

Subpart B. DISCIPLINARY ENFORCEMENT

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CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

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Source

The provisions of this Chapter 83 adopted July 30, 1976, 6 Pa.B. 1779, unless otherwise noted.

Subchapter A. PRELIMINARY PROVISIONS

Rule	
101.	Title and citation of Rules.
102.	Definitions.
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Rule 101. Title and citation of Rules.

These rules shall be known as the Pennsylvania Rules of Disciplinary Enforcement and may be cited as “Pa. R.D.E.”

Rule 102. Definitions.

(a) *General rule.* Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific 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 rule:

Absent attorney—An attorney or formerly admitted attorney for whom a conservator has been sought or appointed under these rules.

Administrative office—The Administrative Office of Pennsylvania Courts.

Administrative suspension—Status of an attorney, after Court order, who: failed to pay the annual fee and/or file the form required by subdivisions (a) and (d) of Enforcement Rule 219; was reported to the Court by the Pennsylvania Continuing Legal Education Board under Rule 111(b), Pa.R.C.L.E., for having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education; failed to pay any expenses taxed pursuant to Enforce-

ment Rule 208(g); or failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or a military attorney.

Attorney—Includes any person subject to these rules.

Attorney Registration Office—The administrative division of the Disciplinary Board which governs the annual registration of every attorney admitted to, or engaging in, the practice of law in this Commonwealth, with the exception of attorneys admitted to practice pro hac vice under Pa.B.A.R. 301.

Board—The Disciplinary Board of the Supreme Court of Pennsylvania.

Censure—Public censure by the Supreme Court.

Conservator—A conservator appointed under Enforcement Rule 321 (relating to appointment of conservator to protect interests of clients of absent attorney).

Court—The Supreme Court of Pennsylvania.

Disciplinary Counsel—The Chief Disciplinary Counsel and assistant disciplinary counsel.

Disciplinary Rules—The provisions of the Code of Professional Responsibility as adopted by the Supreme Court of Pennsylvania May 20, 1970, 438 Pa. XXV, as amended from time to time by special order of the Court and governing lawyer conduct occurring or beginning on or before March 31, 1988 as well as the provisions of the Rules of Professional Conduct as adopted by the Supreme Court of Pennsylvania on October 16, 1987, Pa. , and effective on April 1, 1988, as amended from time to time by special order.

Enforcement Rules—The provisions of these rules.

“Experienced hearing committee member.”—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has served as a member of a panel of hearing committee members for at least one year and on a hearing committee that has conducted at least one hearing into formal charges of misconduct by a respondent-attorney.

Foreign legal consultant—A person who holds a current license as a foreign legal consultant issued under Rule 341 of the Pennsylvania Bar Admission Rules.

Formerly admitted attorney—A disbarred, suspended, administratively suspended, retired or inactive attorney.

Hearing Committee—A hearing committee appointed under Enforcement Rule 206 (relating to hearing committees and special masters).

Informal admonition—Private informal admonition by Disciplinary Counsel.

Military attorney—An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys).

Petitioner-attorney—Includes any person subject to these rules who has filed a petition for reinstatement to the practice of law.

Practice of law—Includes the provision of legal services as a foreign legal consultant or military attorney, or pursuant to a Limited In-House Corporate Counsel License.

Private reprimand—Private reprimand by the Board.

Probation—Probation by the Supreme Court under supervision provided by the Board.

Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Respondent-attorney—Includes any person subject to these rules.

“Senior hearing committee member.”—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has previously served either (i) as a member of the Board, or (ii) a full three-year term on a panel of hearing committee members and on hearing committees that have conducted at least two hearings into formal charges of misconduct by respondent-attorneys.

Special Master—A special master assigned under Enforcement Rule 206 (relating to hearing committees and special masters).

Verified statement—A document filed with the Board or the Court under these rules containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) *Number; tense.* In these rules the singular shall include the plural, and the plural, the singular; and words used in the past or present tense shall include the future.

Source

The provisions of this Rule 102 amended October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029; amended October 16, 1987, effective April 1, 1988, 17 Pa.B. 4509; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended September 9, 2004, effective September 25, 2004, 34 Pa.B. 5244; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended June 26, 2007, effective immediately, 37 Pa.B. 3218; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (328857) to (328859).

Rule 103. Authority for Enforcement Rules.

The Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers (which power is reasserted in Section 10(c) of Article V of the Constitution of Pennsylvania) and in furtherance thereof promulgates these rules.

Source

The provisions of this Rule 103 amended February 2, 1984, effective February 18, 1984, 14 Pa.B. 510. Immediately preceding text appears at serial page (70253).

Rule 104. Filings with the Supreme Court.

(a) *General rule.* Rules 121 through 124 of the Pennsylvania Rules of Appellate Procedure shall be applicable to all filings with the Supreme Court under these rules.

(b) *Exception.* Notwithstanding subdivision (a), an express procedural requirement in these rules shall be controlling over the applicable provision of the Rules of Appellate Procedure.

(c) *Centralized filing.* All filings with the Supreme Court under these rules shall be made only with the prothonotary, and the person making a filing shall not distribute copies to the members of the Court.

Source

The provisions of this Rule 104 adopted October 3, 1990, effective October 27, 1990, 20 Pa.B. 5364; amended April 4, 1995, effective immediately, 25 Pa.B. 1513; amended October 26, 2005, effective immediately upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed, 35 Pa. B. 6226. Immediately preceding text appears at serial page (311375).

Subchapter B. MISCONDUCT

Rule	
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Rule 201. Jurisdiction.

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

- (1) Any attorney admitted to practice law in this Commonwealth.

Official Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney or a person holding a Limited In-House Corporate Counsel License. See the definitions of “attorney,” “practice of law” and “respondent-attorney” in Rule 102.

- (2) Any attorney of another jurisdiction specially admitted by a court of this Commonwealth for a particular proceeding.

- (3) Any formerly admitted attorney, with respect to acts prior to suspension, disbarment, administrative suspension, or transfer to retired or inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute the violation of the Disciplinary Rules, these rules or rules of the Board adopted pursuant hereto.

- (4) Any attorney who is a justice, judge or district justice, with respect to acts prior to taking office as a justice, judge or district justice, if the Judicial Conduct Board declines jurisdiction with respect to such acts.

- (5) Any attorney who resumes the practice of law, with respect to nonjudicial acts while in office as a justice, judge or district justice.

- (6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal services in this Commonwealth.

(b) Nothing contained in these rules shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit bar associations from censuring, suspending or expelling their members from membership in the association.

Source

The provisions of this Rule 201 amended October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029; amended April 30, 2004, effective upon publication, governs matters thereafter commenced and, insofar as just and practicable, matters then pending, 34 Pa.B. 2537; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (328860) and (318515).

Rule 202. Disciplinary districts.

(a) Disciplinary jurisdiction in this Commonwealth shall be divided into the following districts:

- (1) District I-the County of Philadelphia.
- (2) District II-the Counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton and Schuylkill.
- (3) District III-the counties of Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon,

Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

(4) District IV-the counties of Allegheny, Armstrong, Beaver, Bedford, Butler, Blair, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington and Westmoreland.

(b) The disciplinary district which shall have jurisdiction over a person subject to these rules shall be any district in which the person maintains an office or the district in which the conduct under investigation occurred.

Rule 203. Grounds for discipline.

(a) Acts or omissions by a person subject to these rules, individually or in concert with any other person or persons, which violate the Disciplinary Rules, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) The following shall also be grounds for discipline:

(1) Conviction of a crime.

(2) Wilful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, private reprimand or informal admonition.

(3) Wilful violation of any other provision of the Enforcement Rules.

(4) Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master.

(5) Ceasing to meet the requirements for licensure as a foreign legal consultant set forth in Pennsylvania Bar Admission Rule 341(a)(1) or (3).

(6) Making a material misrepresentation of fact or deliberately failing to disclose a material fact in connection with an application submitted under the Pennsylvania Bar Admission Rules.

(c) The Board, its hearing committees, special masters and (when administering informal admonitions) Disciplinary Counsel are “tribunals” within the meaning of the Disciplinary Rules.

Source

The provisions of this Rule 203 amended October 3, 1990, effective October 27, 1990, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 20 Pa.B. 5364; amended September 19, 2003, effective October 4, 2003, 33 Pa.B. 4891; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; March 21, 2006, effective April 8, 2006, 36 Pa.B. 1642; amended July 29, 2009, effective 30 days. Immediately preceding text appears at serial page (343170).

Rule 204. Types of discipline.

(a) Misconduct shall be grounds for:

(1) Disbarment by the Supreme Court.

- (2) Suspension by the Supreme Court for a period not exceeding five years.
 - (3) Public censure by the Supreme Court with or without probation.
 - (4) Probation by the Supreme Court under supervision provided by the Board.
 - (5) Private reprimand by the Board with or without probation.
 - (6) Private informal admonition by Disciplinary Counsel.
- (b) Conditions may be attached to an informal admonition or private reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.
- (c) A reference in these rules to disbarment, suspension, temporary suspension, administrative suspension, or transfer to or assumption of retired or inactive status shall be deemed to mean, in the case of a respondent-attorney who holds a Limited In-House Corporate Counsel License, expiration of that license. A respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:
- (1) shall be deemed to be a formerly admitted attorney for purposes of Rule 217 (relating to formerly admitted attorneys); and
 - (2) shall not be entitled to seek reinstatement under Rule 218 (relating to reinstatement) or Rule 219 (relating to periodic assessment of attorneys; voluntary inactive status) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302.

Source

The provisions of this Rule 204 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (318516) and (342525).

Rule 205. The Disciplinary Board of the Supreme Court of Pennsylvania.

- (a) The Supreme Court shall appoint a board to be known as “The Disciplinary Board of the Supreme Court of Pennsylvania” which shall be composed of eleven members of the Bar of this Commonwealth and two non-lawyer electors. One of the members shall be designated by the Court as Chair and another as Vice-Chair.
- (b) The regular terms of members of the Board shall be for three years, and no member shall serve for more than two consecutive three-year terms. Except when acting under paragraph (c)(5), (7), (8) and (9) of this rule, the Board shall act only with the concurrence of not less than the lesser of:
- (i) seven members, or
 - (ii) a majority of the members in office who are not disqualified from participating in the matter or proceeding.

