

**Rules of the Appellate Division, Third Department**

(22 NYCRR) Part 806

(effective October 1, 2016)

Table of Contents

§806.

1. Applicability.....	1
2. Definitions.....	2
3. Repealed and Intentionally Left Blank.....	
4. Third Judicial Department Attorney Grievance Committee .....	3
5. Staff of the Attorney Grievance Committee for the Third Judicial Department.....	4
6. Repealed and Intentionally Left Blank.....	
7. Procedure Before the Committee .....	6
8. Rules of Practice for Formal Disciplinary Proceedings Before the Court Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) §1240.8.....	8
9. Applications for Interim Suspension While Investigation or Proceeding is Pending .....	11
10. Applications to Resign from Practice While Investigation or Proceeding is Pending .....	12
11. Applications for Diversion to a Monitoring Program .....	13
12. Applications Concerning Attorneys Convicted of a Crime .....	14
13. Applications to Impose Discipline for Misconduct in a Foreign Jurisdiction.....	15
14. Applications Concerning Attorney Capacity .....	16
15. Repealed and Intentionally Left Blank.....	
16. Applications for Reinstatement of Suspended and Disbarred Attorneys Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) §1240.16.....	18
17. Applications for Reinstatement of Incapacitated Attorneys.....	20
18. Applications to Divulge Confidential Materials .....	21
19. Repealed and Intentionally Left Blank.....	
20. Repealed and Intentionally Left Blank.....	
21. Applications for Appointment of Attorney to Protect Interests of Clients or Attorney .....	22
22. Voluntary Nondisciplinary Resignations; Reinstatement .....	23
23. Repealed and Intentionally Left Blank .....	

24. Repealed and Intentionally Left Blank.....	
25. Proceedings Pursuant to Judiciary Law §90 (2-a).....	24
26. County Bar Association Grievance Committees and Mediation Programs .....	25
27. Contingent Fees in Claims and Actions for Personal Injury and Wrongful Death .....	26
28. Attorney's Affidavit in Agency and Private Placement Adoptions .....	28
29. Compensation of Attorneys Representing Claimants Against Lawyer's Fund for Client Protection .....	30
30. Examiners of Reports of Guardians, Committees and Conservators Pursuant to Mental Hygiene Law Article 81 .....	31

**806.1 Applicability**

This Part serves as a supplement to, and should be read in conjunction with, Uniform 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, Third Judicial Department.

## **806.2 Definitions**

Except as otherwise specified below, the definitions set forth in Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.2 are hereby incorporated by reference.

- (a) **Committee:** the Attorney Grievance Committee for the Third Judicial Department established pursuant to section 806.4 (a) of this Part.
- (b) **Court:** the State of New York Supreme Court, Appellate Division, Third Judicial Department.
- (c) **Presiding Justice:** the Presiding Justice of the State of New York Supreme Court, Appellate Division, Third Judicial Department.
- (d) **Chief Attorney:** the Chief Attorney of the Attorney Grievance Committee established pursuant to section 806.5 (a) of this Part.
- (e) **Chairperson:** the Chairperson of the Attorney Grievance Committee appointed by the Court pursuant to section 806.4 (a) of this Part.
- (f) **Executive Committee:** the body appointed by the Chairperson pursuant to section 806.4 (a) of this Part.

**806.4 Third Judicial Department Attorney Grievance Committee**

- (a) **Attorney Grievance Committee for the Third Judicial Department.** The Court shall appoint an Attorney Grievance Committee for the Third Judicial Department, which shall consist of twenty-one members, three of whom shall be nonlawyers and eighteen of whom shall be attorneys in good standing. Appointment of members shall, as far as practicable, be made equally from each of the judicial districts within the Third Judicial Department. Appointments shall be for a term of three years or for such shorter term as the Court deems appropriate. No member who has served two consecutive three-year terms shall be eligible for reappointment until the passage of three years from the expiration of his or her second term. The Chairperson of the Attorney Grievance Committee and a vice-chairperson shall be appointed annually by the Court from among the Committee membership after considering the recommendations of the Committee.

The Chairperson may annually appoint an Executive Committee consisting of at least one member of the Committee from each judicial district within the Third Judicial Department, and such other members as are deemed necessary.

