

Title 22 - Judiciary
Subtitle B - Courts
Chapter IV - Supreme Court
Subchapter D - Fourth Judicial Department
Article 1 - Appellate Division
Subarticle B - Special Rules
Part 1020 - Procedures for Attorney Disciplinary Matters
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§ 1020.1 Application and definitions

This part serves as a supplement to, and must be read in conjunction with, the Rules of the Appellate Division, All Departments (22 NYCRR) part 1240 - Rules for Attorney Disciplinary Matters (hereinafter, “part 1240”). In the event of a conflict, part 1240 shall control. This part incorporates the definitions set forth in section 1240.2 of part 1240. Unless otherwise specified, any reference herein to “the Court” or “the Appellate Division” refers to the Appellate Division, Fourth Department.

§ 1020.2 Fourth Judicial Department grievance plan

In addition to section 1240.4 of part 1240 concerning appointment and composition of grievance committees, grievance committees in the Fourth Judicial Department are subject to the following provisions:

(a) There shall be an attorney grievance committee for each judicial district in the Fourth Judicial Department. There shall be at least one member from each county in each judicial district.

(b) The Appellate Division shall appoint the members of the committees, after consultation with the presidents of the county bar associations. A chairperson of each committee shall be appointed by the Presiding Justice. An appointment shall be for a term of three years. A member who has completed two consecutive three-year terms shall not be eligible for reappointment until three years after the expiration of the second term. Vacancies on a committee shall be filled for the remainder of the unexpired term. Each committee shall be composed of 21 members, including no fewer than three nonlawyers. All members of a committee shall reside or maintain an office within the geographic jurisdiction of the respective judicial district.

§ 1020.3 Duties and authority of attorney grievance committees

Attorney grievance committees in the Fourth Judicial Department shall:

(a) consider and investigate all matters involving allegations of professional misconduct by any person or firm covered by section 1240.1 of part 1240;

(b) supervise staff attorneys in the performance of their duties before the committee;

(c) appoint sub-committees to assist in investigations when necessary and appropriate;

(d) authorize the chief attorney to commence a proceeding in the Appellate Division when the public interest requires prompt action or when such proceeding is otherwise permitted under law or the rules of the Court; and

(e) maintain and provide to the Appellate Division statistical reports, in a form approved by the Court, summarizing the processing and disposition of all matters before the committee.

§ 1020.4 Staff of attorney grievance committees

The attorney grievance committees of the Fourth Judicial Department shall maintain a legal staff, which shall include a chief attorney and such staff attorney positions as may be provided for in the State budget. Staff attorneys and the chief attorney shall be appointed by the Appellate Division. Staff attorneys and the chief attorney shall reside within the Fourth Department. The chief attorney may hire, subject to the approval of the Appellate Division, investigative and clerical staff as provided for in the State budget.

§ 1020.5 Duties and authority of legal staff

Investigation of all complaints shall be initiated and conducted by the chief attorney, with such assistance from the staff attorneys as deemed necessary by the chief attorney. Such investigations shall be conducted in accordance with the provisions of section 1240.7 of part 1240, and subject to the following provisions:

(a) in the event the chief attorney directs a respondent to submit to a committee a written response to a complaint, pursuant to section 1240.7 (b) (2) of part 1240, the chief attorney shall afford the respondent at least 14 days written notice to do so;

(b) the chief attorney has discretion at any time during an investigation or proceeding to provide to the complainant a copy of the respondent's written response to the complaint;

(c) in the event the chief attorney directs a respondent to appear before the chief attorney or a staff attorney for a formal interview or examination under oath, or to produce records, pursuant to section 1240.7 (b) (2) of part 1240, the chief attorney shall afford the respondent at least 14 days written notice to do so;

