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

The Justices of the Appellate Division, Fourth Department, do hereby repeal Part 1022 of the Rules of the Appellate Division, Fourth Department, in its entirety (22 NYCRR 1022.1 through 1022.36), and enact in place thereof Part 1015, consisting of sections 1015.1 through 1015.19, and Part 1020, consisting of sections 1020.1 through 1020.13, both attached, effective October 1, 2016.

Dated: Rochester, New York
September 23, 2016

FOR THE COURT:

Gerald J. Whalen
Presiding Justice

Attest:

Frances E. Cafarell
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.

I, **FRANCES E. CAFARELL,** *Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*

SUPREME COURT APPELLATE DIVISION FOURTH DEPARTMENT

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this* SEP 23 2016

Frances E. Cafarell

Clerk

Title 22 - Judiciary
Subtitle B - Courts
Chapter IV - Supreme Court
Subchapter D - Fourth Judicial Department
Article 1 - Appellate Division
Subarticle B - Special Rules

Part 1015 - Attorneys
(effective October 1, 2016)

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§ 1015.

§ 1015.1 Application

These rules apply to all attorneys who are admitted to practice in, reside in, practice law in, or who have an office in the Fourth Judicial Department, or who otherwise engage in conduct covered by these rules within the Fourth Judicial Department, including an attorney admitted to practice pro hac vice within the Fourth Judicial Department or an attorney who in any way participates in an action or proceeding therein.

§ 1015.2 Confidential nature of statements

(a) All statements filed pursuant to sections 1022.2 and 1022.3 of 22 NYCRR former part 1022 and the contents thereof shall be available to only those individuals designated by written order of a Justice of the Appellate Division.

(b) The Office of Court Administration shall microfilm all such statements and shall thereafter destroy the originals.

§ 1015.3 Filing of statements pursuant to BCL § 1514

A professional service corporation organized for the purpose of practicing law pursuant to the Business Corporation Law, article 15 that has its principal office located in the Fourth Judicial Department shall file with this department on or before July 1st every three years a statement listing the name and residence address of each shareholder, director and officer of the corporation and certifying that all such individuals are duly authorized to practice law in this State. The statement shall be signed by the president or any vice-president of the corporation and attested to by the secretary or any assistant secretary of the corporation.

§ 1015.4 Deposit of infants' funds; withdrawals; accounting

(a) Except as otherwise provided by CPLR 1206 or in proceedings governed by article 17 of the Surrogate's Court Procedure Act, any sum collected by an attorney as a result of a claim or demand belonging to or on behalf of an infant shall be deposited in a fiduciary account in the name of the attorney as fiduciary for the infant. A statement of the amount received and deposited shall be served personally or by mail upon the infant's guardian.

(b) The attorney shall not retain, withhold or withdraw any portion of the amount collected or recovered as compensation or reimbursement of disbursements except

as authorized by an order of a court, as provided in section 474 of the Judiciary Law.

(c) Infants' funds shall not be withdrawn except by court order. A petition for the withdrawal of such funds shall comply with CPLR 1211 and in addition contain:

(1) an explanation of the purpose of withdrawal;
(2) an estimate of the cost of the proposed expenditure;
(3) the date and amounts of the recovery both by the infant and the parent, if any;
(4) the nature of the infants' injuries and his present state of health; and
(5) any other facts material to the application.

(d) No authorization shall be granted to withdraw such funds where the parents are financially able to support the infant. Except in unusual circumstances, no authorization shall be granted for any purpose other than education or necessaries where the parents are not financially able to support the infant.

(e) No allowance, except for necessary disbursements, shall be made to attorneys upon an application to withdraw infants' funds, unless justified by exceptional circumstances. Such application shall be considered part of the duty of attorneys representing infants in their actions and shall not entitle the attorneys to further compensation except as herein provided.

