

**SUPREME COURT OF THE STATE OF NEW YORK**  
**Appellate Division, Fourth Judicial Department**

The Justices of the Appellate Division, Fourth Judicial Department, hereby repeal sections 1022.2 and 1022.3 of the Rules of the Court (22 NYCRR 1022.2 and 1022.3) in their entirety, effective May 28, 2003.

The Justices of the Appellate Division, Fourth Judicial Department, also hereby amend sections 1022.4 (a), 1022.27 (b) and 1022.31 (d) (22 NYCRR 1022.4 [a], 1022.27 [b], 1022.31 [d]) as follows (additions in the text are indicated by underlining and deletions by brackets), effective May 28, 2003.

I. Section 1022.4 (a) is amended as follows:

(a) All statements filed pursuant to former sections 1022.2 and 1022.3 of this Part and the contents thereof shall be available to only those individuals designated by written order of a justice of the Appellate Division.

II. Section 1022.27 (b) is amended as follows:

(b) When an attorney is disbarred, suspended from the practice of law or removed from the roll of attorneys after resignation, the attorney shall promptly notify, by registered or certified mail, each client, the attorney for each party in a pending matter and, for each action where a retainer statement has been filed pursuant to former 22 NYCRR 1022.2, the Office of Court Administration. The notice shall state that the attorney is unable to act as counsel due to disbarment, suspension or removal from the roll of attorneys. A notice to a client shall advise the client to obtain new counsel. A notice to counsel for a party in a pending action or to the Office of Court Administration in connection with an action where a retainer statement has been filed pursuant to former 22 NYCRR 1022.2 shall include the name and address of the disbarred, suspended or resigned attorney's client.

III. Section 1022.31 (d) is amended as follows:

(d) 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] the attorney 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 making the application [who filed the statement of retainer, pursuant to this section] has an office. Upon such application, the justice, in his or her 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 application.

Dated: May 28, 2003

FOR THE COURT:

  
HON. EUGENE F. PIGOTT, JR.  
PRESIDING JUSTICE