- (b) **Committee on Professional Standards Membership to be Continued.** All members of the Committee on Professional Standards for the Third Judicial Department as of September 30, 2016 shall be deemed members of the Committee effective October 1, 2016 and shall thereafter serve such terms as were then remaining on each respective member's tenure with the Committee on Professional Standards.

**806.5 Staff of the Attorney Grievance Committee for the Third Judicial Department**

- (a) **Appointment of the Chief Attorney and Staff.** The Court shall appoint a Chief Attorney of the Attorney Grievance Committee. The Court, in consultation with the Chief Attorney, shall appoint such professional staff and such supporting staff to the Committee as shall be necessary and as may be provided for in the Unified Court System budget.
- (b) **Duties of the Chief Attorney.**
- (1) The Chief Attorney, in accord with Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) part 1240, shall review and take appropriate action respecting all complaints concerning conduct by an attorney or entity to whom the rules of this Part apply.
  - (2) The Chief Attorney is authorized to delegate his or her duties and responsibilities to such other members of the Committee's professional staff as he or she deems appropriate.
  - (3) Transfers Authorized Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (a) (2).
    - (i) The Chief Attorney shall identify complaints submitted to the Committee which are more appropriate for filing in another Judicial Department. Upon identification of such a complaint, the Chief Attorney may transfer such complaint to the appropriate Attorney Grievance Committee located in another Judicial Department by correspondence on notice to the complainant.
    - (ii) The Chief Attorney shall identify complaints submitted to the Committee which allege professional misconduct committed by members of the Committee or the Committee's professional staff. Upon identification of such a complaint, and provided that the complaint may not otherwise be disposed of pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (d) (1), the Chief Attorney shall apply to the Court for an order transferring the complaint to an alternative Attorney Grievance Committee located in another Judicial Department.
    - (iii) The Chief Attorney shall identify complaints submitted to the Committee which allege professional misconduct committed by the

partners, associates or members of any law firm associated with a member of the Committee. Upon identification of such a complaint, and provided that the complaint may not otherwise be disposed of pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (d) (1), the Chief Attorney may, after consultation with the Chairperson, apply to the Court for an order transferring the complaint to an alternative Attorney Grievance Committee located in another Judicial Department. No Committee member shall take part in the disposition of any complaint alleging professional misconduct committed by the partners, associates or members of any law firm associated with such Committee member.

- (iv) The Chief Attorney may, after consultation with the Chairperson, apply to the Court for an order transferring any complaint concerning an attorney or entity covered by the rules of this Part, if the Chief Attorney reasonably concludes that consideration of the complaint by the Committee or the Court would present a conflict of interest for the Court or the Committee.

## 806.7 Procedure Before the Committee

- (a) **Chief Attorney's Complaint.** Prior to initiating an investigation authorized by the Committee acting sua sponte pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (a) (1) , the Committee shall maintain a written complaint, signed by the Chief Attorney, as part of the Committee's records and which Chief Attorney's Complaint shall serve as the basis for such investigation.
- (b) **Examination of respondents.** All examinations of respondents conducted either (1) under oath pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (b) (2), or (2) by subpoena issued pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (b) (3) may be conducted in the presence of a member or members of the Committee as determined by the Chief Attorney. A record of all such examinations shall be made and a copy thereof shall be provided to the respondent upon his or her request and at his or her expense. The Committee shall be entitled to reimbursement by the respondent of all costs associated with the making of any record conducted pursuant to a subpoena issued pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (b) (3), and may move the Court by motion on notice pursuant to section 800.2 (a) of this Title for an order directing such reimbursement.
- (c) **Protective orders.** A respondent aggrieved by any investigation may move the Court by motion on notice to the Chief Attorney pursuant to section 800.2 (a) of this Title for a protective order denying, limiting, conditioning or regulating the use of any information being sought by the Chief Attorney.
- (d) **Applications for Reconsideration of a proposed Admonition.** A respondent's request for reconsideration of a proposed Admonition pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (d) (2) (v) shall be made by correspondence to the Chairperson, certified mail, return receipt requested, with a copy to the Chief Attorney, within 14 days from the date of mailing of the Committee's notice to the respondent of the proposed admonition. The request shall be considered by the Executive Committee. If it is determined by a majority of the Executive Committee that reconsideration is warranted, the matter shall be resubmitted to the Committee.

