

# Overview of the Attorney Disciplinary Process and Recent Developments

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## I. Overview

- A. Purpose of Attorney Disciplinary Proceedings
- B. Legal Authority
  - 1. Judiciary Law § 90
  - 2. Judiciary Law article 15 (contains various provisions governing admission of attorneys, attorney registration, prohibitions regarding certain conduct, etc.)
  - 3. Procedural Rules of the Appellate Division (22 NYCRR part 1240)
  - 4. Rules of Professional Conduct (22 NYCRR 1200.0)
  - 5. Case law (primarily from the Appellate Division and Court of Appeals)
- C. Proceedings before the Grievance Committees
  - 1. Complaint
  - 2. Intake
  - 3. Investigation
  - 4. Duty to cooperate
  - 5. Disposition (dismiss, letter of advisement/admonition, formal charges, etc.)
- D. Proceedings in the Appellate Division
  - 1. Petition
  - 2. Answer
  - 3. CPLR pleading rules
  - 4. Issues of fact
  - 5. Discovery
  - 6. Hearing
  - 7. Appearance
  - 8. Resignation
  - 9. Interim Suspension
  - 10. Diversion

## **II. Relatively Recent Developments**

### **A. Commission on Statewide Attorney Discipline (2015)**

The report of the Commission may be viewed at:

[www.nycourts.gov/attorneys/discipline/Documents/AttyDiscFINAL9-24.pdf](http://www.nycourts.gov/attorneys/discipline/Documents/AttyDiscFINAL9-24.pdf)

### **B. Statewide Uniform Rules for Attorney Disciplinary Matters (2016)**

The statewide rules adopted by the Appellate Division may be viewed at:

[www.nycourts.gov/courts/ad4/Clerk/AttyMtrrs/atty-discip.html](http://www.nycourts.gov/courts/ad4/Clerk/AttyMtrrs/atty-discip.html)

## **III. Topics of Interest**

### **A. Most Common Disciplinary Charges**

1. Neglect and lack of diligence
2. Trust account violations
3. Criminal convictions

### **B. Mitigating or Aggravating Factors**

### **C. No Statute of Limitations**

There is no statute of limitations and the doctrine of laches does not apply in attorney disciplinary matters (*see Matter of O'Hara*, 63 AD2d 500, 503 [1st Dept 1978]; *Matter of Cohalan*, 241 AD 17 [1st Dept 1934])

### **D. Duty to Supervise Employees and Associates**

1. Rule 5.1 – responsibilities of law firms, partners, managers, and supervisory lawyers
2. Rule 5.3 – lawyer's responsibility for conduct of nonlawyers
3. Example Case: *Matter of Galasso* (19 NY3d 688 [2012])