CONTINUING LEGAL EDUCATION

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CURRENT ETHICS ISSUES IN CRIMINAL LAW

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HYPOTHETICALS

Hypothetical # 1

Z, a former Assistant District Attorney, was recently hired as a Law Secretary in the Supreme Court. One day Z is assigned to assist the Judge in the Integrated Domestic Violence Part ("IDVP"). On the way home from dinner, D was stopped by the police at a DWI checkpoint and took a Breathalyzer test. That same day, D is being arraigned in the IDVP on charges of Criminal Contempt and DWI because it is alleged that he took his estranged wife to dinner and drinks, in violation of a Temporary Order of Protection. Just prior to D's arraignment, Z overhears two Assistant District Attorneys ("ADAs") discussing the fact that the Breathalyzer administered by the police came back with negative results indicating that D was not intoxicated. The ADAs further state that they have not turned over the results, because D consented to a blood test and they want to wait for the results from the lab before disclosing the Breathalyzer results. One of the ADAs is Z's spouse, the other is a Bureau Chief in the DA's Office. D is arraigned and bail is set based on all charges including the DWI.

1. Is there any problem with Z working in a Court part where his spouse regularly appears?

2. Does Z have a duty to report what he overheard?

3. What if any obligations do the ADA's have with respect to the results of the Breathalyzer at arraignment?

Hypothetical # 2

A is a criminal defense attorney who is a member of the 18 B Panel. One evening, A is appearing in the arraignment part. The Judge calls A up to the bench and explains that two co-defendants "B and C" and that the case (the last one on the calendar for the evening) is going to be called in the next five minutes. B and C are being charged with Criminal Possession of Stolen Property in the Fourth Degree (an E felony) and Criminal Possession of a Forged Instrument in the Second Degree (a D Felony). Apparently B and C were arrested as they entered a stolen car that was under surveillance. The trunk of the car contained three shopping bags with merchandise with receipts for more than one thousand dollars from each store (three I-Pads in one bag, women's clothing in the second bag and men's clothing in the third bag). When they were searched B's handbag held a wallet that she claimed C asked her to hold for him. C refused to make any statements, but the wallet contained his NY State Driver's License, and two credit cards with someone else's identity; one with a woman's name and the other with a man's name.. The Court Officers advised the Judge that B and C got into a fist fight in the conference room when meeting with their private counsel D (who put in a Notice of Appearance for both B and C with the notation "For Arraignment Only"). The two were separated and B told D "Get away from me. You are not my lawyer. You are only looking out for C. I am so done with him. From now on I am looking out for myself". As a result, the Judge says she is worried about a conflict but needs to move her calendar. The Judge asks A to do her a favor and stand up on the case for the Arraignment. A speaks with B and finds out that B's family will put up bail money because B is a young lawyer in a small local matrimonial firm. A stands up on the case and reports to the Court that B will retain private counsel. The Judge says "That's fine, but for now you are

the 18B counsel assigned to this case". The Judge sets bail at $10,000 each. B's family immediately posts her bail and B is released. A notes his time as one hour so that he can later submit his 18B voucher to the Court.

Two days later, B and her father appear at A's office without an appointment. A meets with them and B explains that even though she is lawyer, (the first in her family), she does not know the criminal process and does not want to tell her law firm what is going on. Moreover, her former boyfriend C wants her to use an attorney that his attorney D recommends, so that "everyone can work together" and that C has agreed to pay her legal fees. B says that A looked like he knew his way around the courtroom, that the Judge liked him, and that she trusted him, rather than anyone that C or D recommends. She asks A to represent her. A says he could do so for a flat fee of $15,000. A says that she can pay him $5,000 now and that her father will sign a note that A can have the $10,000 bail money when the case is over. A agrees and has C sign a retainer that he will "represent her in the case of *People v. C* and any matters related thereto". The retainer also states that C will pay A as follows: "$5,000 immediately and $10,000 at the conclusion of the case". A later drafts a separate letter for C's father in which C's father agrees that A's fee can be paid from the bail money which her sends to C's father to sign, but C's father never sends it back. A never submits a voucher for the arraignment but does submit a Notice of Appearance to the Court listing himself as privately retained.

As the case progresses, A discusses several plea offers with the prosecutor. Initially, A tells C about the offers. C rejects them and tells A "Don't tell me about any more plea offers unless they involve a dismissal!" One day, C brings A copies of several Email messages that she downloaded from her laptop which B used when he was at the apartment one evening. B's messages were sent to his lawyer, as well as his business partner, E. C makes admissions that he gave her his wallet. He also states that C was unaware that the car was stolen or that he had the forged credit cards. A says "Leave the messages with me and I will figure out what do about them".

A meets with the prosecutor to further explore a plea. The prosecutor tells A that she is willing to allow C to plead to a misdemeanor. A explains that C was unaware and should not have to pay the price of being on a date with the wrong person. The prosecutor replies that C must have known what B was up to because B and C spent the day shopping together, B was holding C's wallet and C is a lawyer. The prosecutor gets called out of her office for five minutes by her paralegal, leaving her file open on her desk. Even though the papers are upside down, A spots a "To do" list with names of witnesses and their contact information on the list; one of the names on the list is E. So A uses his I-phone to take a picture of the To do list. Thereafter, A contacts E who refuses to speak to him about the case.

In the meantime, C gets a letter from the Disciplinary Committee that they have opened a "Sua Sponte" complaint pertaining to her arrest, and requesting that she appear for an examination under oath at their office. C contacts A and requests his help. A says, "I never signed up for that, I only signed up for the criminal case and thought you would take a plea. You are on your own when it comes to any ethics issues – I don't know a thing about them".

A later gets a plea offer of a violation with a Conditional Discharge and Restitution. A effusively recommends that C take the deal and she agrees. After the plea A arranges for the release of the $10,000 bail, deposits the check and pays his fee.

One week later, C fires A and demands that he return the $10,000 to her father because he never signed A's letter and did not agree to pay her fee. Moreover, C stated that A engaged in malpractice because his retainer agreed to "represent her in the case of *People v. C* and any matters related thereto", so he should have represented her before the Disciplinary Committee, which has an ongoing investigation. She has had to hire new counsel who advised her that she never should have admitted any wrongdoing in her plea allocution because doing so will affect her license to practice law.

1. Was A required to do the Judge a favor by standing up on the case?

2. Did the Judge do anything wrong by asking A to stand up on the case at arraignment?

3. Once A agreed to be appointed as 18B counsel for C, could A later be retained as private counsel on C's case? Did it make a difference that A never submitted the Voucher?

4. Were there any problems in A's meeting with C and her father?

5. If C's father had signed the agreement prepared by A, was A's agreement to take his final $10,000 payment from the bail money a valid agreement?

6. What was A required to do about B's email that C obtained from her computer?

7. If the case had gone to trial, would A have been able to submit B's email as evidence? Would it have ben admissible?

8. Was A obligated to tell C about plea offers other than those involving a dismissal?

9. Should A have taken the photograph of the prosecutor's to do list?

10. Was it okay for A to contact E as a potential witness for C?

11. Was A required to represent C in the disciplinary matter?

12. Should A have advised C differently with respect to other possible consequences of her plea?

13. Can the disciplinary authorities proceed with an investigation even though C pled to a violation and her conduct was unrelated to any client matters she may have handled?

14. What was A required to do with respect to the request to return the $10,000?

N.Y. Rules of Professional Conduct

NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200 –

RULES OF PROFESSIONAL CONDUCT

APRIL 1, 2009

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THESE RULES OF PROFESSIONAL CONDUCT WERE PROMULGATED AS JOINT RULES OF THE APPELLATE DIVISIONS OF THE SUPREME COURT, EFFECTIVE APRIL 1, 2009. THEY SUPERSEDE THE FORMER PART 1200 (DISCIPLINARY RULES OF THE CODE OF PROFESSIONAL RESPONSIBILITY).

THE NEW YORK STATE BAR ASSOCIATION HAS ISSUED A PREAMBLE, SCOPE AND COMMENTS TO ACCOMPANY THESE RULES. THEY ARE NOT ENACTED WITH THIS PART, AND WHERE A CONFLICT EXISTS BETWEEN A RULE AND THE PREAMBLE, SCOPE OR A COMMENT, THE RULE CONTROLS.

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PART 1200 - RULES OF PROFESSIONAL CONDUCT

RULE 1.0:
TERMINOLOGY

(a) "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

(b) "Belief" or "believes" denotes that the person involved actually believes the fact in question to be true. A person's belief may be inferred from circumstances.

(c) "Computer-accessed communication" means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

(d) "Confidential information" is defined in Rule 1.6.

(e) "Confirmed in writing" denotes (i) a writing from the person to the lawyer confirming that the person has given consent, (ii) a writing that the lawyer promptly transmits to the person confirming the person's oral consent, or (iii) a statement by the person made on the record of any proceeding before a tribunal. If it is not feasible to obtain or transmit the writing at the time the person gives oral consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(f) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(g) "Domestic relations matter" denotes representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support or alimony, or to enforce or modify a judgment or order in connection with any such claim, action or proceeding.

(h) "Firm" or "law firm" includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.

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

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

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

(l) "Matter" includes any litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, ar-

rest, negotiation, arbitration, mediation or any other representation involving a specific party or parties.

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

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

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

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

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

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

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

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

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

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

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

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

RULE 1.1:

COMPETENCE

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

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

(c) lawyer shall not intentionally:

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

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

RULE 1.2:

SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.

(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.

(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

(g) A lawyer does not violate this Rule by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process.

RULE 1.3:

DILIGENCE

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

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

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

RULE 1.4:

COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of:

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

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

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

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

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

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

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

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

RULE 1.5:

FEES AND DIVISION OF FEES

(a) A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule. This provision shall not apply when the lawyer will charge a regularly represented client on the same basis or rate and perform services that are of the same general kind as previously rendered to and paid for by the client. Any changes in the scope of the representation or the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a writing stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge or collect:

(1) a contingent fee for representing a defendant in a criminal matter;

(2) a fee prohibited by law or rule of court;

(3) fee based on fraudulent billing;

(4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated; or

(5) any fee in a domestic relations matter if:

(i) the payment or amount of the fee is contingent upon the securing of a divorce or of obtaining child custody or visitation or is in any way determined by reference to

the amount of maintenance, support, equitable distribution, or property settlement;

(ii) a written retainer agreement has not been signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement; or

(iii) the written retainer agreement includes a security interest, confession of judgment or other lien without prior notice being provided to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

(e) In domestic relations matters, a lawyer shall provide a prospective client with a statement of client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement.

(f) Where applicable, a lawyer shall resolve fee disputes by arbitration at the election of the client pursuant to a fee arbitration program established by the Chief Administrator of the Courts and approved by the Administrative Board of the Courts.

(g) A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless:

(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and

(3) the total fee is not excessive.

(h) Rule 1.5(g) does not prohibit payment to a lawyer formerly associated in a law firm pursuant to a separation or retirement agreement.

RULE 1.6:
CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

"Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime;

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representa-

tion was based on materially inaccurate information or is being used to further a crime or fraud;

(4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;

(5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or

(ii) to establish or collect a fee; or

(6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.

RULE 1.7:

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

(1) the representation will involve the lawyer in representing differing interests; or

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

RULE 1.8:

CURRENT CLIENTS: SPECIFIC CONFLICT OF INTEREST RULES

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not:

(1) solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or

(2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer

any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable.

For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

(1) a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or

(2) any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and

(3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j) (1) A lawyer shall not:

(i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person;

(ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or

(iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

(2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

RULE 1.9:

DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or

(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

RULE 1.10:

IMPUTATION OF CONFLICTS OF INTEREST

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

(b) When a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that the firm knows or reasonably should know are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or Rule 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.

(d) A disqualification prescribed by this Rule may be

waived by the affected client or former client under the conditions stated in Rule 1.7.

(e) A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which proposed engagements are checked against current and previous engagements when:

(1) the firm agrees to represent a new client;

(2) the firm agrees to represent an existing client in a new matter;

(3) the firm hires or associates with another lawyer; or

(4) an additional party is named or appears in a pending matter.

(f) Substantial failure to keep records or to implement or maintain a conflict-checking system that complies with paragraph (e) shall be a violation thereof regardless of whether there is another violation of these Rules.

(g) Where a violation of paragraph (e) by a law firm is a substantial factor in causing a violation of paragraph (a) by a lawyer, the law firm, as well as the individual lawyer, shall be responsible for the violation of paragraph (a).

(h) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

RULE 1.11:

SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly provide, a lawyer who has formerly served as a public officer or employee of the government:

(1) shall comply with Rule 1.9(c); and

(2) shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. This provision shall not apply to matters governed by Rule 1.12(a).

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(c) Except as law may otherwise expressly provide, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in

this Rule, the term "confidential government information" means information that has been obtained under governmental authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely and effectively screened from any participation in the matter in accordance with the provisions of paragraph (b).

(d) Except as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially.

(e) As used in this Rule, the term "matter" as defined in Rule 1.0(l) does not include or apply to agency rulemaking functions.

(f) A lawyer who holds public office shall not:

(1) use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest;

(2) use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client; or

(3) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

RULE 1.12:

SPECIFIC CONFLICTS OF INTEREST FOR FORMER JUDGES, ARBITRATORS, MEDIATORS OR OTHER THIRD-PARTY NEUTRALS

(a) A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

(b) Except as stated in paragraph (e), and unless all parties to the proceeding give informed consent, confirmed in writing, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as:

(1) an arbitrator, mediator or other third-party neutral; or

(2) a law clerk to a judge or other adjudicative officer or an arbitrator, mediator or other third-party neutral.

(c) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral.

(d) When a lawyer is disqualified from representation under this Rule, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(e) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13:
ORGANIZATION AS CLIENT

(a) When a lawyer employed or retained by an organization is dealing with the organization's directors, officers, employees, members, shareholders or other constituents, and it appears that the organization's interests may differ from those of the constituents with whom the lawyer is dealing, the lawyer shall explain that the lawyer is the lawyer for the organization and not for any of the constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action or intends to act or refuses to act in a matter related to the representation that (i) is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization, and (ii) is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include, among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly in violation of law and is likely to result in a substantial injury to the organization, the lawyer may reveal confidential information only if permitted by Rule 1.6, and may resign in accordance with Rule 1.16.

(d) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the concurrent representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

RULE 1.14:
CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a conventional relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial

physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15:

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

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

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

(b) Separate Accounts.

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

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

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

(4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging

to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

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

A lawyer shall:

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

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

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

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

(d) Required Bookkeeping Records.

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

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

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

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

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

(v) copies of all bills rendered to clients;

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

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

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

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

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

(e) Authorized Signatories.

All special account withdrawals shall be made only

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

(f) Missing Clients.

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

(g) Designation of Successor Signatories.

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

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

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

(h) Dissolution of a Firm.

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

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

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

(j) Disciplinary Action.

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

RULE 1.16:
DECLINING OR TERMINATING REPRESENTATION

(a) A lawyer shall not accept employment on behalf of a person if the lawyer knows or reasonably should know that such person wishes to:

(1) bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken for such person, merely for the purpose of harassing or maliciously injuring any person; or

(2) present a claim or defense in a matter that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law.

(b) Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when:

(1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the lawyer knows or reasonably should know that the client is bringing the legal action, conducting the defense, or asserting a position in the matter, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.

(c) Except as stated in paragraph (d), a lawyer may withdraw from representing a client when:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action with which the lawyer has a fundamental disagreement;

(5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;

(6) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively;

(8) the lawyer's inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal;

(9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;

(10) the client knowingly and freely assents to termination of the employment;

(11) withdrawal is permitted under Rule 1.13(c) or other law;

(12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal; or

(13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

(d) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a matter before that tribunal without its permission. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(e) Even when withdrawal is otherwise permitted or required, upon termination of representation, a

lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.

RULE 1.17:
SALE OF LAW PRACTICE

(a) A lawyer retiring from a private practice of law; a law firm, one or more members of which are retiring from the private practice of law with the firm; or the personal representative of a deceased, disabled or missing lawyer, may sell a law practice, including goodwill, to one or more lawyers or law firms, who may purchase the practice. The seller and the buyer may agree on reasonable restrictions on the seller's private practice of law, notwithstanding any other provision of these Rules. Retirement shall include the cessation of the private practice of law in the geographic area, that is, the county and city and any county or city contiguous thereto, in which the practice to be sold has been conducted.

(b) Confidential information.

(1) With respect to each matter subject to the contemplated sale, the seller may provide prospective buyers with any information not protected as confidential information under Rule 1.6.

(2) Notwithstanding Rule 1.6, the seller may provide the prospective buyer with information as to individual clients:

(i) concerning the identity of the client, except as provided in paragraph (b)(6);

(ii) concerning the status and general nature of the matter;

(iii) available in public court files; and

(iv) concerning the financial terms of the client-lawyer relationship and the payment status of the client's account.

(3) Prior to making any disclosure of confidential information that may be permitted under paragraph (b)(2), the seller shall provide the prospective buyer with information regarding the matters involved in the proposed sale sufficient to enable the prospective buyer to determine whether any conflicts of interest exist. Where sufficient information cannot be disclosed without revealing client confidential information, the seller may make the disclosures necessary for the prospective buyer to determine whether any conflict of interest exists, subject to paragraph (b)(6). If the prospective buyer determines that conflicts of interest exist prior to reviewing the information, or determines during the course of review that a conflict of interest exists, the prospective buyer shall not review or continue to review the information unless the seller shall have obtained the consent of the client in accordance with Rule 1.6(a)(1).

(4) Prospective buyers shall maintain the confidentiality of and shall not use any client information received in connection with the proposed sale in the same manner and to the same extent as if the prospective buyers represented the client.

(5) Absent the consent of the client after full disclosure, a seller shall not provide a prospective buyer with information if doing so would cause a violation of the attorney-client privilege.

(6) If the seller has reason to believe that the identity of the client or the fact of the representation itself constitutes confidential information in the circumstances, the seller may not provide such information to a prospective buyer without first advising the client of the identity of the prospective buyer and obtaining the client's consent to the proposed disclosure.

(c) Written notice of the sale shall be given jointly by

the seller and the buyer to each of the seller's clients and shall include information regarding:

(1) the client's right to retain other counsel or to take possession of the file;

(2) the fact that the client's consent to the transfer of the client's file or matter to the buyer will be presumed if the client does not take any action or otherwise object within 90 days of the sending of the notice, subject to any court rule or statute requiring express approval by the client or a court;

(3) the fact that agreements between the seller and the seller's clients as to fees will be honored by the buyer;

(4) proposed fee increases, if any, permitted under paragraph (e); and

(5) the identity and background of the buyer or buyers, including principal office address, bar admissions, number of years in practice in New York State, whether the buyer has ever been disciplined for professional misconduct or convicted of a crime, and whether the buyer currently intends to resell the practice.

