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*New York State Supreme Court*  
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*First Department*

## Departmental Disciplinary Committee

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## Part 605



### § 605.1 Title, Citation and Construction of Rules

- a. These Rules shall be known, and may be cited, as the "Rules and Procedures of the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department" (hereinafter called the Committee).
- b. These Rules are promulgated for the purpose of assisting the Office of Chief Counsel, the Respondent and the Committee to develop the facts relating to, and to reach a just and proper determination of, matters brought to the attention of the Office of Chief Counsel or the Committee. The Committee will not hold action of a Referee or a Hearing Panel invalid

- by reason of any nonprejudicial irregularity. Any error, defect, irregularity or variance which does not effect substantial rights shall be disregarded.
- c. The use of the term attorney in this Part shall apply to a law firm where a firm is the object of an investigation or prosecution of alleged violation of the Code of Professional Responsibility.



### § 605.2 Definitions

- a. Subject to additional definitions contained in subsequent provisions of these Rules which are applicable to specific sections, subsections or other provisions of these Rules, the following words and phrases, when used in these Rules, shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:
1. Admonition. Discipline administered without hearing, by letter issued by the Committee Chairperson, in those cases in which misconduct in violation of a Disciplinary Rule is found, but is determined to be of insufficient gravity to warrant prosecution of formal charges.
  2. Answer. A formal pleading filed by the Respondent in answer to a Notice of Charges.
  3. Chief Counsel. The Chief Counsel appointed by the Court or, in the absence of such Chief Counsel, the Deputy Chief Counsel in the case of vacancy in office, or disability of such Chief Counsel, the Deputy Chief Counsel as designated by the Court.
  4. Code of Professional Responsibility. The Code of Professional Responsibility as adopted by the New York State Bar Association effective January 1, 1970, as the same may from time to time be amended.
  5. Committee Chairperson. The Chairperson of the Committee.
  6. Complainant. A person communicating a Grievance to the Committee or to the Office of Chief Counsel, whether or not set forth in a complaint.
  7. Complaint. A written statement of the nature described in Section 605.6 of this Part with respect to a Grievance concerning an attorney communicated to the Committee or to the Office of Chief Counsel.
  8. Court. The Appellate Division of the Supreme Court of the State of New York, First Judicial Department.
  9. Deputy Chief Counsel. The Deputy Chief Counsel appointed by the Court, or in the absence of such Deputy Chief Counsel, the Principal Attorney designated by the Chief Counsel to serve as Deputy Chief Counsel; in the case of vacancy in office, or disability of such Deputy Chief Counsel, the Principal Attorney as designated by the Court.
  10. Disciplinary Rule. Any provision of the rules of the Court governing the conduct of attorneys, any Disciplinary Rule of the Code of Professional Responsibility, and any Canon of the Canons of Professional Ethics as adopted by the New York State Bar Association.
  11. First Department. The First Judicial Department of the State of New York.
  12. Formal Proceedings. Proceedings subject to Sections 605.11 through 605.14 of this Part.
  13. Grievance. An allegation of misconduct.
  14. Hearing Panel. A Hearing Panel established under Section 605.18 of this Part.
  15. Hearing Panel Chairperson. The member of the Committee designated as chairperson of a Hearing Panel under Section 605.18 of this Part.
  16. Investigation. Fact gathering under the direction of the Office of

- Chief Counsel with respect to alleged misconduct.
17. Investigator. Any person designated by the Office of Chief Counsel to assist it in the investigation of alleged misconduct.
  18. Notice of Charges. A formal pleading served under §605.12 of this Part by the Office of Chief Counsel requesting action by the Committee.
  19. Office of Chief Counsel. The Office of Chief Counsel provided for by § 605.20 of this Part.
  20. Parties. The Office of Chief Counsel and the Respondent.
  21. Policy Committee. The Policy Committee established under §605.21 of this Part.
  22. Reprimand. Discipline administered after a hearing, by the Committee through the Hearing Panel Chairperson, in those cases in which misconduct in violation of a Disciplinary Rule is found.
  23. Respondent. An attorney or legal consultant described in Section 603.1 of this Title who, or a law firm that, has been named in a complaint or notice of charges.
  24. Reviewing Member. The member or members of the Committee designated under Section 605.6(f) of this Part to review the disposition of a Complaint recommended by the Office of the Chief Counsel.
  25. Rules. The provisions of these Rules and Procedures.
  26. Staff Counsel. The attorneys (including the Chief Counsel) constituting the Office of Chief Counsel, and where appropriate the attorney or attorneys of the Office of Chief Counsel, or such special counsel as may be appointed by the Committee Chairperson with the approval of the Policy Committee, assigned to a particular investigation or proceeding.



### § 605.3 Location of Office of Chief Counsel

- The location of the office of Chief Counsel and the office of the Chief Counsel is:

Department Disciplinary Committee of the Appellate Division of the  
Supreme Court  
61 Broadway  
New York, NY 10006



### § 605.4 Grounds for Discipline

- Section 90 of the Judiciary Law of the State of New York, the Disciplinary Rules and decisional law indicate what shall constitute misconduct and shall be grounds for discipline.



### § 605.5 Types of Discipline; Subsequent Consideration of Disciplinary Action

- a. Misconduct under Section 90 of the Judiciary Law of the State of New York, the Disciplinary Rules or decisional law shall be grounds for any of the following:
  1. Disbarment - by the Court.
  2. Suspension - by the Court.
  3. Censure - by the Court.
  4. Reprimand - by the Committee after hearing, with or without referral to the Court for further action.

5. Admonition - by the Committee without hearing.
- b. The fact that an attorney has been issued an Admonition (which has not yet been vacated), or that an attorney has been the subject of a Reprimand (with or without referral to the Court), or that an attorney has been the subject of disciplinary action by the Court, may (together with the basis thereof) be considered in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against the attorney subsequently.