**(e) Court Review of Committee Action.**

- (1) A respondent's application for Court review of Committee action pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7 (e) (1) (ii) or (2) shall be made by motion on notice to the Committee pursuant to section 800.2 (a) of this Title. Such notice of motion shall be accompanied by an affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
- (2) Any application pursuant to this subdivision shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The Committee may be heard in opposition to the application by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The applicant may not be heard in reply absent prior authorization by the Court.
- (3) Any application pursuant to this subdivision, any papers filed in opposition thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (4) Applications pursuant to this subdivision may be argued upon the direction of the Court made upon request of the respondent or the Committee prior to the return date of the application.

**806.8 Rules of Practice for Formal Disciplinary Proceedings Before the Court Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8**

**(a) Time for Service of Pleadings.**

(1) Petition.

(i) Unless the Presiding Justice grants an order to show cause to be served in lieu of a notice of petition at a time and in a manner specified therein, a notice of petition, together with the petition and any affidavits or exhibits specified in the notice, shall be served on the respondent and filed with the Court at least twenty days before the time at which the petition is noticed to be heard and marked returnable before the Court.

(ii) Unless otherwise directed by order to show cause, petitions shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session.

(2) Answer. An answer and supporting affidavits and exhibits, if any, shall be served on the Committee and filed with the Court at least five days before the time at which the petition is noticed to be heard and marked returnable before the Court.

(3) Reply. A reply, together with supporting affidavits and exhibits, if any, may be served and filed with the Court at least one day before the time at which the petition is noticed to be heard and marked returnable before the Court.

**(b) Filing.** Notwithstanding the requirements of section 800.2 (b) of this Title, all pleadings in proceedings authorized pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8 shall be submitted to the Court in the following manner:

(1) Petition. The Committee shall file the original petition with the Court, along with proof of service of a single copy thereof upon the respondent.

The Committee shall also deliver a copy of the original petition to the Court in Portable Document Format ("PDF").

(2) Answer. The respondent shall file the original answer, and a single copy thereof, with the Court, along with proof of service of a single copy thereof on the Committee. The respondent may deliver the copy of the answer to the Court in Portable Document Format ("PDF").

(3) Reply. The Committee shall file the original reply, if any, with the Court, along with proof of service of a single copy thereof upon the respondent.

The Committee shall also deliver a copy of the original reply to the Court in Portable Document Format ("PDF").

- (4) Statement of Disputed Facts. Any statement pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8 (a) (2) shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such statement may be delivered to the Court in Portable Document Format ("PDF").

**(c) Appointment of a Referee to Hear and Report.**

- (1) At any time following the filing of statements pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8 (a) (2), the Court may, upon the motion of either party or upon its own motion, refer issues of disputed fact to a referee to hear and report. If no disputed factual issue is raised, the Court may, upon motion of either party, fix a time at which the respondent may be heard in mitigation or otherwise, or the Court may refer the matter for such purpose.
- (2) A referee appointed pursuant to this subdivision may receive evidence regarding any defense or mitigating factor raised by the respondent, and any aggravating factor raised by the Committee.
- (3) A record of the hearing before the referee shall be made, and a copy thereof shall be provided to the respondent upon his or her request and at his or her expense.
- (4) Following the hearing and the parties' submission of proposed findings of fact if requested by the referee, the referee shall file 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.
- (5) Upon submission of the report of the referee 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 800.2 (a) of this Title. Any motion by the Committee regarding the referee's report is required to be made within 20 days of receipt of a copy thereof. In conjunction with any motion practice conducted pursuant to this subdivision, the parties shall be heard on the issue of the appropriate discipline to be imposed for any

misconduct that might be determined by the Court, and may cite any relevant factor, including but not limited to the nature of the misconduct, aggravating and mitigating circumstances, the parties' contentions regarding the appropriate sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions, and applicable case law and precedent. Applications pursuant to this subdivision may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the motion.

**(d) Motions.**

- (1) All motions in proceedings authorized pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8, including motions requesting the imposition of discipline by consent pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8 (a) (5), shall be submitted to the Court in the manner specified in section 800.2 (a) of this Title.
- (2) Where the Court has appointed a judge or referee to hear and report pursuant to subdivision (c) of this section, the Court may refer any pending motion in that proceeding to the judge or referee for determination.