(d) in the event the chief attorney applies to the Clerk of the Court for a judicial subpoena to compel the attendance of a person as a witness or the production of relevant books and papers, pursuant to section 1240.7 (b) (3) of part 1240, the application shall be supported by sufficient facts to demonstrate that the testimony or books and papers specified in the proposed subpoena are relevant to matters under investigation and are necessary for the proper disposition of a complaint. The application shall also establish that a judicial

subpoena is necessary to obtain such testimony or books and papers and that other potential sources of the information, or the means to obtain the information, are either impractical or unavailable; and,

(e) when a committee or the chief attorney has determined that a complaint is suitable for review by a county or local bar association, pursuant to section 1240.7 (d) of part 1240, the chief attorney may refer the complaint, upon notice to the respondent and the complainant, to an appropriate committee of the local bar association for disposition, in accordance with section 1020.6 of this part.

§ 1020.6 Duties and authority of county and local bar associations

(a) A county or local bar association may review, investigate and dispose of a complaint involving allegations of minor delay that resulted in no permanent harm to the client, fee disputes, personality conflicts between attorney and client, or other minor matters that, in the discretion of a committee or the chief attorney, do not warrant action by a committee or the Appellate Division, subject to the following provisions:

(1) When a complaint is submitted directly to a bar association by a complainant, the bar association shall provide to the chief attorney, within 20 days of receipt of the complaint, a report in a form prescribed by the chief attorney, a copy of the complaint, and any other relevant correspondence.

(2) When a bar association retains jurisdiction over a complaint after notifying the chief attorney as required by paragraph (1) of this subdivision, or where a complaint is referred to the bar association by the chief attorney pursuant to section 1020.5 (e) of this part, the association shall, within 60 days of the date of receipt of the complaint, complete its investigation and forward to the chief attorney the file, along with a status report in a form prescribed by the chief attorney. When the bar association has not reached a determination resolving the complaint within the 60-day period, the committee may assume jurisdiction of the matter by providing written notice to the bar association. The association may make a written request to the chief attorney for an extension of the 60-day period.

(3) A complaint received by a bar association that involves a matter other than a minor delay, fee dispute or personality conflict shall be forwarded to the chief attorney as soon as possible and in no event more than 20 days after receipt thereof.

(b) Each bar association shall file with the chief attorney quarterly reports on attorney grievance matters in a form prescribed by the chief attorney. The report shall be filed within 15 days of the end of each quarter.

§ 1020.7 Authorization to file charges of misconduct in the Appellate Division

The chief attorney may recommend to the committee that disciplinary proceedings be commenced in the Appellate Division asserting charges of professional misconduct against a respondent when there is probable cause to believe that the respondent has committed professional misconduct within the meaning of section 1240.2 of part 1240. The chief attorney shall present the matter to the committee along with a written recommendation setting forth an outline of proposed charges and citing any rule or other standard that forms the basis thereof, a copy of which shall be provided to the respondent. The respondent shall have the right to appear before the committee and to be heard in response to the recommendation of the chief attorney. After the respondent has been afforded an opportunity to be heard, the committee may vote to authorize charges of misconduct against the respondent, pursuant to section 1240.7 (d) (2) (vi) of part 1240.

§ 1020.8 Proceedings in the Appellate Division

(a) Petition. When a committee authorizes charges of professional misconduct against a respondent, the chief attorney shall file in the Appellate Division an original notice of petition and verified petition, together with 5 copies thereof with proof of service of one copy on the respondent. Unless otherwise directed by the Appellate Division, the proceeding shall be made returnable at 2:00 p.m. on the last Tuesday of a scheduled term of the Court. The notice of petition and petition shall be served in the manner set forth in Judiciary Law, section 90 (6), and with sufficient notice to all parties, as set forth in the CPLR, and shall be filed at least 30 days prior to the return date thereof.

(b) Answer. The respondent shall file in the Appellate Division an original verified answer to a petition, together with five copies thereof with proof of service of one copy on the chief attorney or staff counsel, within 20 days from the date of service of the petition. The respondent in the answer shall respond to each allegation of the petition by either admitting the allegation, denying the allegation as known or believed by the respondent to be untrue, or specifying that the respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegation, which shall have the effect of a denial. The respondent in the answer shall additionally plead any affirmative defense to the charges, and may also set forth matters in mitigation.

