

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

ADM 2005-0722.1

The Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department, pursuant to the authority vested in it,

DOES HEREBY, effective immediately, amend Parts 690 and 691 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows (additions in text are indicated by underlining and deletions by ~~strikethrough~~):

I. Adopt a new section 690.21 of Part 690 as follows:

§ 690.21 Orientation to the Profession

(a) Orientation Program. This court shall regularly conduct an orientation program on the subject of professional ethics and related topics for applicants seeking admission to practice as attorneys and counselors-at-law.

(b) Required Attendance. Every person admitted to the practice of law after January 1, 2006, shall have attended and successfully completed such an orientation program within one year prior to the date of admission.

(c) Waivers. The Presiding Justice or his or her designee may, in individual cases involving undue hardship or extenuating circumstances, upon written request, grant waivers and modifications of this requirement.

II. Adopt new subdivisions (m), (n), and (o) of section 691.4 of Part 691 as follows:

§ 691.4 Appointment of Grievance Committees; Commencement of Investigation of Attorney Misconduct; Complaints; Procedure

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(m) Diversion Program.

(1) If during the course of an investigation, the consideration of charges by a grievance committee, or the course of a formal disciplinary proceeding, it appears that the attorney whose conduct is the subject thereof is or may be suffering from alcoholism or other substance abuse or dependency, the court may upon application of the attorney or committee, or on its own motion, stay the investigation, charges, or proceeding and direct the attorney to complete a monitoring program sponsored by a lawyers' assistance program approved by the court. In determining whether to divert an attorney to a monitoring program, the court shall consider (i) whether the alleged misconduct occurred during a time period when the attorney suffered from alcohol or other substance abuse or dependency; (ii) whether the alleged misconduct is related to such alcohol or other substance abuse or dependency; (iii) the seriousness of the alleged misconduct; and (iv) whether diversion is in the best interest of the public, the legal profession, and the attorney.

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

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

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

(n) *Medical and Psychological Evidence.* Whenever an attorney who is the subject of charges of professional misconduct and a hearing before a grievance committee or is the subject of a disciplinary proceeding pending in this court intends to offer medical or psychological evidence at a hearing in mitigation of the charges, he or she shall give written notice to counsel for the committee of the intention to do so not later than 20 days before the scheduled date of the hearing. Said notice shall be accompanied by (1) a duly executed and acknowledged written authorization permitting counsel for the committee to obtain and make copies of the records of the treating physician, psychiatrist, psychologist, or other such health care professionals regarding the attorney's physical or mental condition at issue, and (2) a copy of the written reports, if any, of the health care professionals who the attorney proposes to call as witnesses.

(o) *Disqualification from Representation.* No former staff counsel to a grievance committee or former member of such a committee may accept a retainer or otherwise represent an attorney who is the subject of an investigation, or of charges by a grievance committee of professional misconduct, or of a disciplinary proceeding in this court, if such investigation, charges, and/or proceeding were pending before such committee during the term of service of that former staff counsel or committee member.

No former special referee appointed to hear and report on the issues raised in a formal disciplinary proceeding may accept a retainer or otherwise represent an attorney who is the subject of an investigation, or of charges by a grievance committee of professional misconduct, or of a disciplinary proceeding in this judicial department, until the expiration of two years from the date of the submission of his or her final report.

III. Adopt a new section 691.5-a of Part 691 as follows:

§ 691.5-a Formal Disciplinary Proceedings; Subpoenas, Depositions, and Motions

In the event that a formal disciplinary proceeding pursuant to section 90 of the Judiciary Law or other provision of this part is commenced in this court against an attorney, the following shall apply:

(a) *Subpoenas.* Upon application by the petitioner or the respondent, the clerk of this court may issue subpoenas for the attendance of witnesses and the production of books and papers before the referee, justice, or judge designated by the court to conduct a hearing on the issues raised in the proceeding, at a time and place therein specified.

(b) *Depositions.* When there is good cause to believe that a potential witness will be unavailable at the time of a hearing, the testimony of that witness may be taken by deposition. Such a deposition shall be initiated and conducted in the manner provided by, and the use thereof at a hearing shall be in accordance with, the provisions of article 31 of the Civil Practice Law and Rules.

(c) *Motions.* Motions made during the course of a formal disciplinary proceeding shall be addressed to the court and shall be made and noticed in the manner provided in section 670.5 of this title. The court may refer the motion to a referee, justice, or judge appointed by it to either hear and determine or hear and report on the same.

IV. Repeal section 691.11 of Part 691 and adopt a new section 691.11 thereof as follows:

§ 691.11 Reinstatement Following Suspension, Disbarment, or Striking of Name from Roll of Attorneys

(a) *Timing of Application.* No attorney disbarred after a hearing or on consent, or whose name has been stricken from the roll of attorneys pursuant to subdivision 4 of section 90 of the Judiciary Law or section 691.9 of this Part may apply for reinstatement until the expiration of at least seven years from the effective date of the disbarment or removal. An attorney suspended under the provisions of this Part shall be entitled to apply for reinstatement after such an interval as this court may direct in the order of suspension or any modification thereof.

