In the event the Court accepts the resignation of a Respondent and removes the Respondent on consent, the Office of Chief Counsel by means of written notice shall notify the Complainant of such action.
 - b. Applications for Reinstatement. Upon receipt by the Committee of an application of an attorney who has been disbarred or who has been suspended for more than six months, or whose name has been stricken from the roll of attorneys on consent by order of the Court, applying for reinstatement pursuant to the rules of the Court, the chief counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment, and shall notify the complainant(s) that they have sixty days to raise objections to or to support the lawyer's petition. Upon the expiration of the sixty-day period, the chief counsel shall either (1) advise the lawyer and the Court that the chief counsel will stipulate to the reinstatement or (2) advise the lawyer and the Court that the chief counsel opposes the reinstatement. If the chief counsel opposes the reinstatement, he shall present the reasons for the opposition and shall request that the Court deny the application or appoint a Referee and refer the matter to the Committee.
 - c. Determination of Serious Crimes. Upon receipt by the Committee of a certificate demonstrating that an attorney has been convicted of a crime in the state of New York or in any other state, territory or district, the chief counsel shall determine whether the crime is a "serious crime"; as defined in the rules of the court governing the conduct of attorneys. Upon a determination by the chief counsel that the crime is a serious crime, the office of the chief counsel shall file the certificate of conviction with the Court.

§ 605.11 Formal Proceedings; Preliminary Provisions

- a. Representation of Respondent
 1. Appearance Pro Se. When a Respondent appears pro se in a Formal Proceeding, the Respondent shall file with the Office of Chief Counsel an address to which any notice or other written communication required to be served upon the Respondent may be sent.
 2. Representation of Respondent by Counsel. When a Respondent is represented by counsel in a Formal Proceeding, counsel shall file with the Office of Chief Counsel, a written notice of such appearance, which shall state such counsel's name, address and telephone number, the name and address of the Respondent on whose behalf counsel appears, and the caption of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a Respondent may be sent to the counsel of record for such Respondent at the stated address of the counsel in lieu of transmission to the Respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served on or furnished to the Respondent shall also be served upon or furnished to the Respondent's counsel (or one of such counsel if the Respondent is represented by more than one counsel) in the same manner as prescribed for the Respondent, notwithstanding the fact that such communication may be furnished directly to the Respondent.
- b. Format of Pleadings and Documents. Pleadings or other documents filed in Formal Proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the Supreme Court in the First Department.
- c. Expeditious Proceedings; Extensions. Formal Proceedings shall be

expeditiously conducted. Extension of the time periods specified in this Part regarding proceedings before the Referee or Hearing Panel shall be made in writing to the Court and determined by a Justice of the Court upon good cause shown.

d. Service by the Departmental Disciplinary Committee.

1. Orders, notices and other documents originating with the Committee, including all forms of Referee, Hearing Panel or Committee action, petitions and similar process, and other documents designated by the Committee for this purpose, shall be served by the Office of Chief Counsel either personally or by mailing a copy thereof, to the person to be served, addressed to that person at the person's last known address. Whenever any document is to be served by mail upon the Respondent individually, it shall be by both certified mail, return receipt requested, and by first class mail. In all other instances, service by mail shall be by first class mail.
2. Service by mail shall be complete upon mailing. When service is not accomplished by mail, personal service may be effected by anyone duly authorized by the Office of Chief Counsel in the manner provided in the laws of the State of New York relating to service of process in civil actions.

e. Number of Copies. The following number of copies of documents shall be served by each Party in a proceeding:

1. documents being served by the Office of Chief Counsel: one copy of each document to the Respondent, and one copy of each document to the Referee and to each member of the Hearing Panel, as may be appropriate.
2. documents being served by the Respondent: one copy of each document (plus 10 copies of the Answer) to the Office of Chief Counsel, one copy to the Referee and to each member of the Hearing Panel, as may be appropriate, and one copy of each document to each other Respondent, if any; in each case, to be served personally or by mailing a copy thereof (by certified mail, return receipt requested) to the person to be served.
3. copies of exhibits to be offered during the hearing shall be provided as specified in section 605.12(d) of this Part.
- f. Amendment and Supplementation of Pleadings. No amendment or supplementation of any Notice of Charges or of any Answer shall be made unless specified in the Pre-Hearing Stipulation or otherwise granted by the Referee. Any objection to a proposed amendment shall be determined by the Referee upon conditions deemed appropriate.

Whenever, in the course of any hearing under these Rules, evidence shall be presented upon which another charge or charges against the Respondent might be made, it shall not be necessary to prepare or serve an additional Notice of Charges with respect thereto, but the Referee may, after reasonable notice to the Respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time of service of the Notice of Charges, and may render its decision upon all such charges as may be justified by the evidence in the case.

§ 605.12 Formal Proceedings.

- a. Commencement of Formal Proceedings. The Office of Chief Counsel shall institute formal disciplinary proceedings by serving on the Respondent a Notice of Charges under subdivision (b) of this section in either of the following cases:
 1. pursuant to a determination to institute formal proceedings made under section 605.6 or section 605.7 of this

section 605.11 of this Part.

f. Assignment for Hearing.