§ 1015.5 Obligation of attorneys to expedite court cases

Attorneys representing any party or client in any criminal or civil court proceeding shall arrange their affairs so as to give preference to such court cases, and shall be diligent to assure the earliest disposition consistent with the interest of the client. To this end attorneys shall be punctual at all scheduled appearances or meetings and cooperate with the court and their adversaries to schedule the disposition of cases in the order of their ages.

§ 1015.6 Admission pro hac vice

(a) Applications for admission pro hac vice with respect to an appeal or proceeding pending in the Appellate Division, Fourth Department shall be made pursuant to section 1000.13 (*l*) of this Title (22 NYCRR 1000.13 [*l*]).

(b) Applications for admission pro hac vice pursuant to section 520.11 (a) (2) or 520.11 (b) of this Title shall be made only to the Appellate Division.

(c) all other applications for admission pro hac vice in any court within the Fourth Judicial Department shall be made to the court of record in which the attorney seeks such admission and shall otherwise comply with section 520.11 of this Title, the rules of the court in which the application is made, and any other applicable law or rule.

§ 1015.7 Duties of criminal defense counsel

(a) Counsel assigned to or retained for the defendant in a criminal action or proceeding shall represent the defendant until the matter has been terminated in the trial court. Where there has been a conviction or an adverse decision on an application for a writ of habeas corpus, or on a motion under section 440.10 or 440.20 of the Criminal Procedure Law, immediately after the pronouncement of sentence or the service of a copy of the order disposing of such application or motion, counsel shall advise the defendant in writing of the right to appeal or to apply for permission to appeal, the time limitations involved, the manner of instituting an appeal or applying for permission and of obtaining a transcript of the testimony, and of the right of the person who is unable to pay the cost of an appeal to apply for leave to appeal as a poor person. Such counsel shall also ascertain whether defendant wishes to appeal or to apply for permission to appeal and, if so, counsel shall serve the necessary notice of appeal or application for permission, file the necessary notice of appeal or application for permission with proof of service on or an admission of service by the opposing party and, when appropriate, move for permission to proceed as a poor person and assignment of counsel on the appeal, pursuant to section 1000.14 of this Title (22 NYCRR 1000.14).

(b) Counsel assigned to prosecute an appeal on behalf of an indigent defendant shall prosecute the appeal until entry of the order of the appellate court determining the appeal. Immediately upon entry of an order affirming the judgment of conviction or the order denying an application for a writ of habeas corpus or a motion under section 440.10 or 440.20 of the Criminal Procedure Law, counsel, assigned or retained, shall advise the defendant in writing of the right to apply for permission to appeal and of the right of a person who is unable to pay the cost of a further appeal (in the event that permission is granted) to apply for leave to appeal as a poor person. Counsel shall ascertain whether defendant wished to apply for permission to appeal and, if so, make timely application therefor. In a habeas corpus proceeding, where the order of the Appellate Division is appealable to the Court of Appeals pursuant to CPLR 5601, counsel shall advise the relator of the absolute right to appeal without permission.

(c) On or before the date of filing appellant's brief, assigned counsel shall mail a copy of the brief to the appellant's last known address and advise the clerk in writing of the date of mailing.

(d) When counsel who has been assigned to perfect an appeal on behalf of an indigent defendant determines, after conferring with the defendant and trial counsel, that the appeal is frivolous, counsel may move to be relieved of the assignment pursuant to section 1000.13 (q) of this Title (22 NYCRR 1000.13 [q]). The motion must be accompanied by a brief in which counsel states all points that may arguably provide a basis for appeal, with references to the record and citation of legal authorities. A copy of the brief must be supplied to the defendant at least 30 days before the return date of the motion (see, *People v. Crawford*, 71 AD2d 38). Together with the motion papers and brief, counsel shall submit the papers that would constitute the record on appeal pursuant to section 1000.3 (c) (1) of this Title (22 NYCRR 1000.3 [c] [1]). If the brief is mailed to the defendant, it shall be mailed to the defendant's last known address.

