

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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**In the Matter of the Amendment of Rules  
of the Appellate Division, First Department**

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**ORDER**

The Appellate Division of the Supreme Court of the State of New York, First Department hereby amends the following rules of the Court, effective October 1, 2016:

**Part 603. CONDUCT OF ATTORNEYS**

Section 603.1 is rescinded and a new section 603.1 is adopted to read as follows:

**§ 603.1 Application.**

(a) This Part serves as a supplement to, and should be read in conjunction with, Rules for Attorney Disciplinary Matters (22 NYCRR) Part 1240 and is applicable to all complaints, investigations, proceedings, persons or entities covered by those Rules within the jurisdiction of the State of New York Supreme Court, Appellate Division, First Judicial Department.

(b) The rules in this Part are promulgated for the purpose of assisting the Committee, the Office of the Chief Attorney and the respondent to develop the facts relating to, and to reach a just and proper determination of, matters brought to the attention of the Committee or Office of the Chief Attorney. The Court will not hold action of a referee invalid by reason of any nonprejudicial irregularity. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

Sections 603.2 and 603.3 [Rescinded]

Section 603.4 is rescinded and a new section 603.4 is adopted to read as follows:

**§ 603.4 Appointment of Attorney Grievance Committees; Meetings of the Committees**

**(a) Attorney Grievance Committees**

(1) The Court shall appoint two attorney grievance committees for the First Judicial Department, each committee consisting of 21 members, all of whom shall be appointed by the Court. Each grievance committee shall have the power to appoint its members to subcommittees. Each committee may act through its chairperson, vice-chairperson or subcommittee.

(2) The Court shall appoint as members of the committees attorneys in good standing with the Bar of the State of New York and non-lawyers, who reside or have a principal place of business in the First Judicial Department. At least three members of each committee shall be non-lawyers. Appointment to a Committee shall be 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 years or shorter terms. 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. Appointments to the Committees may be made from lists of nominees submitted by the bar associations and by such other means which the Court deems in the public interest.

(3) Each grievance committee shall have a chairperson and a vice-chairperson who shall be lawyer members appointed by the Court. The chairperson and vice-chairperson shall serve in that capacity for a term of three years and shall be eligible for reappointment for not more than one additional term of three years.

(4) Committee members serving as Special Counsel as of September 30, 2016 shall be deemed attorney grievance committee members effective October 1, 2016 and shall thereafter continue to serve for one (1) three-year term.

**(b) Meetings of the Attorney Grievance Committees**

(1) *Meetings.* Each Committee shall meet not less frequently than every other month. The Committee Chairperson shall preside at all meetings of the Committee. An agenda for each meeting of the Committee shall be prepared by or with the approval of the Committee Chairperson and distributed to each member.

(2) *Quorum and Manner of Acting.* Two-thirds of the membership of a grievance committee shall constitute a quorum for the transaction of business and all action shall require the affirmative vote of at least a majority of the members present.

**(c) Pro Bono Special Counsel**

Pro Bono Special Counsel shall be volunteer attorneys appointed by the Court for the purposes of assisting with the investigation of complaints and providing expert legal advice to the Committees, Chief Attorney and legal staff. Upon initial determination by the Chief Attorney that a potential volunteer is qualified, the Chief Attorney shall submit the volunteer's name to the Chairperson of the Committee, and upon approval by the Chairperson, the Chief Attorney shall forward the volunteer's name and descriptive information to the Court, requesting the appointment of the volunteer attorney as special counsel. Pro Bono Special Counsels shall be appointed for one-year terms.

Sections 603.5 and 603.6 [Rescinded]

Section 603.7 is renumbered as 603.25

Section 603.8 is renumbered as 603.26 and a new section 603.8 is adopted to read as follows:

**§ 603.8 Formal Proceedings Before the Court Pursuant to 22 NYCRR 1240.8**

**(a) Preliminary Provisions**

(1) *Appearance Pro Se.* When a respondent appears pro se, the respondent shall file with the Court and Office of the Chief Attorney an address to which any notice or other written communication required to be served upon the respondent may be sent. The respondent shall also file with the Court and the Office of the Chief Attorney a telephone number and e-mail address.