1. Appointment of Referee. Prior to service of the notice of charges, the Chief Counsel shall request that the Court appoint a Referee to conduct a hearing pursuant to the Rules of this Part.
2. Objection to Referee. Within 7 days of the service of charges the Office of the Chief Counsel or the Respondent may object to the Referee appointed. The objection shall be made to the Court in writing on notice to the Referee and the adversary.
 1. All documents (including schedules, summaries, charts and diagrams) to be offered (other than those to be used for impeachment or rebuttal) are to be listed in the stipulation with a description of each sufficient for identification. The documents are to be premarked by counsel, and, to the extent practicable, such markings are to be in the sequence of which the documents will be offered. If illegible or handwritten documents are to be offered, counsel shall include a typed version of the document.

Objections as to authenticity must be made in this stipulation or else they shall be deemed waived. Counsel are directed to exchange copies of their exhibits within two business days prior to the scheduled hearing.

- Counsel offering an exhibit shall provide a copy for the Referee at that time. Witnesses to be called in rebuttal or for impeachment purposes need not be identified in this stipulation.
2. Witness identification should include the witness' name (and address) and a brief statement of the overall scope of the witness' testimony. For example, if specific witnesses are to be called to substantiate particular claims or defenses on portions thereof, that should be noted. In addition, any witness being called as a character witness should be so designated.
 3. Only a brief statement of each contention is required, together with the principal authority relied upon; string cites are not necessary.

§ 605.13 Conduct of Referee Proceedings

a. Expediting Proceedings.

1. Conferences. In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited (including preparation of agreed stipulations of fact) Staff Counsel and Respondent or his attorneys shall meet five (5) days after the Answer is served to complete and sign a Pre-Hearing Stipulation in conformance with the form set forth in section 605.12(d) of this Part. Staff Counsel shall forward the signed stipulation immediately to the Referee.
2. Commencement of Hearing. The hearing before the Referee shall commence within 60 days after service of the Notice of Charges and shall be conducted on consecutive days.
- b. Appearances. The Referee shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.
- c. Order of Procedure. In proceedings upon a Notice of Charges, the Office of Chief Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence. Opening statements, when permitted in the discretion of the Referee, shall be

- made first by Staff Counsel. Closing statements shall be made first by the Respondent.
- d. Presentation by the Parties. Respondent and Staff Counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Referee may examine all witnesses.
 - e. Limiting Number of Witnesses. The Referee may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.
 - f. Additional Evidence. At the hearing the Referee may authorize any Party to file specific documentary evidence as a part of the record.
 - g. Oral Examination. Witnesses shall be examined orally unless the testimony is taken by deposition as provided in Section 605.17(b) of this Part, or the facts are stipulated in the manner provided in section 605.12 (d) or 605.13(f) of this Part. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.
 - h. Fees of Witnesses. Witnesses subpoenaed by the Office of the Chief Counsel or the Respondent shall be paid, by the subpoenaing party, the same fees and mileage as are paid for like service in the Supreme Court in the First Department.
 - i. Presentation and Effect of Stipulation. The Parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on such Parties with respect to the matters therein stipulated.
 - j. Admissibility of Evidence.
 1. General Rule. All evidence which the Referee deems relevant, competent and not privileged shall be admissible in accordance with the principles set out in section 605.1 of this Part.
 2. Pleadings. The Notice of Charges and Answer thereto shall, without further action, be considered as parts of the record.
 3. Convictions. A certificate of the conviction of a Respondent for any crime shall be conclusive evidence of the Respondent's guilt of that crime in any disciplinary proceeding instituted against the Respondent and based on the conviction, and the Respondent may not offer evidence inconsistent with the essential elements of the crime for which the Respondent was convicted as determined by the statute defining the crime except such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.
 - k. Reception and Ruling on Evidence. When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated. Formal exceptions are unnecessary. The Referee shall rule on the admissibility of all evidence.
 - l. Copies of Exhibits. When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to the Parties and to the Referee.
 - m. Recording of Proceeding. Hearings shall be recorded by reporters authorized to take oaths, or by mechanical recording devices and a transcript of the hearing so recorded, if such transcription is made, shall be a part of the record and sole official transcript of the proceeding. Such transcript shall consist of a verbatim report of the hearing, an exhibit list and the reporter's certificate, and nothing shall be omitted from the record except as the Referee may direct. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony, except as provided in subdivision (f) of this section or changes in the transcript, except as provided in subdivision (n) of this section.
 - n. Transcript Corrections. Corrections in the official transcript may be made only to make it conform to what actually transpired at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing except as provided in this section. Transcript

- corrections agreed to by all Parties may be incorporated into the record, if the Referee approves, at any time during the hearing or after the close of the hearing, but in no event more than 10 days after the receipt of the transcript. Any dispute among the Parties as to correction of the official transcript shall be resolved by the Referee, whose decision shall be final.
- o. Copies of Transcripts. A Respondent desiring copies of an official transcript may obtain such copies at the Respondent's own expense from the official reporter. Any witness may obtain from the official reporter at the witness' own expense a copy of that portion of the transcript relating to the witness' own testimony, or any part thereof. The Office of Chief Counsel shall in either case, bear the expense of one such copy if the Referee so directs upon good cause shown.
- p. Determinations.