(d) When the buyer's representation of a client of the seller would give rise to a waivable conflict of interest, the buyer shall not undertake such representation unless the necessary waiver or waivers have been obtained in writing.

(e) The fee charged a client by the buyer shall not be increased by reason of the sale, unless permitted by a retainer agreement with the client or otherwise specifically agreed to by the client.

RULE 1.18:

DUTIES TO PROSPECTIVE CLIENTS

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client."

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the firm acts promptly and reasonably to notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;

(iii) the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) written notice is promptly given to the prospective client; and

(3) a reasonable lawyer would conclude that the

law firm will be able to provide competent and diligent representation in the matter.

(e) A person who:

(1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or

(2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter, is not a prospective client with the meaning of paragraph (a).

RULE 2.1:
ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors that may be relevant to the client's situation.

RULE 2.2:
[RESERVED]

RULE 2.3:
EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Unless disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is protected by Rule 1.6.

RULE 2.4:
LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a "third-party neutral" when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

RULE 3.1:
NON-MERITORIOUS CLAIMS AND CONTENTIONS

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. A lawyer for the defendant in a criminal proceeding or for the respondent in a proceeding that could result in incarceration may nevertheless so defend the proceeding as to require that every element of the case be established.

(b) A lawyer's conduct is "frivolous" for purposes of this Rule if:

(1) the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) the conduct has no reasonable purpose other than to delay or prolong the resolution of litigation, in violation of Rule 3.2, or serves merely

to harass or maliciously injure another; or

(3) the lawyer knowingly asserts material factual statements that are false.

RULE 3.2:

DELAY OF LITIGATION

In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense.

RULE 3.3:

CONDUCT BEFORE A TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) In presenting a matter to a tribunal, a lawyer shall disclose, unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

(f) In appearing as a lawyer before a tribunal, a lawyer shall not:

(1) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply;

(2) engage in undignified or discourteous conduct;

(3) intentionally or habitually violate any established rule of procedure or of evidence; or

(4) engage in conduct intended to disrupt the tribunal.

RULE 3.4:

FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) (1) suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce;

(2) advise or cause a person to hide or leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein;

(3) conceal or knowingly fail to disclose that which the lawyer is required by law to reveal;

(4) knowingly use perjured testimony or false evidence;

(5) participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false; or

(6) knowingly engage in other illegal conduct or

conduct contrary to these Rules;

(b) offer an inducement to a witness that is prohibited by law or pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the matter. A lawyer may advance, guarantee or acquiesce in the payment of:

(1) reasonable compensation to a witness for the loss of time in attending, testifying, preparing to testify or otherwise assisting counsel, and reasonable related expenses; or

(2) a reasonable fee for the professional services of an expert witness and reasonable related expenses;

(c) disregard or advise the client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling;

(d) in appearing before a tribunal on behalf of a client:

(1) state or allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence;

(2) assert personal knowledge of facts in issue except when testifying as a witness;

(3) assert a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein; or

(4) ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person; or

(e) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

RULE 3.5:

MAINTAINING AND PRESERVING THE IMPARTIALITY OF TRIBUNALS AND JURORS

(a) A lawyer shall not:

(1) seek to or cause another person to influence a judge, official or employee of a tribunal by means prohibited by law or give or lend anything of value to such judge, official, or employee of a tribunal when the recipient is prohibited from accepting the gift or loan but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Part 100 of the Rules of the Chief Administrator of the Courts;

(2) in an adversarial proceeding communicate or cause another person to do so on the lawyer's behalf, as to the merits of the matter with a judge or official of a tribunal or an employee thereof before whom the matter is pending, except:

(i) in the course of official proceedings in the matter;

(ii) in writing, if the lawyer promptly delivers a copy of the writing to counsel for other parties and to a party who is not represented by a lawyer;

(iii) orally, upon adequate notice to counsel for the other parties and to any party who is not represented by a lawyer; or

(iv) as otherwise authorized by law, or by Part 100 of the Rules of the Chief Administrator of the Courts;

(3) seek to or cause another person to influence a juror or prospective juror by means prohibited by law;

(4) communicate or cause another to communicate with a member of the jury venire from which the jury will be selected for the trial of a case or, during the trial of a case, with any member of

the jury unless authorized to do so by law or court order;

(5) communicate with a juror or prospective juror after discharge of the jury if:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the lawyer a desire not to communicate;

(iii) the communication involves misrepresentation, coercion, duress or harassment; or

(iv) the communication is an attempt to influence the juror's actions in future jury service; or

(6) conduct a vexatious or harassing investigation of either a member of the venire or a juror or, by financial support or otherwise, cause another to do so.

(b) During the trial of a case a lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(c) All restrictions imposed by this Rule also apply to communications with or investigations of members of a family of a member of the venire or a juror.

(d) A lawyer shall reveal promptly to the court improper conduct by a member of the venire or a juror, or by another toward a member of the venire or a juror or a member of his or her family of which the lawyer has knowledge.

RULE 3.6:

TRIAL PUBLICITY

(a) A lawyer who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) A statement ordinarily is likely to prejudice materially an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness or the expected testimony of a party or witness;

(2) in a criminal matter that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Provided that the statement complies with paragraph (a), a lawyer may state the following without elaboration:

(1) the claim, offense or defense and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal matter:

(i) the identity, age, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the identity of investigating and arresting officers or agencies and the length of the investigation; and

(iv) the fact, time and place of arrest, resistance, pursuit and use of weapons, and a description of physical evidence seized, other than as contained only in a confession, admission or statement.

(d) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(e) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

RULE 3.7:

LAWYER AS WITNESS

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:

(1) the testimony relates solely to an uncontested issue;

(2) the testimony relates solely to the nature and value of legal services rendered in the matter;

(3) disqualification of the lawyer would work substantial hardship on the client;

(4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or

(5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if:

(1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or

(2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

RULE 3.8:

SPECIAL RESPONSIBILITIES OF PROSECUTORS AND OTHER GOVERNMENT LAWYERS

(a) A prosecutor or other government lawyer shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor or other government lawyer knows or it is obvious that the charge is not supported by probable cause.

(b) A prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant or to a defendant who has no counsel of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence, except when relieved of this responsibility by a protective order of a tribunal.

RULE 3.9:

ADVOCATE IN NON-ADJUDICATIVE MATTERS

A lawyer communicating in a representative capacity with a legislative body or administrative agency in connection with a pending non-adjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the lawyer seeks information from an agency that is available to the public.

RULE 4.1:

TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

RULE 4.2:

COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law.

(b) Notwithstanding the prohibitions of paragraph (a), and unless otherwise prohibited by law, a lawyer may cause a client to communicate with a represented person unless the represented person is not legally competent, and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

RULE 4.3:

COMMUNICATING WITH UNREPRESENTED PERSONS

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

RULE 4.4:

RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass or harm a third person or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

RULE 4.5:

COMMUNICATION AFTER INCIDENTS INVOLVING PERSONAL INJURY OR WRONGFUL DEATH

(a) In the event of a specific incident involving potential claims for personal injury or wrongful death, no unsolicited communication shall be made to an individual injured in the incident or to a family member or legal representative of such an individual, by a lawyer or law firm, or by any associate, agent, employee or other representative of a lawyer or law firm representing actual or potential defendants or entities that may defend and/or indemnify said defendants, before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after

the date of the incident.

(b) An unsolicited communication by a lawyer or law firm, seeking to represent an injured individual or the legal representative thereof under the circumstance described in paragraph (a) shall comply with Rule 7.3(e).

RULE 5.1:

RESPONSIBILITIES OF LAW FIRMS, PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b) (1) A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.2:

RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3:

LAWYER'S RESPONSIBILITY FOR CONDUCT OF NONLAWYERS

(a) A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter and the like-

lihood that ethical problems might arise in the course of working on the matter.

(b) A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed or is a lawyer who has supervisory authority over the nonlawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.4:

PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or another lawyer associated in the firm may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation that fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may compensate a nonlawyer employee or include a nonlawyer employee in a retirement plan based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) Unless authorized by law, a lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal service for another to direct or regulate the lawyer's professional judgment in rendering such legal services or to cause the lawyer to compromise the lawyer's duty to maintain the confidential information of the client under Rule 1.6.

(d) A lawyer shall not practice with or in the form of an entity authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a member, corporate director or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

RULE 5.5:

UNAUTHORIZED PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

RULE 5.6:

RESTRICTIONS ON RIGHT TO PRACTICE

(a) A lawyer shall not participate in offering or making:

(1) a partnership, shareholder, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a client controversy.

(b) This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

RULE 5.7:

RESPONSIBILITIES REGARDING NONLEGAL SERVICES

(a) With respect to lawyers or law firms providing nonlegal services to clients or other persons:

(1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the provision of both legal and nonlegal services.

(2) A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(3) A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

(4) For purposes of paragraphs (a)(2) and (a)(3), it will be presumed that the person receiving nonlegal services believes the services to be the subject of a client-lawyer relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is de minimis.

(b) Notwithstanding the provisions of paragraph (a), a lawyer or law firm that is an owner, controlling party, agent, or is otherwise affiliated with an entity that the lawyer or law firm knows is providing nonlegal services to a person shall not permit any nonlawyer providing such services or affiliated with that entity to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person, or to cause the lawyer or law firm to compromise its duty under Rule 1.6(a) and (c) with respect to the confidential information of a client receiving legal services.

(c) For purposes of this Rule, "nonlegal services" shall mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.

RULE 5.8:

CONTRACTUAL RELATIONSHIP BETWEEN LAWYERS AND NONLEGAL PROFESSIONALS

(a) The practice of law has an essential tradition of complete independence and uncompromised loyalty to those it serves. Recognizing this tradition, clients of lawyers practicing in New York State are guaranteed "independent professional judgment and undivided loyalty uncompromised by conflicts

of interest." Indeed, these guarantees represent the very foundation of the profession and allow and foster its continued role as a protector of the system of law. Therefore, a lawyer must remain completely responsible for his or her own independent professional judgment, maintain the confidences and secrets of clients, preserve funds of clients and third parties in his or her control, and otherwise comply with the legal and ethical principles governing lawyers in New York State.

Multi-disciplinary practice between lawyers and nonlawyers is incompatible with the core values of the legal profession and therefore, a strict division between services provided by lawyers and those provided by nonlawyers is essential to protect those values. However, a lawyer or law firm may enter into and maintain a contractual relationship with a nonlegal professional or nonlegal professional service firm for the purpose of offering to the public, on a systematic and continuing basis, legal services performed by the lawyer or law firm as well as other nonlegal professional services, notwithstanding the provisions of Rule 1.7(a), provided that:

(1) the profession of the nonlegal professional or nonlegal professional service firm is included in a list jointly established and maintained by the Appellate Divisions pursuant to Section 1205.3 of the Joint Appellate Division Rules;

(2) the lawyer or law firm neither grants to the nonlegal professional or nonlegal professional service firm, nor permits such person or firm to obtain, hold or exercise, directly or indirectly, any ownership or investment interest in, or managerial or supervisory right, power or position in connection with the practice of law by the lawyer or law firm, nor, as provided in Rule 7.2(a)(1), shares legal fees with a nonlawyer or receives or gives any monetary or other tangible benefit for giving or receiving a referral; and

(3) the fact that the contractual relationship exists is disclosed by the lawyer or law firm to any client of the lawyer or law firm before the client is referred to the nonlegal professional service firm, or to any client of the nonlegal professional service firm before that client receives legal services from the lawyer or law firm; and the client has given informed written consent and has been provided with a copy of the "Statement of Client's Rights In Cooperative Business Arrangements" pursuant to section 1205.4 of the Joint Appellate Divisions Rules.

(b) For purposes of paragraph (a):

(1) each profession on the list maintained pursuant to a Joint Rule of the Appellate Divisions shall have been designated sua sponte, or approved by the Appellate Divisions upon application of a member of a nonlegal profession or nonlegal professional service firm, upon a determination that the profession is composed of individuals who, with respect to their profession:

(i) have been awarded a bachelor's degree or its equivalent from an accredited college or university, or have attained an equivalent combination of educational credit from such a college or university and work experience;

(ii) are licensed to practice the profession by an agency of the State of New York or the United States Government; and

(iii) are required under penalty of suspension or revocation of license to adhere to a code of ethical conduct that is reasonably comparable to that of the legal profession;

(2) the term "ownership or investment interest" shall mean any such interest in any form of debt or equity, and shall include any interest commonly considered to be an interest accruing to or enjoyed by an owner or investor.

(c) This Rule shall not apply to relationships consisting solely of non-exclusive reciprocal referral agreements or understandings between a lawyer or law firm and a nonlegal professional or nonlegal professional service firm.

RULE 6.1:

VOLUNTARY PRO BONO SERVICE

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

(1) provide at least 20 hours of pro bono legal services each year to poor persons; and

(2) contribute financially to organizations that provide legal services to poor persons.

(b) Pro bono legal services that meet this goal are:

(1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) Appropriate organizations for financial contributions are:

(1) organizations primarily engaged in the provision of legal services to the poor; and

(2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

(d) This Rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

RULE 6.2:

[RESERVED]

RULE 6.3:

MEMBERSHIP IN A LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests that differ from those of a client of the lawyer or the lawyer's firm. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rules 1.7 through 1.13; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests differ from those of a client of the lawyer or the lawyer's firm.

RULE 6.4

LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer actively participates, the lawyer shall disclose that fact to the organization, but need not identify the client. When the lawyer knows that the interests of a client may be adversely affected by a decision in which the lawyer actively participates, the lawyer shall disclose that fact to the client.

RULE 6.5:

PARTICIPATION IN LIMITED PRO BONO LEGAL SERVICE PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization, provides short-term limited legal services to a

client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) shall comply with Rules 1.7, 1.8 and 1.9, concerning restrictions on representations where there are or may be conflicts of interest as that term is defined in these Rules, only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest; and

(2) shall comply with Rule 1.10 only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9.

(b) Except as provided in paragraph (a)(2), Rule 1.7 and Rule 1.9 are inapplicable to a representation governed by this Rule.

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client's informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

RULE 7.1:
ADVERTISING

(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:

(1) contains statements or claims that are false, deceptive or misleading; or

(2) violates a Rule.

(b) Subject to the provisions of paragraph (a), an advertisement may include information as to:

(1) legal and nonlegal education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by these Rules; public offices and teaching positions held; publications of law related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;

(2) names of clients regularly represented, provided that the client has given prior written consent;

(3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by Rule 5.8, and the nature and extent of services available through those contractual relationships; and

(4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by paragraph (p); range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.

(c) An advertisement shall not:

(1) include an endorsement of, or testimonial about, a lawyer or law firm from a client with respect to a matter still pending;

(2) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;

(3) include the portrayal of a judge, the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;

(4) use actors to portray the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same;

(5) rely on techniques to obtain attention that demonstrate a clear and intentional lack of relevance to the selection of counsel, including the portrayal of lawyers exhibiting characteristics clearly unrelated to legal competence;

(6) be made to resemble legal documents; or

(7) utilize a nickname, moniker, motto or trade name that implies an ability to obtain results in a matter.

(d) An advertisement that complies with paragraph (e) may contain the following:

(1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;

(2) statements that compare the lawyer's services with the services of other lawyers;

(3) testimonials or endorsements of clients, where not prohibited by paragraph (c)(1), and of former clients; or

(4) statements describing or characterizing the quality of the lawyer's or law firm's services.

(e) It is permissible to provide the information set forth in paragraph (d) provided:

(1) its dissemination does not violate paragraph (a);

(2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated; and

(3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome."

(f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled "Attorney Advertising" on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words "Attorney Advertising" shall appear therein. In the case of electronic mail, the subject line shall contain the notation "ATTORNEY ADVERTISING."

(g) A lawyer or law firm shall not utilize:

(1) a pop-up or pop-under advertisement in connection with computer-accessed communications, other than on the lawyer or law firm's own web site or other internet presence; or

(2) meta tags or other hidden computer codes that, if displayed, would violate these Rules.

(h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.

(i) Any words or statements required by this Rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud. In the case of a web site, the required words or statements shall appear on the home page.

(j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services

that are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

(k) All advertisements shall be pre-approved by the lawyer or law firm, and a copy shall be retained for a period of not less than three years following its initial dissemination. Any advertisement contained in a computer-accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this Rule shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.

(l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.

(m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this Rule in a publication that is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this Rule in a publication that is published once per month or less frequently, the lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this Rule in a publication that has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.

(n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this Rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(o) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.

(p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law §488(3).

(q) A lawyer may accept employment that results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services.

(r) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give individual advice.

RULE 7.2:
PAYMENT FOR REFERRALS

(a) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

(1) a lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and

other professional services on a systematic and continuing basis as permitted by Rule 5.8, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; and

(2) a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by Rule 1.5(g).

(b) A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations that promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:

(1) a legal aid office or public defender office:

(i) operated or sponsored by a duly accredited law school;

(ii) operated or sponsored by a bona fide, non-profit community organization;

(iii) operated or sponsored by a governmental agency; or

(iv) operated, sponsored, or approved by a bar association;

(2) a military legal assistance office;

(3) a lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule; or

(4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(i) Neither the lawyer, nor the lawyer's partner, nor associate, nor any other affiliated lawyer nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer;

(ii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization;

(iii) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter;

(iv) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief;

(v) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations; and

(vi) Such organization has filed with the appropriate disciplinary authority, to the extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

RULE 7.3:

SOLICITATION AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

(a) A lawyer shall not engage in solicitation:

(1) by in-person or telephone contact, or by real-time or interactive computer-accessed communication unless the recipient is a close friend, relative, former client or existing client; or

(2) by any form of communication if:

(i) the communication or contact violates Rule 4.5, Rule 7.1(a), or paragraph (e) of this Rule;

(ii) the recipient has made known to the lawyer a desire not to be solicited by the lawyer;

(iii) the solicitation involves coercion, duress or harassment;

(iv) the lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient makes it unlikely that the recipient will be able to exercise reasonable judgment in retaining a lawyer; or

(v) the lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.

(b) For purposes of this Rule, "solicitation" means any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request of a prospective client.

(c) A solicitation directed to a recipient in this State shall be subject to the following provisions:

(1) A copy of the solicitation shall at the time of its dissemination be filed with the attorney disciplinary committee of the judicial district or judicial department wherein the lawyer or law firm maintains its principal office. Where no such office is maintained, the filing shall be made in the judicial department where the solicitation is targeted. A filing shall consist of:

(i) a copy of the solicitation;

(ii) a transcript of the audio portion of any radio or television solicitation; and

(iii) if the solicitation is in a language other than English, an accurate English-language translation.

(2) Such solicitation shall contain no reference to the fact of filing.

(3) If a solicitation is directed to a predetermined recipient, a list containing the names and addresses of all recipients shall be retained by the lawyer or law firm for a period of not less than three years following the last date of its dissemination.

(4) Solicitations filed pursuant to this subdivision shall be open to public inspection.