Seven members shall constitute a quorum. The presence of members who are disqualified from participating in one or more matters to be considered at a meeting shall nonetheless be counted for purposes of determining the existence of a quorum for the consideration of all matters on the agenda.

(c) The Board shall have the power and duty:

(1) To consider and investigate the conduct of any person subject to these rules and may initiate any such investigation on its own motion or may undertake the same upon complaint by any person.

(2) To appoint a Secretary, a Chief Disciplinary Counsel, and such assistant disciplinary counsel and staff as may from time to time be required to properly perform the functions prescribed by these rules.

(3) To appoint not less than 18 hearing committee members within each disciplinary district. Each person appointed as a hearing committee member for a district shall be a member of the bar of this Commonwealth who maintains an office for the practice of law within that district.

(4) To assign as special masters three or more former members of the Board or former or retired justices or judges who are not in senior judge status. The expenses and compensation of the special masters shall be paid as a cost of disciplinary administration and enforcement. See Enforcement Rule 219(a) (relating to periodic assessment of attorneys).

(5) To assign formal charges or the conduct of an investigatory hearing to a hearing committee or special master. The assignment to a hearing committee of formal charges or the conduct of an investigatory hearing may be delegated by the Board to its Secretary. A hearing committee who has passed upon Disciplinary Counsel's recommended disposition of the matter shall be ineligible to serve on the hearing committee that considers the matter.

(6) To review the conclusions of hearing committees and special masters with respect to formal charges and to prepare and forward its own findings and recommendations, together with the record of the proceeding before the hearing committee or special master, to the Supreme Court.

(7) To assign periodically, through its Secretary, senior or experienced hearing committee members within each disciplinary district to:

(i) review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands and institution of formal charges.

(ii) hear and determine attacks on the validity of subpoenas issued pursuant to Rule 213(a)(2) (relating to subpoena power, depositions and related matters), as provided in Rule 213(d)(2); or

(iii) consider a petition for reinstatement to active status from inactive status under Enforcement Rule 218 (relating to reinstatement) of a formerly admitted attorney who has not been suspended or disbarred.

(8) To review, through a designated panel of three members, and approve or modify a determination by a reviewing hearing committee member that a matter should be concluded by dismissal, private informal admonition, private reprimand or the institution of formal charges before a hearing committee.

(9) To administer, by the Board or through a designated panel of three members selected by the Board Chair, private reprimands to attorneys for misconduct.

(10) To adopt rules of procedure not inconsistent with these rules. Such rules may provide for the delegation to the Chairman or the Vice-Chairman of the power to act for the Board on administrative and procedural matters.

(11) To cause testimony relating to the conduct of formerly admitted attorneys to be perpetuated.

(12) To petition the Court under Rule 301(d) (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated) to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and to retain counsel other than Disciplinary Counsel to represent the Board in such proceedings when the Board considers such separate representation to be appropriate.

(13) To recommend the temporary suspension of a respondent-attorney pursuant to Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

(14) To exercise the powers and perform the duties vested in and imposed upon the Board by law.

(d) The Board shall, to the extent it deems feasible, consult with officers of local bar associations in the counties affected concerning any appointment which it is authorized to make under these rules.

Source

The provisions of this Rule 205 amended through April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended November 7, 1988, effective November 25, 1988, 18 Pa.B. 5246; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended October 3, 1990, effective October 27, 1990, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 20 Pa.B. 5365; amended November 26, 1990, effective December 15, 1990, 20 Pa.B. 6141; amended January 13, 1993, effective January 30, 1993, 23 Pa.B. 538; amended March 15, 1994, effective immediately, 24 Pa.B. 1671; amended August 4, 1994, effective immediately, 24 Pa.B. 4188; amended March 4, 1997, effective immediately, 27 Pa.B. 1434; amended October 17, 2003, effective immediately, 33 Pa.B. 5412; amended September 9, 2004, effective September 25, 2004, 34 Pa.B. 5244; amended April 3, 2009, effective immediately, 39 Pa.B. 1980; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193; amended January 6, 2010, effective immediately, 40 Pa.B. 513. Immediately preceding text appears at serial pages (343171) to (343173).

Rule 206. Hearing committees and special masters.

(a) When a hearing committee is required to handle a matter, the Board shall appoint a hearing committee consisting of three hearing committee members

from the appropriate disciplinary district. At least one of the members of the hearing committee shall be a senior hearing committee member, and another member shall be either a senior hearing committee member or an experienced hearing committee member. The Board shall designate one of the members so appointed as the chair for the committee, who shall be a senior hearing committee member. The terms of hearing committee members shall be three years and no member shall serve for more than two consecutive three-year terms. Board rules may authorize a hearing committee member whose term has expired to continue to serve until the conclusion of any matter commenced before the member prior to the expiration of such term. A hearing committee member who has served two consecutive three-year terms may be reappointed after the expiration of one year. A hearing committee shall act only with the concurrence of a majority of its members and two members shall constitute a quorum, except that a single senior or experienced hearing committee member may act for the committee when the committee is sitting as an investigatory hearing committee under Enforcement Rule 213(a)(1) (relating to subpoena power, depositions and related matters), or when conducting a prehearing conference. The terms of hearing committee members shall commence on July 1.

(b) Hearing committees shall have the power and duty:

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the Board or the Secretary of the Board (see Enforcement Rule 205(c)(5)).

(2) To submit their conclusions set forth as prescribed by Board rules, together with the record of the hearing, to the Board.

(c) If a member of a hearing committee becomes disqualified or otherwise unavailable to serve with respect to any particular matter, the Secretary shall designate a replacement.

(d) A special master instead of a hearing committee may be assigned by the Board to conduct an investigatory hearing or formal proceeding where it appears that the hearing or proceeding may be protracted and should be conducted continuously from day to day until conclusion.

(e) A special master shall have the power and duty:

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the Board (see Enforcement Rule 205(c)(5)).

(2) To submit his or her conclusions set forth as prescribed by Board rules, together with the record of the hearing into formal charges, to the Board.

Source

The provisions of this Rule 206 amended through April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended January 13, 1993, effective January 30, 1993, 23 Pa.B. 538; amended March 15, 1994, effective immediately, 24 Pa.B. 1671; amended September 9, 2004, effective September 25, 2004, 34 Pa.B. 5244. Immediately preceding text appears at serial pages (300782) to (300783).

Rule 207. Disciplinary counsel.

(a) Disciplinary Counsel shall not be permitted to engage in private practice except that the Board may agree to a reasonable period of transition after appointment.

(b) Disciplinary Counsel shall have the power and duty:

(1) To investigate all matters involving alleged misconduct called to their attention whether by complaint or otherwise.

(2) To dispose of all matters (subject to review by a member of a hearing committee) involving alleged misconduct by dismissal, informal admonition, recommendation for private reprimand or the prosecution of formal charges before a hearing committee or special master. Except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the Board, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney has been notified of the allegations and the time for response under Enforcement Rule 208(b) (relating to formal hearing), if applicable, has expired.

(3) To request the appointment of a special master, where appropriate, and to prosecute all disciplinary proceedings before hearing committees, special masters, the Board and the Supreme Court.

(4) To appear at hearings conducted with respect to petitions for reinstatement by formerly admitted attorneys, to cross-examine witnesses testifying in support of the petition and to marshal available evidence, if any, in opposition thereto.

(5) To maintain permanent records of all matters processed and the disposition thereof.

(6) To exercise the powers and perform the duties vested in and imposed upon Disciplinary Counsel by law.

(c) Disciplinary Counsel:

(1) Shall be a party to all proceedings and other matters before the Board or the Supreme Court under these rules.

(2) May urge in the Supreme Court a position inconsistent with any recommendation of the Board where in the judgment of Disciplinary Counsel a different disposition of the matter is warranted by the law or the facts.

(3) May within the time and in the manner prescribed by the Pennsylvania Rules of Appellate Procedure obtain in the Supreme Court judicial review of any final determination of the Board, except a determination to conclude a matter by dismissal, informal admonition or private reprimand.

Source

The provisions of this Rule 207 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended October 21, 1988, effective November 12, 1988, 18 Pa.B. 5070; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended September 19, 2003, effective October 4, 2003, 33 Pa.B. 4891. Immediately preceding text appears at serial pages (280331) to (280332).

Rule 208. Procedure.(a) *Informal proceedings.*

(1) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel.

(2) Upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

(i) Dismissal of the complaint.

(ii) A conditional or unconditional informal admonition of the attorney concerned.

(iii) A conditional or unconditional private reprimand by the Board of the attorney concerned.

(iv) The prosecution of formal charges before a hearing committee or special master.

(3) Except where Disciplinary Counsel dismisses the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion, the recommended disposition shall be reviewed by a member of a hearing committee in the appropriate disciplinary district who may approve or modify.

(4) Disciplinary Counsel may appeal the recommended disposition directed by a hearing committee member to a reviewing panel composed of three members of the Board which shall order that the matter be concluded by dismissal, conditional or unconditional informal admonition or conditional or unconditional private reprimand or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

(5) A recommendation by a reviewing hearing committee member for a conditional or unconditional private reprimand shall be reviewed by a panel composed of three members of the Board who may approve or modify.

(6) A respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand or any conditions attached thereto in cases where no formal proceeding has been conducted, but may demand as of right that a formal proceeding be instituted against such attorney in the appropriate disciplinary district. In the event of such demand, the respondent-attorney need not appear for the administration of the informal admonition or private reprimand, and the matter shall be disposed of in the same manner as any other formal proceeding, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by paragraph (q)(2) of this rule.

(b) *Formal hearing.* Formal disciplinary proceedings before a hearing committee or special master shall be as follows:

(1) Proceedings shall be instituted by filing with the Board a petition setting forth with specificity the charges of misconduct.

