

NY County Lawyers Proposes Changes In Client Funds Rules

BY LAZAR EMANUEL

In a letter addressed to Chief Judge Judith S. Kaye, the Committee on Professional Discipline of the New York County Lawyers Association has recommended that disbarred and suspended lawyers be compelled to “cease to use an attorney, trust, escrow, special, or IOLA account” immediately. In addition, “within ten days of the effective date of discipline”, they would be required to deliver all “money, property, legal files and unearned legal fees” to the lawyers’ clients, or to a successor attorney designated by the client, or “to third parties entitled thereto.”

The letter was signed by Lewis Lesser, Committee Co-Chair. The Committee’s proposals were co-authored by Timothy J. O’Sullivan, Executive Director of the Lawyers’ Fund for Client Protection. The Fund is administered by Trustees designated by the Judges of the Court of Appeals.

The Committee would exempt from the proposed changes lawyers suspended for a definite period not exceeding three months. This exemption was prompted by the Committee’s conclusion that conduct requiring suspension for less than three months was not likely to involve misuse of client funds. The changes would also not apply to a lawyer who “was a member of a continuing partnership or law firm practicing law in this state and [who] maintained client or third party funds in the partnership’s attorney, trust, escrow, special or IOLA account,” provided the lawyer “shall have no signatory rights on any of such accounts.”

With its letter, the Committee submitted the text of proposed changes to 22 NYCRR 603.4(e), the Appellate Division, First Department rule governing the temporary suspension of lawyers (as an example for similar changes to be adopted by the other Departments), and the text of a new section K of DR 9-102 and of 22 NYCRR 1200.46.

The Committee suggested that its proposals barring continuing access to client funds should also be applied to lawyers who resign, retire, or cease to practice.