(5) The provisions of this paragraph shall not apply to:

(i) a solicitation directed or disseminated to a close friend, relative, or former or existing client;

(ii) a web site maintained by the lawyer or law firm, unless the web site is designed for and directed to or targeted at a prospective client affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or

(iii) professional cards or other announcements the distribution of which is authorized by Rule 7.5(a).

(d) A written solicitation shall not be sent by a method

that requires the recipient to travel to a location other than that at which the recipient ordinarily receives business or personal mail or that requires a signature on the part of the recipient.

(e) No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death shall be disseminated before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.

(f) Any solicitation made in writing or by computer-accessed communication and directed to a pre-determined recipient, if prompted by a specific occurrence involving or affecting a recipient, shall disclose how the lawyer obtained the identity of the recipient and learned of the recipient's potential legal need.

(g) If a retainer agreement is provided with any solicitation, the top of each page shall be marked "SAMPLE" in red ink in a type size equal to the largest type size used in the agreement and the words "DO NOT SIGN" shall appear on the client signature line.

(h) Any solicitation covered by this section shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.

(i) The provisions of this Rule shall apply to a lawyer or members of a law firm not admitted to practice in this State who shall solicit retention by residents of this State.

RULE 7.4:
IDENTIFICATION OF PRACTICE AND SPECIALTY

(a) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law, except as provided in Rule 7.4(c).

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

(1) A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "The [name of the private certifying organization] is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law;"

(2) A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: "Certification granted by the [identify state or territory] is not recognized by any governmental authority within the State of New York. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law."

RULE 7.5:

PROFESSIONAL NOTICES, LETTERHEADS AND SIGNS

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1, including the following:

(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;

(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;

(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or

(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(b) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal aid," "legal service office," "legal assistance office," "defender office" and the like may be used only by qualified legal assistance organizations, except that the term "legal clinic" may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer's name to re-

main in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:

(1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;

(2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;

(3) the domain name does not imply an ability to obtain results in a matter; and

(4) the domain name does not otherwise violate these Rules.

(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.

RULE 8.1:

CANDOR IN THE BAR ADMISSION PROCESS

(a) A lawyer shall be subject to discipline if, in connection with the lawyer's own application for admission to the bar previously filed in this state or in any other jurisdiction, or in connection with the application of another person for admission to the bar, the lawyer knowingly:

(1) has made or failed to correct a false statement of material fact; or

(2) has failed to disclose a material fact requested in connection with a lawful demand for information from an admissions authority.

RULE 8.2:

JUDICIAL OFFICERS AND CANDIDATES

(a) A lawyer shall not knowingly make a false statement of fact concerning the qualifications, conduct or integrity of a judge or other adjudicatory officer or of a candidate for election or appointment to judicial office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Part 100 of the Rules of the Chief Administrator of the Courts.

RULE 8.3:

REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct.

(c) This Rule does not require disclosure of:

(1) information otherwise protected by Rule 1.6;

or

(2) information gained by a lawyer or judge while participating in a bona fide lawyer assistance program.

RULE 8.4:
MISCONDUCT

A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability:

(1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or

(2) to achieve results using means that violate these Rules or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or

(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

RULE 8.5:
DISCIPLINARY AUTHORITY AND CHOICE OF LAW

(a) A lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this state and another jurisdiction where the lawyer is admitted for the same conduct.

(b) In any exercise of the disciplinary authority of this state, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct:

(i) If the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and

(ii) If the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

18B Rules

County Law Article 18-B
Representation of Persons Accused of a Crime or Parties before the Family Court or Surrogate's Court

§ 722. Plan for Representation

The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to county law article eighteen-A.

2. In criminal proceedings, representation by counsel furnished by a private legal aid bureau or society designated by the county or city, organized and operating to give legal assistance and representation to persons charged with a crime within the city or county who are financially unable to obtain counsel. In proceedings under the family court act, representation by a private legal aid bureau or society, or by any corporation, voluntary association, or organization permitted to practice law under the authority of subdivision five of section four hundred ninety-five of the judiciary law.

3. Representation by counsel furnished pursuant to a plan of a bar association in each county or the city in which a county is wholly contained whereby the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service. Any plan of a bar association must receive the approval of the state administrator before the plan is placed in operation. In the county of Hamilton, such representation may be by counsel furnished by the Fulton county bar association pursuant to a plan of the Fulton county bar association.

4. [Until Jan 1, 2004] Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to sections 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence, or in assigning counsel pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.

4. [Eff Jan 1, 2004] Representation according to a plan containing a combination of any of the foregoing. Any judge, justice or magistrate in assigning counsel pursuant to sections 170.10, 180.10, 210.15 and 720.30 of the criminal procedure law, or in assigning counsel to a defendant when a hearing has been ordered in a proceeding upon a motion, pursuant to article four hundred forty of the criminal procedure law, to vacate a judgment or to set aside a sentence or on a motion for a writ of error coram nobis, or in assigning counsel pursuant to the provisions of section two hundred sixty-two of the family court act or section four hundred seven of the surrogate's court procedure act, shall assign counsel furnished in accordance with a plan conforming to the requirements of this section; provided, however, that when the county or the city in which a county is wholly contained has not placed in operation a plan conforming to that prescribed in this subdivision or subdivision three of this section and the judge, justice or magistrate is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when the county or the city in which a county is wholly contained has not placed in operation any plan conforming to that prescribed in this section, the judge, justice or magistrate may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this article.

5. (Added, L 1999) In classification proceedings under article six-C of the correction law or from an appeal thereof, representation shall be according to a plan described in subdivisions one, two, three or four of this section. If such plan includes representation by a private legal aid bureau or society, such private legal aid bureau or society shall have been designated to give legal assistance and representation to persons charged with a crime.

Upon an appeal in a criminal action, and on any appeal described in section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, wherein the party is financially unable to obtain counsel, the appellate court shall assign counsel furnished in accordance with the plan, conforming to the requirements of this section, which is in operation in the county or in the city in which a county is wholly contained wherein the judgment of conviction, disposition, or order of the trial court was entered; provided, however, that when such county or city has not placed in operation a plan conforming to that prescribed in subdivision three or four of this section and such appellate court is satisfied that a conflict of interest prevents the assignment of counsel pursuant to the plan in operation, or when such county or city has not placed in operation any plan conforming to that prescribed in this section, such appellate court may assign any attorney in such county or city and, in such event, such attorney shall receive compensation and reimbursement from such county or city which shall be at the same rate as is prescribed in section seven hundred twenty-two-b of this chapter.

§ 722-a. Definition of crime

For the purposes of this article, the term "crime" shall mean a felony, misdemeanor, or the breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a "traffic infraction," for which a sentence to a term of imprisonment is authorized upon conviction thereof.

§ 722-b. Compensation and reimbursement for representation

[Until Jan 1, 2004, § 722-b, reads as set out below:] All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-two whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive compensation at a rate not exceeding forty dollars per hour for time expended in court or before a magistrate, judge or justice, and twenty-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; except that counsel assigned for representation in an appellate court shall receive compensation at a rate not exceeding forty dollars per hour for time reasonably expended, whether in court or out of court. Where a defendant is charged with a crime which may be punishable by death compensation shall not exceed two thousand four hundred dollars where one counsel has been assigned, and shall not exceed three thousand two hundred dollars where two or more counsel have been assigned. Where a defendant is charged with one or more other felonies, compensation shall not exceed one thousand two hundred dollars. Where a defendant is charged with one or more other crimes, compensation shall not exceed eight hundred dollars. For representation pursuant to the provisions of section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed eight hundred dollars. For representation upon the hearing of a motion for a writ of error coram nobis or a motion to vacate judgment or set aside sentence made pursuant to article four hundred forty of the criminal procedure law, compensation shall not exceed eight hundred dollars. For representation in the court of appeals on an appeal from a judgment of death, compensation shall not exceed two thousand eight hundred dollars where one counsel has been assigned, and shall not exceed three thousand two hundred dollars where two or more counsel have been assigned. For representation in an appellate court on an appeal from a judgment of conviction for one or more other felonies, compensation shall not exceed one thousand two hundred dollars. For representation in an appellate court on an appeal in any other criminal action or proceeding, or on any appeal described in section eleven hundred twenty of the family court act or section four hundred seven of the surrogate's court procedure act, compensation shall not exceed eight hundred dollars.

For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the court where judgment of conviction or acquittal or order of dismissal was entered. In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he is assigned without approval of the court as herein provided.

1. [Eff Jan 1, 2004, § 722-b, reads as set out below:] All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-two of this article whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive:

(a) for representation of a person entitled to representation by law who is initially charged with a misdemeanor or lesser offense and no felony, compensation for such misdemeanor or lesser offense representation at a rate of sixty dollars per hour for time expended in court or before a magistrate, judge or justice, and sixty dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; and

(b) for representation of a person in all other cases governed by this article, including all representation in an appellate court, compensation at a rate of seventy-five dollars per hour for time expended in court before a magistrate, judge or justice and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred.

2. (Added, L 2003) Except as provided in this section, compensation for time expended in providing representation:

(a) pursuant to paragraph (a) of subdivision one of this section shall not exceed two thousand four hundred dollars; and

(b) pursuant to paragraph (b) of subdivision one of this section shall not exceed four thousand four hundred dollars.

3. For representation on an appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the trial court judge. In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement for expenses before the completion of the representation.

4. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he or she is assigned without approval of the court as herein provided.

§ 722-c. Services other than counsel

[Until Jan 1, 2004, § 722-c reads as set out below:] Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not

assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of three hundred dollars.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

[Eff Jan 1, 2004, § 722-c reads as set out below:] Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of one thousand dollars per investigative, expert or other service provider.

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

§ 722-d. Duration of assignment

Whenever it appears that the defendant is financially able to obtain counsel or to make partial payment for the representation or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, to the public defender, private legal aid bureau or society, private attorney, or otherwise.

§ 722-e. Expenses

All expenses for providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly located within a city a city charge to be paid out of an appropriation for such purposes.

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New York State Supreme Court

Appellate Division

First Department

Assigned Counsel Plan (18B)

Recertification Process
Recertification Application

Assigned Counsel Plan, First Department
253 Broadway, Room 200
New York, NY 10007

Jacqueline P. Flug
Administrator
(212) 676-0061
jflug@cityhall.nyc.gov

Lorraine Watson-Turner
Assistant to the Administrator
(212) 676-0081
lwatson@cityhall.nyc.gov

Co-Directors of Payment

Mimi Shui-Han
212-676-0057
Shuim@finance.nyc.gov

Larry Parkins
212-676-0093
ParkinsL@finance.nyc.gov

Kate Doherty
Background Unit
(212) 676-0418
kdoherty@cityhall.nyc.gov

OVERVIEW

Pursuant to Article 18B of the County Law, the Assigned Counsel Plan has been providing quality legal services to indigent persons within the Bronx and New York County Criminal Courts since 1966. The Plan provides compensation to private attorneys for representing indigent clients charged with criminal offenses.

Attorneys are assigned matters by the Court and the Administrator's office when a conflict exists prohibiting the institutional providers, such as The Legal Aid Society, from providing representation. Panel attorneys are screened and certified to the Panel by the Central Screening Committee. Attorneys are compensated at a rate of $60 per hour for misdemeanor matters and $75 per hour for felony matters. The Plan provides legal assistance for trial court matters as well as appellate matters.

If you are an attorney and wish to apply to the panel, you may obtain an application and information from this website. If you are a Panel Attorney, you may obtain forms and other information from this website. Finally, if you are a client seeking the services of a Panel attorney please click on the FAQ portion of this webpage to obtain further information.

A. **APPLICATION PROCESS**

1. You may apply for membership in the panel by completing the Application for Panel Membership and attaching any riders and other supporting documents that are required. Distribute the reference request forms to the individuals you list in answer to questions 28, 29, 30. Mail your completed application to:

Jacqueline P. Flug
Assigned Counsel Plan for the First Department
253 Broadway Room 200
New York, New York 10007

2. Your application will be reviewed for completeness and satisfaction of the minimum requirements. Applications are not complete until all references are received. You can facilitate the application process by urging your references to respond promptly. If the application is facially deficient, it will be returned to you with instructions. Otherwise it will be referred to a member of the Central Screening Committee.

3. The assigned Committee member will review your references, contact several of them, and arrange an interview with you. Usually this is accomplished within two months.

4. After the interview, the Committee member will recommend an action to the Chair of the Central Screening Committee. You will receive a notice of the Screening Committee's determination by mail. If you are approved for one or more panels, the Appellate Division will be notified simultaneously.

5. If you are denied certification to the panel, you may appeal the decision to the full Central Screening Committee and you may further appeal to the Presiding Justice of the First Department, whose decision is final and unappealable.

6. Once certified to the panel, you will receive instructions on the assignment and billing process. All newly certified panel members must attend a training session concerning the billing process and use of the 18B Web system.

7. Panel membership is a privilege, not a right. Upon certification to the panel, an Attorney's conduct and performance is regulated by Article 18-B of the County Law, the Indigent Defendants Legal Panel Plan adopted by the Judicial Conference in 1966, the Rules and Regulations. You are urged to familiarize yourself with these documents.

Please note: Trial panel membership in more than one borough of New York City is not permitted.

B. **PANEL REQUIREMENTS**

Misdemeanor Panel

Method A

1. Applicant must demonstrate actual court experience in at least ten criminal cases involving at least:

a. Five negotiated pleas, dismissals, or other non-trial dispositions;
b. Two litigated motions in which oral testimony was taken and a decision rendered or two preliminary hearings in which oral testimony was taken and a decision rendered;
c. One jury trial which proceeded to verdict;

2. Applicant must submit names and written references of each of the following:

a. Two judges before whom applicant has conducted a preliminary hearing, a litigated motion or a trial;
b. Two trial or hearing adversaries;
c. Two co-counsels with whom applicant has handled criminal cases, or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

1. Appearance in court as co-counsel with an experienced criminal law practitioner on at least five criminal cases involving at least:

a. Three negotiated pleas, dismissals, or other non-trial dispositions;
b. One litigated motion in which oral testimony was taken and a decision rendered or one preliminary hearing in which oral testimony was taken and a decision rendered;
c. One jury trial which proceeded to verdict;

2. Applicant has taken or agrees to take within the next three months, an approved intensive course in criminal law, practice or procedure and;

3. Applicant must submit names and written references of each of the following:

a. The attorneys with whom the applicant appeared as co-counsel;
b. One judge before whom applicant appeared as co-counsel;
c. Instructor with whom applicant has taken approved course;

4. If applicant fails to take an approved course and submit recommendations within a three month period, he/she will be automatically removed from the Panel.

Method C

1. Applicant has taught criminal law and/or procedure course at an accredited law school, or participated as an instructor or panelist in approved seminars or lectures involving criminal law and procedure, or applicant was a law secretary to a judge of the Criminal Court, or Supreme Court (criminal term), or Appellate Court handling criminal matters;

2. Actual court experience in at least three criminal cases including at least:

a. Two negotiated pleas, dismissals or other non-trial dispositions;
b. One litigated motion;
c. One preliminary hearing; or
d. One jury trial to verdict; and

3. Applicant must submit names and written references of each of the following:

a. The judge before whom the applicant has conducted a preliminary hearing, litigated motion, or trial;
b. One co-counsel with whom applicant has handled criminal cases, or attorneys who are familiar with the applicant's work through actual in-court observation (no cross-references permitted);
c. Instructor with whom applicant has taken the approved course.

Method D

A former judge of Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench.

Felony Panel

Method A

1. Actual court experience in at least thirty criminal cases involving at least:

a. Fifteen negotiated pleas, dismissals or other non-trial dispositions, at least five of which occurred post-indictment;
b. Five preliminary hearings in which oral testimony was taken and a decision rendered or five litigated motions in which oral testimony was taken and a decision rendered;
c. Two post-indictment jury trials which proceeded to verdict;

2. Actual court experience on at least ten criminal cases as sole attorney, or twenty non-criminal matters including at least five jury trials as sole attorney;

3. Applicant must submit names and written references from each of the following:

a. One judge before whom the applicant appeared as co-counsel in a post-indictment jury trial;
b. Three judges before whom the applicant has litigated motions or

conducted trials;
c. Three trial or hearing adversaries;
d. Three co-counsels with whom applicant has handled criminal cases or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

A former judge of a Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench who receives favorable recommendations from at least three attorneys who practiced before him or her.

Homicide Panel

Method A

1. Actual court experience in at least sixty criminal cases involving at least:

a. Thirty negotiated pleas, dismissals, or other non-trial dispositions, at least ten of which occurred post-indictment;
b. Ten preliminary hearings in which oral testimony was taken and a decision rendered, or fifteen litigated motions in which oral testimony was taken and a decision rendered, at least eight of which occurred post-indictment;
c. Five post-indictment jury trials which proceeded to verdict as sole attorney and eight as co-counsel;
d. Cross-examination, during trial of at least four of the following:

-police officers -laboratory technicians
-under cover agents -psychiatrists or psychologists
-ballistics experts -fingerprint expert

2. Applicant must submit names and written references of each of the following:

a. Five judges before whom applicant has conducted a litigated motion or a jury trial;
b. Five trial adversaries;
c. Five co-counsels with whom applicant has handled criminal cases or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

A former judge of a Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench, who receives favorable recommendations from at least three attorneys who practiced before him or her.

Appellate Panel

Applicants for certification to the appellate panel must have recent criminal law experience on either the trial or appellate level, be knowledgeable as to current criminal law and its constitutional requirements, and be able to perceive all relevant issues in a trial transcript. In addition, applicants must have knowledge and awareness of the legal issues that arise in criminal practice and to be able to skillfully enunciate the issues in a brief and support the points of law with thorough research, properly cited. Applicants must submit a sample of their writing, such as a brief, a memorandum of law, law

review articles or other similar publications.

An attorney with good academic background, criminal law experience, the requisite writing and verbal skills, motivation and attitude should be able to skillfully handle appellate work. Therefore, the following minimum requirements must be met:

1. Actual experience in at least ten criminal cases, on either the trial or appellate level, during the past three years;
2. A writing sample consisting of a brief, law review article or similar publication;
3. Applicant must submit names and written references of each of the following:

a. Three judges before whom applicant has handled criminal matters on either the trial or appellate level;
b. Three trial or appellate adversaries;

* Panel requirements may be waived if, in the opinion of the Screening Committee, the applicant is otherwise qualified by reason of education, training and other substantial trial experience *

*For Attorneys applying to a trial or appellate panel, the Central Screening Committee will not entertain their applications unless they are accompanied by two or more writing samples, including:

1. an affidavit, affirmation or complaint (without legal argument) demonstrating the attorney's ability to persuasively present moderately complex set of facts; and

2. a brief or memorandum of law demonstrating the attorney's ability to persuasively present moderately complex legal argument. A brief or memorandum of law which contains a complete statement of facts may suffice for both writing samples. The complexity and quality of the writings must be commensurate.

3. If the attorney is currently a member of the panel and is seeking to upgrade his or her certification, the writing sample must include a brief or motion prepared for and actually submitted in an assigned case.