(b) *Form and Notice of Application.* An application for reinstatement shall be made in the form of a motion in accordance with instructions specified by administrative order of the court. The instructions shall be available in the office of the clerk of the court and on the court's internet site. The motion for reinstatement shall be made upon notice to the appropriate grievance committee and the Lawyers' Fund for Client Protection, which may submit papers in opposition or in relation thereto.

(c) *Required Showing.* An application for reinstatement may be granted by the court only upon a showing:

(1) by clear and convincing evidence, that the applicant has complied with the provisions of the order disbarring or suspending him or her, or striking his or her name from the roll of attorneys, and that he or she possesses the character and general fitness to practice law; and,

(2) if the applicant was disbarred or suspended from the practice of law for more than one year, that (i) subsequent to the entry of such order, he or she attained a passing score on the Multistate Professional Responsibility Examination described in section 520.9(a) of the rules of the Court of Appeals for the admission of attorneys and counselors-at-law, the passing score thereon being that determined by the New York State Board of Law Examiners pursuant to section 520.9(c) of such rules, and (ii) he or she has successfully completed one credit hour of continuing legal education accredited in accordance with Part 1500 of this Title for each month of disbarment or suspension up to a maximum of twenty-four credits. The continuing legal education required by clause (ii) of this paragraph shall be completed during the period of disbarment or suspension and within the two years preceding reinstatement. Compliance with clause (ii) of this

paragraph may, upon request of the applicant, be deferred pending notification that the court has conditionally granted the application for reinstatement subject to the completion of required continuing legal education; or,

(3) if the applicant was suspended from the practice of law for one year, that during the period of suspension (i) he or she and successfully completed eighteen credit hours of continuing legal education accredited in accordance with Part 1500 of this Title, six credit hours of which were in the area of ethics and professionalism as defined in subdivision (c) of section 1500.2 of this Title, or (ii) he or she has successfully completed twelve credit hours of continuing legal education accredited in accordance with Part 1500 of this Title and has attained a passing score on the Multistate Professional Responsibility Examination as set forth in clause (i) of paragraph (2) of this subdivision; or,

(4) if the applicant was suspended from the practice of law for less than one year, that during the period of suspension he or she has successfully completed one credit hour of continuing legal education accredited in accordance with Part 1500 of this Title for each month of suspension.

(d) *Character and Fitness Review.* The court shall refer an application for reinstatement after a suspension of more than one year or after a disbarment to a Committee on Character and Fitness in this judicial department or to a referee, justice, or judge for a report before granting that application and, in its discretion, may similarly refer an application for reinstatement after a suspension of one year or less.

(e) *Renewed Motion for Reinstatement.* No renewed motion for reinstatement shall be accepted for filing within one year of the entry of an order of this court denying a prior motion for such relief, unless the order denying the prior motion provides otherwise.

(f) *Expenses.* The court may direct that the necessary expenses incurred in the investigation and processing of a motion for reinstatement be paid by the applicant.

V. Adopt a new section 691.11-a of Part 691 as follows:

§ 691.11-a Reinstatement After Voluntary Resignation

(a) *Form and Notice of Application.* An application for reinstatement by a person who has voluntarily resigned from the bar of this state shall be made in the form of a motion in accordance with instructions specified by administrative order of the court. The instructions shall be available in the office of the clerk of the court and on the court's internet site. The motion for reinstatement shall be made upon notice to the grievance committee in the judicial district in which the applicant last maintained an office for the practice of law, or if none, to the grievance committee in the judicial district in which the applicant resided when admitted to practice, which may submit papers in opposition or in relation thereto.

(c) *Required Showing.* An application for reinstatement may be granted by the court only upon an affidavit or affirmation stating:

(1) the circumstances of the applicant's resignation from the bar and the reason for applying for reinstatement;

(2) whether the applicant has been the subject of a disciplinary complaint or proceeding in any other jurisdiction and the results thereof;

(3) that the applicant is in good standing at the bar of any other jurisdiction in which he or she is admitted to practice; and,

(4) that the applicant has successfully completed one credit hour of continuing legal education accredited in accordance with Part 1500 of this Title for each month since the date of the order of this court accepting the resignation and removing his or her name from the roll of attorneys, up to a maximum of twenty-four credits.

Attached to the moving papers shall be a current certificate of good standing from each jurisdiction in which the applicant is admitted to practice and certificates establishing compliance with the continuing legal education requirement of paragraph (4) of this subdivision.

(d) Character and Fitness Review. The court may refer an application for reinstatement after a voluntary resignation to a Committee on Character and Fitness in this judicial department or to a referee, justice, or judge for a report before granting that application.

VI. Adopt a new paragraph (3) of subdivision (b) of section 691.13 of Part 691 as follows:

§ 691.13 Proceedings Where Attorney is Declared Incompetent or Alleged to Be Incapacitated

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(b) Proceeding to Determine Alleged Incapacity and Suspension Upon Such Determination.

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(3) Any report prepared by a qualified medical expert designated by the court pursuant to paragraph (1) of this subdivision and filed in the office of the clerk of this court shall be made available to counsel for the committee and to counsel for the respondent.

Dated: Brooklyn, New York
July 22, 2005



For the Court:

A handwritten signature in black ink, appearing to read "A. Gail Prudenti".

A. Gail Prudenti
Presiding Justice

Attest:

A handwritten signature in black ink, appearing to read "James Edward Pelzer".
James Edward Pelzer
Clerk of the Court