§ 1015.8 Duties of counsel in Family Court and Surrogate's Court

(a) This rule applies in proceedings commenced pursuant to Family Court Act, articles 3, 7 and 10 and article 6 part 1, and Social Services Law, sections 358-a, 384-b and 392 (*see* Family Court Act, section 1121).

(b) Counsel assigned to or retained by a party and the attorney for the child in an applicable proceeding shall represent the client until the matter is terminated by the entry of an order. Upon the entry of an order, it shall be the duty of counsel promptly to advise the parties of the right to appeal to the Appellate Division or to make a motion for permission to appeal. In the written notice, counsel shall set forth: the time limitations applicable to taking an appeal or moving for permission to appeal; the possible reasons upon which an appeal may be based; the nature and possible consequences of the appellate process; the manner of instituting an appeal or moving for permission to appeal; the procedure for obtaining a transcript of testimony, if any; and the right to apply for permission to proceed as a poor person.

(c) When a party or the attorney for the child determines to appeal or to move for permission to appeal, counsel or the attorney for the child shall serve the notice of appeal or motion for permission and shall file the notice of appeal or motion for permission with proof of service on or an admission of service by the opposing parties, including the attorney for the child when an attorney for the child has been appointed.

(d) Except when counsel has been retained to prosecute the appeal, the notice of appeal may include the statement that it is being filed and served on behalf of appellant pursuant to subdivision (c) of this section and that it shall not be deemed an appearance by counsel as counsel for appellant on the appeal.

(e) When a party has indicated a desire to appeal, counsel shall, when appropriate, move for permission to proceed as a poor person and assignment of counsel pursuant to section 1000.14 of this Title (22 NYCRR 1000.14).

§ 1015.9 Compensation of attorneys assigned as defense counsel

(a) No attorney assigned as defense counsel in a criminal case shall demand, accept, receive or agree to accept any payment, gratuity or reward, or any promise of payment, gratuity, reward, thing of value or personal advantage from the client or any other person in relation to the matter, except as expressly authorized by statute or by written order of a court.

(b) All vouchers submitted by attorneys, psychiatrists or physicians, pursuant to section 35 of the Judiciary Law and section 722(b) of the County Law in which the compensation sought exceeds the statutory limits shall be submitted to the judge or justice before whom the matter was heard for approval or modification. The attorney, psychiatrist or physician shall attach thereto an affidavit describing the unusual or extraordinary circumstances which warrant the additional fee. Time itself does not necessarily constitute an extraordinary circumstance.

(c) A judge or justice approving such a fee, shall certify that the circumstances are unusual or extraordinary and that therefore a fee in excess of the statutory limit has been earned and the amount thereof. Such certification shall state circumstances, other than additional time, which justify the fee recommended. In the absence of either the attorney's affidavit or the court's certification, additional compensation shall not be allowed.

§ 1015.10 Combining or grouping of claims

No attorney for a plaintiff or claimant shall for purposes of settlement or payment combine or group two or more unrelated claims or causes of action on behalf of clients and each such claim or cause of action shall be settled or paid independently on its own merit. No attorney for a defendant shall participate in the settlement of claims or causes of action combined or grouped in violation of this section.

§ 1015.11 Gratuities to public employees

No attorney shall give any gift or gratuity to any employee of any court or other governmental agency with which such attorney has had or is likely to have any professional or official transaction.

§ 1015.12 Practice of law by nonjudicial personnel

(a) Attorney employed full-time in the unified court system. An attorney employed full-time as determined by the time and leave program of the director of administration who is a law secretary to an Appellate Division Justice or confidential clerk or deputy confidential clerk to a Supreme Court Justice or an employee of the Office of Court Administration or of the Appellate Division 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. Subject to the approval of a Justice of the Appellate Division in each case, such an attorney may participate as attorney or counsel in noncontested matters in the Surrogate's Court, noncontested accountings in the Supreme Court, or other ex parte applications not preliminary or incidental to litigated or contested matters.