(c) Default. In the event a respondent fails to file an answer within the time period specified under these rules, the chief attorney may file in the Appellate Division a motion for an order finding the respondent in default, deeming the material allegations of the petition admitted by the respondent, and granting any other relief provided by law and warranted under the circumstances, which may include an order suspending the respondent during the pendency of the proceeding, pursuant to section 1240.9 of part 1240. Unless otherwise directed by the Court, any motion for an order finding the respondent in default shall be filed

in accordance with section 1020.8 (h) of this part and include proof that a copy of the motion papers were delivered personally to the respondent at least 10 days prior to the return date of the motion. The respondent shall personally appear before the Appellate Division on the return date of any such motion.

(d) Hearing. When one or more parties to the proceeding files a statement of disputed facts, pursuant to section 1240.8 (a) (2) of part 1240, which in the discretion of the Court establishes the existence of an issue of fact for which a hearing is necessary, the Court may refer the matter to a justice of the Supreme Court or referee designated by the Appellate Division for a hearing on such issue. The referee may additionally receive evidence regarding any disputed aggravating factor raised in the petition or defense or mitigating factor raised in the answer. The referee shall thereafter file with the Appellate Division a written report setting forth findings of fact with respect to all issues of fact and making an advisory determination as to whether the Committee has established, by a preponderance of the evidence, each element of the charge or charges of misconduct. The referee shall not make a recommendation as to an appropriate sanction. Unless otherwise directed by the Appellate Division, the referee shall give the matter a preference, shall schedule the hearing on consecutive dates, to the extent possible, and shall complete the hearing within 60 days following the date of the entry of the order of reference. The parties shall make final submissions to the referee, including proposed findings of fact, if any, within 15 days following the date on which the stenographic transcript of the minutes of the hearing is completed and provided to the parties, and the referee's report shall be completed within 30 days after final submissions are made by the parties.

(e) Subpoenas. Unless otherwise directed by the Court, an application by any party for a subpoena seeking the attendance of a witness or the production of books and papers before the Court or a referee appointed by the Court, pursuant to section 1240.8 (a) (4) of part 1240, shall not be made until after the entry of an order of the Appellate Division referring the matter for a hearing. The application shall be supported by an affirmation setting forth facts sufficient to demonstrate that the testimony or books and papers specified therein are relevant to a disputed fact in the matter and that a judicial subpoena is necessary to obtain such testimony or books and papers. The application shall also be on notice to all parties to the proceeding, and the Court may direct such further notice as justice may require. The Court may refer the application for consideration and recommendation or determination by the referee.

(f) Appearance in mitigation. When no issue of fact is raised by the pleadings, or after completion of the hearing and report on issues of fact, the Court shall fix a time at which the respondent may be heard in mitigation or otherwise, unless the respondent waives in writing the privilege to be heard.

(g) Written materials in mitigation. Unless otherwise directed by the Court, the respondent may file with the Court written materials setting forth matters in mitigation at any time up until 20 days before any date fixed by the Court for the respondent to be heard in mitigation.

(h) Applications and motions to the Appellate Division

(1) Return date. A motion or application to the Appellate Division concerning any matter governed by part 1240 or this part shall be made returnable at 2:00 p.m. on the last Tuesday of a scheduled term of the Court or any other date specified by the Court.

(2) Necessary papers. Unless otherwise approved by the Court, the moving party shall file with the Appellate Division, no later than 20 days prior to the return date of the motion or application, an original notice of motion and any papers in support of the motion or application, together with five copies thereof, proof that one copy has been served on all other parties to the proceeding, and a check payable to the Appellate Division, Fourth Department, in the amount of \$45 in payment of the motion fee. Any motion or application for resignation from the practice of law or reinstatement to the practice of law shall additionally comply with any applicable section of part 1240, such as sections 1240.10 (resignation while investigation or proceeding is pending); 1240.16 (reinstatement of disbarred or suspended attorneys); 1240.22 (a) (resignation for non-disciplinary reasons); or 1240.22 (b) (reinstatement of attorney resigned for non-disciplinary reasons).