- 1. Post-Testimony Procedure. At the conclusion of the testimony and following the presentation of oral arguments, the Referee shall determine whether an Inquiry as to sanction is required and shall, before the commencement of the Inquiry, set forth on the record or in writing, the charges that are to be sustained. The Inquiry may commence immediately upon the conclusion of the oral arguments, but in no event later than 7 days from the conclusion of the oral arguments whether any charges against the Respondent are to be sustained.
- 2. No Charge Sustained. If none of the charges against the respondent are sustained, the Referee shall so advise the parties in writing or on the record.
- 3. Any Charge Sustained. If any charge against the Respondent is sustained, the Referee shall so advise the parties in writing or on the record, and shall thereupon ascertain from Staff Counsel, whether the Respondent has previously been subject to disciplinary action by the Court, the Departmental Disciplinary Committee, any grievance committee established or authorized by any other Appellate Division of the Supreme Court of the State of New York, or by any other court.
- 4. Sanctions. Following the Referee's determination to sustain one or more charges against the Respondent the Referee shall recommend which of the following disciplinary sanctions should be imposed:
 - 1. reprimand;
 - ii. referral to the Court, with a recommendation as to censure, suspension or disbarment;
 - iii. reprimand, with referral to the Court, with a recommendation as to censure, suspension or disbarment;
 - iv. referral to the Court under (ii) or (iii) above, with a recommendation as to restitution or reimbursement, pursuant to section 90-6-a of the Judiciary Law; and
 - v. referral to the Court under (ii) or (iii) above, authorizing a request to the Court that costs be imposed on the respondent.

Upon such recommendation having been made, the Referee shall so advise the parties on the record or reserve decision until the issuance of the Report and Recommendation.

q. Referee's Report and Recommendation.

- 1. Report and Recommendation. In all cases the Referee shall prepare a written report and recommendation as to sanction which shall state the Referee's findings of fact and conclusions of law.
- 2. Submissions of the Parties. In the Referee's discretion staff counsel or respondent may request, or the Referee may require, the submission of briefs or proposed findings of fact and conclusions of law in accordance with such schedule as the Referee may set at the conclusion of the hearing. Any submission by one party shall be served upon the other.
- 3. Service of Report. The Referee shall file a Report and

Recommendation within 60 days of the conclusion of the hearing at the Office of Chief Counsel, which shall serve copies thereof upon the respondent.

§ 605.13-a Conduct of Hearing Panel Proceedings Directed by the Court

- a. Designation of Hearing Panel. Within 10 days of the date of an order of the court directing the Committee Chairperson to designate a Hearing Panel to conduct disciplinary proceedings pursuant to section 603.12 or 603.14 of this Title, the Chairperson shall assign such Hearing Panel. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying the Petition, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.
- b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is subject of an objection that has been sustained. The Committee Chairperson shall substitute to the extent possible an attorney for an attorney and a non-attorney for a non-attorney.
- c. Conduct of the Proceedings. Proceedings before a Hearing Panel held pursuant to this section shall be conducted in accordance with section 605.13 of this Part.
- d. Procedure Following the filing of the Hearing Panel Report and Recommendation. Upon the filing of the Hearing Panel Report and Recommendation, the Departmental Disciplinary Committee shall take action in accordance with section 605.15 of this Part.

§ 605.14 Conduct of Hearing Panel Proceedings Following the Filing of the Referee's Report and Recommendation

- a. Designation of Hearing Panel. Within 10 days of the filing of the Referee's Report and Recommendation, the Committee Chairperson shall assign a Hearing Panel to review the Report and Recommendation. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying the Report and Recommendation, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.
- b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is the subject of an objection that has been sustained. The Committee Chairperson shall substitute to

- the extent possible an attorney for an attorney and a non-attorney for a non-attorney.
- c. Transmittal of Transcript and Memoranda. Within 10 days of the assignment of a Hearing Panel, the Office of the Chief Counsel shall transmit to the Hearing Panel, one copy of the transcript; and to each Panel Member a copy of the Referee's Report and Recommendation and any other memoranda or briefs submitted to the Referee.
- d. Schedule for Proceedings. Within 30 days of the Hearing Panel's assignment the parties shall present oral argument and submit briefs on the Referee's Report and Recommendation pursuant to a schedule set by the Hearing Panel Chairperson.
- e. Order of Procedure. Oral argument shall be made first by Staff Counsel. The time limits for oral argument shall be set by the Hearing Panel Chairperson.
- f. Transcript. No transcript shall be made of the oral argument.
- g. Determination.
 1. At the conclusion of the oral argument, the Hearing Panel, in executive session, shall determine whether to confirm, disaffirm or modify the findings of fact and conclusions of law set forth in the Referee's Report and Recommendation. Upon making that determination, the Hearing Panel Chairperson shall advise the parties and if the Referee recommends and the Hearing Panel confirms that a reprimand is to be delivered the Hearing Panel chairperson shall thereupon deliver the reprimand and advise the Respondent of his or her rights under section 605.15(e).
 2. Within forty days of the presentation of the oral argument or ten days of the submission of briefs, whichever period is shorter, the Hearing Panel shall file at the Office of the Chief Counsel a written Determination confirming, disaffirming or modifying the Referee's Report and Recommendation. The Hearing Panel Chairperson shall assign a Panel Member to prepare the Determination. Separate dissents or concurrences may be filed.