(2) *Representation of Respondent by Counsel.* Counsel for a respondent shall file with the Court and Office of the Chief Attorney a written notice of appearance which shall state such counsel's name, address, telephone number and e-mail address, and the name and address of the respondent on whose behalf counsel appears. Any additional notice or other written communication required to be served or furnished to a respondent may be sent to counsel of record for such respondent in lieu of transmission to the respondent. Any notice required to be served on or furnished to the respondent shall also be served upon or furnished to respondent's counsel in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

(3) *Preference; Extensions.* Disciplinary matters shall be granted a preference by the Court. Extension of the time periods specified in 22 NYCRR Part 1240 regarding proceedings before the Referee shall be made in writing to the Court and determined by a justice of the Court upon good cause shown.

**(b) Commencement of Formal Proceedings.**

(1) On behalf of the Committee, the Office of the Chief Attorney shall institute formal disciplinary proceedings under 22 NYCRR 1240.8(a)(1) by serving on the respondent a notice of petition, together with the petition and any supporting affidavits and exhibits specified in the notice at least twenty days before the time at which the petition is noticed to be heard. Unless otherwise directed by a justice of the Court, petitions shall be noticed for 10 o'clock in the forenoon of any regular business day of the Court during the period of August 1 through June 20, and on Mondays during the period of June 21 through July 31. The original notice of petition and petition (without additional conformed copies) shall be filed with the Court in accordance with 22 NYCRR 600.2(b).

*(2) Contents of Notice of Petition and Petition.*

The petition 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.

*(3) Answer and Reply.*

(i) An answer and supporting affidavits and exhibits, if any, shall be served at least seven days before the time at which the petition is noticed to be heard. A reply, together with supporting affidavits, if any, shall be served at least one day before the petition is noticed to be heard. The original answer and original reply (without additional conformed copies) shall be filed with the Court in accordance with 22 NYCRR 600.2(b).

(ii) The answer shall be in writing and shall respond specifically (by admissions, denials or otherwise) to each allegation of the petition and shall assert all affirmative defenses.

(iii) The respondent may include in the answer matters in mitigation.

(iv) 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.

**(c) Motions**

(1) All motions and applications authorized under 22 NYCRR Part 1240 shall be filed with the Court in the manner specified in section 600.2(a) of this Title. The parties shall submit to the clerk five conformed copies in addition to the original notice of motion and supporting affidavits and exhibits.

(2) Where the Court has appointed a referee to hear and report pursuant to Rule 603.8-a, the Court may refer any pending motion or application in that proceeding to the referee for determination.

A new section 603.8-a is added to read as follows:

**§ 603.8-a Referee proceedings.**

**(a) Appointment of referee.**

(1) At any time following the filing of statements pursuant to 22 NYCRR 1240.8(a)(2), the Court may, upon motion of either party or upon its own motion, refer issues of disputed facts to a

referee pursuant to 22 NYCRR 1240.8(b)(1).

(2) A referee shall have the powers and duties set forth in this section, 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 22 NYCRR Part 1240.

**(b) Objections to referee.**

Within seven days of the appointment of a referee by the court the Office of the Chief Attorney 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.

**(c) Timing of hearing.**

The hearing before the referee shall be completed within 60 days following the date of the entry of the order of reference in accordance with 22 NYCRR 1240.8(b)(1).

**(d) Appearances.**

The referee shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

**(e) Order of procedure.**

In a referee proceeding upon charges, the Office of Chief Attorney 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 attorney. Closing statements shall be made first by the respondent.

**(f) Presentation by the parties.**

Respondent and staff attorney shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The referee may examine all witnesses.

