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Appellate Division *First Judicial Department*

Supreme Court of the State of New York

Departmental Disciplinary Committee

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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

- a.
 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.

§ 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.)

.....
Code Number

2. Name and present address of client
 3. Plaintiff(s)
 4. Defendant(s)
 5.
 - a. If an action was commenced, state the date:
.....,20...,Court.....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 of,20..
Date of payment to client....day of,19...
 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.
 13. 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.
 14. 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 of,20...
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).
3. 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
 1. 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.
 2. 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.
 1. 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

- i. 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
 - i. 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. The designated committees shall report to the Court in writing.
- 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 520.7 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.
- g. 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

- 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.
- 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.
- 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

- 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:
 - Name of attorney;
 - Association with firm (if any);
 - Business address;
 - Telephone number;
 - Docket number of adoption proceeding;
 - Court where adoption has been filed;
 - 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;
 - 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;
 - A brief statement of the nature of the services rendered;
 - 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;
 - 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;
 - The name and address of any other person, agency, association, corporation, institution, society or organization who received or will receive any compensation or thing of value from the attorney, directly or indirectly, on account of or incidental to any assistance or service in connection with the proposed adoption. The amount of such compensation or thing of value;

13. The name and address, if known, of any person, agency, association, corporation, institution, society or organization to whom compensation or thing of value has been paid or given or is to be paid or given by any source for the placing out of, or on account of or incidental to assistance in arrangements for the placement or adoption of the adoptive child. The amount of such compensation or thing of value and the services performed or the purposes for which the payment was made; and
 14. A brief statement as to the date and manner in which the initial contact occurred between the attorney and the adoptive parents or natural parents with respect to the proposed adoption.
- b. Names or other information likely to identify the natural or adoptive parents or the adoptive child are to be omitted from the information to be supplied in the attorney's statement.
- c. Such statement may be filed personally by the attorney or his representative at the main office of the Office of Court Administration in the City of New York, and upon such filing he shall receive a date-stamped receipt containing the code number assigned to the original so filed. Such statement may also be filed by ordinary mail addressed to:
- Office of Court Administration -
Adoption Affidavits
Post Office Box No. 2016
New York, 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.



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