*In addition, applications for the Appellate Panel must further include papers in opposition, any reply briefs, and the written decision of the opinion rendered by the court. *

CASE ASSIGNMENT RULES-PANEL ATTORNEYS

18-B Website

A. **Assignment Rules**

Assignment Procedures
Cases are assigned to attorneys in one of the following ways:

(1) Through Primary Day shifts.

(2) By the Assigned Counsel Plan. The Administrator of the Assigned Counsel Plan, First Department is authorized to make assignments when requested to do so by the court.

(3) By Judges of the Criminal Court and Justices of the Supreme

Court. The court may make assignments on days other than Primary Days when there is a need for the immediate appointment of counsel to protect the interests of the client.

Attorneys Eligibility for Assignments

Homicide
Attorneys on the Homicide Panel are authorized to accept cases in which the top count is murder, manslaughter or criminally negligent homicide.

Felony
Attorneys on the Felony Panel are authorized to accept cases in which the top charge is any felony other than murder, manslaughter or criminally negligent homicide.

Misdemeanor
Attorneys on the Misdemeanor Panel may accept cases in which the top charge is a misdemeanor or a violation.

Appeals
Attorneys on the Appellate Panel are eligible for all First Department appeals.

Primary Days

Primary Day Assignment Rules

Assignments are reviewed and overseen by the Administrator, and may be adjusted or limited because of attorney caseload.

Attorneys receive Primary Day assignments by submitting availability electronically through the 18-B web system.

Requests should be submitted in accordance with the 18-B web manual. Assignments are made on a rotating basis by the system taking into account the number of assignments recently received by the attorney and the number of requests submitted by panel members for a particular Primary Day assignment.

Duration of Primary Day Shifts
Day shift assignments are from 9 a.m. to 5 p.m. or as designated by the court. Night shift assignments are from 5 p.m. to 1 a.m. or as designated by the court. The attorney scheduled must work the entire shift.

Scheduling
Attorneys may not schedule any other cases during a Primary Day shift.

Attorneys may not split their primary day assignments with other panel attorneys. If due to scheduling, an attorney has a case which requires an appearance on a Primary Day, they must re-assign their Primary Day shift as they may not leave the courtroom which they are assigned to.

If an attorney is unable to cover his or her Primary Day shift, the

attorney must notify the Assigned Counsel Plan at least one day in advance of the scheduled shift.

Attorneys should attempt to arrange coverage with another panel attorney.

If the attorney cannot arrange for another attorney to cover the shift, he or she may request that the Assigned Counsel Plan re-assign the shift.

Attorneys must also notify the part where they are scheduled to work and, if applicable, provide the name and contact information of the attorney who will be taking over the shift.

Retaining Cases on Primary Days
Panel attorneys must provide representation on all cases on a Primary Shift except as follows:

(1) The client is not eligible for 18-B representation;
(2) There is a conflict of interest that precludes the attorney from continuing to represent the client; or
(3) The attorney is not on the appropriate panel.

Suspension of Primary Day Assignments
Attorneys who repeatedly fail to notify the Assigned Counsel Plan that he or she will not be able to work a scheduled Primary Day shift or who do not appear for the Primary Day shift as scheduled will not receive any further Primary Day assignments. The Administrator will not assign Primary Day shifts to any attorney who does not satisfy the Primary Day scheduling obligations. Removal or reinstatement of Primary Day privileges lies within the discretion of the Administrator.

Primary Day Forms
At the conclusion of each Primary Day shift, the attorney will prepare an "ACP Order of Assignment Form" for each case on which the attorney will continue to represent the client subsequent to the Primary Day. The Primary Day judge must sign each form. The attorney will then send the form to the Assigned Counsel Plan for entry into the 18-Bweb system.

Case Assigned Through Means Other Than a Primary Day Shifts

Homicide Cases
Homicide Panel Attorneys
If an attorney from the Homicide Panel represents a client at arraignment on a case in which the client is charged with murder, manslaughter or criminally negligent homicide, the attorney will remain on the case for the duration.

Felony/Misdemeanor Panel Attorneys
If an attorney from the Felony Panel represents a client at arraignments on a case in which the client is charged with murder, manslaughter, criminally negligent homicide or a Felony, the attorney must notify the Administrator who will assign the case to a Homicide Panel attorney. The attorney must advise the court and the client that the attorney is handling the case "for arraignment only". The Court

will then transmit an "ACP Order of Assignment Form" to the Administrator who will assign counsel from the Homicide Panel for the next court date.

Parole Violations and Appeals
Parole violations and appeals will be assigned by the Administrator on a rotating basis.

Appeals
Appeals are assigned by order of the Appellate Division, First Department.

Other Assignment Issues

Length of Assignment
An attorney assigned to represent a client shall continue to represent that client until the case concludes, unless relieved by the court or the Administrator's office. When a client requests that a matter be appealed, panel members are required to file a notice of appeal and perform other appellate preliminaries.

Clients with pending criminal matters
If an attorney represents a client at arraignments and that client has a pending criminal matter in the same county, the attorney must handle the case "for arraignment only". The case will then be transferred to the attorney who is handling the open case.

Clients With Reduced or Elevated Charge

Felony
A Felony Panel attorney who represents a client on a felony case that is later reduced to a misdemeanor will continue to represent the client until the case is concluded.

Misdemeanor
A Misdemeanor Panel attorney who represents a client on a misdemeanor case that is later elevated to a felony must withdraw from representation as soon as the District Attorney serves notice of intent to present the case to a Grand Jury, unless the attorney is also on the Felony Panel.

Clients with Out-of-County Cases
In general, attorneys may represent clients only in the county on which they have panel membership.

If a client has a pending case in another county of New York City, the attorney may apply for approval to represent the client in that county. Requests will be reviewed by the Administrator.

Payment

All panel members must use the online payment system 18B Web. Upon certification to the panel all members must attend a training class concerning the 18B Web system.

Upon completion of a case, a voucher must be submitted through the 18B Web system within 45 days to the judge presiding at the time of final disposition. Vouchers submitted to the 18B Web system after 45 days will be locked and require additional actions in order for members to receive payment.

Duration of Representation

Once assigned to a case, you remain the attorney of record for the duration of the case unless specifically relieved by the court. This means that even if a client returns on a warrant after an extended period of time, you remain the attorney of record. You are obligated to make every court appearance yourself unless you have submitted an affidavit of actual engagement conforming to the Court Rules. In rare circumstances, your partner or another panel member may appear on your behalf; however, neither you nor the other attorney may bill for that appearance.

On several occasions a client's criminal matter may result in a parole violation hearing. If this arises you are to contact the Administrator's office for possible assignment to the parole matter.

Services Other Than Counsel

The services of experts, investigators, interpreter, and others may be obtained by an ex parte application to the court. All experts must meet the Assigned Counsel Plan's eligibility requirements.

The Assigned Counsel Plan retains a roster of experts, investigators and interpreters which is available to all members. The Assigned Counsel Plan does not make any representations as to the quality of those on the roster but simply states that they have met the Plan's eligibility requirements. It is the responsibility of each attorney to assess the needs of their case and properly vet the experts they seek to retain.

Acceptance of Fees

You may not solicit or accept any fees paid by or on behalf of a client on account of your representation on an assigned case, either during or after the case has concluded. If during your representation information comes to your attention that the client or someone on his behalf is able to pay for all or part of the legal costs, you must inform the court. It is the court's responsibility to decide whether the client is entitled to further Panel representation. In no event may you be relieved as counsel and then accept a private retainer for the client.

If a client whom you represent as an 18-B attorney is subsequently arrested and charged with another offense and offers to retain you as a private counsel, you may not accept the case without approval from the court.

Responsibilities

All panel members are required to maintain a local New York City telephone number and an office within the Bronx or Manhattan where they can interview clients and witnesses. Your office space must be accessible to your clients. It is your responsibility to make sure that your clients can meet with you in a private office space. Exceptions may be made for attorneys who are only certified to the Appellate Panel and have offices in near by counties.

Pursuant to the Rules of Professional Conduct (22 NYCRR 1200)), panel members are required to maintain files with contemporaneous time and billing records. Panel members must maintain all files and records from a case for a minimum period of seven years after the final disposition.

EXPERT SERVICES

The Expert Roster of the Assigned Counsel Plan of the City of New York consists of experts who provide auxiliary services to individuals charged with crimes who are financially unable to pay for these services.

If you wish to be considered for the Expert Roster, please complete the Application for Expert Roster Certification.

Affirmation for Expert Services
Order Authorizing Expert Services
Order Authorizing Linguistic Services
Expert Compensation Rate

FAQ (Frequently Asked Questions)

1. How do I get an 18B/Panel attorney?

Judges determine who is eligible for 18B counsel. Therefore, before you are appointed an 18B attorney a judge must make a determination that you are indigent and cannot afford to hire private counsel. This is done at the Criminal Court arraignment.

If a judge determines that you are indigent, representation will be provide from the Legal Aid Society or other institutional provider. When a conflict prevents the Legal Aid Society and other institutions from providing representation, a judge will appoint a panel attorney. Therefore, you cannot have an attorney appointed to your matter until the case is arraigned.

2. How do I find out who my 18B/Panel attorney is?

If you were represented by an 18B/Panel attorney and lost your attorney's name and contact information you should call the Administrator's office.

For cases in Manhattan and the Bronx call 212-676-0081.

For cases in Brooklyn, Queens and Staten Island call 212-676-0099

Please have your docket number readily available

3. I am an attorney and I am interested in applying to the panel. How long is the application process?

Once your application is complete it will be sent to a Screening Committee member and a recommendation on the application should be made within sixty days. Please note that applications are not complete until all references are received by the Administrator's office. Therefore, it is the responsibility of each applicant to ensure that all their references are submitted. Incomplete applications will not be sent to Screening Committee members.

4. What are the panel compensation rates?

Attorneys are compensated at an hourly rate of $60 for misdemeanor matters and $75 for felony matters.

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First Department

Judiciary Law § 90

§ 90. Admission to and removal from practice by appellate division; character committees

1. a. Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law and has satisfied the requirements of section 3-503 of the general obligations law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

b. Upon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia of the United States or in a foreign country, to be admitted to practice as an attorney and counsellor-at-law in the courts of this state without taking the regular bar examination, the appellate division of the supreme court, if it shall be satisfied that such person is currently admitted to the bar in such other jurisdiction or jurisdictions, that at least one such jurisdiction in which he is so admitted would similarly admit an attorney or counsellor-at-law admitted to practice in New York state to its bar without examination and that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law and has satisfied the requirements of section 3-503 of the general obligations law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided, that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys. Such application, which shall conform to the requirements of section 3-503 of the general obligations law, shall be submitted to the appellate division of the supreme court in the department specified in the rules of the court of appeals.

c. The members of the committee appointed by the appellate division in each department to investigate the character and fitness of applicants for admission to the bar, shall be entitled to their necessary traveling, hotel and other expenses, incurred in the performance of their duties, payable by the state out of moneys appropriated therefor, upon certificate of the presiding justice of the appellate division by which such committee is appointed.

d. The committee on character and fitness appointed by the appellate division of the supreme court in the first judicial department and the committee on character and fitness appointed by the appellate division of the supreme court of the second judicial department, may each, with the written consent of the justices of each of such appellate divisions or a majority of such justices, acting for their respective appellate divisions, from time to time, appoint and remove a secretary, stenographers and assistants, and procure a suitable

office for each committee, properly furnished and equipped and all books, stationery, blanks, postal cards, expressage and postage stamps as shall be required for the proper performance of the duties of each such committee.

e. The salaries of such secretary, stenographers and assistants shall be fixed for each department by the justices of the appellate division in each department or a majority of them in each department.

f. The salaries of such secretary, stenographers and assistants and the necessary expenses under the terms of this act in the first judicial department, shall, in the said first judicial department, be paid by the comptroller of the city of New York.

g. The salaries of such secretary, stenographers and assistants and the necessary expenses under the terms of this act in the second judicial department shall be certified by the presiding justice of such department to the state comptroller who shall audit the same. The state department of taxation and finance shall pay such salaries and expenses and shall apportion the same among the counties comprising the second judicial department. Such counties shall reimburse the state for such compensation. The time and method of such apportionment and the time and method of such reimbursement shall be as specified in section seventy-four of this chapter.

2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice.

It shall be the duty of the appellate division to insert in each order of suspension or removal hereafter rendered a provision which shall command the attorney and counsellor-at-law thereafter to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another. In addition it shall forbid the performance of any of the following acts, to wit:

a. The appearance as an attorney or counsellor-at-law before any court, judge, justice, board, commission or other public authority.

b. The giving to another of an opinion as to the law or its application, or of any advice in relation thereto.

In case of suspension only, the order may limit the command to the period of time within which such suspension shall continue, and if justice so requires may further limit the scope thereof.

If an attorney and counsellor-at-law has been heretofore removed from office, the appellate division shall upon application of any attorney and counsellor-at-law, or of any incorporated bar association, and upon such notice to the respondent as may be required, amend the order of removal by adding thereto as a part thereof, provisions similar to those required to be inserted in orders hereafter made.

If a certified copy of such order or of such amended order, be served upon the attorney and counsellor-at-law suspended or removed from

office, a violation thereof may be punished as a contempt of court.

2-a. a. The provisions of this subdivision shall apply in all cases of an attorney licensed, registered or admitted to practice in this state who has failed after receiving appropriate notice, to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding involving him or her personally, or who is in arrears in payment of child support or combined child and spousal support which matter shall be referred to the appropriate appellate division by a court pursuant to the requirements of section two hundred forty-four-c of the domestic relations law or pursuant to section four hundred fifty-eight-b or five hundred forty-eight-b of the family court act.

b. Upon receipt of an order from the court based on arrears in payment of child support or combined child and spousal support pursuant to one of the foregoing provisions of law, the appropriate appellate division within thirty days of receipt of such order, if it finds such person to be so licensed, registered or admitted, shall provide notice to such attorney of, and initiate, a hearing which shall be held by it at least twenty days and no more than thirty days after the sending of such notice to the attorney. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensed, registered or admitted attorney have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court or the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensed attorney shall be given full opportunity to present such proof of payment at the hearing in person or by counsel. The only issue to be determined as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order shall be received or considered by the disciplinary committee.

c. Upon receipt of an order from the court based on failure to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding, the appropriate appellate division within thirty days of receipt of such order, if it finds such person to be so licensed, registered or admitted, shall provide notice to such attorney that his or her license shall be suspended within sixty days of such notice to the attorney unless the conditions in paragraph e of this section are met.

d. Notwithstanding any inconsistent provision of this section or of any other provision of law to the contrary, the license to practice law in this state of an attorney admitted to practice shall be suspended by the appellate division if, at the hearing provided for by paragraph b of this subdivision, the licensed attorney fails to present proof of payments as required by such subdivision. Such suspension shall not be lifted unless the original court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social services district, issues notice to the appellate division that full payment of all arrears of support established by the order of the original court to be due have been paid.

e. Notwithstanding any inconsistent provision of this section or of any other provision of law to the contrary, the license of an attorney admitted to practice law in this state shall be suspended by the

appellate division, in accordance with paragraph c of this subdivision unless the court terminates its order to commence suspension proceedings. Such suspension shall not be lifted unless the court issues an order to the appellate division terminating its order to commence suspension proceedings.

f. The appellate division shall inform the original court of all actions taken hereunder.

g. This subdivision two-a applies to paternity and child support proceedings commenced under, and support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act.

h. Notwithstanding any inconsistent provision of this section or of any other provision of law to the contrary, the provisions of this subdivision two-a shall apply to the exclusion of any other requirements of this section and to the exclusion of any other requirement of law to the contrary.

3. The suspension or removal of an attorney or counsellor-at-law, by the appellate division of the supreme court, operates as a suspension or removal in every court of the state.

4. a. Any person being an attorney and counsellor-at-law who shall be convicted of a felony as defined in paragraph e of this subdivision, shall upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

b. Whenever any attorney and counsellor-at-law shall be convicted of a felony as defined in paragraph e of this subdivision, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

c. Whenever an attorney shall be convicted of a crime in a court of record of the United States or of any state, territory or district, including this state, whether by a plea of guilty or nolo contendere or from a verdict after trial or otherwise, the attorney shall file, within thirty days thereafter, with the appellate division of the supreme court, the record of such conviction.

The failure of the attorney to so file shall be deemed professional misconduct provided, however, that the appellate division may upon application of the attorney, grant an extension upon good cause shown.

d. For purposes of this subdivision, the term serious crime shall mean any criminal offense denominated a felony under the laws of any state, district or territory or of the United States which does not constitute a felony under the laws of this state, and any other crime a necessary element of which, as determined by statutory or common law definition of such crime, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy or solicitation of another to commit a serious crime.

e. For purposes of this subdivision, the term felony shall mean any criminal offense classified as a felony under the laws of this state or

any criminal offense committed in any other state, district, or territory of the United States and classified as a felony therein which if committed within this state, would constitute a felony in this state.

f. Any attorney and counsellor-at-law convicted of a serious crime, as defined in paragraph d of this subdivision, whether by plea of guilty or nolo contendere or from a verdict after trial or otherwise, shall be suspended upon the receipt by the appellate division of the supreme court of the record of such conviction until a final order is made pursuant to paragraph g of this subdivision.

Upon good cause shown the appellate division of the supreme court may, upon application of the attorney or on its own motion, set aside such suspension when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public and the interest of justice.

g. Upon a judgment of conviction against an attorney becoming final the appellate division of the supreme court shall order the attorney to show cause why a final order of suspension, censure or removal from office should not be made.

h. If the attorney requests a hearing, the appellate division of the supreme court shall refer the proceeding to a referee, justice or judge appointed by the appellate division for hearing, report and recommendation.

After said hearing, the appellate division may impose such discipline as it deems proper under the facts and circumstances.

5. a. If such removal or debarment was based upon conviction for a serious crime or upon a felony conviction as defined in subdivision four of this section, and such felony conviction was subsequently reversed or pardoned by the president of the United States, or governor of this or another state of the United States, the appellate division shall have power to vacate or modify such order or debarment, provided, however, that if such attorney or counsellor-at-law has been removed from practice in another jurisdiction, a pardon in said jurisdiction shall not be a basis for application for re-admission in this jurisdiction unless he shall have been readmitted in the jurisdiction where pardoned.

b. If such removal or debarment was based upon conviction for a felony as defined in subdivision four of this section, the appellate division shall have power to vacate or modify such order or debarment after a period of seven years provided that such person has not been convicted of a crime during such seven-year period.

c. An attorney and counsellor-at-law who has been convicted of a felony without the state and whose name has been struck from the roll of attorneys prior to July thirteenth, nineteen hundred seventy-nine by virtue of the provisions of subdivision four of this section may, if he alleges that such felony committed without the state would not constitute a felony if committed within the state, petition the appellate division to vacate or modify such debarment. If the appellate division finds that the felony of which the attorney and counsellor-at-law has been convicted without the state would not constitute a felony if committed within the state, it shall grant a hearing and may retroactively vacate or modify such debarment and impose such discipline as it deems just and proper under the facts and circumstances.