**(g) Limiting number of witnesses.**

The referee may limit the number of witnesses who may be heard upon any issue before him or her to eliminate unduly repetitious or cumulative evidence.

**(h) Additional evidence.**

At the hearing the referee may authorize any party to file specific documentary evidence as a part

of the record.

**(i) Oral examination.**

Witnesses shall be examined orally unless the testimony is taken by deposition as provided in 22 NYCRR 1240.8(a)(4) or the facts are stipulated to by the parties. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before any questions are put to them or their testimony is deemed evidence in the proceeding.

**(j) Fees of witnesses.**

Any witnesses subpoenaed shall be paid, by the subpoenaing party, the same fees and mileage as are paid for like services in the Supreme Court in the First Department.

**(k) 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.

**(l) Admissibility of evidence.**

(1) *General rule.* All evidence which the referee deems relevant, competent and not privileged shall be admissible.

(2) *Pleadings.* The notice of petition 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.

**(m) 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.

**(n) 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.

**(o) Recording of proceeding.**

Hearings shall be recorded, and the transcript of the hearing so recorded, if such transcription is made, shall be a part of the record and sole official transcript of 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 (h) of this section or changes in the transcript, except as provided in subdivision (p) of this section.

**(p) 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.

**(q) 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.

**(r) Amendment and supplementation of pleadings.**

(1) No amendment or supplementation of any pleadings shall be made unless by consent of the parties or by leave of the Court or the referee.

(2) 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, 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 petition and petition, and may render a decision upon all charges as may be justified by the evidence in the case.

**(s) Reopening of record on application of respondent.**

(1) *Application to reopen.* No application to reopen a proceeding shall be granted except upon the application of staff attorney or the respondent made prior to the filing by the referee of the report and recommendation, 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 Attorney. 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 Attorney 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 Attorney shall transmit such documents to the referee who shall grant or deny such application.

**(t) Referee's report and recommendation**

(1) 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 seven days from the conclusion of the oral arguments. The referee may receive evidence regarding any defense or mitigating factor raised by the respondent, and any aggravating factor raised by the Committee.

(2) Following the hearing and the parties' submissions of proposed findings of fact, the referee, in all cases, shall prepare a written report as to whether the Committee has established each element of the charge or charges of misconduct, setting forth findings of fact and conclusions of law. Where the referee's determination is to sustain one or more charges against the respondent, the referee shall make a recommendation as to an appropriate sanction.

(3) The referee shall file a report within 60 days of the conclusion of the hearing with the Court and the Office of Chief Attorney, which shall serve copies thereof upon the respondent.

(4) Upon submission of the referee's report to the Court, either party may move to confirm or disaffirm the report, in whole or in part, by motion on notice to the adversary pursuant to section 603.8(c)(1) of this Title. Any motion by the Committee regarding the referee's report shall be made within 30 days of receipt of a copy thereof.

Sections 603.9 to 603.14 [Rescinded]

Section 603.15 is renumbered as section 603.27

Section 603.16 [Rescinded]

Section 603.17 is renumbered as section 603.28

Section 603.18 is renumbered as section 603.29

Section 603.19 is renumbered as section 603.30

Section 603.20 is renumbered as section 603.31

Section 603.21 is renumbered as section 603.32

Section 603.22 [Previously rescinded]

Section 603.23 is renumbered as section 603.33

Section 603.24 is renumbered as section 603.34

**§ 603.25      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

P.O. Box 2016

New York, NY 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 8½ inches by 11 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: \_\_\_\_\_, New York, \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Yours, etc.

Signature of Attorney

Attorney Name

Office and P.O. Address

Dist.      Dept.      County

NOTE: CPLR 2104 and 3217 REQUIRE THAT THE ATTORNEY FOR THE DEFENDANT 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: 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.