### § 605.6 Investigations and Informal Proceedings

- a. Initiation of Investigations. The Office of Chief Counsel shall, except as otherwise provided by subdivision (g) of this section, undertake and complete an investigation of all matters involving alleged misconduct of attorneys within the jurisdiction of the Committee called to its attention by a Complaint filed pursuant to subdivision (b) of this section, by the Court, or by the Committee by written order, and may, on its own initiative, undertake and complete an investigation of any other matter within the jurisdiction of the Committee otherwise coming to the attention of such Office. The Office of Chief Counsel shall use such Investigators as are deemed appropriate by the Chief Counsel.
- b. Contents of Complaint.
  1. General Rule. Each Complaint relating to alleged misconduct of an attorney shall be in writing and subscribed by the Complainant and shall contain a concise statement of the facts upon which the Complaint is based. Verification of the Complaint shall not be required. If necessary the Office of Chief Counsel will assist the Complainant in reducing the Grievance to writing. The Complaint shall be deemed filed when received by the Office of Chief Counsel.
  2. Other Situations. In the case of an allegation of misconduct originating in the Court or the Committee, or upon the initiative of the Office of Chief Counsel, the writing reflecting the allegation shall be treated as a Complaint.
- c. Investigation. The staff of the Office of Chief counsel shall make such investigation of each Complaint as may be appropriate.
- d. Notification to Respondent of Complaint.
  1. General Rule. No discipline shall be recommended by the Office of the Chief Counsel until the Respondent shall have been afforded the opportunity to state the Respondent's position with respect to the allegations.
  2. Transmission of Notice. Except where it appears that there is no basis for proceeding further, the Office of Chief Counsel shall promptly prepare and forward to the Respondent a request for a statement in response to the Complaint, advising the Respondent of:
    - i. the nature of the Grievance and the facts alleged in connection therewith; and
    - ii. The Respondent's right to state the Respondent's position with respect to the allegations.

Unless a shorter time is fixed by the Committee Chairperson and specified in such notice, the Respondent shall have 20 days from the date of such notice within which to file such a response in the Office of Chief Counsel.
- e. Recommendation of the Office of Chief Counsel. Following completion of any Investigation of the Complaint (including consideration of any statement filed by the Respondent pursuant to Section 605.6(d) of this Part), the Office of Chief Counsel shall recommend one of the following dispositions:
  1. referral to another body on account of lack of territorial jurisdiction;

2. dismissal for any reason (with an indication of the reason therefor), and referral to another body if appropriate;
3. admonition; or
4. formal proceedings before a hearing panel.

f. Action Following Recommendation.

1. No Jurisdiction. If the Office of Chief Counsel determines that the Complaint should be referred under paragraph (e)(1) of this section, it shall notify the complainant and the Respondent (if previously notified of the Complaint) of such disposition in writing and close the file on the matter. Whenever possible in cases of lack of jurisdiction, the Office of Chief Counsel shall bring the matter to the attention of the authorities of the appropriate jurisdiction, or to any other duly constituted body which may be able to provide a forum for the consideration of the Grievances, and shall advise the Complainant of such referral.
2. Other Cases. In the case of recommendations under paragraph (e) (2) of this section, the Committee chairperson shall designate a lawyer member of the Committee to review the recommendations. In the case of recommendations under paragraph (e)(3) of this section, the Committee chairperson (or a member of the Committee designated by the Committee chairperson) and at least one other member of the Committee shall review the recommendations. In the case of recommendations under paragraph (e)(4) of this section, or under Section 605.15(e)(2) of this part, the Committee chairperson shall designate at least two members of the policy committee, at least one of whom is a lawyer, to review the recommendations.

g. Preliminary Screening of Complaints. Any complaint received by the Office of Chief Counsel against a member of the Committee or Staff counsel involving alleged misconduct shall be transmitted forthwith to the Committee Chairperson, who shall assign it either to the Office of Chief Counsel or to special counsel who shall

1. conduct or direct the appropriate investigation, and
2. give a written recommendation as to the disposition of the Complaint to the Committee Chairperson, who shall determine the appropriate disposition of the Complaint. Any such Complaint which relates to the Committee Chairperson shall, in the first instance, be transmitted to a Hearing Panel Chairperson, who shall conduct the appropriate investigation and determine the appropriate disposition of the Complaint.



### **§ 605.7 Review of Recommended Disposition of Complaint**

- a. Transmission to Reviewing Member. In the case of recommendations under § 605.6(e)(3) of this part, the chief counsel shall forward the file (including the proposed disposition letter) to the reviewing member designated under §605.6(f)(2) of this part for action. In the case of recommendations under § 605.6(e)(4) of this part, the chief counsel shall forward the file, the proposed charges, and a memo summarizing the evidence adduced in support of the charges to the reviewing policy member designated under § 605.6(f)(2) of this part for action. In the case of recommendations to file a motion to disaffirm under § 605.15(e) (2) of this part, the chief counsel shall forward the hearing panel's report, the proposed motion, and memo of law or other memo summarizing the reasons for the motion, to the reviewing member designated under § 605.6(f)(2) of this part for action.
- b. Action by Reviewing Member.
  1. General Rule. The Reviewing Member may approve or modify the recommendation of the Office of Chief Counsel concerning the disposition of a Complaint.

2. Modification. If the Reviewing Member determines to modify the recommendation of the Office of Chief Counsel, the Reviewing Member shall set forth such determination in writing together with a brief statement of the reason therefor. Such determination shall be one of the following:
  - i. dismissal of the complaint;
  - ii. further investigation;
  - iii. admonition; or
  - iv. formal proceedings before a hearing panel.
3. Return of File. Upon making such determination, the Reviewing Member shall return the file to the Office of Chief Counsel.
- c. Reconsideration. Upon notification of the dismissal of a complaint pursuant to Section 605.6, the complainant may submit a written application for reconsideration that shall be filed with the Office of the Chief Counsel within 30 days of the date of the notification. The Committee chairperson shall designate to examine a request for reconsideration a member of the Committee other than the member who originally reviewed the recommendation of the Office of the Chief Counsel.



### **§ 605.8 Final Disposition Without Formal Proceedings**

- a. Notification to Respondent of Disposition of Complaint. Upon the approval of the recommendation of the Office of Chief Counsel by the Reviewing Member, the acceptance of the Reviewing Member's modification by the Office of Chief Counsel, or the determination of the appropriate disposition by the Committee Chairperson, then, unless the disposition involves the institution of Formal Proceedings, as appropriate:
  1. The Office of Chief Counsel by means of written notice shall notify the Respondent of the dismissal of the Complaint; or
  2. the Committee Chairperson shall transmit to the Respondent an Admonition (which shall bear the designation "ADMONITION").
- b. Admonitions.
  1. General Rule. A written record shall be made of the fact of and basis for Admonitions.
  2. Notice of Right to Formal Proceedings. In the Admonition, the Respondent shall be advised of:
    - i. the Respondent's right under § 605.8(c) of this Part; and
    - ii. the availability of such records for consideration in determining whether to impose discipline, and the extent of discipline to be imposed, in the event other charges of misconduct are brought against the Respondent subsequently.
- c. Action Available to Respondent.
  1. General Rule. A Respondent shall not be entitled to appeal an Admonition, but the Respondent may submit a written application for reconsideration which shall be disposed of in accordance with paragraph (3) of this subdivision; or, in the alternative, Respondent may demand as of right that Formal Proceedings be instituted before a Referee, in accordance with subsection (2) of this subdivision.
  2. Formal Proceedings. A demand under paragraph (1) of this subdivision that Formal Proceedings be instituted shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. In the event of such demand, the Admonition shall be vacated and the Referee shall not be bound by its terms, but may take any appropriate action authorized by the Rules of the Committee or the Rules of the Appellate Division, First Department, including a

Reprimand or referral to the Court.