(2) A copy of the petition containing a notice to plead shall be personally served upon the respondent-attorney.

(3) Within 20 days after such service, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. In the event the respondent-attorney fails to file an answer, the charges shall be deemed at issue. Any factual allegation that is not timely answered shall be deemed admitted.

(4) Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. No evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown.

(5) The Board shall serve a notice of hearing upon the respondent-attorney, or upon counsel for such attorney, indicating the date and place of the hearing at least 15 days in advance thereof. The notice of hearing shall state that the respondent-attorney is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in the attorney's own behalf.

(c) *Hearing procedures.* Proceedings before hearing committees and special masters shall be governed by Board rules, except that, unless waived in the manner provided by such rules, at the conclusion of the hearing the hearing committee or special master shall submit a report to the Board containing the findings and recommendations of the hearing committee or special master.

(d) *Review and action by Board.*

(1) Proceedings before the Board shall be governed by Board rules, except that, unless waived in the manner provided by such rules, the respondent-attorney shall have the right to submit briefs and to present oral argument to a panel of at least three members of the Board. Members of the Board who have participated on a reviewing panel under paragraph (a)(4) or (5) of this rule shall not participate in further consideration of the same matter or decision thereof on the merits under this subdivision (d).

(2) The Board shall either affirm or change in writing the recommendation of the hearing committee or special master by taking the following action, as appropriate, within 60 days after the adjudication of the matter at a meeting of the Board;

(i) *Dismissal.* In the event that the Board determines that a proceeding should be dismissed, it shall so notify the respondent-attorney.

(ii) *Informal admonition or private reprimand.* In the event that the Board determines that the proceeding should be concluded by informal admonition or private reprimand, it shall arrange to have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving informal admonition or before a designated panel of three members selected by the Board Chair pursuant to Pa.R.D.E. 205(c)(9), for the purpose of receiving private reprimand.

(iii) *Other discipline.* In the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition or private reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition or private reprimand, it shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court. A respondent-attorney who is unwilling to have the matter concluded by an informal admonition or private reprimand must file within thirty (30) days after notice of the determination of the Board, a notice of appeal. Review by the Supreme Court shall be de novo and the Court may impose a sanction greater or less than that recommended by the Board.

(3) [Rescinded].

(e) *Review and action in the Supreme Court.*

(1) Service of the findings and recommendations of the Board upon the respondent-attorney shall be governed by Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure. See Rule 104 (relating to filings with the Supreme Court).

(2) In the event the Board recommends that the matter should be concluded by disbarment, the respondent-attorney may, within twenty (20) days after service of the findings and recommendations of the Board under paragraph (1) of this subdivision, submit to the Supreme Court a request to present oral argument.

(3) In the event the Board recommends a sanction less than disbarment, and the Court, after consideration of said recommendation, is of the view that a rule to show cause should be served upon respondent-attorney, why an order of disbarment not be entered, the same shall be issued. A copy of said rule is to be served on Disciplinary Counsel. Within twenty (20) days after service of the rule either party may submit to the Supreme Court a response thereto. Within ten (10) days after service of a response, the other party may submit to the Supreme Court a reply thereto. Respondent-attorney in such case shall have the absolute right upon request for oral argument.

(4) Except as provided in (e)(2) and (e)(3), respondent-attorney will not be afforded the right of oral argument.

(5) The Supreme Court shall review the record, where appropriate consider oral argument, and enter an order.

(f) *Emergency temporary suspension orders and related relief.*

(1) Disciplinary Counsel, with the concurrence of a reviewing member of the Board, whenever it appears by an affidavit demonstrating facts that the continued practice of law by a person subject to these rules is causing immediate and substantial public or private harm because of the misappropriation of

funds by such person to his or her own use, or because of other egregious conduct, in manifest violation of the Disciplinary Rules or the Enforcement Rules, may petition the Supreme Court of injunctive or other appropriate relief. A copy of the petition shall be personally served upon the respondent-attorney by Disciplinary Counsel. The Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rules shall be returnable within ten days. The Court, or any justice thereof, may, before or after issuance of the rule, issue such orders to the respondent-attorney, and to such financial institutions or other persons as may be necessary to preserve funds, securities or other valuable property of clients or others which appear to have been misappropriated or mishandled in manifest violation of the Disciplinary Rules.

(2) If a rule to show cause has been issued under paragraph (1), and the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under these rules.

(3) Any order of temporary suspension which restricts the respondent-attorney from maintaining an attorney or other trust account shall, when served on any bank or other financial institution maintaining an account against which the respondent-attorney may make withdrawals, serve as an injunction to prevent the financial institution from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court. Any order of temporary suspension issued under this rule shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension. Such order may also provide that any fees or portion thereof tendered to the respondent-attorney during such 30-day period shall be deposited into a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court.

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board. A hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board. The designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing. Upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(5) The Board on its own motion, or upon the petition of Disciplinary Counsel, may issue a rule to show cause why the respondent-attorney should

not be placed on temporary suspension whenever it appears that the respondent-attorney has disregarded an applicable provision of the Enforcement Rules, refused to comply with a valid subpoena or engaged in other conduct that in any such instance materially delays or obstructs the conduct of a proceeding under these rules. The rule to show cause shall be returnable within 30 days. If the response to the rule to show cause raises issues of fact, the Chairman of the Board may direct that a hearing be held before a member of the Board who shall submit a report to the Board upon the conclusion of the hearing. If the period for response to the rule to show cause has passed without a response having been filed, or after consideration of any response and any report of a Board member following a hearing under this paragraph, the Board may recommend to the Supreme Court that the respondent-attorney be placed on temporary suspension. The recommendation of the Board shall be reviewed by the Supreme Court as provided in subdivision (e) of this rule.

(6) A respondent-attorney who has been temporarily suspended pursuant to this rule for conduct described in paragraph (1), or pursuant to the procedures of paragraph (5) where a formal proceeding has not yet been commenced shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition. Within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline under subdivision (b) of this rule and the matter shall be assigned to a hearing committee for accelerated disposition. Thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay. If a petition for discipline is not timely filed under this paragraph, the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this rule.

(7) A proceeding involving a respondent-attorney who has been temporarily suspended pursuant to this rule at a time when a formal proceeding has already been commenced shall proceed and be concluded without appreciable delay.

Official Note: The “without appreciable delay” standard of subdivisions (f)(6) and (7) of the rule is derived from *Barry v. Barchi*, 443 U. S. 55, 56 (1979). Appropriate steps should be taken to satisfy this requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

(g) *Costs.*

(1) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses taxed under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

(2) In the event a proceeding is concluded by informal admonition or private reprimand, the Board in its discretion may direct that the necessary

expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel or the Board for informal admonition or private reprimand. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules.

(3) The expenses taxable under paragraph (1) or (2) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an informal admonition. The administrative fee shall be \$250.

(h) *Violation of probation.* Where it appears that a respondent-attorney who has been placed on probation has violated the terms of the probation, the Office of Disciplinary Counsel may file a petition with the Board detailing the violation and suggesting appropriate modification of the order imposing the probation, including without limitation immediate suspension of the respondent-attorney. A hearing on the petition shall be held within ten business days before a member of the Board designated by the Board Chair. If the designated Board member finds that the order imposing probation should be modified, the following procedures shall apply:

(1) If the order imposing probation was entered by the Supreme Court, the designated Board member shall submit a transcript of the hearing and a recommendation to the Supreme Court within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney. The Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the order imposing probation should not be modified as set forth in the petition, which rule shall be returnable within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order modifying as appropriate the order imposing probation.

(2) If the order imposing probation was entered by the Board, the designated Board member shall submit a transcript of the hearing and a recommendation to the Board within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney along with a notice that the respondent-attorney may file a response to the recommendation with the Board within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Board may enter an order modifying as appropriate the probation previously ordered or directing the commencement of a formal proceeding under this Rule.

(i) *Continuances.* All formal proceedings under this rule shall be conducted as expeditiously as possible. Ordinarily the engagement of a member of the Board or the assigned hearing committee, a special master or counsel for a respondent-attorney will be recognized as a basis for continuance of a formal proceeding or meeting of the board only where such member or counsel is actually engaged before an appellate court of this Commonwealth or a court of the

United States. Engagement of a member of the Board or the assigned hearing committee, a special master or counsel for a respondent-attorney before any other court, administrative agency or other body shall not be recognized as a basis for continuance except upon a showing of unforeseen and compelling circumstances prohibiting appearance.

Source

The provisions of this Rule 208 amended through September 25, 1986, effective September 25, 1986, 16 Pa.B. 3823; amended October 21, 1988, 18 Pa.B. 5070; amended November 7, 1988, effective November 25, 1988, effective upon publication and governs all matters thereafter commended and, insofar as just and practicable, matters then pending, 18 Pa.B. 5246; amended November 7, 1988, effective November 25, 1988, 18 Pa.B. 5247; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended December 20, 1979, effective immediately, 20 Pa.B. 7; amended October 3, 1990, effective October 27, 1990, 20 Pa.B. 5364; amended October 3, 1990, effective October 27, 1990, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 20 Pa.B. 5365; amended March 15, 1994, effective upon publication, 24 Pa.B. 1671; amended April 4, 1995, effective immediately, 25 Pa.B. 1513; amended September 19, 2003, effective October 4, 2003, 33 Pa.B. 4891; amended October 17, 2003, effective immediately, 33 Pa.B. 5412; amended March 5, 2004, effective March 20, 2004, 34 Pa.B. 1547; amended October 26, 2005, effective immediately upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed, 35 Pa.B. 6226; amended November 9, 2005, effective upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 35 Pa.B. 6431; amended June 28, 2006, effective July 15, 2006, 36 Pa.B. 3646; amended December 12, 2008, effective immediately, 38 Pa.B. 7079. Immediately preceding text appears at serial pages (300785) to (300786), (315183) to (315184) and (320259) to (320261).

Rule 209. Immunity.