The attorney and counsellor-at-law shall petition for reinstatement by

filing in the appellate division a copy of the order of removal together with a request for a hearing pursuant to the provisions of this paragraph. Upon such application, the order of removal shall be deemed an order of suspension for the purposes of a proceeding pursuant to this paragraph.

6. Before an attorney or counsellor-at-law is suspended or removed as prescribed in this section, a copy of the charges against him must be delivered to him personally within or without the state or, in case it is established to the satisfaction of the presiding justice of the appellate division of the supreme court to which the charges have been presented, that he cannot with due diligence be served personally, the same may be served upon him by mail, publication or otherwise as the said presiding justice may direct, and he must be allowed an opportunity of being heard in his defense. In all cases where the charges are served in any manner other than personally, and the attorney and counsellor-at-law so served does not appear, an application may be made by such attorney or in his behalf to the presiding justice of the appellate division of the supreme court to whom the charges were presented at any time within one year after the rendition of the judgment, or final order of suspension or removal, and upon good cause shown and upon such terms as may be deemed just by such presiding justice, such attorney and counsellor-at-law must be allowed to defend himself against such charges.

The justices of the appellate division in any judicial department, or a majority of them, may make an order directing the expenses of any disciplinary proceedings, and the necessary costs and disbursements of the petitioner in prosecuting such charges, including the expense of any preliminary investigation in relation to professional conduct of an attorney and counsellor-at-law, to be paid out of funds appropriated to the office of court administration for that purpose.

6-a. a. Where the appellate division of supreme court orders the censure, suspension from practice or removal from office of an attorney or counsellor-at-law following disciplinary proceedings at which it found, based upon a preponderance of the legally admissible evidence, that such attorney or counsellor-at-law wilfully misappropriated or misapplied money or property in the practice of law, its order may require him or her to make monetary restitution in accordance with this subdivision. Its order also may require that he or she reimburse the lawyers' fund for client protection of the state of New York for awards made to the person whose money or property was wilfully misappropriated or misapplied.

b. Monetary restitution, as authorized hereunder, shall be made to the person whose money or property was wilfully misappropriated or misapplied and shall be for the amount or value of such money or property, as found in the disciplinary proceedings. In the event that such person dies prior to completion of such restitution, any amount remaining to be paid shall be paid to the estate of the deceased.

c. Any payment made as restitution pursuant to this subdivision shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment; nor shall any order of the appellate division made hereunder deprive a criminal court of any authority pursuant to article sixty of the penal law.

d. An order issued pursuant to this subdivision may be entered as a civil judgment. Such judgment shall be enforceable as a money judgment in any court of competent jurisdiction by any person to whom payments are due thereunder, or by the lawyers' fund for

client protection where it has been subrogated to the rights of such person.

e. Where an attorney or counsellor-at-law is permitted to resign from office, the appellate division may, if appropriate, issue an order as provided herein requiring him or her to make payments specified by this subdivision.

f. Notwithstanding any other provision of this subdivision, no order may be issued hereunder unless the person required to make payments under such order first is given an opportunity to be heard in opposition thereto.

7. In addition to the duties prescribed by section seven hundred of the county law, it shall be the duty of any district attorney within a department, when so designated by the justices of the appellate division of the supreme court in such department, or a majority of them, to prosecute all proceedings for the removal or suspension of attorneys and counsellors-at-law or the said justices, or a majority of them may appoint any attorney and counsellor-at-law to conduct a preliminary investigation and to prosecute any disciplinary proceedings and, during or upon the termination of the investigation or proceedings, may fix the compensation to be paid to such attorney and counsellor-at-law for the services rendered, which compensation shall be a charge against the county specified in his certificate and shall be paid thereon.

8. Any petitioner or respondent in a disciplinary proceeding against an attorney or counsellor-at-law under this section, including a bar association or any other corporation or association, shall have the right to appeal to the court of appeals from a final order of any appellate division in such proceeding upon questions of law involved therein, subject to the limitations prescribed by section three of article six of the constitution of this state.

9. No objection shall be taken to the appointment of any member of the bar to act as referee or judge in a disciplinary proceeding under this section on the ground that he is a member of a bar association or other corporation or association which is the petitioner therein.

10. Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the application or examination of any person for admission as an attorney and counsellor at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary. Without regard to the foregoing, in the event that charges are sustained by the justices of the appellate division having jurisdiction in any complaint, investigation or proceeding relating to the conduct or discipline of any attorney, the records and documents in relation thereto shall be deemed public records.

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Part 603. Conduct Of Attorneys

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 theformer 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 conducton 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 ofProfessional 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 thesum 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 compiled 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 (les):_____.
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 ofProfessional 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 with1.15 of the Rules ofProfessional 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 ofProfessional 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

a. An attorney who is employed as a public officer or employee in any court in this judicial department shall not maintain an office for the private practice of law, alone or with others, hold himself out to be in the private practice of law, or engage in the private practice of law; such attorney shall not participate, directly or indirectly, as attorney or counsel in any action or proceeding, pending before any court or any administrative board, agency, committee or commission of any government, or in the preparation or subscription of briefs, papers, or documents pertaining thereto.

b. By special permission secured from the presiding justice of this judicial department as to each professional engagement, a person referred to in subdivision (a) of this section may engage in the private practice of law as to matters not pending before a court or governmental agency, in uncontested matters in the Surrogate's Court, uncontested accountings in the Supreme Court, and other ex parte applications not preliminary or incidental to litigated or contested matters. Such approval, which shall continue only to the completion of the particular engagement for which permission was obtained, shall be sought by application in writing to the presiding justice of this judicial department (processed through the

immediate supervisor and the administrative judge or other head of the court or agency in which applicant is employed for his comment and recommendation including restrictions, if any), which shall state the position occupied, all pertinent information as to the matter to be handled (including the name of the client engaging such attorney and the prior relationship, if any, between such client and said attorney) and that in the event of litigation the applicant will immediately withdraw as attorney and notify his administrative judge or other head of the court or agency thereof.

c. A person referred to in subdivision (a) of this section shall not engage in any other practice of law which is incompatible with or would reflect adversely upon the performance of his duties.

§ 603.22 [Rescinded]

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

§ 603.23 Attorney's Affidavit in Agency and Private Placement Adoptions

a. Every attorney appearing for an adoptive parent, a natural parent or an adoption agency in an adoption proceeding in the courts within this judicial department shall, prior to the entry of an adoption decree, file with the Office of Court Administration of the State of New York, and with the court in which the adoption proceeding has been initiated, a signed statement under oath setting forth the following information:
   1. Name of attorney;
   2. Association with firm (if any);
   3. Business address;
   4. Telephone number;
   5. Docket number of adoption proceeding;
   6. Court where adoption has been filed;
   7. The date and terms of every agreement, written or otherwise, between the attorney and the adoptive parents, the natural parents or anyone else on their behalf, pertaining to any compensation or thing of value paid or given or to be paid or given by or on behalf of the adoptive parents or the natural parents, including but not limited to retainer fees;
   8. The date and amount of any compensation paid or thing of value given, and the amount of total compensation to be paid or thing of value to be given to the attorney by the adoptive parents, the natural parents or by anyone else on account of or incidental to any assistance or service in connection with the proposed adoption;
   9. A brief statement of the nature of the services rendered;
   10. The name and address of any other attorney or attorneys who shared in the fees received in connection with the services or to whom any compensation or thing of value was paid or is to be paid, directly or indirectly, by the attorney. The amount of such compensation or thing of value;
   11. The name and address of any other attorney or attorneys, if known, who received or will receive any compensation or thing of value, directly or indirectly, from the adoptive parents, natural parents, agency or other source, on account of or incidental to any assistance or service in connection with the proposed adoption. The amount of such compensation or thing of value, if known;
   12. The name and address of any other person, agency, association,

corporation, institution, society or organization who received or will receive any compensation or thing of value from the attorney, directly or indirectly, 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.

New York State Supreme Court

Appellate Division

First Department

Departmental Disciplinary Committee

Part 605. Rules And Procedures Of The Departmental Disciplinary Committee

Part 605

§ 605.1 Title, Citation and Construction of Rules

a. These Rules shall be known, and may be cited, as the "Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department" (hereinafter called the Committee).

b. These Rules are promulgated for the purpose of assisting the Office of Chief Counsel, the Respondent and the Committee to develop the facts relating to, and to reach a just and proper determination of, matters brought to the attention of the Office of Chief Counsel or the Committee. The Committee will not hold action of a Referee or a Hearing Panel invalid

by reason of any nonprejudicial irregularity. Any error, defect, irregularity or variance which does not effect substantial rights shall be disregarded.

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

§ 605.2 Definitions

a. Subject to additional definitions contained in subsequent provisions of these Rules which are applicable to specific sections, subsections or other provisions of these Rules, the following words and phrases, when used in these Rules, shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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

Chief Counsel with respect to alleged misconduct.

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

§ 605.3 Location of Office of Chief Counsel

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

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

§ 605.4 Grounds for Discipline

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

§ 605.5 Types of Discipline; Subsequent Consideration of Disciplinary Action

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

5. Admonition - by the Committee without hearing.

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

§ 605.6 Investigations and Informal Proceedings

a. Initiation of Investigations. The Office of Chief Counsel shall, except as otherwise provided by subdivision (g) of this section, undertake and complete an investigation of all matters involving alleged misconduct of attorneys within the jurisdiction of the Committee called to its attention by a Complaint filed pursuant to subdivision (b) of this section, by the Court, or by the Committee by written order, and may, on its own initiative, undertake and complete an investigation of any other matter within the jurisdiction of the Committee otherwise coming to the attention of such Office. The Office of Chief Counsel shall use such investigators as are deemed appropriate by the Chief Counsel.

b. Contents of Complaint.
   1. General Rule. Each Complaint relating to alleged misconduct of an attorney shall be in writing and subscribed by the Complainant and shall contain a concise statement of the facts upon which the Complaint is based. Verification of the Complaint shall not be required. If necessary the Office of Chief Counsel will assist the Complainant in reducing the Grievance to writing. The Complaint shall be deemed filed when received by the Office of Chief Counsel.
   2. Other Situations. In the case of an allegation of misconduct originating in the Court or the Committee, or upon the initiative of the Office of Chief Counsel, the writing reflecting the allegation shall be treated as a Complaint.

c. Investigation. The staff of the Office of Chief counsel shall make such investigation of each Complaint as may be appropriate.

d. Notification to Respondent of Complaint.
   1. General Rule. No discipline shall be recommended by the Office of the Chief Counsel until the Respondent shall have been afforded the opportunity to state the Respondent's position with respect to the allegations.
   2. Transmission of Notice. Except where it appears that there is no basis for proceeding further, the Office of Chief Counsel shall promptly prepare and forward to the Respondent a request for a statement in response to the Complaint, advising the Respondent of:
      i. the nature of the Grievance and the facts alleged in connection therewith; and
      ii. The Respondent's right to state the Respondent's position with respect to the allegations.

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

e. Recommendation of the Office of Chief Counsel. Following completion of any Investigation of the Complaint (including consideration of any statement filed by the Respondent pursuant to Section 605.6(d) of this Part), the Office of Chief Counsel shall recommend one of the following dispositions:
   1. referral to another body on account of lack of territorial jurisdiction;

2. dismissal for any reason (with an indication of the reason therefor), and referral to another body if appropriate;
3. admonition; or
4. formal proceedings before a hearing panel.

f. Action Following Recommendation.
1. No Jurisdiction. If the Office of Chief Counsel determines that the Complaint should be referred under paragraph (e)(1) of this section, it shall notify the complainant and the Respondent (if previously notified of the Complaint) of such disposition in writing and close the file on the matter. Whenever possible in cases of lack of jurisdiction, the Office of Chief Counsel shall bring the matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may be able to provide a forum for the consideration of the Grievances, and shall advise the Complainant of such referral.
2. Other Cases. In the case of recommendations under paragraph (e)(2) of this section, the Committee chairperson shall designate a lawyer member of the Committee to review the recommendations. In the case of recommendations under paragraph (e)(3) of this section, the Committee chairperson (or a member of the Committee designated by the Committee chairperson) and at least one other member of the Committee shall review the recommendations. In the case of recommendations under paragraph (e)(4) of this section, or under Section 605.15(e)(2) of this part, the Committee chairperson shall designate at least two members of the policy committee, at least one of whom is a lawyer, to review the recommendations.

g. Preliminary Screening of Complaints. Any complaint received by the Office of Chief Counsel against a member of the Committee or Staff counsel involving alleged misconduct shall be transmitted forthwith to the Committee Chairperson, who shall assign it either to the Office of Chief Counsel or to special counsel who shall
1. conduct or direct the appropriate investigation, and
2. give a written recommendation as to the disposition of the Complaint to the Committee Chairperson, who shall determine the appropriate disposition of the Complaint. Any such Complaint which relates to the Committee Chairperson shall, in the first instance, be transmitted to a Hearing Panel Chairperson, who shall conduct the appropriate investigation and determine the appropriate disposition of the Complaint.

§ 605.7 Review of Recommended Disposition of Complaint

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

2. Modification. If the Reviewing Member determines to modify the recommendation of the Office of Chief Counsel, the Reviewing Member shall set forth such determination in writing together with a brief statement of the reason therefor. Such determination shall be one of the following:
   i. dismissal of the complaint;
   ii. further investigation;
   iii. admonition; or
   iv. formal proceedings before a hearing panel.
3. Return of File. Upon making such determination, the Reviewing Member shall return the file to the Office of Chief Counsel.

c. Reconsideration. Upon notification of the dismissal of a complaint pursuant to Section 605.6, the complainant may submit a written application for reconsideration that shall be filed with the Office of the Chief Counsel within 30 days of the date of the notification. The Committee chairperson shall designate to examine a request for reconsideration a member of the Committee other than the member who originally reviewed the recommendation of the Office of the Chief Counsel.

§ 605.8 Final Disposition Without Formal Proceedings

a. Notification to Respondent of Disposition of Complaint. Upon the approval of the recommendation of the Office of Chief Counsel by the Reviewing Member, the acceptance of the Reviewing Member's modification by the Office of Chief Counsel, or the determination of the appropriate disposition by the Committee Chairperson, then, unless the disposition involves the institution of Formal Proceedings, as appropriate:
   1. The Office of Chief Counsel by means of written notice shall notify the Respondent of the dismissal of the Complaint; or
   2. the Committee Chairperson shall transmit to the Respondent an Admonition (which shall bear the designation "ADMONITION").

b. Admonitions.
   1. General Rule. A written record shall be made of the fact of and basis for Admonitions.
   2. Notice of Right to Formal Proceedings. In the Admonition, the Respondent shall be advised of:
      i. the Respondent's right under § 605.8(c)of this Part; and
      ii. the availability of such records for consideration in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against the Respondent subsequently.

c. Action Available to Respondent.
   1. General Rule. A Respondent shall not be entitled to appeal an Admonition, but the Respondent may submit a written application for reconsideration which shall be disposed of in accordance with paragraph (3) of this subdivision; or, in the alternative, Respondent may demand as of right that Formal Proceedings be instituted before a Referee, in accordance with subsection (2) of this subdivision.
   2. Formal Proceedings. A demand under paragraph (1) of this subdivision that Formal Proceedings be instituted shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. In the event of such demand, the Admonition shall be vacated and the Referee shall not be bound by its terms, but may take any appropriate action authorized by the Rules of the Committee or the Rules of the Appellate Division, First Department, including a

Reprimand or referral to the Court.

3. Application for Reconsideration. An application under paragraph (1) of this subdivision for reconsideration shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. As soon as practicable after the receipt of an application, the Office of Chief Counsel shall transmit the application and the file relating to the matter to a member of the Departmental Disciplinary Committee (who shall not be a Reviewing Member designated with respect to such matter under § 605.6(f)(2) of the Part) designated to review the matter by the Committee Chairperson (or, upon general or limited written direction of the Committee Chairperson, by the Chief Counsel). The member so designated shall either confirm or vacate the Admonition or otherwise determine to modify the Admonition under §605.7(b)(2) of this Part.

d. Notification to Complainant of Disposition of Complaint. The Office of the Chief Counsel, by means of written notice, shall notify the Complainant of the dismissal of a Complaint, or of the issuance of an Admonition. If the complaint has been dismissed pursuant to Section 605.6(e)(2), the notice shall state that the Complainant may seek reconsideration of the dismissal by submitting to the Office of the Chief Counsel a written request within 30 days of the date of the notice.

§ 605.9 Abatement of Investigation

a. Refusal of Complainant or Respondent to Proceed, etc. Neither unwillingness or neglect of the Complainant to prosecute a charge, nor settlement, compromise or restitution, nor the failure of the Respondent to cooperate, shall, in itself, justify abatement of an Investigation into the conduct of an attorney or the deferral or termination of proceedings under these Rules.

b. Matters Involving Related Pending Civil Litigation or Criminal Matters.

1. General Rule. The processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not be deferred pending determination of such litigation.
2. Effect of Determination. The acquittal of a Respondent on criminal charges or a verdict or judgment in the Respondent's favor in a civil litigation involving substantially similar material allegations shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations.

§ 605.10 Resignations, Reinstatements, Convictions of Crimes

a. Resignations by Attorneys Under Disciplinary Investigations.

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

before the Court shall be conducted by staff counsel.

2. Notification of Complainant. In the event the Court accepts the resignation of a Respondent and removes the Respondent on consent, the Office of Chief Counsel by means of written notice shall notify the Complainant of such action.

b. Applications for Reinstatement. Upon receipt by the Committee of an application of an attorney who has been disbarred or who has been suspended for more than six months, or whose name has been stricken from the roll of attorneys on consent by order of the Court, applying for reinstatement pursuant to the rules of the Court, the chief counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment, and shall notify the complainant(s) that they have sixty days to raise objections to or to support the lawyer's petition. Upon the expiration of the sixty-day period, the chief counsel shall either (1) advise the lawyer and the Court that the chief counsel will stipulate to the reinstatement or (2) advise the lawyer and the Court that the chief counsel opposes the reinstatement. If the chief counsel opposes the reinstatement, he shall present the reasons for the opposition and shall request that the Court deny the application or appoint a Referee and refer the matter to the Committee.

c. Determination of Serious Crimes. Upon receipt by the Committee of a certificate demonstrating that an attorney has been convicted of a crime in the state of New York or in any other state, territory or district, the chief counsel shall determine whether the crime is a "serious crime" as defined in the rules of the court governing the conduct of attorneys. Upon a determination by the chief counsel that the crime is a serious crime, the office of the chief counsel shall file the certificate of conviction with the Court.