3. Application for Reconsideration. An application under paragraph (1) of this subdivision for reconsideration shall be in writing and shall be filed in the Office of Chief Counsel within 30 days after the date on which the Admonition is sent to the Respondent. As soon as practicable after the receipt of an application, the Office of Chief Counsel shall transmit the application and the file relating to the matter to a member of the Departmental Disciplinary Committee (who shall not be a Reviewing Member designated with respect to such matter under § 605.6(f)(2) of the Part) designated to review the matter by the Committee Chairperson (or, upon general or limited written direction of the Committee Chairperson, by the Chief Counsel). The member so designated shall either confirm or vacate the Admonition or otherwise determine to modify the Admonition under §605.7(b)(2) of this Part.
- d. Notification to Complainant of Disposition of Complaint. The Office of the Chief Counsel, by means of written notice, shall notify the Complainant of the dismissal of a Complaint, or of the issuance of an Admonition. If the complaint has been dismissed pursuant to Section 605.6(e)(2), the notice shall state that the Complainant may seek reconsideration of the dismissal by submitting to the Office of the Chief Counsel a written request within 30 days of the date of the notice.



#### **§ 605.9 Abatement of Investigation**

- a. Refusal of Complainant or Respondent to Proceed, etc. Neither unwillingness or neglect of the Complainant to prosecute a charge, nor settlement, compromise or restitution, nor the failure of the Respondent to cooperate, shall, in itself, justify abatement of an Investigation into the conduct of an attorney or the deferral or termination of proceedings under these Rules.
- b. Matters Involving Related Pending Civil Litigation or Criminal Matters.
  1. General Rule. The processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation need not be deferred pending determination of such litigation.
  2. Effect of Determination. The acquittal of a Respondent on criminal charges or a verdict or judgment in the Respondent's favor in a civil litigation involving substantially similar material allegations shall not, in itself, justify termination of a disciplinary investigation predicated upon the same material allegations.



#### **§ 605.10 Resignations, Reinstatements, Convictions of Crimes**

- a. Resignations by Attorneys Under Disciplinary Investigations.
  1. Recommendation to the Court. Upon receipt by the Committee of an affidavit from an attorney who intends to resign pursuant to the rules of the Court, the chief counsel shall review the affidavit and such other matters as the chief counsel deems appropriate and determine either (i) to recommend to the Court that the resignation be accepted and to recommend any terms and conditions of acceptance the chief counsel deems appropriate, or (ii) to recommend to the Court that the resignation not be accepted with the reasons therefor. The chief counsel shall submit the affidavit and the recommendation to the Court, and the proceedings, if any,

- before the Court shall be conducted by staff counsel.
2. Notification of Complainant. In the event the Court accepts the resignation of a Respondent and removes the Respondent on consent, the Office of Chief Counsel by means of written notice shall notify the Complainant of such action.
  - b. Applications for Reinstatement. Upon receipt by the Committee of an application of an attorney who has been disbarred or who has been suspended for more than six months, or whose name has been stricken from the roll of attorneys on consent by order of the Court, applying for reinstatement pursuant to the rules of the Court, the chief counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment, and shall notify the complainant(s) that they have sixty days to raise objections to or to support the lawyer's petition. Upon the expiration of the sixty-day period, the chief counsel shall either (1) advise the lawyer and the Court that the chief counsel will stipulate to the reinstatement or (2) advise the lawyer and the Court that the chief counsel opposes the reinstatement. If the chief counsel opposes the reinstatement, he shall present the reasons for the opposition and shall request that the Court deny the application or appoint a Referee and refer the matter to the Committee.
  - c. Determination of Serious Crimes. Upon receipt by the Committee of a certificate demonstrating that an attorney has been convicted of a crime in the state of New York or in any other state, territory or district, the chief counsel shall determine whether the crime is a "serious crime" as defined in the rules of the court governing the conduct of attorneys. Upon a determination by the chief counsel that the crime is a serious crime, the office of the chief counsel shall file the certificate of conviction with the Court.



### **§ 605.11 Formal Proceedings; Preliminary Provisions**

- a. Representation of Respondent
  1. Appearance Pro Se. When a Respondent appears pro se in a Formal Proceeding, the Respondent shall file with the Office of Chief Counsel an address to which any notice or other written communication required to be served upon the Respondent may be sent.
  2. Representation of Respondent by Counsel. When a Respondent is represented by counsel in a Formal Proceeding, counsel shall file with the Office of Chief Counsel, a written notice of such appearance, which shall state such counsel's name, address and telephone number, the name and address of the Respondent on whose behalf counsel appears, and the caption of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a Respondent may be sent to the counsel of record for such Respondent at the stated address of the counsel in lieu of transmission to the Respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served on or furnished to the Respondent shall also be served upon or furnished to the Respondent's counsel (or one of such counsel if the Respondent is represented by more than one counsel) in the same manner as prescribed for the Respondent, notwithstanding the fact that such communication may be furnished directly to the Respondent.
- b. Format of Pleadings and Documents. Pleadings or other documents filed in Formal Proceedings shall comply with and conform to the rules from time to time in effect for comparable documents in the Supreme Court in the First Department.
- c. Expeditious Proceedings; Extensions. Formal Proceedings shall be



- expeditiously conducted. Extension of the time periods specified in this Part regarding proceedings before the Referee or Hearing Panel shall be made in writing to the Court and determined by a Justice of the Court upon good cause shown.
- d. Service by the Departmental Disciplinary Committee.
    1. Orders, notices and other documents originating with the Committee, including all forms of Referee, Hearing Panel or Committee action, petitions and similar process, and other documents designated by the Committee for this purpose, shall be served by the Office of Chief Counsel either personally or by mailing a copy thereof, to the person to be served, addressed to that person at the person's last known address. Whenever any document is to be served by mail upon the Respondent individually, it shall be by both certified mail, return receipt requested, and by first class mail. In all other instances, service by mail shall be by first class mail.
    2. Service by mail shall be complete upon mailing. When service is not accomplished by mail, personal service may be effected by anyone duly authorized by the Office of Chief Counsel in the manner provided in the laws of the State of New York relating to service of process in civil actions.
  - e. Number of Copies. The following number of copies of documents shall be served by each Party in a proceeding:
    1. documents being served by the Office of Chief Counsel: one copy of each document to the Respondent, and one copy of each document to the Referee and to each member of the Hearing Panel, as may be appropriate.
    2. documents being served by the Respondent: one copy of each document (plus 10 copies of the Answer) to the Office of Chief Counsel, one copy to the Referee and to each member of the Hearing Panel, as may be appropriate, and one copy of each document to each other Respondent, if any; in each case, to be served personally or by mailing a copy thereof (by certified mail, return receipt requested) to the person to be served.
    3. copies of exhibits to be offered during the hearing shall be provided as specified in section 605.12(d) of this Part.
  - f. Amendment and Supplementation of Pleadings. No amendment or supplementation of any Notice of Charges or of any Answer shall be made unless specified in the Pre-Hearing Stipulation or otherwise granted by the Referee. Any objection to a proposed amendment shall be determined by the Referee upon conditions deemed appropriate.