(3) Responding papers. Answering affidavits and a notice of cross motion, if any, shall be served and filed with the Appellate Division no later than 10 days prior to the return date of the motion. Reply papers or papers in response to a cross motion, if any, must be served and filed with the Appellate Division no later than 5 days prior to the return date of the motion.

(4) Oral argument. Oral argument of motions in disciplinary matters is not permitted unless otherwise directed by the Court.

§ 1020.9 Conduct of disbarred or suspended attorneys

A respondent suspended or disbarred from the practice of law by order of the Appellate Division, Fourth Department shall comply with section 1240.15 of part 1240, including the filing of an affidavit in the form prescribed therein, together with proof that a copy of the affidavit was served on counsel to the committee.

§ 1020.10 Reinstatement of attorneys suspended for failing to comply with registration requirements

A respondent who by order of the Court was suspended from the practice of law following a proceeding based solely on allegations that the respondent failed to comply with attorney registration requirements or failed to pay attorney registration fees, pursuant to Judiciary Law § 468-a, may apply for reinstatement at any time by filing an affidavit in the form prescribed in section 1240.16 (d) of part 1240 and upon proof that the applicant has since complied with such registration requirements, including payment of all required registration fees. The application must additionally include a check payable to the Appellate Division, Fourth Department, in the amount of \$45 in payment of the motion fee.

§ 1020.11 Diversion to a monitoring program

When a respondent, in defense or mitigation of any allegation of professional misconduct, raises alcohol or substance abuse or other mental or physical health issues, any party may apply to the Court for an order diverting the respondent to a monitoring program to address such issue or issues, pursuant to section 1240.11 of part 1240. Any such application shall be supported by proof that the respondent has entered into a monitoring program with the New York State Bar Association Lawyer Assistance Program or an equivalent program approved by the Court in advance of the filing of the motion. Approval of an equivalent program must be sought by written request to the Court, copied to the chief attorney, setting forth the terms and requirements of the proposed equivalent program and the identity of the proposed monitor. The application must also be accompanied by a check payable to the Appellate Division, Fourth Department, in the amount of \$45 in payment of the motion fee.

§ 1020.12 Investigations of persons or parties unlawfully practicing or assuming to practice law

(a) A bar association recognized in a county within the Fourth Department or a committee thereof engaged in an investigation into the alleged unlawful practice of law or the subject of such an investigation may apply to this Court for the issuance of a subpoena directing the attendance of witnesses or the production of books, papers and records before the association or a committee thereof. The application shall establish that the specified testimony or books, papers and records are relevant to the inquiry of the bar association and that other potential sources of the information, or the means to obtain the information, are either impractical or unavailable. Subpoenas shall be issued by the Clerk of the Court in the name of the Presiding Justice upon a determination that there is reasonable cause to believe that a person, firm, corporation or other organization is unlawfully practicing law or assuming to practice law or is engaged in any business or activity that may involve the unlawful practice of law.

(b) The party who requested the subpoena is authorized to take and cause to be transcribed testimony under oath upon the attendance of a witness pursuant to a subpoena issued under subdivision (1) of this rule.

(c) Upon a finding by an association or committee that there is probable cause to believe that the subject of the investigation has engaged in the unlawful practice of law, the association or committee may refer the matter and disclose the results of the investigation to a law enforcement agency or official with jurisdiction over the matter.

1020.13 Application to unseal attorney disciplinary records or for access to closed disciplinary proceedings

An application for an order unsealing attorney disciplinary records or for access to closed disciplinary proceedings made pursuant to Judiciary Law section 90 (10) or section 1240.18 (d) of part 1240 shall consist of a notice of motion and supporting papers filed in accordance with section 1020.8 (h) of this part and shall be on notice to the chief attorney and the subject attorney, unless the application requests, and the Presiding Justice approves, dispensing with such service.