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§ 605.15 Action by the Departmental Disciplinary Committee

- a. Dismissal of All Charges. In the event that the Referee and the Hearing Panel determine that all charges considered at both proceedings should be dismissed, the Office of Chief Counsel shall give written notice of such determination to the respondent and the complainant. This decision shall be final and the matter closed, unless within sixty days of the date on which the Hearing Panel files its determination the Chief Counsel files a motion to disaffirm under § 605.15(e)(2) of this Part.
- b. Reprimand.
 1. Notice. In the event that the Referee and Hearing Panel determine that the proceeding should be concluded by Reprimand (with or without referral of the matter to the Court), the Committee Chairperson shall give written confirmation thereof (which shall bear the designation "Reprimand") to the Respondent and Staff Counsel, which notice shall also advise the Respondent of:
 - i. the charges which were sustained;
 - ii. any charges which were dismissed;
 - iii. the respondent's right under subdivision (c) of this section to petition the Court; and
 - iv. the determination, if made, to refer the matter to the Court.
 2. Record. The confirmation shall constitute a written record of the Reprimand, and shall be permanently retained.
- c. Petition by Respondent to Vacate Reprimand. A Respondent shall not be entitled to appeal a Reprimand recommended by a Referee and confirmed by a Hearing Panel. Within 30 days of a Reprimand without referral of the

matter to the Court, a Respondent may petition the Court to vacate the Reprimand pursuant to the Rules of the Court. In the event of such petition, if so determined by the Hearing Panel Chairperson, the disciplinary sanction shall become a Reprimand with referral to the Court under section 605.13(p)(4)(iii) of this Part, and shall be treated as such under section 605.13(q) of this Part.

- d. Notification of Complainant. The Office of Chief Counsel by means of written notice shall notify the Complainant of any Reprimand which has become final and is not subject to further review, and the notice shall inform the Complainant of the requirement of confidentiality.
- e. Referral to the Court.

- 1. General Rule. In the event the Referee and Hearing Panel shall determine that the matter should be concluded by referral to the Court (with or without Reprimand), by Reprimand without referral to the Court in cases where the Respondent is unwilling to have the matter concluded by such Reprimand, or in the event that the Hearing Panel modifies or disaffirms the Referee's Report and Recommendation the Committee shall submit the Referee's Report and Recommendation and the Hearing Panel's Determination together with the entire record as reflected in the docket maintained by the Office of Chief Counsel, to the Court, and the proceedings, if any, before the Court shall be conducted by Staff Counsel.

- 2. Procedure. The Committee (or, upon the general or limited written direction of the Committee chairperson, the chief counsel) shall transmit the report and the record to the Court with an appropriate petition or motion to disaffirm. If the chief counsel's office accepts the Hearing Panel's report, it shall file a petition. If the chief counsel's office objects to any finding or conclusion contained in the Hearing Panel Determination it may file a motion to disaffirm the Determination in whole or in part, and ask the Court to enter such other and further relief as may be appropriate under the circumstances including, but not limited to, reversal or modification of any finding in the Determination and change in sanction. Copies of such petition or motion to disaffirm shall be served by the office of chief counsel upon the respondent.

- 3. Notification of Complainant. The Office of Chief Counsel by means of written notice shall notify the Complainant of any referral to the Court (which notice shall inform the Complainant of the requirement of confidentiality), and of any final action by the Court.

§ 605.16 Reopening of Record

- a. Reopening on Application of Respondent.

- 1. Application to Reopen. No application to reopen a proceeding shall be granted except upon the application of Staff Counsel or the Respondent made prior to the filing by the Referee of the Report and Recommendation or a Hearing Panel acting as the trier of fact in the first instance of its Determination and only upon good cause shown. Such application shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, and shall be filed with the Office of Chief Counsel. A copy of such application shall be served by the movant upon all other parties.
- 2. Responses. Within five days following the receipt of such application, any other Party may file with the Office of Chief Counsel an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such application.
- 3. Action on Application. As soon as practicable after the filing of an answer to such application or default thereof, as the case may be, the Office of Chief Counsel shall transmit such documents to the

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Referee or to the Hearing Panel Chairperson, as may be appropriate, who shall grant or deny such petition.

§ 605.17 Subpoenas, Depositions and Motions

- a. Subpoenas. Both Staff Counsel and the Respondent shall have the right to summon witnesses and require production of books and papers by issuance of subpoenas in accordance with the rules of the Court.
- b. Depositions. When there is good cause to believe that the testimony of a potential witness will be unavailable at the time of hearing, testimony may be taken by deposition. Such deposition shall be initiated and conducted in the manner provided for the taking of depositions in the New York Civil Practice Law and Rules, and the use of such depositions at hearings shall be in accordance with the use of depositions at trials under the Civil Practice Law and Rules.
- c. Motions. The Referee or the Hearing Panel to which a matter has been assigned, as may be appropriate, will entertain, from time to time, such motions as justice may require, in accordance with the principles set out in section 605.1(d) of this Part.