Whenever, in the course of any hearing under these Rules, evidence shall be presented upon which another charge or charges against the Respondent might be made, it shall not be necessary to prepare or serve an additional Notice of Charges with respect thereto, but the Referee may, after reasonable notice to the Respondent and an opportunity to answer and be heard, proceed to the consideration of such additional charge or charges as if they had been made and served at the time of service of the Notice of Charges, and may render its decision upon all such charges as may be justified by the evidence in the case.



### **§ 605.12 Formal Proceedings.**

- a. Commencement of Formal Proceedings. The Office of Chief Counsel shall institute formal disciplinary proceedings by serving on the Respondent a Notice of Charges under subdivision (b) of this section in either of the following cases:
  1. pursuant to a determination to institute formal proceedings made under section 605.6 or section 605.7 of this

- Part; or
2. pursuant to a referral under the rules of the Court.
- b. Notice of Charges.
1. Caption. A Notice of Charges will be captioned as follows:  
 Before the Departmental Disciplinary  
 Committee of the Appellate Division  
 Of the Supreme Court of the State of New York,  
 First Judicial Department

Notice of Charges Docket No. Before Referee

\_\_\_\_\_

In the Matter of

\_\_\_\_\_,

Respondent.

2. Contents. The notice of charges shall set forth the charges of misconduct against the respondent, the disciplinary rules alleged to have been violated, and, in appropriate cases, the fact that the Committee will seek restitution or reimbursement pursuant to section 90 6-a(a) of the Judiciary Law, and costs pursuant to section 605.13(p)(4)(v) of this Part. The notice of charges shall also indicate the Referee appointed to hear the matter, the date, time and place of the hearing, which shall be determined by the Referee and shall advise the respondent that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.
- c. Answer.
1. General Rule. The Respondent shall answer the Notice of Charges by serving and filing an Answer (and 10 copies thereof) in the Office of Chief Counsel within 20 days after service of the Notice of Charges, unless a shorter time is fixed by the Committee Chairperson and specified in the Notice of Charges.
  2. Contents of Answer. The Answer shall be in writing and shall respond specifically (by admissions, denials or otherwise) to each allegation of the Notice of Charges and shall assert all affirmative defenses.
  3. Request to Be Heard in Mitigation. The Respondent may include in the Answer matters in mitigation.
  4. Effect of Failure to Answer. In the event the Respondent fails either to serve and file an Answer or respond specifically to any allegation or charge, such allegation or charge shall be deemed admitted.
- d. Pre-hearing Stipulation. A form of a Pre-Hearing Stipulation specifying the following shall be served on the Respondent together with the Notice of Charges:
1. amendments;
  2. claims or defenses abandoned; or
  3. undisputed facts:
    - i. facts not in dispute as to Staff's Counsel's case;
    - ii. facts not in dispute as to the Respondent's case;
  4. facts in dispute:
    - i. the Staff Counsel's contentions;
    - ii. the Respondent's contentions;
  5. documents to be offered in evidence during the hearing.<sup>1</sup>
    - i. the staff will offer the following numbered exhibits;
    - ii. the Respondent will offer the following lettered exhibits;
  6. witnesses to be called:<sup>2</sup>
    - i. by Staff Counsel;
    - ii. by the Respondent;
  7. statement of legal contentions and authorities;<sup>3</sup>
  8. length of trial.
- e. No Other Pleadings. Pleadings shall be limited to a Notice of Charges and any Answer thereto, as amended or supplemented in accordance with

section 605.11 of this Part.

- f. Assignment for Hearing.
1. Appointment of Referee. Prior to service of the notice of charges, the Chief Counsel shall request that the Court appoint a Referee to conduct a hearing pursuant to the Rules of this Part.
  2. Objection to Referee. Within 7 days of the service of charges the Office of the Chief Counsel or the Respondent may object to the Referee appointed. The objection shall be made to the Court in writing on notice to the Referee and the adversary.
    1. All documents (including schedules, summaries, charts and diagrams) to be offered (other than those to be used for impeachment or rebuttal) are to be listed in the stipulation with a description of each sufficient for identification. The documents are to be premarked by counsel, and, to the extent practicable, such markings are to be in the sequence of which the documents will be offered. If illegible or handwritten documents are to be offered, counsel shall include a typed version of the document.

Objections as to authenticity must be made in this stipulation or else they shall be deemed waived. Counsel are directed to exchange copies of their exhibits within two business days prior to the scheduled hearing.

Counsel offering an exhibit shall provide a copy for the Referee at that time. Witnesses to be called in rebuttal or for impeachment purposes need not be identified in this stipulation.

2. Witness identification should include the witness' name (and address) and a brief statement of the overall scope of the witness' testimony. For example, if specific witnesses are to be called to substantiate particular claims or defenses on portions thereof, that should be noted. In addition, any witness being called as a character witness should be so designated.
3. Only a brief statement of each contention is required, together with the principal authority relied upon; string cites are not necessary.