§ 605.11 Formal Proceedings; Preliminary Provisions

a. Representation of Respondent

1. Appearance Pro Se. When a Respondent appears pro se in a Formal Proceeding, the Respondent shall file with the Office of Chief Counsel an address to which any notice or other written communication required to be served upon the Respondent may be sent.

2. Representation of Respondent by Counsel. When a Respondent is represented by counsel in a Formal Proceeding, counsel shall file with the Office of Chief Counsel, a written notice of such appearance, which shall state such counsel's name, address and telephone number, the name and address of the Respondent on whose behalf counsel appears, and the caption of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a Respondent may be sent to the counsel of record for such Respondent at the stated address of the counsel in lieu of transmission to the Respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served on or furnished to the Respondent shall also be served upon or furnished to the Respondent's counsel (or one of such counsel if the Respondent is represented by more than one counsel) in the same manner as prescribed for the Respondent, notwithstanding the fact that such communication may be furnished directly to the Respondent.

b. Format of Pleadings and Documents. Pleadings or other documents filed in Formal Proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the Supreme Court in the First Department.

c. Expeditious Proceedings; Extensions. Formal Proceedings shall be

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

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

e. Number of Copies. The following number of copies of documents shall be served by each Party in a proceeding:
   1. documents being served by the Office of Chief Counsel: one copy of each document to the Respondent, and one copy of each document to the Referee and to each member of the Hearing Panel, as may be appropriate.
   2. documents being served by the Respondent: one copy of each document (plus 10 copies of the Answer) to the Office of Chief Counsel, one copy to the Referee and to each member of the Hearing Panel, as may be appropriate, and one copy of each document to each other Respondent, if any; in each case, to be served personally or by mailing a copy thereof (by certified mail, return receipt requested) to the person to be served.
   3. copies of exhibits to be offered during the hearing shall be provided as specified in section 605.12(d) of this Part.

f. Amendment and Supplementation of Pleadings. No amendment or supplementation of any Notice of Charges or of any Answer shall be made unless specified in the Pre-Hearing Stipulation or otherwise granted by the Referee. Any objection to a proposed amendment shall be determined by the Referee upon conditions deemed appropriate.

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

§ 605.12 Formal Proceedings.

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

Part; or

2. pursuant to a referral under the rules of the Court.

b. Notice of Charges.

1. Caption. A Notice of Charges will be captioned as follows:
Before the Departmental Disciplinary
Committee of the Appellate Division
Of the Supreme Court of the State of New York,
First Judicial Department

Notice of Charges Docket No. Before Referee

_____

In the Matter of

_____,

Respondent.

2. Contents. The notice of charges shall set forth the charges of misconduct against the respondent, the disciplinary rules alleged to have been violated, and, in appropriate cases, the fact that the Committee will seek restitution or reimbursement pursuant to section 90 6-a(a) of the Judiciary Law, and costs pursuant to section 605.13(p)(4)(v) of this Part. The notice of charges shall also indicate the Referee appointed to hear the matter, the date, time and place of the hearing, which shall be determined by the Referee and shall advise the respondent that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

c. Answer.

1. General Rule. The Respondent shall answer the Notice of Charges by serving and filing an Answer (and 10 copies thereof) in the Office of Chief Counsel within 20 days after service of the Notice of Charges, unless a shorter time is fixed by the Committee Chairperson and specified in the Notice of Charges.
2. Contents of Answer. The Answer shall be in writing and shall respond specifically (by admissions, denials or otherwise) to each allegation of the Notice of Charges and shall assert all affirmative defenses.
3. Request to Be Heard in Mitigation. The Respondent may include in the Answer matters in mitigation.
4. Effect of Failure to Answer. In the event the Respondent fails either to serve and file an Answer or respond specifically to any allegation or charge, such allegation or charge shall be deemed admitted.

d. Pre-hearing Stipulation. A form of a Pre-Hearing Stipulation specifying the following shall be served on the Respondent together with the Notice of Charges:

1. amendments;
2. claims or defenses abandoned; or
3. undisputed facts:
   i. facts not in dispute as to Staff's Counsel's case;
   ii. facts not in dispute as to the Respondent's case;
4. facts in dispute:
   i. the Staff Counsel's contentions;
   ii. the Respondent's contentions;
5. documents to be offered in evidence during the hearing.1
   i. the staff will offer the following numbered exhibits;
   ii. the Respondent will offer the following lettered exhibits;
6. witnesses to be called:2
   i. by Staff Counsel;
   ii. by the Respondent;
7. statement of legal contentions and authorities;3
8. length of trial.

e. No Other Pleadings. Pleadings shall be limited to a Notice of Charges and any Answer thereto, as amended or supplemented in accordance with

section 605.11 of this Part.

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

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

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

§ 605.13 Conduct of Referee Proceedings

a. Expediting Proceedings.
   1. Conferences. In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited (including preparation of agreed stipulations of fact) Staff Counsel and Respondent or his attorneys shall meet five (5) days after the Answer is served to complete and sign a Pre-Hearing Stipulation in conformance with the form set forth in section 605.12(d) of this Part. Staff Counsel shall forward the signed stipulation immediately to the Referee.
   2. Commencement of Hearing. The hearing before the Referee shall commence within 60 days after service of the Notice of Charges and shall be conducted on consecutive days.

b. Appearances. The Referee shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

c. Order of Procedure. In proceedings upon a Notice of Charges, the Office of Chief Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence. Opening statements, when permitted in the discretion of the Referee, shall be

made first by Staff Counsel. Closing statements shall be made first by the Respondent.

d. Presentation by the Parties. Respondent and Staff Counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Referee may examine all witnesses.

e. Limiting Number of Witnesses. The Referee may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.

f. Additional Evidence. At the hearing the Referee may authorize any Party to file specific documentary evidence as a part of the record.

g. Oral Examination. Witnesses shall be examined orally unless the testimony is taken by deposition as provided in Section 605.17(b) of this Part, or the facts are stipulated in the manner provided in section 605.12 (d) or 605.13(i) of this Part. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

h. Fees of Witnesses. Witnesses subpoenaed by the Office of the Chief Counsel or the Respondent shall be paid, by the subpoenaing party, the same fees and mileage as are paid for like service in the Supreme Court in the First Department.

i. Presentation and Effect of Stipulation. The Parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on such Parties with respect to the matters therein stipulated.

j. Admissibility of Evidence.

1. General Rule. All evidence which the Referee deems relevant, competent and not privileged shall be admissible in accordance with the principles set out in section 605.1 of this Part.
2. Pleadings. The Notice of Charges and Answer thereto shall, without further action, be considered as parts of the record.
3. Convictions. A certificate of the conviction of a Respondent for any crime shall be conclusive evidence of the Respondent's guilt of that crime in any disciplinary proceeding instituted against the Respondent and based on the conviction, and the Respondent may not offer evidence inconsistent with the essential elements of the crime for which the Respondent was convicted as determined by the statute defining the crime except such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.

k. Reception and Ruling on Evidence. When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated. Formal exceptions are unnecessary. The Referee shall rule on the admissibility of all evidence

l. Copies of Exhibits. When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to the Parties and to the Referee.

m. Recording of Proceeding. Hearings shall be recorded by reporters authorized to take oaths, or by mechanical recording devices and a transcript of the hearing so recorded, if such transcription is made, shall be a part of the record and sole official transcript of the proceeding. Such transcript shall consist of a verbatim report of the hearing, an exhibit list and the reporter's certificate, and nothing shall be omitted from the record except as the Referee may direct. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony, except as provided in subdivision (f) of this section or changes in the transcript, except as provided in subdivision (n) of this section.

n. Transcript Corrections. Corrections in the official transcript may be made only to make it conform to what actually transpired at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing except as provided in this section. Transcript

corrections agreed to by all Parties may be incorporated into the record, if the Referee approves, at any time during the hearing or after the close of the hearing, but in no event more than 10 days after the receipt of the transcript. Any dispute among the Parties as to correction of the official transcript shall be resolved by the Referee, whose decision shall be final.

o. Copies of Transcripts. A Respondent desiring copies of an official transcript may obtain such copies at the Respondent's own expense from the official reporter. Any witness may obtain from the official reporter at the witness' own expense a copy of that portion of the transcript relating to the witness' own testimony, or any part thereof. The Office of Chief Counsel shall in either case, bear the expense of one such copy if the Referee so directs upon good cause shown.

p. Determinations.

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

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

q. Referee's Report and Recommendation.

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

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

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

a. Designation of Hearing Panel. Within 10 days of the date of an order of the court directing the Committee Chairperson to designate a Hearing Panel to conduct disciplinary proceedings pursuant to section 603.12 or 603.14 of this Title, the Chairperson shall assign such Hearing Panel. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying the Petition, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.

b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is subject of an objection that has been sustained. The Committee Chairperson shall substitute to the extent possible an attorney for an attorney and a non-attorney for a non-attorney.

c. Conduct of the Proceedings. Proceedings before a Hearing Panel held pursuant to this section shall be conducted in accordance with section 605.13 of this Part.

d. Procedure Following the Filing of the Hearing Panel Report and Recommendation. Upon the filing of the Hearing Panel Report and Recommendation, the Departmental Disciplinary Committee shall take action in accordance with section 605.15 of this Part.

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

a. Designation of Hearing Panel. Within 10 days of the filing of the Referee's Report and Recommendation, the Committee Chairperson shall assign a Hearing Panel to review the Report and Recommendation. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying in the Report and Recommendation, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.

b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is the subject of an objection that has been sustained. The Committee Chairperson shall substitute to

the extent possible an attorney for an attorney and a non-attorney for a non-attorney.

c. Transmittal of Transcript and Memoranda. Within 10 days of the assignment of a Hearing Panel, the Office of the Chief Counsel shall transmit to the Hearing Panel, one copy of the transcript; and to each Panel Member a copy of the Referee's Report and Recommendation and any other memoranda or briefs submitted to the Referee.

d. Schedule for Proceedings. Within 30 days of the Hearing Panel's assignment the parties shall present oral argument and submit briefs on the Referee's Report and Recommendation pursuant to a schedule set by the Hearing Panel Chairperson.

e. Order of Procedure. Oral argument shall be made first by Staff Counsel. The time limits for oral argument shall be set by the Hearing Panel Chairperson.

f. Transcript. No transcript shall be made of the oral argument.

g. Determination.

1. At the conclusion of the oral argument, the Hearing Panel, in executive session, shall determine whether to confirm, disaffirm or modify the findings of fact and conclusions of law set forth in the Referee's Report and Recommendation. Upon making that determination, the Hearing Panel Chairperson shall advise the parties and if the Referee recommends and the Hearing Panel confirms that a reprimand is to be delivered the Hearing Panel chairperson shall thereupon deliver the reprimand and advise the Respondent of his or her rights under section 605.15(e).
2. Within forty days of the presentation of the oral argument or ten days of the submission of briefs, whichever period is shorter, the Hearing Panel shall file at the Office of the Chief Counsel a written Determination confirming, disaffirming or modifying the Referee's Report and Recommendation. The Hearing Panel Chairperson shall assign a Panel Member to prepare the Determination. Separate dissents or concurrences may be filed.

§ 605.15 Action by the Departmental Disciplinary Committee

a. Dismissal of All Charges. In the event that the Referee and the Hearing Panel determine that all charges considered at both proceedings should be dismissed, the Office of Chief Counsel shall give written notice of such determination to the respondent and the complainant. This decision shall be final and the matter closed, unless within sixty days of the date on which the Hearing Panel files its determination the Chief Counsel files a motion to disaffirm under § 605.15(e)(2) of this Part.

b. Reprimand.

1. Notice. In the event that the Referee and Hearing Panel determine that the proceeding should be concluded by Reprimand (with or without referral of the matter to the Court), the Committee Chairperson shall give written confirmation thereof (which shall bear the designation "REPRIMAND") to the Respondent and Staff Counsel, which notice shall also advise the Respondent of:
   i. the charges which were sustained;
   ii. any charges which were dismissed;
   iii. the respondent's right under subdivision (c) of this section to petition the Court; and
   iv. the determination, if made, to refer the matter to the Court.
2. Record. The confirmation shall constitute a written record of the Reprimand, and shall be permanently retained.

c. Petition by Respondent to Vacate Reprimand. A Respondent shall not be entitled to appeal a Reprimand recommended by a Referee and confirmed by a Hearing Panel. Within 30 days of a Reprimand without referral of the

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

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

e. Referral to the Court.

1. General Rule. In the event the Referee and Hearing Panel shall determine that the matter should be concluded by referral to the Court (with or without Reprimand), by Reprimand without referral to the Court in cases where the Respondent is unwilling to have the matter concluded by such Reprimand, or in the event that the Hearing Panel modifies or disaffirms the Referee's Report and Recommendation the Committee shall submit the Referee's Report and Recommendation and the Hearing Panel's Determination together with the entire record as reflected in the docket maintained by the Office of Chief Counsel, to the Court, and the proceedings, if any, before the Court shall be conducted by Staff Counsel.
2. Procedure. The Committee (or, upon the general or limited written direction of the Committee chairperson, the chief counsel) shall transmit the report and the record to the Court with an appropriate petition or motion to disaffirm. If the chief counsel's office accepts the Hearing Panel's report, it shall file a petition. If the chief counsel's office objects to any finding or conclusion contained in the Hearing Panel Determination it may file a motion to disaffirm the Determination in whole or in part, and ask the Court to enter such other and further relief as may be appropriate under the circumstances including, but not limited to, reversal or modification of any finding in the Determination and change in sanction. Copies of such petition or motion to disaffirm shall be served by the office of chief counsel upon the respondent.
3. Notification of Complainant. The Office of Chief Counsel by means of written notice shall notify the Complainant of any referral to the Court (which notice shall inform the Complainant of the requirement of confidentiality), and of any final action by the Court.

§ 605.16 Reopening of Record

a. Reopening on Application of Respondent.

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

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

§ 605.17 Subpoenas, Depositions and Motions

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

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

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

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

§ 605.19 Meetings of the Departmental Disciplinary Committee

a. Meetings, Notice of Time and Place. The Committee shall meet not less frequently than every other month, and such meetings shall be held upon notice from the Secretary given at the direction of the Committee Chairperson or five members of the Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Departmental Disciplinary Committee or, in the absence of such resolution by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Committee at the addresses furnished for such purposes by the members to the Secretary.

b. Organization. The Committee Chairperson shall preside at all meetings of the Committee. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Committee selected for the purpose by the members present at the meeting may preside at the meeting. The Secretary shall keep the minutes of all meetings of the Committee, and in the absence of the Secretary the person presiding at the meeting shall appoint a member present to keep the minutes.

c. Agenda. To the extent possible, an agenda for each meeting of the Committee shall be prepared by or with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Committee together with the notice of meeting or subsequent thereto but prior to the meeting.

d. Quorum and Manner of Acting. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the members present at the meeting.

§ 605.20 Office of Chief Counsel

a. General. There shall be an Office of Chief Counsel which shall consist of the Chief Counsel, Deputy Chief Counsel and other Staff Counsel.

b. Supervision by Chief Counsel. The Office of Chief Counsel shall be supervised by the Chief Counsel who shall, either personally or by other Staff Counsel, exercise the powers and perform the duties of the Office of Chief Counsel set forth in these Rules. The Chief Counsel may from time to time designate the Deputy Chief Counsel or in the absence of such Deputy Chief Counsel, an Associate Counsel, to serve as Acting Chief Counsel in the Chief Counsel's absence.

c. Powers and Duties of the Office of Chief Counsel.
The Office of Chief Counsel shall:
   1. have the powers and duties set forth in this Part;
   2. maintain permanent records of all matters processed by it, including the disposition thereof, and maintain dockets and assign such docket numbers as may be appropriate for the clear designation of each matter, which shall include the calendar year in which the matter is originally docketed;
   3. represent the Committee in all proceedings before the Court;
   4. supervise and manage the Bar Mediation Project and Pro Bono

Special Counsel Project according to the provisions of this part and as may be from time to time modified by the Court, the Committee Chairperson, the Policy Committee or the entire Disciplinary Committee; and

5. have such other duties as may be assigned to it from time to time by the Committee Chairperson, the Policy Committee or the Committee.

d. Bar Mediation Project.
   1. General. Bar Mediators shall consist of volunteers appointed by the Court for the purposes described in section 605.22(d)(2) of this part. The Committee Chair may, with the approval of the Policy Committee, recommend lawyers to the Court for such appointments. The Chief Counsel shall forward these recommendations to the Court together with a proposed order requesting the appointment of the volunteers as Bar Mediators.
   2. Referrals. The Chief Counsel's Office may refer minor complaints involving lawyers with no significant disciplinary history to Bar Mediators, who shall attempt to mediate and resolve the matters raised by the complaint. If the Bar Mediator is unable to resolve the matter, or if it appears that the matter should be further considered by the Committee, the Bar Mediator shall refer the complaint back to the Chief Counsel's Office for investigation under these rules.

e. Pro Bono Special Counsel Program.
   1. General. Pro Bono Special Counsel shall be volunteer lawyers appointed by the Court for the purpose of expediting cases.
   2. Procedure for Appointment. Upon initial determination by the Chief Counsel that a potential volunteer is qualified, the Chief Counsel shall submit the volunteer's resume to the Policy Committee. Upon approval by the Policy Committee, the Chief Counsel shall forward the volunteer's name and descriptive information to the Court, together with a proposed order, requesting the appointment of the volunteer attorney as special counsel.

f. Other Provisions Governing the Bar Mediation Project and the Pro Bono Special Counsel Program.
   1. Recruitment. From time to time, the Chief Counsel's Office shall send notices to the principal bar associations and bar committees on professional discipline or ethics in the First Department, describing the Bar Mediation Project and the Pro Bono Special Counsel Program and soliciting the resumes of interested volunteers. Potential volunteers may also be recruited informally by members of the Court or by members of the Committee. Recommendations for appointment shall be on a non-discriminatory basis.
   2. Conflicts. Before accepting the assignment of a case, Pro Bono Special Counsel shall determine whether accepting the assignment would create a conflict under the Lawyer's Code of Professional Responsibility, and shall agree to inform the Chief Counsel's Office of any conflict or potential conflict which arises in the course of handling the case.
   3. Confidentiality. Bar Mediators and Pro Bono Special Counsel shall be bound by the confidentiality rules contained in Judiciary Law §90 (10) and all other applicable confidentiality provisions.
   4. Supervision and Reporting. The Chief Counsel (or other staff counsel designated by the Chief Counsel) shall assume direct responsibility for supervising a case assigned to Pro Bono Special Counsel. The Chief Counsel shall report to the Policy Committee on an ongoing basis as to the progress of cases assigned to Special Counsel.
   5. Bar Mediators and Pro Bono Special Counsel as Volunteers. The members of the Departmental Advisory Committee, as volunteers, are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17

of the Public Officers Law.