§ 605.18 Membership, Committees, Officers and Office of Chief Counsel

- a. Membership.
 1. General. The Committee consists of volunteers appointed by the Court.
 2. Disqualification. No person shall, while serving on the Committee, appear before the Committee or any Hearing Panel on behalf of any other person.
- b. Policy Committee and Hearing Panels; Sub-committees. The Committee chairperson shall from time to time appoint, subject to the approval of a majority of the total membership of the Departmental Disciplinary Committee, from among the members of the Committee (1) a policy committee consisting of the Committee chairperson and six or more other members, and (2) no fewer than nine hearing panels each consisting of no fewer than four members, at least three of whom shall be assigned to a matter. The Committee chairperson shall assign at least two attorneys to each matter. No person shall serve concurrently either on the policy committee and hearing panel, or on more than one hearing panel (except by virtue of substitution in accordance with section 605.14(b) of this part, or when requested by a hearing panel in order to assure the presence of a quorum, and in any such event such person shall also be deemed a member of such other hearing panel with respect to and for the remainder of the proceeding). The Committee Chairperson may from time to time establish one or more subcommittees of the Committee, consisting of one or more members of the Committee for such purposes as the Committee Chairperson shall direct.
- c. Officers. The Committee Chairperson shall serve as the chairperson of the Policy Committee. The Committee Chairperson shall appoint a Hearing Panel Chairperson for each of the Hearing Panels from among the members thereof who are attorneys. The Committee Chairperson shall also appoint a Secretary of the Committee. Each Hearing Panel Chairperson and the Secretary shall be appointed for a one year term and may be appointed for additional terms while serving on the Committee. The Committee Chairperson may from time to time appoint, from among the members of the Policy Committee, an Acting Committee Chairperson who shall, in the absence of the Committee Chairperson, have all the powers of the Committee Chairperson.

- d. Duties of Officers: The Committee Chairperson, each Hearing Panel Chairperson and the Secretary shall have such duties as are provided in this Part.

§ 605.19 Meetings of the Departmental Disciplinary Committee

- a. Meetings, Notice of Time and Place. The Committee shall meet not less frequently than every other month, and such meetings shall be held upon notice from the Secretary given at the direction of the Committee Chairperson or five members of the Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Departmental Disciplinary Committee or, in the absence of such resolution by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Committee at the addresses furnished for such purposes by the members to the Secretary.
- b. Organization. The Committee Chairperson shall preside at all meetings of the Committee. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Committee selected for the purpose by the members present at the meeting may preside at the meeting. The Secretary shall keep the minutes of all meetings of the Committee, and in the absence of the Secretary the person presiding at the meeting shall appoint a member present to keep the minutes.
- c. Agenda. To the extent possible, an agenda for each meeting of the Committee shall be prepared by or with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Committee together with the notice of meeting or subsequent thereto but prior to the meeting.
- d. Quorum and Manner of Acting. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the members present at the meeting.

§ 605.20 Office of Chief Counsel

- a. General. There shall be an Office of Chief Counsel which shall consist of the Chief Counsel, Deputy Chief Counsel and other Staff Counsel.
- b. Supervision by Chief Counsel. The Office of Chief Counsel shall be supervised by the Chief Counsel who shall, either personally or by other Staff Counsel, exercise the powers and perform the duties of the Office of Chief Counsel set forth in these Rules. The Chief Counsel may from time to time designate the Deputy Chief Counsel or in the absence of such Deputy Chief Counsel, an Associate Counsel, to serve as Acting Chief Counsel in the Chief Counsel's absence.
- c. Powers and Duties of the Office of Chief Counsel.
The Office of Chief Counsel shall:
 1. have the powers and duties set forth in this Part;
 2. maintain permanent records of all matters processed by it, including the disposition thereof, and maintain dockets and assign such docket numbers as may be appropriate for the clear designation of each matter, which shall include the calendar year in which the matter is originally docketed;
 3. represent the Committee in all proceedings before the Court;
 4. supervise and manage the Bar Mediation Project and Pro Bono

- Special Counsel Project according to the provisions of this part and as may be from time to time modified by the Court, the Committee Chairperson, the Policy Committee or the entire Disciplinary Committee; and
5. have such other duties as may be assigned to it from time to time by the Committee Chairperson, the Policy Committee or the Committee.
- d. Bar Mediation Project.
1. General. Bar Mediators shall consist of volunteers appointed by the Court for the purposes described in section 605.22(d)(2) of this part. The Committee Chair may, with the approval of the Policy Committee, recommend lawyers to the Court for such appointments. The Chief Counsel shall forward these recommendations to the Court together with a proposed order requesting the appointment of the volunteers as Bar Mediators.
 2. Referrals. The Chief Counsel's Office may refer minor complaints involving lawyers with no significant disciplinary history to Bar Mediators, who shall attempt to mediate and resolve the matters raised by the complaint. If the Bar Mediator is unable to resolve the matter, or if it appears that the matter should be further considered by the Committee, the Bar Mediator shall refer the complaint back to the Chief Counsel's Office for investigation under these rules.
- e. Pro Bono Special Counsel Program.
1. General. Pro Bono Special Counsel shall be volunteer lawyers appointed by the Court for the purpose of expediting cases.
 2. Procedure for Appointment. Upon initial determination by the Chief Counsel that a potential volunteer is qualified, the Chief Counsel shall submit the volunteer's resume to the Policy Committee. Upon approval by the Policy Committee, the Chief Counsel shall forward the volunteer's name and descriptive information to the Court, together with a proposed order, requesting the appointment of the volunteer attorney as special counsel.
- f. Other Provisions Governing the Bar Mediation Project and the Pro Bono Special Counsel Program.
1. Recruitment. From time to time, the Chief Counsel's Office shall send notices to the principal bar associations and bar committees on professional discipline or ethics in the First Department, describing the Bar Mediation Project and the Pro Bono Special Counsel Program and soliciting the resumes of interested volunteers. Potential volunteers may also be recruited informally by members of the Court or by members of the Committee. Recommendations for appointment shall be on a non-discriminatory basis.
 2. Conflicts. Before accepting the assignment of a case, Pro Bono Special Counsel shall determine whether accepting the assignment would create a conflict under the Lawyer's Code of Professional Responsibility, and shall agree to inform the Chief Counsel's Office of any conflict or potential conflict which arises in the course of handling the case.
 3. Confidentiality. Bar Mediators and Pro Bono Special Counsel shall be bound by the confidentiality rules contained in Judiciary Law §90 (10) and all other applicable confidentiality provisions.
 4. Supervision and Reporting. The Chief Counsel (or other staff counsel designated by the Chief Counsel) shall assume direct responsibility for supervising a case assigned to Pro Bono Special Counsel. The Chief Counsel shall report to the Policy Committee on an ongoing basis as to the progress of cases assigned to Special Counsel.
 5. Bar Mediators and Pro Bono Special Counsel as Volunteers. The members of the Departmental Advisory Committee, as volunteers, are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17