### **§ 605.13 Conduct of Referee Proceedings**

- a. Expediting Proceedings.
  1. Conferences. In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited (including preparation of agreed stipulations of fact) Staff Counsel and Respondent or his attorneys shall meet five (5) days after the Answer is served to complete and sign a Pre-Hearing Stipulation in conformance with the form set forth in section 605.12(d) of this Part. Staff Counsel shall forward the signed stipulation immediately to the Referee.
  2. Commencement of Hearing. The hearing before the Referee shall commence within 60 days after service of the Notice of Charges and shall be conducted on consecutive days.
- b. Appearances. The Referee shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.
- c. Order of Procedure. In proceedings upon a Notice of Charges, the Office of Chief Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence. Opening statements, when permitted in the discretion of the Referee, shall be

- made first by Staff Counsel. Closing statements shall be made first by the Respondent.
- d. Presentation by the Parties. Respondent and Staff Counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Referee may examine all witnesses.
  - e. Limiting Number of Witnesses. The Referee may limit the number of witnesses who may be heard upon any issue before it to eliminate unduly repetitious or cumulative evidence.
  - f. Additional Evidence. At the hearing the Referee may authorize any Party to file specific documentary evidence as a part of the record.
  - g. Oral Examination. Witnesses shall be examined orally unless the testimony is taken by deposition as provided in Section 605.17(b) of this Part, or the facts are stipulated in the manner provided in section 605.12 (d) or 605.13(i) of this Part. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.
  - h. Fees of Witnesses. Witnesses subpoenaed by the Office of the Chief Counsel or the Respondent shall be paid, by the subpoenaing party, the same fees and mileage as are paid for like service in the Supreme Court in the First Department.
  - i. Presentation and Effect of Stipulation. The Parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on such Parties with respect to the matters therein stipulated.
  - j. Admissibility of Evidence.
    - 1. General Rule. All evidence which the Referee deems relevant, competent and not privileged shall be admissible in accordance with the principles set out in section 605.1 of this Part.
    - 2. Pleadings. The Notice of Charges and Answer thereto shall, without further action, be considered as parts of the record.
    - 3. Convictions. A certificate of the conviction of a Respondent for any crime shall be conclusive evidence of the Respondent's guilt of that crime in any disciplinary proceeding instituted against the Respondent and based on the conviction, and the Respondent may not offer evidence inconsistent with the essential elements of the crime for which the Respondent was convicted as determined by the statute defining the crime except such evidence as was not available either at the time of the conviction or in any proceeding challenging the conviction.
  - k. Reception and Ruling on Evidence. When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated. Formal exceptions are unnecessary. The Referee shall rule on the admissibility of all evidence
  - l. Copies of Exhibits. When exhibits of a documentary character are received in evidence, copies shall, unless impracticable, be furnished to the Parties and to the Referee.
  - m. Recording of Proceeding. Hearings shall be recorded by reporters authorized to take oaths, or by mechanical recording devices and a transcript of the hearing so recorded, if such transcription is made, shall be a part of the record and sole official transcript of the proceeding. Such transcript shall consist of a verbatim report of the hearing, an exhibit list and the reporter's certificate, and nothing shall be omitted from the record except as the Referee may direct. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony, except as provided in subdivision (f) of this section or changes in the transcript, except as provided in subdivision (n) of this section.
  - n. Transcript Corrections. Corrections in the official transcript may be made only to make it conform to what actually transpired at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing except as provided in this section. Transcript

- corrections agreed to by all Parties may be incorporated into the record, if the Referee approves, at any time during the hearing or after the close of the hearing, but in no event more than 10 days after the receipt of the transcript. Any dispute among the Parties as to correction of the official transcript shall be resolved by the Referee, whose decision shall be final.
- o. Copies of Transcripts. A Respondent desiring copies of an official transcript may obtain such copies at the Respondent's own expense from the official reporter. Any witness may obtain from the official reporter at the witness' own expense a copy of that portion of the transcript relating to the witness' own testimony, or any part thereof. The Office of Chief Counsel shall in either case, bear the expense of one such copy if the Referee so directs upon good cause shown.
  - p. Determinations.
    1. Post-Testimony Procedure. At the conclusion of the testimony and following the presentation of oral arguments, the Referee shall determine whether an inquiry as to sanction is required and shall, before the commencement of the inquiry, set forth on the record or in writing, the charges that are to be sustained. The inquiry may commence immediately upon the conclusion of the oral arguments, but in no event later than 7 days from the conclusion of the oral arguments whether any charges against the Respondent are to be sustained.
    2. No Charge Sustained. If none of the charges against the respondent are sustained, the Referee shall so advise the parties in writing or on the record.
    3. Any Charge Sustained. If any charge against the Respondent is sustained, the Referee shall so advise the parties in writing or on the record, and shall thereupon ascertain from Staff Counsel, whether the Respondent has previously been subject to disciplinary action by the Court, the Departmental Disciplinary Committee, any grievance committee established or authorized by any other Appellate Division of the Supreme Court of the State of New York, or by any other court.
    4. Sanctions. Following the Referee's determination to sustain one or more charges against the Respondent the Referee shall recommend which of the following disciplinary sanctions should be imposed:
      - i. reprimand;
      - ii. referral to the Court, with a recommendation as to censure, suspension or disbarment;
      - iii. reprimand, with referral to the Court, with a recommendation as to censure, suspension or disbarment;
      - iv. referral to the Court under (ii) or (iii) above, with a recommendation as to restitution or reimbursement, pursuant to section 90 6-a of the Judiciary Law; and
      - v. referral to the Court under (ii) or (iii) above, authorizing a request to the Court that costs be imposed on the respondent.

Upon such recommendation having been made, the Referee shall so advise the parties on the record or reserve decision until the issuance of the Report and Recommendation.

- q. Referee's Report and Recommendation.
  1. Report and Recommendation. In all cases the Referee shall prepare a written report and recommendation as to sanction which shall state the Referee's findings of fact and conclusions of law.
  2. Submissions of the Parties. In the Referee's discretion staff counsel or respondent may request, or the Referee may require, the submission of briefs or proposed findings of fact and conclusions of law in accordance with such schedule as the Referee may set at the conclusion of the hearing. Any submission by one party shall be served upon the other.
  3. Service of Report. The Referee shall file a Report and

Recommendation within 60 days of the conclusion of the hearing at the Office of Chief Counsel, which shall serve copies thereof upon the respondent.



#### **§ 605.13-a Conduct of Hearing Panel Proceedings Directed by the Court**

- a. Designation of Hearing Panel. Within 10 days of the date of an order of the court directing the Committee Chairperson to designate a Hearing Panel to conduct disciplinary proceedings pursuant to section 603.12 or 603.14 of this Title, the Chairperson shall assign such Hearing Panel. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying the Petition, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.
- b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is subject of an objection that has been sustained. The Committee Chairperson shall substitute to the extent possible an attorney for an attorney and a non-attorney for a non-attorney.
- c. Conduct of the Proceedings. Proceedings before a Hearing Panel held pursuant to this section shall be conducted in accordance with section 605.13 of this Part.
- d. Procedure Following the Filing of the Hearing Panel Report and Recommendation. Upon the filing of the Hearing Panel Report and Recommendation, the Departmental Disciplinary Committee shall take action in accordance with section 605.15 of this Part.