**806.9 Applications for Interim Suspension While Investigation or Proceeding is Pending**

- (a) The Committee's application for a respondent's interim suspension pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.9 shall be brought on before the Court by order to show cause executed by the Presiding Justice and shall be served upon the respondent at a time and in a manner specified therein consistent with Judiciary Law § 90 (6).
- (b) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the Committee's application.
- (c) The Committee's application shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The respondent may be heard in opposition to the application by filing an affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The Committee may not be heard in reply absent prior authorization by the Court.
- (d) The Committee's application and any papers filed in opposition thereto shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Applications pursuant to this subdivision may not be argued unless otherwise specified by the Presiding Justice in the order to show cause.

**806.10 Applications to Resign from Practice While Investigation or Proceeding is Pending**

- (a) A respondent's application to resign from practice pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.10 shall be in the form of Appendix A to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) part 1240, and shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session, upon no less than 20 days notice to the Committee.
- (b) The Committee may be heard in response to the application by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The respondent may not be heard in reply absent prior authorization by the Court.
- (c) Any application pursuant to this section, any papers filed in response thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").

**806.11 Applications for Diversion to a Monitoring Program**

- (a) In Matters Pending Before the Committee Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7.**

  - (1) Any application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.11 (a) shall be brought on before the Court by order to show cause executed by the Presiding Justice and shall be served upon the adversary at a time and in a manner specified therein.
  - (2) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
  
- (b) In Matters Pending Before the Court Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8.**

  - (1) Any application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.11 (a) shall be made by motion on notice to the adversary pursuant to section 800.2 (a) of this Title.
  - (2) Such notice of motion shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
  
- (c)** Any application pursuant to this section shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The adversary may be heard in response to the application by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The applicant may not be heard in reply absent prior authorization by the Court.
  
- (d)** Any application pursuant to this section, any papers filed in opposition thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
  
- (e)** Applications pursuant to this section may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the application.

**806.12 Applications Concerning Attorneys Convicted of a Crime**

- (a) The Committee's application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.12 (b) (2) shall be brought on before the Court by order to show cause executed by the Presiding Justice and shall be served upon the respondent at a time and in a manner specified therein consistent with Judiciary Law § 90 (6).
- (b) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the Committee's application.
- (c) The Committee's application shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The respondent may be heard in opposition to the application by filing an affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The Committee may not be heard in reply absent prior authorization by the Court.
- (d) The Committee's application, any papers filed in opposition thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Applications pursuant to this subdivision may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the application.

**806.13 Applications to Impose Discipline for Misconduct in a Foreign Jurisdiction**

- (a) The Committee's application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.13 (a) shall be brought on before the Court by order to show cause executed by the Presiding Justice and shall be served upon the respondent at a time and in a manner specified therein consistent with Judiciary Law § 90 (6).
- (b) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the Committee's application.
- (c) The Committee's application shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The respondent may be heard in opposition to the application by filing an affidavit pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.13 (b), and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The Committee may not be heard in reply absent prior authorization by the Court.
- (d) The Committee's application, any papers filed in opposition thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Applications pursuant to this subdivision may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the application.

#### **806.14 Applications Concerning Attorney Capacity**

- (a) In Matters Pending Before the Committee Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7.**

  - (1) Any application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.14 shall be brought on before the Court by order to show cause executed by the Presiding Justice and shall be served upon the adversary at a time and in a manner specified therein.
  - (2) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
- (b) In Matters Pending Before the Court Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8.**

  - (1) Any application pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.14 shall be made by motion on notice to the adversary pursuant to section 800.2 (a) of this Title.
  - (2) Such notice of motion shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
- (c)** Any application pursuant to this section shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. The adversary may be heard in response to the application by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The applicant may not be heard in reply absent prior authorization by the Court.
- (d)** Any application pursuant to this section, any papers filed in opposition thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e)** Applications pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.14 (b) may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the application. Applications pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.14 (a) may not be argued.

- (f) If, during the course of a proceeding before the Court pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8, the respondent contends that he is suffering from a mental disability or condition, alcohol or substance abuse, or any other condition that makes it impossible for him or her to adequately to defend him- or herself, the Court thereupon shall enter an order suspending the respondent from continuing to practice law until a determination is made of the respondent's capacity to do so pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.14 (b).