§ 605.21 Policy Committee

- a. General. The Policy Committee shall:
 1. have the powers and duties set forth in this Part;
 2. consult with and report regularly to the full Committee;
 3. consider and recommend to the Committee the establishment of policy for the Committee including without limitation, the establishment of priorities for type of misconduct to be investigated and prosecuted, standards to insure uniform treatment of cases and, subject to these Rules, the establishment of procedures for the conduct of investigations by the Office of Chief Counsel and hearings by the Hearing Panel;
 4. oversee and evaluate on a continuing basis the effectiveness of the operation of the Committee to assure the integrity of the attorney disciplinary system;
 5. develop and implement a program to make the public aware of the importance and effectiveness of the disciplinary procedures and activities of the Committee; and
 6. engage in such activities as may be assigned to it by the Committee or the Committee Chairperson.
- b. Meetings, Notice of Time and Place, Agenda. The Policy Committee shall meet not less frequently than monthly, and such meetings shall be held upon notice from the Committee Chairperson or three members of the Policy Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Policy Committee or, in the absence of such resolution, by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Policy Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Policy Committee at the addresses furnished for such purpose by the members to the Secretary. To the extent possible, an agenda for each meeting of the Policy Committee shall be prepared with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Policy Committee together with the notice of meeting or subsequent thereto but prior to the meeting.
- c. Organization. The Committee Chairperson shall preside at all meetings of the Policy Committee and shall appoint a secretary who shall keep the minutes of the meetings. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Policy Committee selected for the purpose by the members of the Policy Committee present at the meeting may preside at the meeting. The Committee Chairperson may from time to time establish subcommittees of the Policy Committee, consisting of one or more members of the Policy Committee, for such purposes as the Committee Chairperson shall direct.
- d. Quorum and Manner of Acting. A majority of the members of the Policy Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the total membership of the Policy Committee.

§ 605.22 Referees; Hearing Panels

- a. A Referee shall:
 1. have the powers and duties set forth in these Rules, including, without limitation, the power and duty to conduct hearings into

formal charges of misconduct, and to make such findings of fact and conclusions of law and to recommend such disciplinary sanctions as the Referee may deem appropriate, in accordance with this Part and Part 603 of the Rules of the Court; and

2. perform such other duties as may be imposed by or pursuant to this Part and Part 603 of the Rules of the Court.

b. Hearing Panels:

1. General. Each Hearing Panel shall:

1. have the powers and duties set forth in these Rules, including without limitation, the power and duty to review the Referee's Report and Recommendation and to make such

Determination as it may deem appropriate in accordance with this Part; and Part 603 of the Rules of the Court and

- ii. perform such other duties as may be imposed pursuant to this Part and Part 603 of the Rules of the Court.

- c. Officers. Each Hearing Panel shall be presided over by a Hearing Panel Chairperson designated under section 605.18(1) of this Part or by an Acting Hearing Panel Chairperson, who shall be appointed by the Committee Chairperson from among the members of the Hearing Panel who are attorneys to serve in the absence of the Hearing Panel Chairperson shall such powers and duties as are set forth in this Part.
- d. Quorum and Manner of Acting. All matters presented to a Hearing Panel shall be determined by three members of the Panel. Two Panel members assigned to a matter shall constitute a quorum for the transaction of business. All action shall require the concurrence of at least two members. At least two members of a Hearing Panel assigned to a matter shall have heard the entire proceeding before the Hearing Panel or shall have read the transcript of proceedings before Referee and briefs submitted to the Referee. In the event that one of the three members assigned to a matter dies, becomes incapacitated, or is otherwise unable to determine a matter, the fourth member shall take his or her place. If the fourth member dies, becomes incapacitated, or is otherwise unable to serve, the Chairperson may designate another member of the Committee to serve in his or her place.

§ 605.23 Committee Chairperson and Secretary

- In addition to such other duties as are set forth in this Part, the Committee Chairperson shall perform such duties as may be assigned by the Committee, and the Secretary shall perform such duties as may be assigned by the Committee or the Committee Chairperson.

§ 605.24 Confidentiality

- a. Confidentiality. Disciplinary committee members, committee lawyers, committee employees, and all other individuals officially associated or affiliated with the committee, including pro bono lawyers, bar mediators, law students, stenographers, operators of recording devices and typists who transcribe recorded testimony shall keep committee matters confidential in accordance with applicable law.
- b. Waiver. Upon the written waiver of confidentiality by any Respondent, all participants shall thereafter hold the matter confidential to the extent required by the terms of the waiver.