#### **§ 605.14 Conduct of Hearing Panel Proceedings Following the Filing of the Referee's Report and Recommendation**

- a. Designation of Hearing Panel. Within 10 days of the filing of the Referee's Report and Recommendation, the Committee Chairperson shall assign a Hearing Panel to review the Report and Recommendation. The Hearing Panel shall not include any Reviewing Member designated pursuant to section 605.6(f)(2) of this Part to review the complaint underlying in the Report and Recommendation, any member of the Committee designated pursuant to section 605.8(c)(3) of this Part to review such matter, or the complainant if a member of the Committee.
- b. Objection to Hearing Panel Member. Within 7 days of the assignment of a Hearing Panel, the Office of the Chief Counsel or Respondent may object to participation of any member of the Hearing Panel. The objection shall be made in writing to the Hearing Panel Chairperson. The Hearing Panel shall consider the objection and determine whether to sustain or deny the objection. The Hearing Panel member who is the subject of an objection shall not participate in the determination of the objection. In his or her discretion, the Committee Chairperson may substitute another member of the Committee for a panel member who is the subject of an objection that has been sustained. The Committee Chairperson shall substitute to

- the extent possible an attorney for an attorney and a non-attorney for a non-attorney.
- c. Transmittal of Transcript and Memoranda. Within 10 days of the assignment of a Hearing Panel, the Office of the Chief Counsel shall transmit to the Hearing Panel, one copy of the transcript; and to each Panel Member a copy of the Referee's Report and Recommendation and any other memoranda or briefs submitted to the Referee.
  - d. Schedule for Proceedings. Within 30 days of the Hearing Panel's assignment the parties shall present oral argument and submit briefs on the Referee's Report and Recommendation pursuant to a schedule set by the Hearing Panel Chairperson.
  - e. Order of Procedure. Oral argument shall be made first by Staff Counsel. The time limits for oral argument shall be set by the Hearing Panel Chairperson.
  - f. Transcript. No transcript shall be made of the oral argument.
  - g. Determination.
    1. At the conclusion of the oral argument, the Hearing Panel, in executive session, shall determine whether to confirm, disaffirm or modify the findings of fact and conclusions of law set forth in the Referee's Report and Recommendation. Upon making that determination, the Hearing Panel Chairperson shall advise the parties and if the Referee recommends and the Hearing Panel confirms that a reprimand is to be delivered the Hearing Panel chairperson shall thereupon deliver the reprimand and advise the Respondent of his or her rights under section 605.15(e).
    2. Within ten days of the presentation of the oral argument or the submission of briefs, whichever is later, the Hearing Panel shall file at the Office of the Chief Counsel a written Determination confirming, disaffirming or modifying the Referee's Report and Recommendation. The Hearing Panel Chairperson shall assign a Panel Member to prepare the Determination. Separate dissents or concurrences may be filed.



#### **§ 605.15 Action by the Departmental Disciplinary Committee**

- a. Dismissal of All Charges. In the event that the Referee and the Hearing Panel determine that all charges considered at both proceedings should be dismissed, the Office of Chief Counsel shall give written notice of such determination to the respondent and the complainant. This decision shall be final and the matter closed, unless within sixty days of the date on which the Hearing Panel files its determination the Chief Counsel files a motion to disaffirm under § 605.15(e)(2) of this Part.
- b. Reprimand.
  1. Notice. In the event that the Referee and Hearing Panel determine that the proceeding should be concluded by Reprimand (with or without referral of the matter to the Court), the Committee Chairperson shall give written confirmation thereof (which shall bear the designation "REPRIMAND") to the Respondent and Staff Counsel, which notice shall also advise the Respondent of:
    - i. the charges which were sustained;
    - ii. any charges which were dismissed;
    - iii. the respondent's right under subdivision (c) of this section to petition the Court; and
    - iv. the determination, if made, to refer the matter to the Court.
  2. Record. The confirmation shall constitute a written record of the Reprimand, and shall be permanently retained.
- c. Petition by Respondent to Vacate Reprimand. A Respondent shall not be entitled to appeal a Reprimand recommended by a Referee and confirmed by a Hearing Panel, but in the case of a Reprimand without referral of the

- matter to the Court the Respondent may petition the Court to vacate the Reprimand pursuant to the Rules of the Court. In the event of such petition, if so determined by the Hearing Panel Chairperson, the disciplinary sanction shall become a Reprimand with referral to the Court under section 605.13(p)(4)(iii) of this Part, and shall be treated as such under section 605.13(q) of this Part.
- d. Notification of Complainant. The Office of Chief Counsel by means of written notice shall notify the Complainant of any Reprimand which has become final and is not subject to further review, and the notice shall inform the Complainant of the requirement of confidentiality.
  - e. Referral to the Court.
    1. General Rule. In the event the Referee and Hearing Panel shall determine that the matter should be concluded by referral to the Court (with or without Reprimand), by Reprimand without referral to the Court in cases where the Respondent is unwilling to have the matter concluded by such Reprimand, or in the event that the Hearing Panel modifies or disaffirms the Referee's Report and Recommendation the Committee shall submit the Referee's Report and Recommendation and the Hearing Panel's Determination together with the entire record as reflected in the docket maintained by the Office of Chief Counsel, to the Court, and the proceedings, if any, before the Court shall be conducted by Staff Counsel.
    2. Procedure. The Committee (or, upon the general or limited written direction of the Committee chairperson, the chief counsel) shall transmit the report and the record to the Court with an appropriate petition or motion to disaffirm. If the chief counsel's office accepts the Hearing Panel's report, it shall file a petition. If the chief counsel's office objects to any finding or conclusion contained in the Hearing Panel Determination it may file a motion to disaffirm the Determination in whole or in part, and ask the Court to enter such other and further relief as may be appropriate under the circumstances including, but not limited to, reversal or modification of any finding in the Determination and change in sanction. Copies of such petition or motion to disaffirm shall be served by the office of chief counsel upon the respondent.
    3. Notification of Complainant. The Office of Chief Counsel by means of written notice shall notify the Complainant of any referral to the Court (which notice shall inform the Complainant of the requirement of confidentiality), and of any final action by the Court.



### **§ 605.16 Reopening of Record**

- a. Reopening on Application of Respondent.
  1. Application to Reopen. No application to reopen a proceeding shall be granted except upon the application of the Respondent prior to the filing by the Referee of the Report and Recommendation or Hearing Panel of its Determination and only upon good cause shown. Such application shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, and shall be filed with the Office of Chief Counsel. A copy of such application shall be served by the Respondent upon all other parties.
  2. Responses. Within five days following the receipt of such application, any other Party may file with the Office of Chief Counsel an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such application.
  3. Action on Application. As soon as practicable after the filing of an answer to such application or default thereof, as the case may be, the Office of Chief Counsel shall transmit such documents to the



Referee or to the Hearing Panel Chairperson, as may be appropriate, who shall grant or deny such petition.