§ 605.21 Policy Committee

a. General. The Policy Committee shall:
   1. have the powers and duties set forth in this Part;
   2. consult with and report regularly to the full Committee;
   3. consider and recommend to the Committee the establishment of policy for the Committee including without limitation, the establishment of priorities for type of misconduct to be investigated and prosecuted, standards to insure uniform treatment of cases and, subject to these Rules, the establishment of procedures for the conduct of investigations by the Office of Chief Counsel and hearings by the Hearing Panel;
   4. oversee and evaluate on a continuing basis the effectiveness of the operation of the Committee to assure the integrity of the attorney disciplinary system;
   5. develop and implement a program to make the public aware of the importance and effectiveness of the disciplinary procedures and activities of the Committee; and
   6. engage in such activities as may be assigned to it by the Committee or the Committee Chairperson.

b. Meetings, Notice of Time and Place, Agenda. The Policy Committee shall meet not less frequently than monthly, and such meetings shall be held upon notice from the Committee Chairperson or three members of the Policy Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Policy Committee or, in the absence or such resolution, by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Policy Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Policy Committee at the addresses furnished for such purpose by the members to the Secretary. To the extent possible, an agenda for each meeting of the Policy Committee shall be prepared with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Policy Committee together with the notice of meeting or subsequent thereto but prior to the meeting.

c. Organization. The Committee Chairperson shall preside at all meetings of the Policy Committee and shall appoint a secretary who shall keep the minutes of the meetings. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Policy Committee selected for the purpose by the members of the Policy Committee present at the meeting may preside at the meeting. The Committee Chairperson may from time to time establish subcommittees of the Policy Committee, consisting of one or more members of the Policy Committee, for such purposes as the Committee Chairperson shall direct.

d. Quorum and Manner of Acting. A majority of the members of the Policy Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the total membership of the Policy Committee.

§ 605.22 Referees; Hearing Panels

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

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

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

b. Hearing Panels.
   1. General. Each Hearing Panel shall:
      i. have the powers and duties set forth in these Rules, including without limitation, the power and duty to review the Referee's Report and Recommendation and to make such Determination as it may deem appropriate in accordance with this Part; and Part 603 of the Rules of the Court and
      ii. perform such other duties as may be imposed pursuant to this Part and Part 603 of the Rules of the Court.

c. Officers. Each Hearing Panel shall be presided over by a Hearing Panel Chairperson designated under section 605.18(1) of this Part or by an Acting Hearing Panel Chairperson, who shall be appointed by the Committee Chairperson from among the members of the Hearing Panel who are attorneys to serve in the absence of the Hearing Panel Chairperson shall such powers and duties as are set forth in this Part.

d. Quorum and Manner of Acting. All matters presented to a Hearing Panel shall be determined by three members of the Panel. Two Panel members assigned to a matter shall constitute a quorum for the transaction of business. All action shall require the concurrence of at least two members. At least two members of a Hearing Panel assigned to a matter shall have heard the entire proceeding. The third assigned member either shall have heard the entire proceeding before the Hearing Panel or shall have read the transcript of proceedings before Referee and briefs submitted to the Referee. In the event that one of the three members assigned to a matter dies, becomes incapacitated, or is otherwise unable to determine a matter, the fourth member shall take his or her place. If the fourth member dies, becomes incapacitated, or is otherwise unable to serve, the Chairperson may designate another member of the Committee to serve in his or her place.

§ 605.23 Committee Chairperson and Secretary

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

§ 605.24 Confidentiality

a. Confidentiality. Disciplinary committee members, committee lawyers, committee employees, and all other individuals officially associated or affiliated with the committee, including pro bono lawyers, bar mediators, law students, stenographers, operators of recording devices and typists who transcribe recorded testimony shall keep committee matters confidential in accordance with applicable law.

b. Waiver. Upon the written waiver of confidentiality by any Respondent, all participants shall thereafter hold the matter confidential to the extent required by the terms of the waiver.

§ 691.1 Application

(a) This Part shall apply to all attorneys who are admitted to practice, reside in, commit acts in or who have offices in the Second Judicial Department, or who are admitted to practice by a court of another jurisdiction and who regularly practice within this department as counsel for governmental agencies or as house counsel to corporations or other entities, or otherwise. 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 the Second Judicial Department, or who in any way participates in an action or proceeding therein, shall be subject to this Part.

(b) The imposition of discipline pursuant to this Part shall not preclude the imposition of any further or additional sanctions prescribed or authorized by law, and nothing contained in this Part shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit bar associations from censuring, suspending or expelling their members from membership in the association or from admonishing attorneys in minor matters; provided, however, that such action by a bar association shall be reported to the appropriate committee appointed pursuant to section 691.4(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 this court or by a committee appointed pursuant to section 691.4(a) of this Part.

§ 691.2 Professional misconduct defined

Any attorney who fails to conduct himself, either professionally or 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 any of the Rules of Professional Conduct set forth in part 1200 of this Title, or any other rule or announced standard of this court governing the conduct of attorneys, shall be deemed to be guilty of professional misconduct within the meaning of subdivision (2) of section 90 of the Judiciary Law.

§ 691.3 Discipline of attorneys for professional misconduct in foreign jurisdictions

(a) Any attorney to whom this Part shall apply, pursuant to section 691.1 of this Part, who has been disciplined in another state, territory or district, may be disciplined by this court because of the conduct which gave rise to the discipline imposed in such other state, territory or district.

(b) Upon receipt from the foreign jurisdiction of a certified or exemplified copy of the order imposing such discipline and of the record of the proceedings upon which such order was based, this court, directly or by a committee appointed pursuant to section 691.4(a) of this Part, 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 any defense to a 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 defenses enumerated in said subdivision (c) of this section. Such notice shall further advise the attorney that, in default of such filing by him, this court will impose such discipline or take such disciplinary action as it deems appropriate.

(c) This court, in default of the attorney's filing a verified statement and demand as provided for in subdivision (b) of this section, may discipline such attorney unless an examination of the entire record before this court, including the record of the foreign jurisdiction and such other evidence as this court in its discretion may receive, discloses (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 of the court in the foreign jurisdiction as to the attorney's misconduct; or (3) that the imposition of discipline by this court would be unjust.

(d) Opportunity for hearing. Where an attorney shall have duly filed both his verified statement setting forth any defense (as enumerated in subdivision (c) of this section) to the imposition of discipline by this court and his written demand for a hearing with respect to such defense, no discipline, by way of suspension or otherwise, shall be imposed without affording the attorney an opportunity to have a hearing.

(e) Any attorney to whom this Part shall apply who has been disciplined in a foreign jurisdiction shall promptly advise this court of such discipline.

§ 691.7 Attorneys convicted of serious crimes; record of conviction conclusive evidence

(a) Upon the filing with this court of a certificate that an attorney has been convicted of a serious crime as hereinafter defined in a court of record of any state, territory or district, including this State, this court shall cause formal charges to be made and served upon the respondent and shall enter an order immediately referring the matter to a referee, justice or judge appointed by this court to conduct forthwith disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(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 lesser crime 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, an attempt or a conspiracy or solicitation of another to commit a serious crime or a crime involving moral turpitude.

(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 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.

(d) Upon the filing with the court of a certificate that an attorney has been convicted of a crime not constituting a serious crime as hereinbefore defined in a court of record in any state, territory or district, including this State, this court shall either refer the matter to a committee appointed pursuant to section 691.4(a) of this Part for whatever action may be appropriate, or cause formal charges to be made and served upon the respondent and enter an order immediately referring the matter to a referee, justice or judge appointed by this court to conduct forthwith disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(e) The clerk of any court within the judicial department in which an attorney admitted to practice in this State is convicted of a crime shall within five days of said conviction forward a certificate thereof to the clerk of this court and to the clerk of the Appellate Division of the Supreme Court in the judicial department in which said person was admitted to practice.

(f) Any such committee, upon receiving information that an attorney to whom these rules shall apply pursuant to section 691.1 of this Part, has been convicted of a crime in a court of record of any state, territory or district, shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate of the conviction to this court. If the certificate has not been forwarded by the clerk, such committee shall obtain a certificate of the conviction and forward it to this court.

§ 691.16 Attorneys assigned by the court as counsel for a defendant in a criminal case

(a) 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.

(b) No attorney assigned by a court as counsel for an indigent defendant in any criminal case shall, during the pendency thereof, accept a private retainer to represent the defendant in that or any other case.

(c) Violation of this section shall result in the removal of the attorney's name from the panel of attorneys eligible to receive assignment pursuant to article 18-B of the County Law and shall constitute a violation of section 1200.3(5) of this Title.

Case Law

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 27, 2012 D-43-12

In the Matter of TERENCE L. KINDLON, an Attorney.

COMMITTEE ON PROFESSIONAL STANDARDS,
Petitioner;

MEMORANDUM AND ORDER

TERENCE L. KINDLON,
Respondent.

(Attorney Registration No. 1034057)

Calendar Date: September 5, 2012

Before: Peters, P.J., Rose, Lahtinen, Spain and Kavanagh, JJ.

Peter M. Torncello, Committee on Professional Standards, Albany, for petitioner.

Kindlon Shanks & Associates, Albany (Lee C. Kindlon of counsel), for respondent.

Per Curiam.

Respondent was admitted to practice by this Court in 1974 and maintains an office for the practice of law in the City of Albany.

Petitioner moves to confirm a Referee's report as to the specification of a single charge that the Referee sustained and to disaffirm the report as to those specifications that the Referee did not sustain. Respondent cross-moves to confirm the Referee's report in its entirety. We have heard respondent on

the motions and in mitigation.

We grant petitioner's motion to confirm the Referee's report, deny the motion to disaffirm the report and grant respondent's cross motion to confirm the report in accordance with the findings of professional misconduct set forth in this decision. Respondent's misconduct arose out of his representation of a criminal defendant. During a recess in the trial and while the prosecutor was outside the courtroom, respondent viewed, handled and photographed a document that was on the prosecution's table. Respondent did not seek, nor was he ever granted, permission by the prosecutor to examine, handle or photograph the document.

The Referee found, and we agree, that respondent engaged in undignified and/or discourteous conduct, as well as conduct that adversely reflects on his fitness as a lawyer in violation of the Rules of Professional Conduct (22 NYCRR 1200.0) rules 3.3 (f) (2); 8.4 (h). In aggravation of respondent's misconduct, we note that petitioner has issued three letters of caution to respondent since 1997. In mitigation, we note respondent's otherwise distinguished legal career and laudable community service.

Under all of the circumstances presented, we conclude that respondent should be censured.

Peters, P.J., Rose, Lahtinen, Spain and Kavanagh, JJ., concur.

ORDERED that respondent is found guilty of the professional misconduct set forth in charge 1, specification 1 only insofar as it alleges a violation of Rules of Professional Conduct (22 NYCRR 1200.0) rule 3.3 (f) (2) and rule 8.4 (h); and it is further

ORDERED that petitioner's motion to confirm and disaffirm the Referee's report is granted and denied accordingly and respondent's cross motion to confirm the Referee's report is granted; and it is further

ORDERED that respondent is censured.

ENTER:

Robert D. Mayberger
Clerk of the Court

Topic: Interviewing adverse witness

Opinion No. 245 (22-72)

NEW YORK STATE BAR ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS

April 28, 1972

OPINION:

Digest: It is not improper for defense counsel in a criminal case to interview a witness for the prosecution over the objection of the District Attorney

Code: EC 6-4; DR 6-101(A); DR 7-102; DR 7-104

QUESTION

May the attorney for a defendant in a criminal case interview a witness for the prosecution without the knowledge of, or over the objection of, the District Attorney?

OPINION

It is not improper for an attorney or defendant in a criminal case to interview a witness for the prosecution without the knowledge, or over the objection of, the District Attorney. Failure to thoroughly investigate and marshal the facts by defense counsel could be considered a dereliction of duty. EC 6-4; DR 6-101(A). A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of the opposing counsel or party, as a witness does not "belong" to any party. This does not, of course, sanction any suggestion calculated to induce any witness to suppress evidence or to deviate from the truth. DR 7-102. See also, American College of Trial Lawyers, Code of Trial Conduct Section 15.

As prosecution witnesses are not parties nor clients of the prosecution, ABA 101 (1933), the provisions of DR 7-104, prohibiting conversations by a lawyer with a party represented by a lawyer unless he has the prior consent of the lawyer representing such party, are not applicable.

Matter of Chmura
2012 NY Slip Op 06298
Decided on September 26, 2012
Appellate Division, Second Department
Per Curiam
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on September 26, 2012

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

WILLIAM F. MASTRO, A.P.J.
REINALDO E. RIVERA
PETER B. SKELOS
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2010-11606

[*1]In the Matter of Eugene Chmura, an attorney and counselor-at-law. Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts, petitioner; Eugene Chmura, respondent. (Attorney Registration No. 2392074)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts. By decision and order of this Court dated February 23, 2011, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts was authorized to institute and prosecute a disciplinary proceeding against the respondent and the issues raised were referred to the Honorable Jerome M. Becker, as Special Referee to hear and report. By decision and order of this Court dated March 18, 2011, the Honorable Jerome M. Becker was relieved as Special Referee and the matter was re-assigned to David Ferber, Esq., to hear and report.

Diana Maxfield Kearse, Brooklyn, N.Y. (Melissa D. Broder of counsel), for petitioner.
Eugene Chmura, Astoria, N.Y., respondent pro se.

OPINION & ORDER

The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on March 27, 1991.

The Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) served the respondent with a verified petition dated December 3, 2010, containing two charges of professional misconduct. After a pre-hearing conference on July 11, 2010, and hearings on August 22, 2011, and August 23, 2011, the Special Referee issued a report, which sustained both charges. The Grievance Committee now moves to confirm the Special Referee's report and impose such discipline upon the respondent as the Court deems just and proper. The respondent has submitted an affirmation seeking to disaffirm the report and for a dismissal of the charges.

Charge one alleges that the respondent converted funds entrusted to him as a fiduciary, in violation of Code of Professional Responsibility DR 9-102(a) and DR 1-102(a)(7) (22 NYCRR 1200.46[a]; 1200.3[a][7]). The respondent maintained an IOLA account at J.P. Morgan Chase Bank, entitled "IOLA - Eugene Chmura." On or about October 19, 2006, Barbara Szalanska retained the respondent on behalf of Allan Sirju, and paid him $10,000 in cash from her own funds to post a bond for Sirju, who was being held in immigration custody in Arizona. On or about August [*2]28, 2008, the respondent deposited a check from the U.S. Treasury Department for $10,487.30, into his IOLA account, representing the return of the bond for Sirju, plus interest. On or about November 20, 2008, without authorization, the respondent wrote a check, payable to himself, for $6,015 from the bond money paid by Szalanska. The respondent never returned the $10,487.30 to either Szalanska or Sirju.

Charge two alleges that the respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Code of Professional Responsibility DR 1-102 (a)(4) and (7) (22 NYCRR 1200.3[a][4], [7]). On or about October 19, 2006, the respondent

signed a fixed fee retainer agreement for $3,000 for Sirju's immigration matter. On April 12, 2010, while under oath at the Grievance Committee's offices, the respondent produced a bill dated April 12, 2010, for attorney's fees in excess of $6,015. The respondent had never sent the bill to Sirju. He created the bill in an effort to justify paying himself the $6,015 from Szalanska's bond money.

Based on the evidence adduced, the Special Referee properly sustained both charges. Accordingly, the motion to confirm is granted. The respondent, who disputed the charges, claimed that the bond money was Sirju's money and that, therefore, he had no obligation to refund any money to Szalanska, whom he maintained was simply a "messenger." We agree with the findings of the Special Referee, who after hearing the testimony of the respondent and Szalanska, was "convinced" that the bond money belonged to Szalanska and that the respondent was well aware of that fact. We agree as well with the Special Referee's finding that the April 12, 2010, bill was a fabrication.

The respondent offered no evidence in mitigation.

The respondent has a significant disciplinary history of three Admonitions and two Letters of Caution.

The respondent is currently delinquent in the payment of his attorney re-registration fees for two biennial periods.

The respondent shows no remorse and remains defiant in his claim that he is "entitled" to deduct his fees from the bond money. The evidence shows that the respondent took advantage of a fellow Polish immigrant. His offer to return the balance of the bail money, but only to Sirju, who is no longer in the country, underscores the bold nature of his theft. His testimony was riddled with inconsistencies and contradictions. Not only did the respondent wrongfully deduct his fees from the bail money, but he padded his bill with improper charges, a bill which was fabricated to justify his conduct. Of note, the respondent was previously admonished in 2005 for similar conduct.

Under the totality of the circumstances, the respondent is disbarred for his professional misconduct.

MASTRO, A.P.J., RIVERA, SKELOS, DILLON and ANGIOLILLO, JJ., concur.

ORDERED that the petitioner's motion to confirm the Special Referee's report is granted; and it is further,

ORDERED that the respondent, Eugene Chmura, is disbarred, effective immediately, and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, Eugene Chmura, shall promptly comply with this Court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent, Eugene Chmura, shall desist and refrain from (l) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further, [*3]

ORDERED that if the respondent, Eugene Chmura, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency, and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:

Aprilanne Agostino

Clerk of the Court

Return to Decision List

People v Jobi

[*1] People v Jobi 2012 NY Slip Op 22305 Decided on October 22, 2012 Supreme Court, Bronx County Marcus, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on October 22, 2012
Supreme Court, Bronx County

The People of the State of New York

against

Kehinde Jobi, Defendant.

862/2010

For the People: A.D.A Nicholas Lewis

A.D.A Stephanie Taylor

Bronx County District Attorney's Office

198 E. 161st Street

Bronx, NY

For the defendant: Steven L Brounstein, Esq.

42-40 Bell Boulevard

Bayside, NY

Martin Marcus, J.

In this case, the defendant, formerly an attorney, was charged with four counts of Grand Larceny in the Third Degree (§ 155.35), one count each of Grand Larceny in the Fourth Degree (Penal Law § 155.30), Petit Larceny (Penal Law § 155.25), Scheme to Defraud in the First Degree (Penal Law §190.65[1][b], and nine counts of Practice of Law by Disbarred or Suspended Attorney (Judiciary Law § 486). In essence, the allegations are that the defendant stole money from several clients and another person, both before and after she was suspended from the practice of law. Before any of these charges were brought against the defendant, the Disciplinary Committee for the First Judicial Department began an investigation into several of these matters, which later became the subject of some of the criminal charges she is now facing.

After complaints were filed against her, and before she was suspended from the practice of law, the defendant testified in a hearing conducted on behalf of the Disciplinary Committee on November 16, 2006, February 21, 2007, March 13, 2008, and November 23, 2009, the first three times without an attorney, and on the final occasion, with one. At the beginning of the first appearance, Roberta Kolar, Esq., an attorney for the Committee, informed the defendant that she was appearing voluntarily, that she was entitled to have counsel with her, and that the [*2]proceedings would be adjourned any time she requested counsel. Ms. Kolar also told the defendant that: This is a civil proceeding and if you should assert your Fifth Amendment privilege we can make an adverse inference. By statute and case law you are required to answer questions even though you might at some point raise an objection to they're (sic) being entered into evidence should it come to that. But you do have to answer.