The Office of Court Administration—Statements  
Post Office Box No. 2016  
New York, NY 10008

(2) Each closing statement shall be on one side of paper 8½ inches by 11 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.
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 \_\_\_\_\_, 20\_\_

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, 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 fix 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: CPLR 2104 and 3217 REQUIRE THAT THE ATTORNEY FOR THE DEFENDANT FILE A STIPULATION OR STATEMENT OF DISCONTINUANCE WITH THE COURT UPON DISCONTINUANCE OF AN ACTION

Dated: \_\_\_\_\_, New York, \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Yours, etc.

Signature of Attorney

Attorney's Name

Office and P.O. Address

Dist.      Dept.      County

(If space provided is insufficient, riders on sheets 8½ inches by 11 inches 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 reproduce in an alternative format, as that term is defined in section 104.1(c) of this Title, all statements filed pursuant to this section by a means that shall accurately reproduce the original statements in all details thereof, and shall thereafter destroy the originals so reproduced. Such a reproduction in an alternative format 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 603.27 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 Rule 1.15(f) of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15(f)]), 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 the recovery, the receipt, retention or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than that contained in any schedule of fees adopted by this department is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such scheduled fees shall constitute the exaction of unreasonable and unconscionable compensation in violation of any provision of the Rules of Professional Conduct (Part 1200 of this Title) with respect to conduct on or after April 1, 2009, or the former Code of Professional Responsibility, as adopted by the New York State Bar Association effective January 1, 1970, as amended, with respect to conduct on or before March 31, 2009, unless authorized by a written order of the court as hereinafter provided.

(2) The following is the schedule of reasonable fees referred to in paragraph (1) of this subdivision: either,

**SCHEDULE A**

(i) 50 percent on the first \$1,000 of the sum recovered,

- (ii) 40 percent on the next \$2,000 of the sum recovered,
- (iii) 35 percent on the next \$22,000 of the sum recovered,
- (iv) 25 percent on any amount over \$25,000 of the sum recovered; or

#### SCHEDULE B

A percentage not exceeding 33% 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 by one of the following two methods, to be selected by the client in the retainer agreement or letter of engagement: (i) 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; or (ii) in the event that the attorney agrees to pay costs and expenses of the action pursuant to Judiciary Law section 488(2)(d), on the gross sum recovered before deducting expenses and disbursements. The retainer agreement or letter of engagement shall describe these alternative methods, explain the financial consequences of each, and clearly indicate the client's selection. 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 this subdivision 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 this subdivision 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 section 5102 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 actions for personal injury alleging medical, dental or podiatric malpractice shall be computed pursuant to the fee schedule in Judiciary Law, section 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 cancelled 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 603.27 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.

**§ 603.26      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 603.27 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.

**§ 603.27      Random review and audit.**

**(a) Availability of bookkeeping records; random review and audit.** The financial records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), 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 Grievance Committee.

**(b) Confidentiality.** All matters, records and proceedings relating to compliance with Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), 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 Grievance 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 Grievance Committee as it may deem appropriate, and only such regulations and procedures as have been approved by the court shall become effective.

**(d) Biennial affirmation of compliance.** Any attorney subject to this court's jurisdiction shall execute that portion of the biennial registration statement provided by the Office of Court Administration, affirming that the attorney has read and is in compliance with Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), 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 Grievance 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.

**§ 603.28 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.

**§ 603.29 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.

**§ 603.30 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.

**§ 603.31 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.

**§ 603.32 Practice of law by nonjudicial 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.

**§ 603.33 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.

**§ 603.34 Compensation of attorneys representing claimants against Lawyers' Fund for Clients Protection.**

No attorney shall charge a fee for or accept compensation for representation of claimants against the Lawyers' Fund for Clients Protection of the State of New York, except as approved by the trustees of the fund.

**Part 605. RULES AND PROCEDURES OF THE DEPARTMENTAL DISCIPLINARY COMMITTEE [Rescinded]**

Dated: New York, New York  
September 20, 2016

For the Court:

A handwritten signature in black ink, appearing to be 'Peter Tom', written over a horizontal line.

Peter Tom,  
Acting Presiding Justice