(a) Complaints submitted to the Board or Disciplinary Counsel shall be confidential unless the matter results in the filing of formal charges. See Rule 402(a) (relating to access to disciplinary information and confidentiality). Members of the Board, members of hearing committees, special masters, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, special master, or Disciplinary Counsel relating to misconduct by a respondent-attorney and all testimony given in a proceeding conducted pursuant to these rules shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402. For purposes of this subdivision (a), the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules or the rules of the Board.

(b) Complaints against members of the Board involving alleged violations of the Disciplinary Rules or these rules shall be handled in the same manner as other complaints, except that if action is required by the Board the Secretary shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

(c) Complaints against Disciplinary Counsel involving alleged violations of the Disciplinary Rules or these rules shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition.

Official Note: The provisions of subdivision (a) of the rule recognize that the submission and receipt of complaints against attorneys, and the investigation, hearing, decision and disposition of such complaints, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (a) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirement of Rule 402 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.

Source

The provisions of this Rule 209 amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended March 30, 1990, effective April 21, 1990, 20 Pa.B. 2150; amended May 16, 1994, effective June 4, 1994, 24 Pa.B. 2792; amended April 1, 2005, effective April 16, 2005, 35 Pa.B. 2208; amended October 26, 2005, effective immediately upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed, 35 Pa.B. 6226. Immediately preceding text appears at serial pages (306089) and (310459).

Rule 210. Refusal of complainant to proceed, compromise, etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall, in itself, justify abatement of an investigation into the conduct of an attorney.

Rule 211. Matters involving related pending civil or criminal litigation.

(a) Processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation shall not be deferred unless the Board in its discretion, for good cause shown, authorizes such deferment. In the event a deferment of disciplinary investigation or proceeding is authorized by the Board as the result of pending related litigation, the respondent-attorney shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation. In the event the respondent-attorney fails to take reasonable steps to assure prompt disposition of the litigation, the investigation and subsequent disciplinary proceedings indicated shall be conducted promptly.

(b) The acquittal of the respondent-attorney on criminal charges or a verdict or judgment in favor of the respondent-attorney in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations.

Rule 212. Substituted service.

In the event a respondent-attorney cannot be located and personally served with notices required under these rules, such notices may be served upon the respondent-attorney by addressing them to the address furnished by the

respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys) or in the case of a foreign legal consultant, by serving them pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341 (b)(8).

Source

The provisions of this Rule 212 amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972. Immediately preceding text appears at serial page (280340).

Rule 213. Subpoena power, depositions and related matters.

(a) *General rule.*

(1) At any stage of an investigation, both Disciplinary Counsel and a respondent-attorney shall have the right to summon witnesses before a hearing committee or special master and require production of records before the same by issuance of subpoenas.

(2) Before assignment of a matter to a hearing committee or special master, Disciplinary Counsel shall have the right to require production of records by issuance of subpoenas which shall be returnable to the office of Disciplinary Counsel in which the investigation is being conducted. The respondent-attorney shall have the right, upon request and payment of appropriate duplicating costs, to receive copies of the records produced.

(b) *Procedure.* Subpoenas authorized by subdivision (a) shall be obtained by filing with the Prothonotary in the district of the Supreme Court where the subpoena is to be returnable a statement calling for the issuance of the subpoena. On the same day that the statement is filed with the Prothonotary, the party seeking the subpoena shall send by certified mail a copy of said statement to either Disciplinary Counsel or the respondent-attorney as the case may be. Upon the filing of the statement, the Prothonotary shall forthwith issue the subpoena and it shall be served in the regular way. A subpoena issued pursuant to subdivision (a)(2) shall not be returnable until at least ten days after the date of its issuance.

(c) *Confidentiality.* A subpoena issued under this rule shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under these rules, and that it is regarded as contempt of the Supreme Court or grounds for discipline under these rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney. The subpoena and deposition procedures of these rules shall be subject to the protective requirements of confidentiality provided in Rule 402 (relating to access to disciplinary information and confidentiality).

(d) *Challenges.* Any attack on the validity of a subpoena issued under this rule handled as follows:

- (1) A challenge to a subpoena authorized by subdivision (a)(1) shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable.
 - (2) A challenge to a subpoena authorized by subdivision (a)(2) shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable.
 - (3) A determination under paragraph (1) or (2) may not be appealed to the Board, but may be appealed to the Supreme Court under subdivision (g) within ten days after service of the determination on the party bringing the appeal.
- (e) *Examination under oath.* Witnesses before hearing committees or special masters shall be examined under oath or affirmation.
- (f) *Depositions.* With the approval of the hearing committee or special master, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other compelling reason. A complete record of the testimony so taken shall be made and preserved.
- (g) *Enforcement of subpoenas; appeal of challenges to subpoena.*

(1) Either Disciplinary Counsel or a respondent-attorney may petition the Supreme Court to enforce a subpoena or to review a determination under subdivision (d)(1) or (2) on the validity of a subpoena. No attack on the validity of such a subpoena will be considered by the Court unless previously raised as provided in subdivision (d). See also Enforcement Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

Official Note: The reference to Enforcement Rule 208(f)(5) is intended to make clear that, where the person who is resisting complying with a subpoena is the respondent-attorney, the provisions of this rule are cumulative of those in Enforcement Rule 208(f)(5).

(2) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena is directed, returnable within ten days, why the person should not be held in contempt. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

(3) A petition for review of a determination made under subdivision (d)(1) or (2) must set forth in detail the grounds for challenging the determination. Upon timely receipt of a petition for review, the Court shall issue a rule to show cause upon the party to the proceeding who is not challenging the determination, returnable within ten days, why the determination should not be

reversed. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

(h) *Exclusivity.* Any rule of the Supreme Court or any statute providing for discovery shall not be applicable in a proceeding under these rules, which proceeding shall be governed by these rules alone.

(i) *Foreign proceedings.* The Supreme Court may order a person domiciled or found within this Commonwealth to give testimony or a statement or to produce documents or other things for use in a lawyer discipline or disability proceeding in another state, territory or province or in a court of the United States or any other jurisdiction. The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this Commonwealth, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of these rules. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Court or before a commissioner appointed by a court or by an authorized disciplinary agency of another jurisdiction, any of whom shall have the power to administer any necessary oath. Any order to testify or to produce documents or other things issued as prescribed in this subdivision may be enforced as any subpoena of the Supreme Court is enforced, upon petition of any party interested in the subject attorney discipline or disability proceeding.

Source

The provisions of this Rule 213 amended October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029; amended November 7, 1988, effective November 25, 1988, 18 Pa.B. 5247; amended December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421; amended January 13, 1993, effective January 30, 1993, 23 Pa.B. 538; amended September 9, 2004, effective September 25, 2004, 34 Pa.B. 5244; amended November 22, 2004, effective upon publication, 34 Pa.B. 6505; amended October 26, 2005, effective upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed, 35 Pa.B. 6226. Immediately preceding text appears at serial pages (310460) and (308207) to (308208).

Rule 214. Attorneys convicted of crimes.

(a) An attorney convicted of a serious crime shall report the fact of such conviction to the Secretary of the Board within 20 days after the date of sentencing. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b).

(b) The clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within

20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

(c) Upon being advised that an attorney has been convicted of a crime within this Commonwealth, Disciplinary Counsel shall secure and file a certificate in accordance with the provisions of subdivision (b). If the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such conviction.

(d)(1) Upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a serious crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(2) If a rule to show cause has been issued under paragraph (1), and the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under these rules.

(3) Any order of temporary suspension issued under this rule shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension.

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board. A hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board. The designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing. Upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(5) At any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the respondent-attorney's on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

Official Note: The subject of the summary proceedings authorized by subdivision (d) is limited to whether the conditions triggering the application of subdivision (d) exist, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged and that the offense is a serious crime, and will not include such subjects as mitigating or aggravating circumstances. The provision of subdivision (d)(3) permitting the respondent-attorney to continue representing existing clients for 30 days is intended to avoid undue hardship to clients and to permit a winding down of matters being handled by the respondent-

attorney, and the permissible activities of the respondent-attorney are intended to be limited to only those necessary to accomplish those purposes.

(e) A certificate of a conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(f)(1) Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of subdivision (d), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until all appeals from the conviction are concluded.

(2) Notwithstanding the provision of paragraph (1) that a hearing shall not be held until all appeals from a conviction have been concluded, a respondent-attorney who has been temporarily suspended pursuant to this rule shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition. Within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline, if such a petition has not already been filed, and the matter shall be assigned to a hearing committee for accelerated disposition. The assignment to a hearing committee shall take place within seven (7) days after the filing of such a notice or the filing of a petition for discipline, whichever occurs later. Thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay. If a petition for discipline is not timely filed or assigned to a hearing committee for accelerated disposition under this paragraph, the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this rule.

Official Note: The “without appreciable delay” standard of subdivision (f)(2) is derived from *Barry v. Barchi*, 443 U. S. 55, 66 (1979). Appropriate steps should be taken to satisfy this requirement, such as continuous hearing sessions, procurement of daily transcript, filing of truncated briefing schedules, conducting special sessions of the Board, etc.

(g) Upon receipt of a certificate of a conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted. The Court may in its discretion take no action with respect to convictions for minor offenses.

Official Note: The actions the Court may take under subdivision (g) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.

(h) An attorney suspended under the provisions of subdivision (d) may be reinstated immediately upon the filing by the Board with the Court of a certifi-

cate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney.

(i) As used in this rule, the term “serious crime” means a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction.

Source

The provisions of this Rule 214 amended through April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended February 7, 1989, effective February 25, 1989, 19 Pa.B. 763; amended November 17, 1989, effective December 9, 1989, 19 Pa.B. 5212; amended August 19, 1993, effective September 4, 1993, 23 Pa.B. 4204; amended March 5, 2004, effective March 20, 2004, 34 Pa.B. 1547; amended March 28, 2006, effective upon publication; amended July 29, 2009, effective 30 days. Immediately preceding text appears at serial pages (315189), (318517) to (318518) and (340347).

Rule 215. Discipline on consent.