(b) Attorney employed part-time as a confidential clerk or deputy confidential clerk to a Supreme Court Justice or law secretary to an Appellate Division Justice. An attorney who is employed part-time, as defined by the time and leave program of the director of administration, as a confidential clerk or deputy confidential clerk to a Supreme Court Justice or law secretary to an Appellate Division Justice shall not appear as attorney or counsel in any action or proceeding pending in the Supreme Court or a County Court, nor shall the attorney indorse papers or documents pertaining thereto. The attorney may engage in any other practice of law which is compatible with and would not reflect adversely upon the performance of the duties of the attorney. No partner or associate of the attorney employed as part-time confidential clerk or deputy confidential clerk or law secretary shall practice law before the Justice by whom the attorney is employed.

§ 1015.13 Nondisciplinary appointment of attorney to protect clients

(a) Incapacitation or death. When an attorney who is not the subject of a disciplinary investigation or proceeding is unable to practice law, is deceased or is otherwise unable to adequately protect the interests of clients, the Appellate Division may appoint one or more attorneys to take possession of the attorney's

files, examine the files, advise the clients to secure another attorney or take any other action necessary to protect the client's interests.

(b) Report to court. An attorney appointed pursuant to this section shall file, within 30 days of the order of appointment or any other time period set by the Appellate Division, a status report, which shall include the name and address of each client and the disposition of each client's file.

(c) Compensation. The Appellate Division may fix the compensation of any attorney appointed pursuant to subdivision (a) of this section, and may direct that compensation shall be a cost of any underlying estate or incapacitation proceeding.

§ 1015.14 Responsibilities of retired attorneys

(a) An attorney shall, at least 60 days prior to retirement from the practice of law, notify by certified mail, return receipt requested, each client and the attorney for each adverse party in any pending matter involving the client, that the attorney is retiring and shall advise each client to secure another attorney. The attorney shall in each such notice advise the client whether the attorney possesses or controls money or property in which the client has an interest and, if so, the attorney shall specify the amount of funds or nature of such property and the current location of the money or property. The attorney shall also, with respect to each matter in which a retainer statement has been filed with the Office of Court Administration, notify the Office of Court Administration that the attorney is retiring.

(b) In the event that a retired attorney fails to comply with subdivision (a) of this section, the Appellate Division may appoint an attorney to take possession of the retired attorney's files, examine the files, advise the clients to secure another attorney or take any other action necessary to protect the clients' interest.

§ 1015.15 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 any schedule of fees adopted by this department is deemed to be fair and reasonable. Unless authorized by a written order of a court as hereinafter provided, 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 the applicable provisions of the Rules of Professional Conduct (22 NYCRR 1200.0) or, with respect to conduct before April 1, 2009, the former Code of Professional Responsibility.

(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 hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply.

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 contained in Judiciary Law, section 474-a.

(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, above, because of extraordinary circumstances, will not give 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 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.

(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.

§ 1015.16 Examiners of reports of guardians, committees and conservators pursuant to article 81 of the Mental Hygiene Law

(a) Appointment of court examiners.

(1) Appointment. On or before September 1st of each year, the Presiding Justice shall appoint, for each county within the Appellate Division, Fourth Department, examiners of the reports of guardians, as well as the reports of committees and conservators appointed prior to April 1, 1993.

(2) Eligibility.

(i) Only persons who have satisfied training and education requirements approved by the Presiding Justice shall be appointed as court examiners.

(ii) Court examiners shall maintain compliance with Part 36 of this Title.

(b) Duties of court examiners.

(1) Generally. In examining the report of a guardian, committee or conservator, the court examiner shall ascertain whether a guardian, committee or conservator has completed a timely and complete report as required by article 81 of the Mental Hygiene Law; whether a guardian, committee or conservator has complied with the order of appointment; and whether a guardian, committee or conservator has satisfied the duties set forth in Mental Hygiene Law, section 81.20.