### **§ 605.17 Subpoenas, Depositions and Motions**

- a. Subpoenas. Both Staff Counsel and the Respondent shall have the right to summon witnesses and require production of books and papers by issuance of subpoenas in accordance with the rules of the Court.
- b. Depositions. When there is good cause to believe that the testimony of a potential witness will be unavailable at the time of hearing, testimony may be taken by deposition. Such deposition shall be initiated and conducted in the manner provided for the taking of depositions in the New York Civil Practice Law and Rules, and the use of such depositions at hearings shall be in accordance with the use of depositions at trials under the Civil Practice Law and Rules.
- c. Motions. The Referee or the Hearing Panel to which a matter has been assigned, as may be appropriate, will entertain, from time to time, such motions as justice may require, in accordance with the principles set out in section 605.1(b) of this Part.



### **§ 605.18 Membership, Committees, Officers and Office of Chief Counsel**

- a. Membership.
  1. General. The Committee consists of volunteers appointed by the Court.
  2. Disqualification. No person shall, while serving on the Committee, appear before the Committee or any Hearing Panel on behalf of any other person.
- b. Policy Committee and Hearing Panels; Sub-committees. The Committee chairperson shall from time to time appoint, subject to the approval of a majority of the total membership of the Departmental Disciplinary Committee, from among the members of the Committee (1) a policy committee consisting of the Committee chairperson and six or more other members, and (2) nine hearing panels each consisting of four members three of whom shall be assigned to a matter. The Committee chairperson shall assign at least two attorneys to each matter. No person shall serve concurrently either on the policy committee and hearing panel, or on more than one hearing panel (except by virtue of substitution in accordance with section 605.14(b) of this part, or when requested by a hearing panel in order to assure the presence of a quorum, and in any such event such person shall also be deemed a member of such other hearing panel with respect to and for the remainder of the proceeding). The Committee Chairperson may from time to time establish one or more subcommittees of the Committee, consisting of one or more members of the Committee for such purposes as the Committee Chairperson shall direct.
- c. Officers. The Committee Chairperson shall serve as the chairperson of the Policy Committee. The Committee Chairperson shall appoint a Hearing Panel Chairperson for each of the Hearing Panels from among the members thereof who are attorneys. The Committee Chairperson shall also appoint a Secretary of the Committee. Each Hearing Panel Chairperson and the Secretary shall be appointed for a one year term and may be appointed for additional terms while serving on the Committee. The Committee Chairperson may from time to time appoint, from among the members of the Policy Committee, an Acting Committee Chairperson who shall, in the absence of the Committee Chairperson, have all the powers of the Committee Chairperson.

- d. Duties of Officers. The Committee Chairperson, each Hearing Panel Chairperson and the Secretary shall have such duties as are provided in this Part.



#### **§ 605.19 Meetings of the Departmental Disciplinary Committee**

- a. Meetings, Notice of Time and Place. The Committee shall meet not less frequently than every other month, and such meetings shall be held upon notice from the Secretary given at the direction of the Committee Chairperson or five members of the Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Departmental Disciplinary Committee or, in the absence of such resolution by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Committee at the addresses furnished for such purposes by the members to the Secretary.
- b. Organization. The Committee Chairperson shall preside at all meetings of the Committee. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Committee selected for the purpose by the members present at the meeting may preside at the meeting. The Secretary shall keep the minutes of all meetings of the Committee, and in the absence of the Secretary the person presiding at the meeting shall appoint a member present to keep the minutes.
- c. Agenda. To the extent possible, an agenda for each meeting of the Committee shall be prepared by or with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Committee together with the notice of meeting or subsequent thereto but prior to the meeting.
- d. Quorum and Manner of Acting. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the members present at the meeting.



#### **§ 605.20 Office of Chief Counsel**

- a. General. There shall be an Office of Chief Counsel which shall consist of the Chief Counsel, Deputy Chief Counsel and other Staff Counsel.
- b. Supervision by Chief Counsel. The Office of Chief Counsel shall be supervised by the Chief Counsel who shall, either personally or by other Staff Counsel, exercise the powers and perform the duties of the Office of Chief Counsel set forth in these Rules. The Chief Counsel may from time to time designate the Deputy Chief Counsel or in the absence of such Deputy Chief Counsel, an Associate Counsel, to serve as Acting Chief Counsel in the Chief Counsel's absence.
- c. Powers and Duties of the Office of Chief Counsel.  
The Office of Chief Counsel shall:
  - 1. have the powers and duties set forth in this Part;
  - 2. maintain permanent records of all matters processed by it, including the disposition thereof, and maintain dockets and assign such docket numbers as may be appropriate for the clear designation of each matter, which shall include the calendar year in which the matter is originally docketed;
  - 3. represent the Committee in all proceedings before the Court;
  - 4. supervise and manage the Bar Mediation Project and Pro Bono

- Special Counsel Project according to the provisions of this part and as may be from time to time modified by the Court, the Committee Chairperson, the Policy Committee or the entire Disciplinary Committee; and
5. have such other duties as may be assigned to it from time to time by the Committee Chairperson, the Policy Committee or the Committee.
- d. Bar Mediation Project.
1. General. Bar Mediators shall consist of volunteers appointed by the Court for the purposes described in section 605.22(d)(2) of this part. The Committee Chair may, with the approval of the Policy Committee, recommend lawyers to the Court for such appointments. The Chief Counsel shall forward these recommendations to the Court together with a proposed order requesting the appointment of the volunteers as Bar Mediators.
  2. Referrals. The Chief Counsel's Office may refer minor complaints involving lawyers with no significant disciplinary history to Bar Mediators, who shall attempt to mediate and resolve the matters raised by the complaint. If the Bar Mediator is unable to resolve the matter, or if it appears that the matter should be further considered by the Committee, the Bar Mediator shall refer the complaint back to the Chief Counsel's Office for investigation under these rules.
- e. Pro Bono Special Counsel Program.
1. General. Pro Bono Special Counsel shall be volunteer lawyers appointed by the Court for the purpose of expediting cases.
  2. Procedure for Appointment. Upon initial determination by the Chief Counsel that a potential volunteer is qualified, the Chief Counsel shall submit the volunteer's resume to the Policy Committee. Upon approval by the Policy Committee, the Chief Counsel shall forward the volunteer's name and descriptive information to the Court, together with a proposed order, requesting the appointment of the volunteer attorney as special counsel.
- f. Other Provisions Governing the Bar Mediation Project and the Pro Bono Special Counsel Program.
1. Recruitment. From time to time, the Chief Counsel's Office shall send notices to the principal bar associations and bar committees on professional discipline or ethics in the First Department, describing the Bar Mediation Project and the Pro Bono Special Counsel Program and soliciting the resumes of interested volunteers. Potential volunteers may also be recruited informally by members of the Court or by members of the Committee. Recommendations for appointment shall be on a non-discriminatory basis.
  2. Conflicts. Before accepting the assignment of a case, Pro Bono Special Counsel shall determine whether accepting the assignment would create a conflict under the Lawyer's Code of Professional Responsibility, and shall agree to inform the Chief Counsel's Office of any conflict or potential conflict which arises in the course of handling the case.
  3. Confidentiality. Bar Mediators and Pro Bono Special Counsel shall be bound by the confidentiality rules contained in Judiciary Law §90 (10) and all other applicable confidentiality provisions.
  4. Supervision and Reporting. The Chief Counsel (or other staff counsel designated by the Chief Counsel) shall assume direct responsibility for supervising a case assigned to Pro Bono Special Counsel. The Chief Counsel shall report to the Policy Committee on an ongoing basis as to the progress of cases assigned to Special Counsel.
  5. Bar Mediators and Pro Bono Special Counsel as Volunteers. The members of the Departmental Advisory Committee, as volunteers, are expressly authorized to participate in a State-sponsored volunteer program within the meaning of subdivision 1 of section 17