(a) *Voluntary resignation.* An attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to the Board a verified statement stating that the attorney desires to resign and that:

(1) the resignation is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the resignation; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to resign;

(2) the attorney is aware that there is a presently pending investigation into allegations that the attorney has been guilty of misconduct the nature of which the verified statement shall specifically set forth;

(3) the attorney acknowledges that the material facts upon which the complaint is predicated are true; and

(4) the resignation is being submitted because the attorney knows that if charges were predicated upon the misconduct under investigation the attorney could not successfully defend against them.

(b) *Order of disbarment.* Upon receipt of the required statement, the Board shall file it with the Supreme Court and the Court shall enter an order disbarring the attorney on consent.

(c) *Confidentiality or resignation statement.* The order disbarring the attorney on consent shall be a matter of public record. If the statement required under the provisions of subdivision (a) of this rule is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

- (1) upon order of the Supreme Court,
- (2) pursuant to an express written waiver by the attorney,
- (3) upon a request of another jurisdiction for purposes of a reciprocal disciplinary proceeding,

(4) upon a request by the Pennsylvania Lawyers Fund for Client Security Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board), or

(5) when the resignation is based on an order of temporary suspension from the practice of law entered by the Court either pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief) or pursuant to Enforcement Rule 214 (relating to attorneys convicted of crimes).

(d) *Other Discipline on Consent.*—At any stage of a disciplinary investigation or proceeding, a respondent-attorney and Disciplinary Counsel may file a joint Petition in Support of Discipline on Consent. The Petition shall include the specific factual allegations that the attorney admits he or she committed, the specific Rules of Professional Conduct and Rules of Disciplinary Enforcement allegedly violated and a specific recommendation for discipline. The Petition shall be accompanied by an affidavit stating that the attorney consents to the recommended discipline and that:

(1) the consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the consent; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to consent to discipline;

(2) the attorney is aware that there is presently pending an investigation into, or proceeding involving, allegations that the respondent-attorney has been guilty of misconduct as set forth in the Petition;

(3) the attorney acknowledges that the material facts set forth in the Petition are true; and

(4) the attorney consents because the attorney knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, the attorney could not successfully defend against them.

(e) *Handling of Petition.*—The Petition shall be filed with the Board. The filing of the Petition shall stay any pending proceeding before a hearing committee, special master or the Board. The Petition shall be reviewed by a panel composed of three members of the Board who may approve or deny.

(f) *Private discipline.*—If a panel approves a Petition consenting to an informal admonition or private reprimand, with or without probation, the Board shall enter an appropriate order, and it shall arrange to have the attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(g) *Public discipline.*—If a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court. If the Court grants the Petition, the Court shall enter an appropriate order disciplining the attorney on consent.

(h) *Denial of Petition.*—If either the panel of the Board or the Supreme Court denies a Petition, the members of the Board who participated on the reviewing panel shall not participate in further consideration of the same matter. Any stayed proceedings shall resume as if the Petition had not been filed and neither the Petition nor the affidavit may be used against the attorney in any disciplinary proceeding or any other judicial proceeding.

(i) *Costs.*—The panel of the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the matter shall be paid by the attorney as a condition to the grant of the Petition. All expenses taxed under this subdivision shall be paid by the attorney before the imposition of discipline under subdivision (f) or (g).

Source

The provisions of this Rule 215 amended October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029; amended November 7, 1988, effective November 25, 1988, 18 Pa.B. 5248; amended February 7, 1989, effective February 25, 1989, 19 Pa.B. 764; amended May 24, 2005, 35 Pa.B. 3286; amended October 26, 2005, effective upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed, 35 Pa.B. 6226; amended December 12, 2008, effective immediately, 38 Pa.B. 7079. Immediately preceding text appears at serial pages (318519) to (318520) and (315193).

Rule 216. Reciprocal discipline.

(a) Upon receipt of a certified copy of an order, judgment or disciplinary directive of another court, a federal government agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, disbarment, or revocation of license or pro hac vice admission, or has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, the Supreme Court shall forthwith issue a notice directed to the respondent-attorney containing:

- (1) a copy of said order, judgment or directive from the other court, federal government agency or military tribunal; and
- (2) an order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline in this Commonwealth would be unwarranted, and the reasons therefor.

The Board shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8).

(b) In the event the discipline imposed in the other court, federal government agency or military tribunal has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (a) of this rule, the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; or

(3) that the imposition of the same or comparable discipline would result in grave injustice; or be offensive to the public policy of this Commonwealth.

Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Commonwealth.

(e) An attorney who has been disciplined in another court or by a federal government agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, shall report the fact of such suspension, disbarment, revocation or resignation to the Secretary of the Board within 20 days after the date of the order, judgment or directive imposing or confirming the discipline.

Source

The provisions of this Rule 216 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended July 18, 1995, effective August 5, 1995, 25 Pa.B. 3092; amended April 30, 2004, effective upon publication, governs matters thereafter commenced and insofar as just and practicable, matters then pending, 34 Pa.B. 2537; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended July 29, 2009, effective 30 thirty, 39 Pa.B. 4887. Immediately preceding text appears at serial pages (343175) to (343176).

Rule 217. Formerly admitted attorneys.

(a) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

(b) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are

involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

(c) A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

(1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, administrative suspension or transfer to inactive status, and

(2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status.

(d) Orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(e) Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing:

(1) that the provisions of the order and these rules have been fully complied with; and

(2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

(f) The Board shall cause a notice of the suspension, disbarment, administrative suspension or transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced.

(g) The Board shall promptly transmit a certified copy of the order of suspension, disbarment, administrative suspension or transfer to inactive status to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced. The president judge shall make such further order as may be necessary to fully protect the rights of the clients of the formerly admitted attorney.

(h) Within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Attorney Registration Office under Rule 219(e) (relating to periodic assessment of attorneys; voluntary inactive status) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule

201(d) (relating to certification of good standing), certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary), certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure), Limited In-House Corporate Counsel License issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license) or limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys). The Board may destroy the annual certificate issued under Rule 219(e), but shall retain any other documents surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

(i) A formerly admitted attorney shall keep and maintain records of the various steps taken by such person under these rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with these rules and with the disbarment, suspension, administrative suspension or transfer to inactive status order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

(j) A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements:

(1) All law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm shall be designated by the firm or organization as the supervising attorney for purposes of this subdivision.

(2) For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following:

(i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and

(iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(3) A formerly admitted attorney, organization may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages.

The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(4) Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

- (i) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;
- (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;
- (iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;
- (iv) representing himself or herself as a lawyer or person of similar status;
- (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);
- (vi) rendering legal consultation or advice to a client;
- (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;
- (viii) appearing as a representative of the client at a deposition or other discovery matter;
- (ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;
- (x) receiving, disbursing or otherwise handling client funds.

(5) The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of engagement, identifying the supervising attorney certifying that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

(6) The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

Official Note: Subdivision (j) was adopted by the Court to limit and regulate the law-related activities performed by formerly admitted attorneys regardless of whether those formerly admitted attorneys are engaged as employees, independent contractors or in any other capacity. Subdivision (j) requires that a notice be filed with the Disciplinary Board when any law-related activities are performed by a formerly admitted attorney and when the engagement is terminated.

Subdivision (j) is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. Subdivision (j) is also not intended to establish a standard for what

constitutes the unauthorized practice of law. Finally, subdivision (j) is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

Source

The provisions of this Rule 217 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended December 21, 1990, effective January 12, 1991, 21 Pa.B. 150; amended December 7, 2000, effective immediately upon publication in the *Pennsylvania Bulletin* and shall apply: (i) immediately to persons becoming formerly admitted attorneys on or after the date of such publication; and (ii) commencing January 1, 2001, to persons who are formerly admitted attorneys on the date of such publication; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended December 11, 2006, effective immediately, 36 Pa.B. 7801; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (340350) and (324817) to (324820).

Rule 218. Reinstatement.

(a) An attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to this rule if the attorney was:

- (1) suspended for a period exceeding one year;
- (2) retired, on inactive status or on administrative suspension for more than three years;
- (3) transferred to inactive status as a result of the sale of his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct; or
- (4) disbarred.

(b) A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to Rule 216 (relating to reciprocal discipline) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

(c) The procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:

- (1) Petitions for reinstatement shall be filed with the Board.
- (2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall file a response thereto with the Board and serve a copy on the formerly admitted attorney. Upon receipt of the response, the Board shall refer the petition and response to a hearing committee in the disciplinary district in which the formerly admitted attorney maintained an office at the time of the disbarment or suspension. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

Official Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney, the response to the petition for reinstatement should explain in reasonable detail the reasons for the objection.

(3) The hearing committee shall promptly schedule a hearing at which a disbarred or suspended attorney shall have the burden of demonstrating by

clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

Official Note: When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 579, 506 A.2d 872, 875 (1986) and its progeny applies.

(4) At the conclusion of the hearing, the hearing committee shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Board.

(5) The Board shall review the report of the hearing committee and the record and shall promptly file its own findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court.

(6) In the event the Board recommends reinstatement and the Supreme Court, after consideration of that recommendation, is of the view that a rule to show cause should be served upon the petitioner-attorney why an order denying reinstatement should not be entered, the same shall be issued setting forth the areas of the Court's concern. A copy of the rule shall be served on Disciplinary Counsel. Within 20 days after service of the rule, petitioner-attorney, as well as Disciplinary Counsel, may submit to the Supreme Court a response thereto. Unless otherwise ordered, matters arising under this rule will be considered without oral argument.

(d) The procedure for petitioning for reinstatement from retired status for more than three years, inactive status for more than three years or administrative suspension for more than three years, or after transfer to inactive status as a result of the sale of a law practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct is as follows:

(1) Petitions for reinstatement shall be filed with the Board.

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall either:

(i) file a response thereto with the Board and serve a copy on the formerly admitted attorney; or

(ii) file a certification with the Board Secretary stating that after a review of the petition for reinstatement and reasonably diligent inquiry, Disciplinary Counsel has determined that there is no impediment to reinstatement and that the petitioner-attorney will meet his or her burden of proof under paragraph (d)(3) if the petition were to proceed to hearing under (d)(4).