(2) Initial reports. With respect to an initial report of a guardian, the court examiner shall file a report within 30 days of the filing of the guardian's report.

(3) Annual reports. With respect to an annual report of a guardian, committee or conservator, the court examiner shall file a report within 30 days of the filing of the report of the guardian, committee or conservator.

(4) Filing requirements.

(i) The court examiner shall file the court examiner's report in the office of the clerk of the court that appointed the guardian,

committee or conservator, with proof of service of the report on the guardian, committee or conservator.

(ii) Within 10 days of the filing of the court examiner's report, the court examiner shall file a copy of the report with the Clerk of the Appellate Division, Fourth Department, together with proof of the filing and service required by subparagraph (i) of this paragraph.

(5) Untimely and incomplete reports. In the event that a guardian, committee or conservator fails to file a timely report or files an incomplete report, the court examiner shall serve the guardian, committee or conservator with a demand for the report and shall take such actions as are necessary to compel compliance, pursuant to Mental Hygiene Law, section 81.32(c) and (d).

(6) Examination under oath. The court examiner may examine a guardian, committee, conservator or other witness under oath and reduce the testimony to writing.

(7) Forms. For court examiner reports, the court examiner shall use forms designated by the Appellate Division, Fourth Department.

(c) Compensation.

(1) Initial reports. For the examination of an initial report, a court examiner is entitled to a fee of $100, together with reimbursement for reasonable and necessary disbursements.

(2) Annual reports. For the examination of an annual report, a court examiner is entitled to reimbursement for reasonable and necessary disbursements and a fee fixed pursuant to the following fee schedule:

Closing balance of estate examined	Fee
$5,000 and under	$150
$5,001-$25,000	$200
$25,001-$50,000	$250
$50,001-$100,000	$300
$100,001-$150,000	$400
$150,001-$225,000	$500
$225,001-$350,000	$600

$350,001-$500,000	$700
$500,001-$750,000	$800
$750,001-$1,000,000	$900
Over $1,000,000	$1,000

(3) The fee shall be calculated on the net value of the estate at the close of the calendar year for which the annual report has been filed. Upon a showing of extraordinary circumstances, a fee in excess of the fee fixed by the schedule may be awarded.

(4) An application for a fee for an estate with a value of $5,000 or less shall be made by standard voucher and shall be approved by the Presiding Justice or the designee of the Presiding Justice.

(5) An application for a fee for an estate with a value of more than $5,000 shall be set forth in the report of the court examiner and shall be approved by order of the Presiding Justice for payment by the estate. The court examiner shall serve a copy of the order approving payment on the guardian, committee or conservator, and shall file a copy of the order with the clerk of the court that appointed the guardian.

(6) A guardian, committee or conservator may apply to the Presiding Justice for review and reconsideration of any fee on the ground of excessiveness. Such application shall be in writing and shall be made within 20 days of service by the court examiner of the order directing payment of the fee from the estate.

(d) Transition.

(1) The appointment of any court examiner, appointed pursuant to former 22 NYCRR section 1022.32, due to expire on March 31, 2008, shall be continued to August 31, 2008.

§ 1015.17 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 signed statement of the attorney.

(c) Such statement may be filed personally by the attorney, or a representative of the attorney, at the main office of the Office of Court Administration in the City of New York, and upon such filing the attorney 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 a Justice of the Appellate Division.