of the Public Officers Law.



### **§ 605.21 Policy Committee**

- a. General. The Policy Committee shall:
  1. have the powers and duties set forth in this Part;
  2. consult with and report regularly to the full Committee;
  3. consider and recommend to the Committee the establishment of policy for the Committee including without limitation, the establishment of priorities for type of misconduct to be investigated and prosecuted, standards to insure uniform treatment of cases and, subject to these Rules, the establishment of procedures for the conduct of investigations by the Office of Chief Counsel and hearings by the Hearing Panel;
  4. oversee and evaluate on a continuing basis the effectiveness of the operation of the Committee to assure the integrity of the attorney disciplinary system;
  5. develop and implement a program to make the public aware of the importance and effectiveness of the disciplinary procedures and activities of the Committee; and
  6. engage in such activities as may be assigned to it by the Committee or the Committee Chairperson.
- b. Meetings, Notice of Time and Place, Agenda. The Policy Committee shall meet not less frequently than monthly, and such meetings shall be held upon notice from the Committee Chairperson or three members of the Policy Committee. The notice shall be in writing and shall set forth the date and time of the meeting, which shall take place at such place as may be designated by resolution of the Policy Committee or, in the absence or such resolution, by the Committee Chairperson. In lieu of such written notice, meetings may be called on notice given to each member of the Policy Committee not less than 24 hours prior to the time fixed for the meeting, in person or by telephone or telegraph. All notices shall be given to members of the Policy Committee at the addresses furnished for such purpose by the members to the Secretary. To the extent possible, an agenda for each meeting of the Policy Committee shall be prepared with the approval of the Committee Chairperson, or the members calling the meeting, and distributed by the Secretary to all members of the Policy Committee together with the notice of meeting or subsequent thereto but prior to the meeting.
- c. Organization. The Committee Chairperson shall preside at all meetings of the Policy Committee and shall appoint a secretary who shall keep the minutes of the meetings. In the absence of the Committee Chairperson and the Acting Committee Chairperson, any member of the Policy Committee selected for the purpose by the members of the Policy Committee present at the meeting may preside at the meeting. The Committee Chairperson may from time to time establish subcommittees of the Policy Committee, consisting of one or more members of the Policy Committee, for such purposes as the Committee Chairperson shall direct.
- d. Quorum and Manner of Acting. A majority of the members of the Policy Committee shall constitute a quorum for the transaction of business, and all action shall require an affirmative vote of a majority of the total membership of the Policy Committee.



### **§ 605.22 Referees; Hearing Panels**

- a. A Referee shall:
  1. have the powers and duties set forth in these Rules, including, without limitation, the power and duty to conduct hearings into

- formal charges of misconduct, and to make such findings of fact and conclusions of law and to recommend such disciplinary sanctions as the Referee may deem appropriate, in accordance with this Part and Part 603 of the Rules of the Court; and
2. perform such other duties as may be imposed by or pursuant to this Part and Part 603 of the Rules of the Court.
- b. Hearing Panels.
1. General. Each Hearing Panel shall:
    - i. have the powers and duties set forth in these Rules, including without limitation, the power and duty to review the Referee's Report and Recommendation and to make such Determination as it may deem appropriate in accordance with this Part; and Part 603 of the Rules of the Court and
    - ii. perform such other duties as may be imposed pursuant to this Part and Part 603 of the Rules of the Court.
  - c. Officers. Each Hearing Panel shall be presided over by a Hearing Panel Chairperson designated under section 605.18(1) of this Part or by an Acting Hearing Panel Chairperson, who shall be appointed by the Committee Chairperson from among the members of the Hearing Panel who are attorneys to serve in the absence of the Hearing Panel Chairperson shall such powers and duties as are set forth in this Part.
  - d. Quorum and Manner of Acting. All matters presented to a Hearing Panel shall be determined by three members of the Panel. Two Panel members assigned to a matter shall constitute a quorum for the transaction of business. All action shall require the concurrence of at least two members. At least two members of a Hearing Panel assigned to a matter shall have heard the entire proceeding. The third assigned member either shall have heard the entire proceeding before the Hearing Panel or shall have read the transcript of proceedings before Referee and briefs submitted to the Referee. In the event that one of the three members assigned to a matter dies, becomes incapacitated, or is otherwise unable to determine a matter, the fourth member shall take his or her place. If the fourth member dies, becomes incapacitated, or is otherwise unable to serve, the Chairperson may designate another member of the Committee to serve in his or her place.



#### **§ 605.23 Committee Chairperson and Secretary**

- In addition to such other duties as are set forth in this Part, the Committee Chairperson shall perform such duties as may be assigned by the Committee, and the Secretary shall perform such duties as may be assigned by the Committee or the Committee Chairperson.



#### **§ 605.24 Confidentiality**

- a. Confidentiality. Disciplinary committee members, committee lawyers, committee employees, and all other individuals officially associated or affiliated with the committee, including pro bono lawyers, bar mediators, law students, stenographers, operators of recording devices and typists who transcribe recorded testimony shall keep committee matters confidential in accordance with applicable law.
- b. Waiver. Upon the written waiver of confidentiality by any Respondent, all participants shall thereafter hold the matter confidential to the extent required by the terms of the waiver.