Official Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney under (d)(2)(i), the response to the petition for reinstatement should explain in reasonable detail the reasons for the objection.

(3) A formerly admitted attorney who has been on retired status, inactive status or administrative suspension shall have the burden of demonstrating that

such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth.

(4) Upon receipt of a response under (d)(2)(i), the Board shall refer the petition and response to a single senior or experienced hearing committee member in the disciplinary district in which the formerly admitted attorney maintained an office at the time of transfer to or assumption of retired or inactive status, or transfer to administrative suspension; the single senior or experienced hearing committee member shall promptly schedule a hearing during which the hearing committee member shall perform the functions of a hearing committee under this subdivision (d). The rules of the Board may provide for abbreviated procedures to be followed by the hearing committee member, except that the abbreviated procedure shall not be available at any hearing conducted after review by a designated Board Member pursuant to paragraph (d)(6) of this rule. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

(5) At the conclusion of the hearing, the hearing committee member shall promptly file a report containing the member's findings and recommendations and transmit same, together with the record, to the Board. Thereafter, the matter will proceed in accordance with the provisions of (c)(5) and (c)(6) of this rule.

(6) Upon receipt of a certification filed by Disciplinary Counsel under (d)(2)(ii), the Board Chair shall designate a single member of the Board to review the record and certification and to issue a report and recommendation.

(i) If the Board Member decides that reinstatement should be denied or that a hearing on the petition is warranted, the designated Board Member shall issue a report setting forth the areas of the designated Board Member's concern and direct the Board Secretary to schedule the matter for hearing pursuant to subdivision (d)(4) of this rule.

(ii) Upon receipt of a report and recommendation for an order of reinstatement, the Court may enter an order reinstating the formerly admitted attorney to active status and direct that the necessary expenses incurred in the investigation and processing of the petition be paid by the petitioner-attorney. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(e) In all proceedings upon a petition for reinstatement, cross-examination of the petitioner-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

(f) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of the petition for reinstatement be paid by the petitioner-attorney. A reinstatement fee of \$300 shall be assessed against a petitioner-attorney who was administratively suspended at the time of the filing of the petition. The annual fee required by Rule 219(a) and the

reinstatement fee, if applicable, shall be paid to the Attorney Registration Office after the Supreme Court order is entered.

(g) (1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the formerly admitted attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Enforcement Rule 217 (relating to formerly admitted attorneys), the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

(2) Paragraph (1) of this subdivision shall not be applicable and a formerly admitted attorney shall be subject instead to the other provisions of this rule requiring the filing of a petition for reinstatement, if:

(i) other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney;

(ii) the formerly admitted attorney has been on inactive status or administrative suspension for more than three years; or

(iii) the order of suspension has been in effect for more than three years.

(h) Attorneys who have been on inactive status, retired status or administrative suspension for three years or less may be reinstated pursuant to Enforcement Rule 219(h), (i), (j), (k) or (m) (relating to periodic assessment of attorneys) as appropriate. This subdivision (h) does not apply to an attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.

(i) The Board may cause a notice of the reinstatement to be published in one or more appropriate legal journals and newspapers of general circulation.

(j) The Board when appropriate shall promptly transmit to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced a copy of:

(1) the certification filed with the Prothonotary under Enforcement Rule 219(h) or (m); or

(2) any other order of reinstatement entered under these rules.

(k) If Disciplinary Counsel shall have probable cause to believe that any formerly admitted attorney:

(1) has failed to comply with this rule or Rule 217 (relating to formerly admitted attorneys), or

(2) is otherwise continuing to practice law, Disciplinary Counsel may bring an action in any court of competent jurisdiction for such injunctive and other relief as may be appropriate.

Source

The provisions of this Rule 218 amended through July 15, 1983, effective July 16, 1983, 13 Pa.B. 2183; amended November 14, 1989, effective December 9, 1989, 19 Pa.B. 5213; amended October 3, 1990, effective October 27, 1990, 20 Pa.B. 5366; amended December 21, 1990, effective January 12, 1991, 21 Pa.B. 150; amended April 5, 2001, effective April 21, 2001, apply to all formerly admitted attorneys seeking reinstatement after the date of such publication; amended June 28, 2001, effective July 14, 2001, 31 Pa.B. 3728; amended September 19, 2003, effective October 4, 2003, 33 Pa.B.

4891; amended September 9, 2004, effective September 25, 2004, 34 Pa.B. 5244; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (324820), (310467) to (310468) and (333751).

Rule 219. Periodic assessment of attorneys; voluntary inactive status.

(a) Every attorney admitted to practice law in this Commonwealth, shall pay an annual fee of \$140.00 under this rule. The annual fee shall be collected under the supervision of the Attorney Registration Office, which shall send and receive, or cause to be sent and received, the notices and forms provided for in this rule. The said fee shall be used to defray the costs of disciplinary administration and enforcement under these rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

(b) The following shall be exempt from paying the annual fee required by subdivision (a):

- (1) Justices or judges serving in the following Pennsylvania courts of record shall be exempt for such time as they serve in office: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and justices or judges serving an appointment for life on any federal court;
- (2) retired attorneys; and
- (3) military attorneys holding a limited certificate of admission issued under Pa.B.A.R. 303 (relating to admission of military attorneys).

Official Note: The exemption created by subdivision (b)(1) does not include Philadelphia Traffic Court judges, Pittsburgh Municipal Court judges, magisterial district judges, arraignment court magistrates or administrative law judges.

(c) On or before May 15 of each year the Attorney Registration Office shall transmit by ordinary mail to all persons required by this rule to pay an annual fee a form required by subdivision (d) of this rule.

(d) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance with the following procedures:

(1) The form shall set forth:

(i) The date on which the attorney was admitted to practice, licensed as a foreign legal consultant, granted limited admission as an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or issued a Limited In-House Corporate Counsel License, and a list of all courts (except courts of this Commonwealth) and jurisdictions in which the person has ever been licensed to practice law, with the current status thereof.

(ii) The current residence and office addresses of the attorney, each of which shall be an actual street address or rural route box number, and the Attorney Registration Office shall refuse to accept a form that sets forth only a post office box number for either required address. A preferred mailing address different from those addresses may also be provided on the form and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, will be accessible through the website of the Board (<http://www.padisciplinaryboard.org/>) and by written or oral request to the Board.

Official Note: Public web docket sheets will show the attorney's address as entered on the court docket.

(iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the lawyer holds such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

(iv) A statement that the attorney is familiar and in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regarding the handling of funds and other property of clients and others and the maintenance of IOLTA Accounts, and with Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement regarding the mandatory reporting of overdrafts on fiduciary accounts.

(v) A statement that any action brought against the attorney by the Pennsylvania Lawyers Fund for Client Security for the recovery of monies paid by the Fund as a result of claims against the attorney may be brought in the Court of Common Pleas of Allegheny, Dauphin or Philadelphia County.

(vi) Whether the attorney is covered by professional liability insurance on the date of registration in the minimum amounts required by Rule of Professional Conduct 1.4(c). Rule 1.4(c) does not apply to attorneys who do not have any private clients, such as attorneys in full-time government practice or employed as in-house corporate counsel.

Official Note: The Disciplinary Board will make the information regarding insurance available to the public upon written or oral request and on its web site. The requirement of Rule 219(d)(3) that every attorney who has filed an annual registration form must notify the Attorney Registration Office in writing of any change in the information previously submitted within 30 days after such change will apply to the information regarding insurance.

(vii) Such other information as the Attorney Registration Office may from time to time direct.

(2) Payment of the annual fee shall accompany the form. Where a check in payment of the annual fee has been returned to the Board unpaid, the annual fee shall not be deemed to have been paid until a collection fee shall also have been paid. The amount of the collection fee shall be established by the Board annually after giving due regard to the direct and indirect costs incurred by the Board during the preceding year for checks returned to the Board unpaid.

(3) Every person who has filed such a form shall notify the Attorney Registration Office in writing of any change in the information previously submitted within 30 days after such change.

(4) Upon original admission to the bar of this Commonwealth, licensure as a Foreign Legal Consultant, issuance of a Limited In-House Corporate Counsel License, or limited admission as an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, a person shall concurrently file a

form under this subdivision for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

(e) Upon receipt of a form, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of subdivision (d) of this rule, and of payment of the required annual fee *to practice law in this Commonwealth*, receipt thereof shall be acknowledged on a certificate *or license*.

(f) The *Attorney Registration* Office shall transmit by ordinary mail to every attorney who fails to timely file the form and pay the annual fee required by this rule, addressed to the last known mailing address of the attorney, a notice stating:

(1) That unless the attorney shall comply with the requirements of subdivision (d) of this rule within 30 days after the date of the notice, such failure to comply will be deemed a request to be administratively suspended, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will enter an order administratively suspending the attorney.

(2) That upon the entry of an order of administrative suspension, the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be enclosed with the notice.

(g) The *Attorney Registration* Office shall certify to the Supreme Court the names of every attorney who has failed to respond to a notice issued pursuant to subdivisions (f) and (1) of this rule within the 30-day period provided therein and the Court shall enter an order administratively suspending the attorney. A copy of any such certification from the *Attorney Registration* Office to the Supreme Court shall be given to the Board Secretary. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(h) The procedure for reinstatement of an attorney who has been administratively suspended for three years or less pursuant to subdivision (g) is as follows:

(1) The formerly admitted attorney shall submit to the *Attorney Registration* Office the form required by subdivision (d)(1) along with payment of:

- (i) the current annual fee;
- (ii) the annual fee that was due in the year in which the attorney was administratively suspended;
- (iii) the late payment penalty required by paragraph (3);
- (iv) a reinstatement fee of \$300.00.

(2) Upon receipt of the annual fee form, a verified statement showing compliance with Enforcement Rule 217 (relating to formerly admitted attorneys), and the payments required by paragraph (1), the *Attorney Registration* Office shall so certify to the Board Secretary and to the Supreme Court. Unless the formerly admitted attorney is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the *Attorney Registration* Office with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.