§ 1015.18 Admission of attorneys

(a) Filing of application papers. Every applicant for admission to practice as an attorney and counselor-at-law pursuant to subdivision 1 (a) or 1 (b) of section 90 of the Judiciary Law may obtain the standard forms and instructions for that purpose from the Clerk of the Appellate Division. Every applicant for admission to practice pursuant to subdivision 1(a) of section 90 of the Judiciary Law may obtain such forms and instructions immediately after taking the bar examination, and may file a completed application, consisting of the standard form of

questionnaire and the other required papers as directed by the instructions, at any time thereafter, regardless of whether the results of the bar examination have yet been issued. As soon as the applicant receives a letter from the State Board of Law Examiners stating that the applicant has passed the bar examination, the applicant shall file that letter with the Clerk of the Appellate Division, and if the applicant's questionnaire was verified more than 45 days prior to such filing, the applicant shall also file a supplemental affidavit stating whether there have been any changes in the facts stated therein and setting forth any such changes.

(b) Referral to committee on character and fitness. Every completed application shall be referred for investigation of the applicant's character and fitness to a committee on character and fitness designated by the Appellate Division of the department to which the applicant is eligible for certification by the State Board of Law Examiners after passing the bar examination, or to which the applicant is applying for admission without examination in accordance with the rules of the Court of Appeals for the admission of attorneys and counselors-at-law.

(c) Quorum for committee action. A majority of the entire committee shall constitute a quorum for the transaction of business by a committee on character and fitness if it consists of less than 10 members, and one-fifth of the entire committee, but not less than five members, shall constitute a quorum if it consists of 10 or more members.

(d) Investigation and interview. The committee may itself conduct the required investigation, including an interview of the applicant, or it may authorize its chairperson or acting chairperson to designate one or more of its members to do so and to make a recommendation to the committee. The committee or the member or members thereof conducting the investigation may require the applicant to furnish such additional information or proofs of good character as the committee or such member or members may consider pertinent. The committee may commence the required investigation at any time after the applicant's completed application has been filed, except that the personal interview of an applicant for admission pursuant to subdivision 1(a) of section 90 of the Judiciary Law shall not be held until after the applicant has been notified by the State Board of Law Examiners that the applicant has passed the bar examination and has been certified to apply for admission.

(e) Procedure upon recommendation of approval. If the committee shall approve the application following its own investigation, or if it shall accept a recommendation of approval submitted by the member or members conducting an investigation pursuant to designation, the chairperson or acting chairperson shall

certify to the Appellate Division on behalf of the committee that the applicant possesses the requisite character and fitness.

(f) Procedure upon recommendation of disapproval, deferral or committee consideration. If the committee shall fail to approve the application following its own investigation, or following a recommendation submitted by the member or members conducting an investigation pursuant to designation that the application be disapproved or that action thereon be deferred, a hearing on the application shall be held expeditiously before the committee or a subcommittee of at least two members designated by the chairperson or acting chairperson. Such a hearing shall also be held if the member or members conducting an investigation pursuant to designation shall recommend consideration of the application by the committee and the committee shall fail to approve the application following such consideration.

(g) Notice of hearing; waiver. Unless waived in writing by the applicant, a written notice of hearing of not less than 20 days, specifying the time and place of the hearing, shall be served on the applicant. In addition, the notice of hearing shall inform the applicant of the matters to be inquired into and of the applicant's right to be represented by an attorney, and such information shall also be given to the applicant prior to the hearing if the applicant has waived notice of hearing.

(h) Procedure at hearing. At the hearing, hearsay evidence may be received and considered and adherence to strict rules of evidence shall not be required. The applicant shall be given an opportunity to call and cross-examine witnesses and to challenge, examine and controvert any adverse evidence. Upon timely request, subpoenas for the attendance of witnesses or the production of papers shall be issued to the applicant by the Clerk of the Appellate Division, the subpoena fees and mileage to be paid by the applicant.

(i) Stenographic record or tape recording. A stenographic record or tape recording shall be made of the hearing, and the applicant may obtain a transcript or copy of the recording at the applicant's expense.