**806.16 Applications for Reinstatement of Suspended and Disbarred Attorneys Pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.16**

- (a) **Disbarred Attorneys and Attorneys Suspended for More than Six Months.**
- (1) Any motion for reinstatement by a respondent who has been disbarred or who has been suspended for more than six months shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session, upon no less than 90 days notice to the Committee and the Lawyers' Fund for Client Protection.
  - (2) Such notice of motion shall be accompanied by an affidavit of the respondent in the form of Appendix C to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) Part 1240, and such additional exhibits as are necessary.
  - (3) The Committee shall be heard in response to the motion by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The respondent may not be heard in reply absent prior authorization by the Court.
  - (4) Any motion pursuant to this subdivision, any papers filed in response thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
  - (5) At the discretion of the Court, any application pursuant to this subdivision may be referred to the appropriate Committee on Character & Fitness or to a referee for hearing and report.
- (b) **Attorneys Suspended for Six Months or Less.**
- (1) Any motion for reinstatement by a respondent who has been suspended for six months or less shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session, upon no less than 30 days notice to the Committee and the Lawyers' Fund for Client Protection.
  - (2) Such notice of motion shall be accompanied by an affidavit of the respondent in the form of Appendix D to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) Part 1240, and such additional exhibits as are necessary.

- (3) Unless the Court otherwise directs, the Committee shall be heard in response to the motion by filing an affidavit, and such additional exhibits as are necessary, with the Court within 20 days of the date such motion was served upon the Committee. The respondent may not be heard in reply absent prior authorization by the Court.
- (4) Any motion pursuant to this subdivision, any papers filed in response thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").

**806.17 Applications for Reinstatement of Incapacitated Attorneys**

- (a) Any application for reinstatement by a respondent pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.17 shall be made in the form of a motion returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session, upon no less than 90 days notice to the Committee.
- (b) Such notice of motion shall be accompanied by an affidavit of the respondent, such papers as may be required pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.17 (b) and (e), and such additional exhibits as are necessary.
- (c) The Committee shall be heard in response to the motion by filing an affirmation or affidavit, and such additional exhibits as are necessary, with the Court on or before 11:00 a.m. on the Friday before the return date. The respondent may not be heard in reply absent prior authorization by the Court.
- (d) Any motion pursuant to this subdivision, any papers filed in response thereto and the reply, if any, shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Motions pursuant to this subdivision may be argued upon the direction of the Court made upon request of the Committee or the respondent prior to the return date of the application.

**806.18 Applications to Divulge Confidential Materials**

- (a) Any application pursuant to Judiciary Law § 90 (10) and Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.18 (d) shall be brought on before the Court by order to show cause executed by the Presiding Justice and to be served upon such persons or entities as are directed therein and at a time and in a manner specified therein.
- (b) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
- (c) The application shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. Papers in opposition to the application, if any, shall be in the form of an affidavit or affirmation, with such additional exhibits as are necessary, and shall be filed with the Court on or before 11:00 a.m. on the Friday before the return date.
- (d) The application and any papers filed in opposition thereto shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Applications pursuant to this subdivision may not be argued unless otherwise specified by the Presiding Justice in the order to show cause.

**806.21 Applications for Appointment of Attorney to Protect Interests of Clients or Attorney**

- (a) Any applications for an order pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.21 shall be brought on before the Court by order to show cause executed by the Presiding Justice and to be served upon the Committee and such other persons or entities as are directed therein and at a time and in a manner specified therein.
- (b) Such order to show cause shall be accompanied by an affirmation or affidavit, and such additional exhibits as are necessary, setting forth the facts alleged in support of the application.
- (c) The application shall be made returnable on Monday (or if Monday falls on a holiday, on the next business day), whether or not Court is actually in session. Papers in opposition to the application shall be in the form of an affidavit or affirmation, with such additional exhibits as are necessary, and shall be filed with the Court on or before 11:00 a.m. on the Friday before the return date.
- (d) The application and any papers filed in opposition thereto shall be filed with the Court as an original and a single copy thereof, along with proof of service of a single copy thereof upon the adversary. The copy of any such papers may be delivered to the Court in Portable Document Format ("PDF").
- (e) Applications pursuant to this subdivision may not be argued unless otherwise specified by the Presiding Justice in the order to show cause.