(3) A formerly admitted attorney who is administratively suspended pursuant to subdivision (g) must pay a late payment penalty with respect to that year. The amount of the late payment penalty shall be established by the Board

annually after giving due regard to such factors as it considers relevant, including the direct and indirect costs incurred by the Board during the preceding year in processing the records of attorneys who fail to timely file the statement required by subdivision (d) of this rule.

(i) *Retired Status:* An attorney who has retired shall file with the Attorney Registration Office an application for retirement. Upon the transmission of such application from the Attorney Registration Office to the Supreme Court, the Court shall enter an order transferring the attorney to retired status, and the attorney shall no longer be eligible to practice law. The *retired* attorney will be relieved from the payment of the fee imposed by this rule upon active practitioners and Enforcement Rule 217 (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Court in connection with the entry of an order of suspension or disbarment under another provision of these rules. An attorney on retired status for three years or less may be reinstated in the same manner as an inactive attorney, except that the retired attorney shall pay the annual active fee for the three most recent years or such shorter period in which the attorney was on retired status instead of the amounts required to be paid by an inactive attorney seeking reinstatement. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(j) *Inactive Status:* An attorney who is not engaged in practice in Pennsylvania, has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or is not required by virtue of his or her practice elsewhere to maintain active licensure in the Commonwealth may request voluntary inactive status or continue that status once assumed. The attorney shall be removed from the roll of those classified as active until such person requests and is granted reinstatement to the active rolls.

(1) An inactive attorney under this subdivision (j) shall continue to file the annual form required by subdivision (d) and shall pay an annual fee of \$70.00. Noncompliance with this provision will result in the inactive attorney being placed on administrative suspension after the Attorney Registration Office provides notice in accordance with the provisions of paragraph (f). An attorney who voluntarily assumed inactive status under former subdivision (j) of this rule shall continue to file the annual form required by subdivision (d) and pay an annual fee of \$70.00 commencing with the next regular assessment year. Noncompliance with this provision will result in the inactive attorney being placed on administrative suspension after notice in accordance with the provisions of paragraph (f).

(2) Reinstatement shall be granted unless the inactive attorney is subject to an outstanding order of suspension or disbarment or unless the inactive status has been in effect for more than three years, upon the payment of *the active fee* for the assessment year in which the application for resumption of active status is made or the difference between the active fee and the inactive fee that has been paid for that year, and any arrears accumulated prior to the assumption of inactive status.

(3) In transmitting the annual fee form under subdivision (c) of this rule, the Attorney Registration Office shall include a notice of this subdivision (j).

Official Note: Under prior practice, an attorney who was neither retiring nor selling his or her law practice was given the option of assuming or continuing inactive status and ceasing the practice of law in Pennsylvania, and no annual fee was required. Under new subdivision (j), payment of an annual fee is required to assume and continue inactive status, and failure to pay the annual fee required by subdivision (j) and file the form required by subdivision (d) will result in an order administratively suspending the attorney.

(k) On the effective date of this subdivision (k), any attorney who is on inactive status:

(1) by order after having failed to pay the annual fee or file the form required by subdivisions (a) and (d) of this rule,

(2) by order pursuant to Rule 111(b), Pa.R.C.L.E., after having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education,

(3) by order after having failed to pay any expenses taxed pursuant to Enforcement Rule 208(g), or

(4) by order after having failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender legal services programs pursuant to Pa.B.A.R. 311, or a military attorney, shall have a grace period of one year, commencing on July 1 of the year in which the next annual form under paragraph (d) is due, in which to request reinstatement to active status under an applicable provision of this rule, or to be reinstated to active status under Rule 218(a), as the case may be. Failure to achieve active status before the expiration of the grace period shall be deemed a request to be administratively suspended. An attorney who is on inactive status by court order will not be eligible to transfer to voluntary inactive status under subdivision (j) of this rule until the attorney first achieves active status. During the grace period, the inactive attorney shall remain ineligible to practice law. In transmitting the annual form under subdivision (c) of this rule, the Attorney Registration Office shall include a notice of this subdivision (k).

Official Note: Attorneys who voluntarily assumed inactive status under former paragraph (j) of Enforcement Rule 219 are governed by the provisions of paragraph (j). Attorneys who were transferred to inactive status by order after having failed to pay any expenses taxed pursuant to Enforcement Rule 208(g) are governed by the provisions of paragraph (m).

(l) The Board shall transmit by certified mail, return receipt requested, to every attorney who fails to pay any expenses taxed pursuant to Enforcement Rule 208(g) (relating to costs), addressed to the last known address of the attorney, a notice stating:

(1) That unless the attorney shall pay all such expenses within 30 days after the date of the notice, such failure to pay will be deemed a request to be administratively suspended, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will enter an order administratively suspending the attorney.

(2) That upon entry of the order of administrative suspension, the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be enclosed with the notice.

(m) Upon payment of all expenses taxed pursuant to Enforcement Rule 208(g) by a formerly admitted attorney on administrative suspension solely for failure to comply with subdivision (l) of this rule, the Board shall so certify to the Supreme Court. Unless such person is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the Board with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.

(n) A former or retired justice or judge who is not the subject of an outstanding order of discipline affecting his or her right to practice law and who wishes to resume the practice of law shall file with the Attorney Registration Office a notice in writing to that effect. The notice shall:

(i) describe:

(A) any discipline imposed within six years before the date of the notice upon the justice or judge by the Court of Judicial Discipline;

(B) any proceeding before the Judicial Conduct Board or the Court of Judicial Discipline settled within six years before the date of the notice on the condition that the justice or judge resign from judicial office or enter a rehabilitation program;

(ii) include a waiver by the justice or judge, if the notice discloses a proceeding described in paragraph (i), of the confidentiality of the record in that proceeding for the limited purpose of making the record available to the Board in any subsequent proceeding under these rules;

(iii) be accompanied by payment of the full annual fee for the assessment year in which the notice is filed.

Source

The provisions of this Rule 219 amended through December 20, 1983, effective July 1, 1984, 14 Pa.B. 5; amended May 10, 1989, effective July 1, 1989, 19 Pa.B. 2245; amended November 26, 1990, effective with respect to assessment years commencing on or after July 1, 1991, 20 Pa.B. 6141; amended March 13, 1991, effective July 1, 1991, 21 Pa.B. 1424; amended October 18, 1991, effective with respect to assessment years commencing July 1, 1992 and thereafter, 21 Pa.B. 5254; amended March 4, 1993, effective with respect to assessment years commencing on and after July 1, 1993, 23 Pa.B. 1685; amended March 15, 1994, effective upon publication, 24 Pa.B. 1672; amended April 18, 1995, effective immediately, 25 Pa.B. 1766; amended April 3, 1996, effective July 1, 1996, 26 Pa.B. 1806; amended July 17, 1996, effective September 1, 1996, 26 Pa.B. 3624; amended April 9, 1998, effective upon publication and applicable beginning with the 1998—1999 assessment year, 28 Pa.B. 2024; amended May 15, 2001, effective immediately, 31 Pa.B. 2788; amended June 28, 2001, effective July 14, 2001, 31 Pa.B. 3728; amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended October 13, 2005, effective October 29, 2005, 35 Pa.B. 5954; amended April 10, 2007, effective upon publication in the *Pennsylvania Bulletin* and shall be applicable beginning with the 2007-2008 assessment year; amended April 1, 2008, effective for the 2008-2009 assessment, 38 Pa.B. 1701; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193; amended March 25, 2010, effective July 1, 2010, 40 Pa.B. 1892. Immediately preceding text appears at serial pages (343184) to (343189).

Rule 220. Recusal of members of the Board or a hearing committee or a special master.

(a) *General Rule.* A member of the Board or of a hearing committee or a special master shall withdraw from participating in a matter or proceeding where there is a substantial showing that the member or special master cannot partici-

pate in a fair and reasonable manner, including but not limited to instances where the member or special master:

(1) has a fixed bias or prejudice for or against the respondent-attorney, or personal knowledge of disputed evidentiary facts relating to the matter or proceeding;

(2) served as a lawyer in connection with any events relating to the matter or proceeding, or a lawyer with whom the member or special master practices law served as a lawyer in connection with any events relating to the matter or proceeding;

(3) individually or as a fiduciary, or any minor child of the member or special master living in his or her household or the spouse of the member or special master, has a financial interest in any events relating to the matter or proceeding.

(b) *Procedure for recusal.* A motion to disqualify a member of the Board or of a hearing committee or a special master shall be made in accordance with the rules of procedure of the Board, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion.

Source

The provisions of this Rule 220 adopted December 6, 1989, effective December 23, 1989, 19 Pa.B. 5421.

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

(a) For purposes of this rule, the following definitions apply:

(1) *Eligible Institution.* An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.

(2) *Financial Institution.* A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(3) *Fiduciary Funds.* Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Nonqualified Funds.

(4) *Rule 1.15 Funds.* Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.

(5) *Trust Account.* A Trust Account is an account in an Eligible Institution in which an attorney holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

(b) An attorney shall maintain a Trust Account with respect to his/her practice in this Commonwealth only in an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for Eligible Institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of Eligible Institutions.

(c) All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds as defined in Rule 1.15(a)(9) of the Pennsylvania Rules of Professional Conduct, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

(d) The responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

(e) An attorney shall maintain the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held:

(1) all transaction records provided to the attorney by the Financial Institution, such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and

(2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.

(f) The records required by this rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

(g) The records required by this rule may be subject to subpoena and must be produced in connection with an investigation or hearing pursuant to these rules. Failure to produce such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f) (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a pro-

ceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

(h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board and shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

(1) whether the instrument is honored, or

(2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(i) For purposes of this rule:

(1) A Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the treatment of such funds by the Eligible Institution, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) A check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(j) No report need be made when the Eligible Institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(k) A failure on the part of an Eligible Institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.

(l) Eligible Institutions shall be immune from suit for the filing of any reports required by this Rule or believed in good faith to be required by this Rule.