(j) Decision or report following hearing. Where the hearing has been conducted by the committee, the committee shall render a decision, and where the hearing has been conducted by a subcommittee, the subcommittee shall render a report, within 60 days after the matter is finally submitted, unless the time is extended by consent of the applicant or order of the Appellate Division. The decision of the committee or the report of the subcommittee, as the case may be, may recommend approval or

disapproval of the applicant or deferral of action on the application for a period not to exceed six months.

(k) Transmittal of decision to Appellate Division following hearing conducted by committee. Where the hearing has been conducted by the committee, the committee shall transmit its decision to the Appellate Division, together with the appropriate certificate if it recommends approval of the applicant. If the decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based and a copy thereof shall be served on the applicant or the applicant's attorney.

(l) Review by committee following hearing conducted by subcommittee. Where the hearing has been conducted by a subcommittee, the subcommittee's report and the stenographic record or tape recording of the hearing shall be referred for consideration and review to the committee, which shall render a decision thereon expeditiously. The committee's decision may confirm, reverse or modify the subcommittee's report or direct that a further hearing be held before the same or another subcommittee. If the committee's decision recommends disapproval of the applicant or deferral of action on the application, it shall include a statement of the grounds on which it is based and a copy thereof shall be served on the applicant or the applicant's attorney. The decision shall be transmitted to the Appellate Division, together with the appropriate certificate if it recommends approval of the applicant. The deliberations of the committee shall be confidential and the applicant shall not be entitled to compel disclosure thereof.

(m) Petition to Appellate Division following adverse decision. If the committee's decision is adverse to the applicant, the applicant may, within 60 days after service of a copy thereof, petition the Appellate Division, in accordance with rule 9404 of the Civil Practice Law and Rules, on notice of not less than eight days served on the committee together with any supporting papers, for an order granting the application for admission to practice notwithstanding the committee's decision.

(n) Petition to Appellate Division in case of unreasonable delay. In any case in which it is claimed that the committee has unreasonably delayed action on an application for admission to practice, the applicant may petition the Appellate Division, in accordance with rule 9404 of the Civil Practice Law and Rules, on notice of not less than eight days served on the committee together with any supporting papers, for an order granting the application notwithstanding the committee's failure to complete action thereon, or for other appropriate relief.

(o) Petition for advance ruling with respect to past conduct.

(1) Any person who is a matriculated student in an approved law school, as an approved law school is defined in the rules of the Court of Appeals for the admission of attorneys and counselors-at-law, or who has applied for admission to such a law school, and who has previously been:

(i) convicted of a felony or misdemeanor;

(ii) suspended, removed or dismissed from public office or employment; or

(iii) dishonorably discharged from the armed services of the United States;

may petition the Appellate Division of the department in which such person resides or is employed full-time, or if such person does not reside and is not employed full-time in the State, the Appellate Division of the Third Department, for an advance ruling, in accordance with this section, as to whether such conviction, suspension, removal or dismissal from public office or employment, or dishonorable discharge, as the case may be, would operate to disqualify the petitioner, on character grounds, from being admitted to practice as an attorney and counselor-at-law in this State.

(2) The petition shall include a detailed statement of the facts with respect to the petitioner's conviction, suspension, dismissal or removal from public office or employment, or dishonorable discharge, as the case may be, and of the petitioner's activities subsequent thereto which the petitioner believes bear on character and fitness to practice law.

(3) The petitioner shall also submit a completed and verified questionnaire on the standard form furnished by the committee on character and fitness, and affidavits of good moral character from two reputable persons who have known the petitioner for at least one year. In addition, the petitioner shall submit a letter from a person in authority at the approved law school in which the petitioner is a matriculated student or to which the petitioner has applied for admission, stating that such law school would retain or accept the petitioner as a student therein, as the case may be, if the petitioner's conviction, suspension, dismissal or removal from public office or employment or dishonorable discharge, as the case may be, would not operate to disqualify the petitioner from being admitted to practice as an attorney and counselor-at-law in this State.