**806.22 Voluntary Nondisciplinary Resignations; Reinstatement.**

- (a) An attorney's application to resign from practice pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.22 (a) shall be submitted to the Court by original sworn affidavit in the form of Appendix E to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) Part 1240, with proof of service of a copy thereof upon the Committee and the Lawyer's Fund for Client Protection.
- (b) An application for reinstatement following nondisciplinary resignation shall be submitted to the Court by original sworn affidavit in the form of Appendix F to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) Part 1240, with proof of service of a copy thereof upon the Committee.

**806.25 Proceedings Pursuant to Judiciary Law § 90 (2-a)**

- (a) Upon referral of a matter to the Court pursuant to Domestic Relations Law § 244c or Family Court Act §§ 458-b or 548-b, or upon receipt of an order of a court finding an attorney admitted to practice or registered within the Third Judicial Department to be in arrears in payment of child support or combined child and spousal support in an amount equivalent to or greater than that due pursuant to court order for a period of four months, the Court shall, within thirty (30) days of its receipt of said order, (i) direct that a subcommittee of the Committee be convened for a hearing pursuant to Judiciary Law § 90 (2-a) (b), and (ii) provide notice to the respondent that such hearing will be convened.
- (b) The hearing before the designated subcommittee shall be held at least twenty (20) days and no more than thirty (30) days after the sending of such notice to the respondent. 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 respondent have been paid.
- (c) Within five (5) days following the conclusion of the hearing, the designated subcommittee shall file a report with the Court advising whether the respondent appeared at the hearing and adduced the proof required by Judiciary Law § 90 (2a) (b).

**806.26 County Bar Association Grievance Committees and Mediation [sic] Programs**

**(a) County Bar Association Grievance Committees.**

- (1) A County Bar Association which receives a complaint against an attorney shall initially refer the complaint to the Committee for action pursuant to Uniform Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.7.
- (2) If the Chief Attorney, or the Committee after investigation, determines that the complaint is a matter involving undue delay in rendering legal services not constituting neglect, a fee dispute to which Rules of the Chief Administrator (22 NYCRR) Part 137 does not apply, or inadequate representation not constituting professional misconduct, the complaint may be referred back to the County Bar Association for resolution. A complaint submitted directly to the Committee may also be referred by the Committee or Chief Attorney to the County Bar Association in the first instance.
- (3) The County Bar Association shall complete an investigation and attempt to resolve the complaint within 90 days after receipt of the complaint from the Committee or Chief Attorney. If the County Bar Association is unable to resolve the complaint within this time period, it shall, upon request of the Chief Attorney, return its complete file to the Committee for further consideration.
- (4) The County Bar Association shall render an [sic] annual report to the Committee within 30 days after the end of each calendar year. The report shall contain the names of all attorneys against whom complaints were received or were pending during the preceding year. If a County Bar Association resolves a complaint, it shall forward its complete original file to the Committee.

**(b) County Bar Association Mediation Programs.** Upon receipt of a complaint submitted directly to the Committee, or following referral of a complaint by a County Bar Association, the Committee or Chief Attorney, upon determining that the matter is appropriate for mediation, may refer the complaint to a County Bar Association Mediation Program pursuant to Rules of the Appellate Divisions (22 NYCRR) Part 1220.

**806.27 Contingent Fees in Claims and Actions for Personal Injury and Wrongful Death**

- (a) 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 the schedule of fees in subdivision (b) of this section is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such schedule of fees shall constitute the exaction of unreasonable and unconscionable compensation, unless authorized by a written order of the court as provided in this section. 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.
- (b) The following is the schedule of reasonable fees referred to in subdivision (a) of this section: either,

SCHEDULE A

- (1) 50 percent on the first \$1,000 of the sum recovered,
- (2) 40 percent on the next \$2,000 of the sum recovered,
- (3) 35 percent on the next \$22,000 of the sum recovered,
- (4) 25 percent on any amount over \$25,000 of the sum recovered; or

SCHEDULE B

A percentage not exceeding 33 1/3 percent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure provided in this section for making application for additional compensation because of extraordinary circumstances shall not apply.