Dealing With an Ethical Dilemma

Submitted by Deborah A. Scalise, Esq.¹

In today's legal world every practitioner encounters ethical issues ranging from obligations to be fulfilled in the practice of law, (such as Continuing Legal Education and biannual registration), to issues arising from client representation, (such as conflicts and client fraud). Somehow a lawyer must find a way to deal with such issues and to do so in compliance with the New York Rules of Professional Conduct, as well as a multitude of other rules in the Judiciary Law; and the Rules of Court. In addition, where the rules are not specific, lawyers may look to bar association advisory opinions or case law for guidance. As a result, it can be difficult to deal with issues on behalf of a client, while maintaining and protecting our licenses to earn a living. This article will give a brief practical overview as to what to do if an ethics and professional responsibility issue arises and what to do when facing disciplinary authorities conducting a grievance investigation.

1. *What can a lawyer do when faced with an ethical dilemma?*

If taking an action on behalf of a client feels wrong but you are unable to pinpoint the problem - follow your instinct; don't do it, or ask for time to research the issue (see Ethics Resources Outline). If you are pressed for time due to a trial or court appearance, a brief discussion with the judge or law secretary as to a pending "ethics issue" (without disclosing harmful facts) will usually result in a short adjournment to allow you to make a telephone call to consult with a colleague or a supervisory attorney. If you are unable to reach someone, contact one of the bar association ethics hotlines. You will find that most issues have arisen before and someone will either have an answer or give you guidance as to a rule, case or advisory opinion.

2. *What can a lawyer do when faced with an allegation of ethical misconduct?*

22 NYCRR § 1200 Rule 8.3 (formerly 22 NYCRR § 1200.4 [DR 1-103]) provides that a lawyer may report another lawyer's misconduct to either "a tribunal or other authority empowered to investigate or act upon such violation." Notwithstanding the rule, even if the allegations are only made to the court in which you are appearing, the grievance

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committee can still initiate an investigation! Thus, you may be subject to financial sanctions by the court, as well as disciplinary sanctions by disciplinary authorities. As a result, once there is any allegation of ethical misconduct a lawyer should act carefully and try to resolve the issues so as not to risk a negative Opinion by a Court.

- Consider obtaining counsel.

Representing yourself is not a good idea because you are too close to the issues. In addition, practitioners in the field know the grievance procedures, rules and staff and will be able to shepherd you through the system. If you cannot afford to hire someone, at the very least have a respected colleague look over your documents before you submit them to the court or the grievance authorities to give your answer a dispassionate review.

- Cooperate with the court's or grievance committee's requests.

Any delay in the submission of your response may negatively impact on the investigation. Moreover, a failure to respond may result in an interim suspension pending a final hearing. See 22 N.Y.C.R.R. § 603.4(e)(1)(1st Dept.); § 691.4(d)(1) (2d Dept.); §806.4(f)(1)(3rd Dept.) and § 1022.19(f)(1)(4th Dept.).

- All statements can and will be used against you.

Do not make any "off the cuff" statements about your conduct to the court, clients, colleagues and opposing counsel. Moreover, if you contact staff for the grievance committee, keep the conversation to a minimum. Most important, do not misrepresent the facts because the grievance authorities will find out if you do. As a result, you could be subject to additional charges for lying to the committee during the investigation.

- Written responses.

When providing a written response to a grievance, consult the client's files and your records before responding. Focus on an explanation of your conduct. Do not blame the client, the court or your supervisors unless you can back-up your claims. Note: 22 NYCRR § 1200 Rule 1.6(b) (formerly 22 NYCRR § 1200.19(c) [DR 1-103 (c)]) permits a lawyer to reveal client confidences or secrets in order to defend the lawyer or the lawyer's employees against an accusation of wrongful conduct.

■ Aggravating and mitigating circumstances.

If you find yourself the target of a disciplinary investigation there are certain factors, which may be presented as aggravating or mitigating circumstances which can affect the sanction imposed upon a finding of misconduct.

Aggravating circumstances which considered by the grievance committees when sanctioning a lawyer include, *inter alia*, failure to cooperate with the committee, lying to the committee, lack of remorse, prior disciplinary history and untreated substance abuse. Mitigating circumstances include, *inter alia*, character references, pro bono activities, community service and treatment for substance abuse.

■ Substance Abuse.

Lawyers Assistance Programs ("LAP") are available to members of the legal community with alcohol or substance problems. The New York State Lawyers Assistance Trust (NYLAT) has a website which provides invaluable information about resources to deal with these issues at www.nylat.org. NYLAT works hand in hand with local LAPs including those established by the New York State Bar Association and the Association of the Bar of the City of New York.

Each LAP offers free, confidential assistance to lawyers, judges, law students and their families in addressing their problem, identifying appropriate resources and beginning the recovery process. These programs work together to assist lawyers in need and their services are confidential pursuant to §499 of the Judiciary Law as amended by Chapter 327 of the Laws of 1993 and Federal Regulation 42 CFR Part 2. There are national, statewide and local LAP programs and they that can be reached as follows:

- New York State Bar Association LAP - Pat Spataro (800)255-0569
- New York City Bar Association LAP - Eileen Travis (212)302-5787
- Brooklyn Bar Association LAP - (718)624-4001
- Nassau County Bar Association LAP - Peter Schweitzer(888)408-6222
- ABA Co-LAP - Leigh Stewart-1-800-238-2667 or 1-866-LAW-LAPS(1-866-529-5277)
- ABA Judicial Assistance - Ann Foster- 1-800-219-6474

If you, or any lawyer you know is experiencing a problem, don't wait until a grievance is filed, call LAP, they can help!