(4) The petition and other papers submitted by the petitioner shall be referred to the appropriate committee on character and fitness, which shall process and investigate the petition in accordance with the procedures set forth in the preceding sections of this Part. The committee may recommend that a ruling be made either in favor of or against the petitioner, or that no ruling be made, and its recommendation shall be transmitted to the Appellate Division.

(5) A ruling made by the Appellate Division in favor of the petitioner shall determine that the petitioner's prior conviction, suspension, removal or dismissal from public office or employment, or dishonorable discharge, as the case may be, and the acts committed by the petitioner which resulted therein, would not operate to disqualify the petitioner, on character grounds, from being admitted to practice as an attorney and counselor-at-law in this State. Such a ruling shall have binding force throughout the State with respect to the determination thus made by it. In the event that the Appellate Division should rule against the petitioner or should refuse to make a ruling, its determination shall be without prejudice to the petitioner's right, after passing the bar examination, to apply for a favorable ruling with respect to character and fitness.

(p) Manner of service. Service of any notice or other papers required under any of these rules may be made by mail or in the manner provided for service of a summons.

§ 1015.19 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, except as approved by the trustees of the fund.

Title 22 - Judiciary
Subtitle B - Courts
Chapter IV - Supreme Court
Subchapter D - Fourth Judicial Department
Article 1 - Appellate Division
Subarticle B - Special Rules
Part 1020 - Procedures for Attorney Disciplinary Matters
(effective October 1, 2016)

Table of Contents

§ 1020.

§ 1020.1 Application and definitions

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

§ 1020.2 Fourth Judicial Department grievance plan

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

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

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

§ 1020.3 Duties and authority of attorney grievance committees

Attorney grievance committees in the Fourth Judicial Department shall:

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

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

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

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

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

§ 1020.4 Staff of attorney grievance committees

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

§ 1020.5 Duties and authority of legal staff

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

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

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

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

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

investigation and are necessary for the proper disposition of a complaint. The application shall also establish that a judicial subpoena is necessary to obtain such testimony or books and papers and that other potential sources of the information, or the means to obtain the information, are either impractical or unavailable; and,

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

§ 1020.6 Duties and authority of county and local bar associations

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

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

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

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

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

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

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

§ 1020.8 Proceedings in the Appellate Division

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

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

(c) Default. In the event a respondent fails to file an answer within the time period specified under these rules, the chief attorney may file in the Appellate Division a motion for an order finding the respondent in default, deeming the material allegations of the petition admitted by the respondent, and granting any other relief

provided by law and warranted under the circumstances, which may include an order suspending the respondent during the pendency of the proceeding, pursuant to section 1240.9 of part 1240. Unless otherwise directed by the Court, any motion for an order finding the respondent in default shall be filed in accordance with section 1020.8 (h) of this part and include proof that a copy of the motion papers were delivered personally to the respondent at least 10 days prior to the return date of the motion. The respondent shall personally appear before the Appellate Division on the return date of any such motion.

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

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

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

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

(h) Applications and motions to the Appellate Division

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

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

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

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

§ 1020.9 Conduct of disbarred or suspended attorneys

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

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

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

§ 1020.11 Diversion to a monitoring program

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

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

(a) A bar association recognized in a county within the Fourth Department or a committee thereof engaged in an investigation into the alleged unlawful practice of law or the subject of such an investigation may apply to this Court for the issuance of a subpoena directing the attendance of witnesses or the production of books,

papers and records before the association or a committee thereof. The application shall establish that the specified testimony or books, papers and records are relevant to the inquiry of the bar association and that other potential sources of the information, or the means to obtain the information, are either impractical or unavailable. Subpoenas shall be issued by the Clerk of the Court in the name of the Presiding Justice upon a determination that there is reasonable cause to believe that a person, firm, corporation or other organization is unlawfully practicing law or assuming to practice law or is engaged in any business or activity that may involve the unlawful practice of law.

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

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

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

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