- (c) 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:
- (1) 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

(2) 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 self-insurers or insurance carriers.

- (d) In the event that claimant's or plaintiff's attorney believes in good faith that Schedule A, of subdivision (b) of this section, 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 a special term of Supreme Court in the judicial district in which the attorney 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, of subdivision (b) of this section; 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.
- (e) Nothing contained in 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.
- (f) Nothing contained in this section shall be deemed applicable to the fixing of compensation of attorneys for services rendered in connection with collection of first-party benefits as defined in article XVIII of the Insurance Law.

**806.28 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, NY 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.

**806.29 Compensation of Attorneys Representing Claimants Against Lawyer's Fund for Client Protection**

No attorney shall charge a fee for or accept compensation for representation of claimants against the Lawyer's Fund for Client Protection of the State of New York, except as approved by the Trustees of the Fund.

Part 806.30

Examiners of Reports of Guardians, Committees and Conservators Pursuant to Article  
81 of the Mental Hygiene Law

(a) Appointment. Annually in the month of December, the Presiding Justice shall appoint examiners of the reports of guardians, as well as of committees and conservators appointed prior to April 1, 1993, in accordance with Mental Hygiene Law § 81.32 (b).

(b) Duties of examiners.

(1) The examiner appointed by the Presiding Justice shall examine initial and annual reports within the times and in the manner required by Mental Hygiene Law § 81.32 (a).

(2) The examiner shall file a report, with regard to an initial report of a guardian, within 60 days after the filing of such report. With respect to an annual report filed in the month of May, the examiner's report shall be filed on or before September 15th of the same year. When a court has authorized the filing of an annual report at any other time, the examiner's report shall be filed within 90 days thereafter. Examiner's reports shall be in the form prescribed by the order appointing the examiner.

(3) Examiner's reports shall, on five days notice to the guardian, committee or conservator, be filed in the office of the clerk of the court which appointed the guardian, committee or conservator. A copy of the examiner's report shall, within five days of the date of such filing, also be filed with the office of the Clerk of the Appellate Division, Third Department.

(4) If a guardian, committee or conservator shall fail to file a report within the time specified by law, or shall file an incomplete report, the examiner shall serve a demand and take the other steps necessary to insure compliance as set forth in Mental Hygiene Law § 81.32 (c) and (d).

(5) In his or her discretion, the examiner may examine the guardian, committee or conservator and other witnesses under oath and reduce their testimony to writing.

(c) Compensation.

(1) For examination of an initial report, an examiner shall be entitled to a fee of \$100 for estates having a net value of \$5000 or less, and of \$150 for all other estates, and to reimbursement for necessary and reasonable disbursements.

(2) For examination of an annual report, an examiner shall be entitled to reimbursement for necessary and reasonable disbursements and to a fee fixed in accordance with the following schedule:

Closing balance of estate examined:	Fee:
Up to \$5,000	\$150
5,001 - 25,000	250
25,001 - 50,000	300
50,001 - 100,000	500
100,001 - 150,000	650
150,001 - 225,000	800
225,001 - 350,000	950
350,001 - 500,000	1,100
500,001 - 750,000	1,250
750,001 - 1,000,000	1,400
Over 1,000,000	Additional fee of \$30 for each \$25,000 in net value over \$1,000,000, with a maximum fee of \$5,000

The fee shall be computed on the net value of the estate at the end of the calendar year for which the guardian's report has been submitted. A fee in excess of the amount set forth in the above schedule may be awarded upon a showing of extraordinary circumstances.

(3) The fee for examination of annual reports filed for previous years shall be fixed on a quantum meruit basis.

(4) The examiner's claim for a fee and disbursements in estates of up to \$5,000 shall be made by standard state voucher and shall be approved by the Presiding Justice or his or her designee. In estates of more than \$5,000, the examiner's claim for a fee and disbursements shall be set forth in the examiner's report and shall be approved by order of the Presiding Justice for payment by the estate.

(5) Within 15 days after receipt of an order directing payment by the estate of the examiner's fee and disbursements, the guardian, committee or conservator may, by written request, upon notice to the examiner, apply to the Presiding Justice for review and reconsideration of any allowance deemed excessive.

October 31, 2016 revised