

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

ADM 2009-0325.1

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

DOES HEREBY, effective April 1, 2009 (additions in text are indicated by underlining and deletions by ~~strikethrough~~),

I. Amend § 691.2 of part 691 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 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 ~~disciplinary rule of the Code of Professional Responsibility, adopted jointly by the Appellate Divisions of the Supreme Court, effective September 1, 1990, or any canon of the Canons of Professional Ethics adopted by the New York State Bar Association~~ 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.

II. Amend paragraph (3) of subdivision (e) of § 691.4 of part 691 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 691.4 Appointment of grievance committees; commencement of investigation of attorney misconduct; complaints; procedure.

* * *

(e) Upon receipt or initiation of a specific complaint of professional misconduct, any such committee may, after preliminary investigation and upon a majority vote of the full committee:

* * *

(3) conclude the matter by privately admonishing the attorney, which admonition shall clearly indicate the improper conduct found and the ~~disciplinary rule, canon or special rule governing the conduct of attorneys~~ which has been violated, and by appropriately advising the complainant of such action;

III. Amend subdivisions (a), (b), and (d) of § 691.12 of part 691 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 691.12 Regulations and procedures for random review and audit and biennial affirmation of compliance.

(a) *Availability of bookkeeping records; random review and audit.* The financial records required by ~~section 1200.46~~ rule 1.15 of part 1200 of this Title shall be available at the principal New York State office of the attorneys subject hereto, for inspection, copying and determination of compliance with said rule 1.15, to a duly authorized representative of the court pursuant to the issuance, on a randomly selected basis, of a notice or subpoena by this court or the appropriate grievance committee.

(b) *Confidentiality.* All matters, records and proceedings relating to compliance with ~~section 1200.46~~ rule 1.15 of part 1200 of this Title, 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.

* * *

(d) 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 ~~section 1200.46~~ rule 1.15 of part 1200 of this Title. The affirmation shall be available at all times to the grievance committees. 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.

IV. Amend paragraph (1) of subdivision (e) and subdivision (f) of § 691.20 of part 691 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 691.20 Claims or actions for personal injury, property damage, wrongful death, loss of services resulting from personal injuries, due to negligence or any type of malpractice, and claims in connection with condemnation or change of grade proceedings.

* * *

(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, or loss of services resulting from personal injury or for property or money damages resulting from negligence or any type of malpractice, 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 provisions of the ~~Code of Professional Responsibility, as adopted by the New York State Bar Association, or of any canon of the Canons of Ethics, as adopted by such bar association~~ Rules of Professional Conduct as set forth in part 1200 of this Title, unless authorized by a written order of the court as hereinafter provided.

* * *

(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 691.12 of this Part~~ rule 1.15 of part 1200 of this Title.

V. Amend § 700.1 of part 700 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 700.1 Application of rules.

These rules shall apply in all actions and proceedings, civil and criminal, in courts subject to the jurisdiction of the Appellate Division of the Supreme Court in the Second Judicial Department. They are intended to supplement, but not to supersede, the ~~code of professional responsibility and the canons of judicial ethics, as adopted by the New York State Bar Association~~ Rules of Professional Conduct set forth in part 1200 of this Title and the Rules of Judicial Conduct set forth in part 100 of this Title. In the event of any conflict between the provisions of these rules and ~~that Code or those Canons~~ the Rules of Professional Conduct and/or the Rules of Judicial Conduct, the ~~Code and the Canons~~ Rules of Professional Conduct and/or the Rules of Judicial Conduct shall prevail.

VI. Repeal § 700.4 of part 700 of the Official Compilation of Codes, Rules and Regulations of the State of New York and substitute therefor the following:

§ 700.4 Obligations of attorneys.

(a) Attorneys are both officers of the court and advocates. It is their professional obligation to conduct each case courageously, vigorously, and with all the skill and knowledge they possess. It is also their obligation to uphold the honor and maintain the dignity of the profession. They must avoid disorder or disruption in the courtroom and must maintain a respectful attitude toward the court. In all respects attorneys are bound, in court and out, by the provisions of the Rules of Professional Conduct.

(b) Attorneys shall use their best efforts to dissuade their client and witnesses from causing disorder or disruption in the courtroom.

(c) Attorneys shall not engage in any examination which is intended merely to harass, annoy or humiliate the witness.

(d) No attorney shall argue in support of or against an objection without permission from the court; nor shall any attorney argue with respect to a ruling of the court on any objection without such permission. However, an attorney may make a concise statement of the particular grounds for an objection or exception, not otherwise apparent, where it is necessary to do so in order to call the court's attention thereto, or to preserve an issue for appellate review. If an attorney believes in good faith that the court has wrongly made an adverse ruling, he or she may respectfully request reconsideration thereof.

(e) Attorneys have neither the right nor duty to execute any directive of a client which is not consistent with the Rules of Professional Conduct set forth in part 1200 of this Title. Nor may attorneys advise another to do any act or to engage in any conduct in any manner contrary to these rules.

(f) Once a client has employed an attorney who has entered an appearance, the attorney shall not withdraw or abandon the case without

(1) justifiable cause,

(2) reasonable notice to the client, and

(3) permission of the court.

(g) Attorneys are not relieved of these obligations by what they may regard as a deficiency in the conduct or ruling of a judge or in the system of justice; nor are they relieved of these obligations by what they believe to be the moral, political, social, or ideological merits of the cause of any client.

VII. Amend § 701.1 of part 701 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 701.1 Application of Rules.

These rules shall apply in all actions and proceedings, civil and criminal, in courts subject to the jurisdiction of the Appellate Division of the Supreme Court in the Second Judicial Department. They are intended to supplement, but not to supersede, the ~~code of professional responsibility and the canons of judicial ethics, as adopted by the New York State Bar Association~~ Rules of Professional Conduct set forth in part 1200 of this Title and the Rules of Judicial Conduct set forth in part 100 of this Title. In the event of any conflict between the provisions of these rules and ~~that Code or those Canons~~ the Rules of Professional Conduct and/or the Rules of Judicial Conduct, the Code and the Canons Rules of Professional Conduct and/or the Rules of Judicial Conduct shall prevail.

VIII. Amend § 702.1 of part 702 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

§ 702.1 Application of Rules.

These rules shall apply in all criminal actions and proceedings in courts subject to the jurisdiction of the Appellate Division of the Supreme Court in the Second Judicial Department. They are intended to supplement, but not supersede, the ~~Code of Professional Responsibility and the Canons of Judicial Ethics, as adopted by the New York State Bar Association~~ Rules of Professional Conduct set forth in part 1200 of this Title and the Rules of Judicial Conduct set forth in part 100 of this Title. In the event of any conflict between the provisions of these rules and ~~that Code or those Canons~~ the Rules of Professional Conduct and/or the Rules of Judicial Conduct, the ~~Code and the Canons~~ Rules of Professional Conduct and/or the Rules of Judicial Conduct shall prevail.

Dated: Brooklyn, New York
March 25, 2009



For the Court:

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

A. Gail Prudenti
Presiding Justice

Attest:

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