Ethics Resources 2013

SCALISE & HAMILTON, LLP
670 White Plains Road
Suite 325
Scarsdale, N.Y. 10583
(914)725-2801
Fax (914)931-2112

Rules of Professional Conduct (effective April 1, 2009)/Lawyer's Code of Professional Responsibility (prior to April 1, 2009)

- Judiciary Law Section 90 (Case comments)
- 22 NYCRR Section 1200
- Lexis and Westlaw

Judiciary Law

- Judiciary Law Section 90
- Judiciary Law Section 264(4)
- Judiciary Law Sections 467-499
- CPLR Section 9407 and 9701

Attorney Admissions

- Judiciary Law Section 53
- Judiciary Law Section 56
- Judiciary Law Section 90(1)
- Judiciary Law Section 460-466
- CPLR 9401-9406
- General Obligations Law 3-503
- 22 NYCRR Section 520
- 22 NYCRR Section 602 (1st Dept.)
- 22 NYCRR Section 690 (2nd Dept.)
- 22 NYCRR Section 805 (3rd Dept.)
- 22 NYCRR Section 1022.34 (4th Dept.)

Other Applicable Rules

- 22 NYCRR § 1200 Appendix A Standards of Civility (Aspirational)
- 22 NYCRR § 1205 Cooperative Business Arrangements between lawyers and non-legal Professionals (“Multidisciplinary Practice”)
- 22 NYCRR § 1210 Statement of Client's Rights

- 22 NYCRR § 1215 Written Letter of Engagement
- 22 NYCRR § 1220 Mediation of Attorney-Client Disputes
- 22 NYCRR § 118 Registration of Attorneys
- 22 NYCRR § 130 Costs and Sanctions
- 22 NYCRR § 137 Fee Dispute Arbitration
- 22 NYCRR § 1300 Dishonored Check Rule
- 22 NYCRR § 1400 Procedure in Domestic Relations Matters
- 22 NYCRR § 1500 Continuing Legal Education

Attorney Disciplinary Procedures

- Judiciary Law Section 90
- 22 NYCRR §§ 603 & 605 (First Department)
- 22 NYCRR §§ 690 & 691 (Second Department)
- 22 NYCRR § 806 (Third Department)
- 22 NYCRR § 1022 (Fourth Department)

Disciplinary Case Law

- Appellate Division Reporters (for attorneys)
- Court of Appeals and Judicial Conduct Committee (for judges)
- Non-Disciplinary Case Law
- All other courts

Judicial Conduct

- 22 NYCRR § 100 Judicial Conduct
- 22 NYCRR § 101 Advisory Committee on Judicial Ethics
- 22 NYCRR § 7000 State Commission on Judicial Conduct – Procedural Rules
- 22 NYCRR § 7100 Judicial Nomination Commission
- 22 NYCRR § 7400 Ethics Commission for the Unified Court System

Formal and Informal Ethics Opinions

- ABA
- NYSSBA
- Association of the Bar of the City of New York
- NY County Lawyers Association
- Nassau County Bar Association
- ABA/BNA Manual

Other Resources and Periodicals

- Annotated Code and Model Rules
- ABA Standards on Imposing Lawyer Sanctions
- Professional Responsibility: A Contemporary Approach, Russell G. Pearce, Daniel J. Capra, Bruce A. Green (Thomson Reuters 2011)

- The New York Code of Professional Responsibility: Opinions, Commentary and Caselaw, New York County Lawyer's Ethics Institute (Oxford 2010)
- Simon's New York Rules of Professional Conduct Annotated, Roy Simon (Thomson West 2012)
- Modern Legal Ethics: Charles Wolfram (West Publishing)
- Legal Ethics: The Lawyers Deskbook on Professional Responsibility, Ronald D. Rotunda, American Bar Association Center on Professional Responsibility (Thomson West 2012)
- Regulation of Lawyers: Statutes and Standards, Stephen Gillers and Roy D. Simon, (Aspen Publishers 2012)
- Attorney Escrow Accounts, Rules, Regulations and Related Topics, Peter Coffey and Anne Reynolds Capps, Editors (New York State Bar Association 2012)
- New York Law Journal

Telephone Hotlines

- Association of the Bar of the City of New York (212) 382-6600 Ext. 8
- Association of the Bar of the City of New York LAP (212) 302-5787
- NY County Lawyers' Association (212) 267-6646
- NY State Bar Association (800) 342-3661
- NY State Bar Association LAP 1-800-255-0569
- American Bar Association (800) 285-2221 or e-mail ethicsearch@abanet.org
- American Bar Association CoLAP 1-866-LAW-LAPS(529-5277)
- American Bar Association Judicial Assistance 1-800-219-6474

Websites

- ABA Center for Professional Responsibility (www.abanet.org/cpr/home.html)
- ABA/BNA Lawyer's Manual on Professional Conduct (www.bna.com/products/lit/mopc.htm)
- American Legal Ethics Library/Cornell Legal Information Institute (www.secure.lawcornell.edu/ethics)
- American Judicature Society (www.ajs.org)
- Association of Professional Responsibility Lawyers (www.aprl.net)
- National Organization of Bar Counsel (www.nobc.org)
- The New York State Lawyers Assistance Trust (NYLAT) (www.nylat.org)