Finally, Ms. Kolar informed her that "this proceeding is confidential pursuant to Section 90.10 of the judiciary law, Title 29." Ms. Kolar gave the defendant similar admonitions when she testified on March 13, 2008.

On all four occasions that the defendant appeared she answered the questions put to her. On November 16, 2006 and March 13, 2008 — the two occasions in which the defendant was given the admonitions set forth above — she was asked whether money a complainant named Jean John had given to her for the down payment on the purchase of property was still in her escrow account. Both time she testified that the money was still there.

Based on banking records, the People allege that this testimony was false, a fact which the defendant does not now contest. The People assert that in this criminal case, in which the defendant is charged with, inter alia, stealing that money from Ms. Jean, the falsity of that testimony evidences a consciousness of guilt. Accordingly, they asked permission to offer those portions of the defendant's hearing testimony at the trial. In a motion in limine, the defendant objected to the admission of the testimony, claiming that the adverse inference that would have been applicable had she asserted her right against self-incrimination rendered her answers compelled within the meaning of the Fifth Amendment. After hearing argument and receiving written submissions from both sides, I held the testimony admissible. This opinion sets forth the reasons for that decision.

The admonitions the defendant received were, without doubt, poorly phrased. As quoted above, she was first told that she had a Fifth Amendment right not to testify, albeit with the possible consequence of the drawing of an adverse inference in the hearing. She was then told that the was "required to answer questions" but that her testimony would be "confidential." She was not informed that if she answered questions, they might be offered in evidence against her in a subsequent criminal proceeding. Nevertheless, she does not now claim that by being "required to answer questions" she believed she would be compelled to answer them even had she asserted her Fifth Amendment privilege. Nor does she claim that she believed the promise of confidentiality meant her answers could not be offered against her in any subsequent criminal proceedings.

The defendant also does not assert that if she had been specifically informed of the possibility of their use in a subsequent criminal proceeding she would have asserted the privilege. In any case, such a claim would have been unavailing. In U.S. v. Rubinson, 543 F.2d 951 (2d Cir. 1976), the defendants in a prior civil proceeding asserted the Fifth Amendment privilege as to some questions put to them, but made statements in response to others, and those statements were later offered in evidence against them in a criminal prosecution. The defendants argued that the statements were inadmissible because they would have asserted the privilege in the civil proceeding had they known they would be later prosecuted. The Court rejected the claim, [*3]reasoning that since they could have invoked the privilege with respect to those questions they did answer, "they [could not] rely upon what information they did disclose to establish prejudice." Id. at 961.

The sole ground upon which the defendant does claim that she was compelled to testify at the disciplinary hearing is by the prospect of the adverse inference that could have been drawn against her in that proceeding had she invoked her privilege against self-incrimination. In support of her claim, the defendant cites People v. Bass, 140 Misc 2d

57 (Sup. Ct. Bronx Co. 1988). There the court precluded the People from offering against the defendant statements he made to a certified social worker, which the Court held were privileged. The defendant does not claim such a privilege applied to her testimony in this case, and none did.

The defendant also relies upon People v. Kleiner, 170 Misc 2d 850, 852 (Sup. Ct. Richmond Co. 1996), in which the court held that, [j]ust as in a criminal case where defendant's statements at a hearing on a motion to suppress are not admissible if offered by the People in their direct case, likewise defendant's civil case statements in a pro se lawsuit alleging constitutional violations ought not be introduced against him at a criminal trial on related issues. (See, e.g., Simmons v. U.S., 390 U.S. 377 [1968].)

In Simmons, 390 U.S. at 394, the Supreme Court held that "when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." As the Supreme Court and numerous other courts have made clear, however, the Fifth Amendment applies quite differently to testimony given in a civil proceeding, making the analogy drawn in Kleiner inapposite.

In Griffin v. California, 380 U.S. 609, 614 (1965), the Supreme Court held that a person may not suffer any penalty in a criminal case for exercise of her Fifth Amendment right to silence, and that this prohibition is not restricted to fine or imprisonment, but extends to the imposition of any sanction which makes assertion of the Fifth Amendment privilege "costly." In that case, the penalties in question were comment by the prosecution on the accused's decision not to testify at his criminal trial, and an instruction by the court that such silence is evidence of guilt — that is, that the jury could draw an adverse inference from the defendant's failure to testify. In this case, however, that adverse inference would be drawn, not in the criminal case itself, as in Griffin, but in the disciplinary proceeding in which the defendant testified.

In Spevak v. Klein, 385 U.S. 511 (1967), an attorney facing disciplinary proceedings in New York was disbarred, as this State's law then permitted, solely because he refused to honor a subpoena for records and to testify at the judicial inquiry, asserting his Fifth Amendment privilege. Noting that "[t]he threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege," the Court reversed the decision of the Court of Appeals upholding Spevak's disbarment, finding that a disbarment on that basis violated the Fifth Amendment. Id. at 516; see also Gerrity v. New Jersey, 385 U.S. 493 (1967) (statements made by police officers under investigation by State Attorney General's office could not be used against them in criminal proceeding because the officers were told that if they did not answer them without grant of [*4]immunity they were subject to removal from office). As the New York Court of Appeals has explained, in Spevak the Supreme Court viewed "[t]he threat of disbarment for the mere exercise of the privilege . . . as an unconstitutional compulsion to waive the privilege without a coextensive protection against the ultimate use of those statements in a criminal proceeding." Matter of Anonymous Attorneys, 41 NY2d 506, 511 (1977). Thus, it is clear that when suspension or disbarment can flow automatically from exercise of an attorney's Fifth Amendment right, the attorney can be compelled to testify only "[w]hen assurance is made that the statements made cannot be used in a related criminal action . . . ." Id.

As the People correctly observe, however, the assertion of the right against self-incrimination in an attorney's disciplinary proceeding in New York is no longer by itself sufficient to justify the attorney's suspension or disbarment. Instead, it may result only in the drawing of an adverse inference, which may be considered along with other evidence of misconduct in determining whether to suspend or disbar the attorney. Moreover, such action may be taken only "in conjunction with other misconduct which, together, form[ ] a basis for uncontested evidence of professional misconduct.' " Matter of Kapchan, 86 AD3d 110, 112 (1st Dept. 2011). In other words, "merely invoking one's Fifth Amendment right against self-incrimination should not serve as a separate ground for an interim suspension." Id; see also Matter of Harris, 97 AD3d 96 (1st Dept. 2012); People v. Smith, 29 AD3d 1035, 1037 (3d Dept. 2006); Matter of Muraskin, 286 AD2d 186 (1st Dept. 2001).

In Baxter v. Palmigiano, 425 U.S. 308 (1976), which arose from a Rhode Island prison disciplinary proceeding, the Court faced the question whether an adverse inference

could be drawn from the prisoner's silence in that proceeding. The Court distinguished its decision in Griffin, noting that the inference was to be drawn in the disciplinary hearing and not in a criminal case. Moreover, it noted that in Rhode Island, "an inmate's silence in and of itself [was] insufficient to support an adverse decision by the Disciplinary Board," which "must be based on substantial evidence manifested in the record of the disciplinary proceeding." Id. at 317 (internal quotation marks and citation omitted). On this basis, the Court distinguished those of its prior decisions in which "refusal to submit to interrogation and to waive . . . Fifth Amendment privilege, standing alone and without regard to the other evidence, resulted in loss of employment or opportunity to contract with the State." Id. at 318. Thus, the Court concluded, drawing an adverse inference from the prisoner's silence did not offend the Fifth Amendment. The Court observed that, [h]ad the State desired [the prisoner's] testimony over his Fifth Amendment objection," it could have compelled it by "extend [ing] whatever use immunity is required by the Federal Constitution." Id. The Court did not, however, explicitly state whether, had the prisoner answered questions without asserting his Fifth Amendment right and without such a grant of immunity, those answers could have been used against him in a criminal proceeding.

Analysis of that issue begins with U.S. v. Kordel, 397 U.S. 1 (1970), an earlier decision in which the Court held the answers to interrogatories submitted to a corporation and given by the defendant, one of its vice-presidents, could be used against him in a subsequent criminal prosecution. Had no one answered the interrogatories on behalf of the corporation, the government could have seized certain products it manufactured. Nonetheless, the Court reasoned that because the defendant could have invoked his Fifth Amendment privilege against compulsory self-incrimination rather than answer the interrogatories, he was not compelled to [*5]give testimony against himself even if "the information [the defendant] supplied the Government in his answers to the interrogatories, if not necessary to the proof of the Government's case in the criminal prosecution, . . . at least provided evidence or leads useful to the Government." Id. at 6.

Numerous federal courts have relied on Baxter and Kordel in concluding that, even when the civil matter is one brought by the government, "[a] defendant has no absolute right not to be forced to choose between testifying in [that] civil matter and asserting his Fifth Amendment privilege." Keating v. Office of Thrift Supervision, 45 F.3d 322, 326 (9th Cir. 1995) (rejecting Fifth Amendment challenge to administrative law judge's decision banning defendant from federally insured banking industry and directing him to pay restitution). In Hoover v. Knight, 678 F.2d 578 (5th Cir. 1982), the Fifth Circuit held that the failure to postpone an administrative hearing resulting in a police officer's termination while criminal charges were pending against the officer did not violate the Constitution. Similarly, in De Vita v. Sills, 422 F.2d 1172, 1178 (3d Cir. 1970), the Third Circuit denied a request to enjoin an inquiry into the possible disbarment of the plaintiff, both a judge and an attorney, against whom an indictment was also pending, noting that Kordel rejected "the contention that an actual or potential defendant in a criminal case should not even be put to the difficult choice of having to assert the privilege in a related civil case."

The Second Department reached a similar conclusion in Kurlansky v. Bed-Stuy Health Care Corp., 135 AD2d 160 (2d Dept. 1988). There, in determining whether to freeze assets of the defendant that were sought in a civil forfeiture proceeding, the trial court directed the defendants, against whom criminal charges were also pending, to disclose certain financial information. The Second Department upheld the order, noting that the defendants could assert their privilege against self-incrimination, and that while such an assertion could be considered in the civil proceeding, it would not result in an automatic forfeiture of their property. Citing Baxter, the court held that the order did "not subject the defendants to the potent sanctions' held [in other cases] to violate the privilege against self-incrimination." Id. at 180.

The unstated implication in all of these cases is that if a person forgoes her Fifth Amendment privilege in a civil matter and makes statements, even a disciplinary hearing like this one, in which an adverse inference may be drawn from the assertion of the privilege against self-incrimination, a prosecutor can offer those statements in evidence against her in a subsequent criminal case. Other courts have explicitly said so. In Arthurs v. Stern, 560 F.2d 477 (1st Cir. 1977), for example, a physician accused of writing illegal prescriptions sought to suspend disciplinary proceedings against him until

pending criminal charges were resolved. Relying on Baxter, the First Circuit held that the Fifth Amendment did not prohibit the board conducting the proceedings from drawing an adverse inference should the physician refuse to testify. Relying on Kordel, the Court concluded that there was nothing "inherently repugnant to due process in requiring the doctor to choose between giving testimony at the disciplinary hearing, a course that may help the criminal prosecutors, and keeping silent, a course that may lead to the loss of his license." Id. at 478-79 (emphasis added). Similarly, in Brock v. Tolkow, 109 F.R.D.116, 119 (E.D.NY 1985), the Court noted that cases subsequent to Kordel, including Baxter, Arthurs and Rubinson, "have made even clearer that it is not unconstitutional to force a litigant to choose between invoking the fifth amendment in a civil case, thus risking a loss there, or answering the questions in the civil context, thus risking subsequent criminal prosecution." [*6]

State v. Horton, 561 A.2d 488 (Me. 1989), is a case on all fours with this one. There, the defendant, an attorney, made statements in an inquiry conducted by the Grievance Committee of the Board of Overseers for the Bar concerning an alleged misappropriation of money left with him by a client, never raising his Fifth Amendment privilege not to testify. After he was indicted on charges based upon the same alleged misappropriation, the trial court suppressed the statements, finding that they were obtained involuntarily. The Supreme Judicial Court of Maine reversed and held the statements admissible, citing Baxter for the proposition that "[d]isciplinary proceedings are civil in nature, and a lawyer has no constitutional right to prevent the factfinder in that proceeding from considering the implication of his silence, along with other evidence against him, in making a determination." Id. at 491. Citing Arthurs, the Court concluded that "[I]f he chooses to invoke his Fifth Amendment privilege and remain silent, a lawyer might be disciplined for the underlying misconduct charged by the Board, but that does not mean he is compelled to speak rather than assert the privilege." Id.

Similarly, in U.S. v. McKinney, 695 F.Supp.2d 182 (E.D.Pa. 2010), the court held that a doctor's statements at a DEA hearing concerning the possible suspension of his license to prescribe drugs were admissible against him in a criminal prosecution for distribution of a controlled substance, even though the agency could draw an adverse inference against him in the hearing if he chose not to testify. Relying on Arthurs and Keating, the court concluded that the doctor "was able to choose whether or not he wanted to testify" at the DEA hearing, and "his Fifth Amendment rights were not violated when he chose to testify . . . ." Id. at 196; see also People v. Reed, 247 AD2d 900 (4th Dept. 1998) (statements made by Erie County caseworker during investigatory interview concerning alleged misappropriation of client funds admissible against her in criminal trial since, "[a]lthough defendant was told that, if

she was not willing to cooperate, it would shed a certain kind of light on her in terms of what her role in this whole thing was', that is not the type of explicit or implicit threat that serves to immunize defendant's subsequent responses to questioning").

Similarly, in this case, had the defendant exercised her right to silence in the disciplinary proceeding, her silence could have been considered, along with other evidence, in determining whether she should be suspended from the practice of law. Had she done so, her assertion of that right could not, of course, have been offered in evidence against her in this trial. However, she chose instead to testify, and because that choice was voluntary and not compelled within the meaning of the Fifth Amendment, her testimony is admissible against her in this criminal case.

Finally, the defendant asserts that the hearing testimony should not be admitted because its probative value is outweighed by the prejudice it would cause her, in particular because her motivation in testifying falsely at the hearing was her fear of suspension and disbarment, which could be based solely on the violation of the disciplinary rules committed by her removal of the funds from the escrow account, regardless of whether she stole those funds. This argument is also without merit. First, evidence that the money was removed from the account is admissible to establish that she stole it, regardless of whether her hearing testimony to the contrary is admitted at trial. Second, while defense counsel may argue to the jury that her motive in giving the false testimony was solely to prevent her suspension [*7]

(and, of course, the defendant, if she wishes, may so testify), the jury is entitled to

consider that her false testimony was evidence of her consciousness of guilt of the alleged theft.

In the seminal case of People v. Yazum, 13 NY2d 302, 304 (1963), the defendant, who was wanted in Ohio for a parole violation, argued that it was error to admit at his criminal trial in New York evidence of his attempted escape from custody as consciousness of guilt of the crime. The Court of Appeals rejected the argument, noting that: It is quite true that the attempted escape might have been motivated by a consciousness of guilt of the Ohio parole violation as well as by guilt feelings over the crime involved here. Indeed, the defendant may have fled because of guilt of both, or for some other innocent reason. This spectrum of possibilities, however, does not differ materially from that present in any case in which a defendant's flight is introduced in evidence.

Observing that "[t]his court has always recognized the ambiguity of evidence of flight and insisted that the jury be closely instructed as to its weakness as an indication of guilt of the crime charged," Id., and noting that such a charge had been given, the Court upheld the defendant's conviction. See also People v. Flores, 14 AD3d 351 (1st Dept. 2005) (citing Yazum in holding that it was proper for trial court to give consciousness of guilt charge, and noting that "[a]ny ambiguity in defendant's conduct was for the jury to consider"). Here, too, although the defendant may have had another motive for testifying falsely, it is nonetheless relevant as evidence of consciousness of guilt, and the jury will receive the appropriate instruction concerning the weakness of such evidence.

For these reasons, the People's application to permit admission of the relevant

portions of that testimony was granted and the defendant's in limine motion to preclude their admission was denied.

Dated: October 22, 2012

MARTIN MARCUS

J.S.C.

How To Deal With An Ethical Dilemma 2012

Dealing With an Ethical Dilemma

Submitted by Deborah A. Scalise, Esq.[1]

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

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

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

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

   22 NYCRR § 1200.57 [Rule 8.3] (formerly 22 NYCRR § 1200.4 [DR 1-103]) provides that a lawyer may report another lawyer's misconduct to either "a tribunal or other authority empowered to investigate or act upon such violation." Notwithstanding the rule, even if the allegations are only made to the court in which you are appearing, the

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

- *Consider obtaining counsel.*

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

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

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

- *All statements can and will be used against you.*

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

- *Written responses.*

  When providing a written response to a grievance, consult the client's files and your records before responding. Focus on an explanation of your conduct. Do not blame the client, the court or your supervisors unless you can back-up your claims. Note: 22 NYCRR § 1200.6(b) [Rule 1.6(b)] (formerly 22 NYCRR § 1200.19(c) [DR 1-103 (c)]) permits a lawyer to reveal client confidences or secrets in order to defend the lawyer or the lawyer's employees against an accusation of wrongful conduct.

- *Aggravating and mitigating circumstances.*

  If you find yourself the target of a disciplinary investigation there are certain factors, which may be presented as aggravating or mitigating circumstances which can affect the sanction imposed upon a finding of misconduct. Aggravating circumstances which considered by the grievance committees when sanctioning a lawyer include, *inter alia*, failure to cooperate with the committee, lying to the committee, lack of remorse, prior disciplinary history and untreated substance abuse. Mitigating circumstances include, *inter alia,* character references, pro bono activities, community service and treatment for substance abuse.

- *Substance Abuse.*

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

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

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

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

Ethics Resources

2012

Ethics Resources 2012

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

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

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

Judiciary Law

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

Attorney Admissions

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

Other Applicable Rules

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

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

Attorney Disciplinary Procedures

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

Disciplinary Case Law

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

Judicial Conduct

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

Formal and Informal Ethics Opinions

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

Other Resources and Periodicals

- Annotated Code and Model Rules
- ABA Standards on Imposing Lawyer Sanctions

- The New York Code of Professional Responsibility: Opinions, Commentary and Caselaw (Oceana Publications 2010) New York County Lawyer's Ethics Institute
- Simon's New York Rules of Professional Conduct Annotated (Thomson West 2009)
- Modern Legal Ethics Charles Wolfram (West Publishing)
- Legal Ethics: The Lawyers Deskbook on Professional Responsibility, Ronald D. Rotunda, American Bar Association Center on Professional Responsibility (Thomson West 2010)
- Regulation of Lawyers: Statutes and Standards Stephen Gillers and Roy D. Simon, (Aspen Publishers 2008)
- Attorney Escrow Accounts, Rules, Regulations and Related Topics (New York State Bar Association 2010) Peter Coffey and Anne Reynolds Copps, Editors
- New York Law Journal

Telephone Hotlines

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

Websites

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