(m) An Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this rule.

(n) A report filed pursuant to this rule shall not, in and of itself, be considered a disciplinary complaint.

(o) A designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation. Neither a report filed with the Lawyers Fund for Client Security Board pursuant to this rule nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(p) Reports required to be made under this rule shall be made to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

Source

The provisions of this Rule 221 adopted April 18, 1995, effective immediately, 25 Pa.B. 1766; amended April 3, 1996, effective July 1, 1996, 26 Pa.B. 1806; amended July 17, 1996, effective September 1, 1996, 26 Pa.B. 3624; amended August 29, 1996, effective September 1, 1996, 26 Pa.B. 4519; amended April 5, 2005, effective upon publication, 35 Pa.B. 2386; amended September 4, 2008, effective September 20, 2008, 38 Pa.B. 5157. Immediately preceding text appears at serial pages (311377) to (311379).

Subchapter C. DISABILITY AND RELATED MATTERS

- Rule
301. Proceedings where an attorney is declared to be incapacitated or severely mentally disabled.
302. [Rescinded].

CONSERVATORS FOR INTERESTS OF CLIENTS

321. Appointment of conservator to protect interests of clients of absent attorney.
322. Duties of conservator.
323. Cooperation with conservator.
324. Book and other accounts.
325. Duration of conservatorship.
326. Discharge of conservator.
327. Liability of conservator.
328. Compensation and expenses of conservator.
329. Review by Supreme Court.

Rule 301. Proceedings where an attorney is declared to be incapacitated or severely mentally disabled.

(a) The clerk of any court within this Commonwealth that declares that an attorney is incapacitated or that orders involuntary treatment of an attorney on the grounds that the attorney is severely mentally disabled or that denies a petition for review of a certification by a mental health review officer subjecting an attor-

ney to involuntary treatment shall within 24 days of such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

Official Note: It is the responsibility of each local court to adopt any necessary procedures so that mental health officers and individual judges notify the clerk of the court that the respondent in a matter is an attorney and that a certificate must accordingly be sent to Disciplinary Counsel under this rule.

(b) Upon being advised that an attorney has been declared incapacitated or involuntarily committed to an institution on the grounds of incapacity or severe mental disability, Disciplinary Counsel shall secure and file a certificate in accordance with the provisions of subdivision (a) of this rule. If the declaration of incapacity or commitment occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such declaration or commitment.

(c) Where an attorney has been judicially declared incapacitated or involuntarily committed on the grounds of incapacity or severe mental disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of the Court. A copy of such order shall be served upon such formerly admitted attorney, the guardian of such person, and/or the director of the institution to which such person has been committed in such manner as the Court may direct. Where an attorney has been transferred to inactive status by an order in accordance with the provisions of this subdivision and, thereafter, in proceedings duly taken, the person is judicially declared to be competent, the Court upon application may dispense with further evidence that the disability has been removed and may direct reinstatement to active status upon such terms as are deemed proper and advisable.

(d) Whenever the Board shall petition the Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to inactive status on the ground of such disability for an indefinite period and until the further order of the Court. If examination of a respondent-attorney by a qualified medical expert reveals that the respondent lacks the capacity to aid effectively in the preparation of a defense, the Court may order that any pending disciplinary proceeding against the respondent shall be held in abeyance except for the perpetuation of testimony and the preservation of documentary evidence. The order of

abatement may provide for reexaminations of the respondent-attorney at specified intervals or upon motion by Disciplinary Counsel. The Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if the respondent is without adequate representation.

(e) If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to prepare an adequate defense, the Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to aid effectively in the preparation of a defense or to continue to practice law in a proceeding instituted in accordance with the provisions of subdivision (d) of this rule. If the Court shall determine at any time that the respondent is able to aid effectively in the preparation of a defense or is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(f) The Board shall cause a notice of transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the disabled attorney practiced.

(g) The Board shall promptly transmit a certified copy of the order of transfer to inactive status to the president judge of the court of common pleas of the judicial district in which the disabled attorney practiced and shall request such action under the provisions of Enforcement Rule 321 (relating to appointment of conservator to protect interests of clients of absent attorney) as may be indicated in order to protect the interests of the disabled attorney and the clients of the disabled attorney.

(h) Except as provided in subdivision (c), a disabled attorney may not resume active status until reinstated by order of the Court upon petition for reinstatement pursuant to Rule 218 (relating to reinstatement). A disabled attorney shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the Court upon a showing by clear and convincing evidence that the formerly admitted attorney's disability has been removed and such person is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the formerly admitted attorney's disability has been removed including a direction for an examination of the formerly admitted attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the formerly admitted attorney.

(i) In a proceeding seeking a transfer to inactive status under this rule, the burden of proof shall rest with the Board. In a proceeding seeking an order of reinstatement to active status under this rule, the burden of proof shall rest with the respondent-attorney.

(j) The filing of an application for reinstatement to active status by a formerly admitted attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the formerly admitted attorney during the period of disability. The formerly admitted attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the formerly admitted attorney has been examined or treated since transfer to inactive status and shall furnish to the Court written consent to each to divulge such information and records as requested by court appointed medical experts.

(k) As used in this rule, the term “disabled attorney” means an attorney transferred to inactive status under this rule.

(l) See Rule 601(a) (relating to statutes and other authorities suspended or abrogated).

Source

The provisions of this Rule 301 amended through April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended November 7, 1988, effective November 25, 1988, 18 Pa.B. 5246. Immediately preceding text appears at serial pages (219493) to (219494) and (212689) to (212690).

Rule 302. [Rescinded].

Source

The provisions of this Rule 302 rescinded October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029. Immediately preceding text appears at serial page (31691).

CONSERVATORS FOR INTERESTS OF CLIENTS

Source

The provisions of these Rules 321—329 adopted October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029, unless otherwise noted.

Rule 321. Appointment of conservator to protect interests of clients of absent attorney.

(a) Upon application of Disciplinary Counsel or any other interested person with the written concurrence of Disciplinary Counsel, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

- (1) the attorney maintains or has maintained an office for the practice of law within the judicial district; and
 - (2) any of the following applies:
 - (i) the attorney is made the subject of an order under Enforcement Rule 208(f) (relating to emergency interim suspension orders and related matters); or
 - (ii) the president judge of the court of common pleas pursuant to Enforcement Rule 217(g) (relating to formerly admitted attorneys) by order directs Disciplinary Counsel to file an application under this rule; or
 - (iii) the attorney abandons his or her practice, disappears, dies or is transferred to inactive status because of incapacity or disability; and
 - (3) no partner or other responsible successor to the practice of the attorney is known to exist.
- (b) A copy of the application for appointment of a conservator under this rule shall be personally served upon the absent attorney or the personal representative or guardian of the estate of a deceased or incompetent absent attorney. If personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by Enforcement Rule 212 (relating to substituted service).
- (c) The president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application. At the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist for appointment of a conservator.
- (d) Within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the absent attorney, a copy of the order shall be served upon the absent attorney in the manner prescribed by Subdivision (b) of this rule.
- (e) The conservator or conservators shall be appointed by the president judge, from among members of the bar of this Commonwealth, subject to the following:
- (1) non-disciplinary counsel conservators:
 - (i) shall not represent any party who is adverse to any known client of the absent attorney; and
 - (ii) shall have no adverse interest or relationship with the absent attorney or his or her estate.
- Official Note:** Nothing in the Rules of Professional Conduct relating to conflict of interest, confidentiality, or any other provision, shall prevent the Office of Disciplinary Counsel from serving as conservator, and from subsequently pursuing an investigation, and disciplinary prosecution of the absent attorney, based upon information gathered during the course of Disciplinary Counsel's service as a conservator.
- (f) The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall be

deemed for the purposes of any statute of limitations or limitation on time for appeal as the filing in the court of common pleas or other proper court or magisterial district court of this Commonwealth on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

- (1) the application for appointment of a conservator is granted, and
- (2) substitute counsel actually files an appropriate document in a court or magisterial district court within 30 days after executing a receipt for the file relating to the matter.

Official Note: Under 42 Pa.C.S. § 5503(b) (relating to implementing court rules) the Supreme Court may define by rule the document which when filed constitutes the commencement of a matter for purposes of Chapter 55 of the Judicial Code (relating to limitation of time). Thus the application by Disciplinary Counsel under this rule is an omnibus pleading which stays the running of all statutes of limitations and appeal times pending a 30-day review of the files of the absent attorney.

(g) The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:

- (1) the application for appointment of a conservator is denied;
- (2) the conservator is discharged;
- (3) the court, tribunal, magisterial district court or other government unit in which a matter is pending orders that the stay be lifted; or
- (4) 30 days after the court, tribunal, magisterial district court or other government unit in which a matter is pending is notified that substitute counsel has been retained.

(h) As used in this rule, the term “government unit” has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).

Official Note: Under 42 Pa.C.S. § 5503(b) (relating to implementing court rules) the Supreme Court may define by rule the document which when filed constitutes the commencement of a matter for purposes of Chapter 55 of the Judicial Code (relating to limitation of time). Thus the application by Disciplinary Counsel under this rule is an omnibus pleading which stays the running of all statutes of limitations and appeal times pending a 30-day review of the files of the absent attorney.

Source

The provisions of this Rule 321 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended March 28, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial pages (280362) to (280364).

Rule 322. Duties of conservator.

(a) The conservator shall take immediate possession of all files of the absent attorney. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for them or their removal or other facts showing that the files cannot be obtained without the use of the process of the court.

(b) The conservator shall make a written inventory of all files taken into his or her possession.

(c)(1) The conservator shall make a reasonable effort to identify all clients of the absent attorney whose files were opened within five (5) years of the appointment of the conservator, regardless of whether the case is active or not, and a reasonable effort to identify all clients whose cases are active, regardless of the age of the file. The conservator shall send all such clients, and former clients, written notice of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active.

(2) All clients whose files are identified by the conservator as both inactive and older than five (5) years shall be given notice by publication of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The specific method of publication shall be approved by the appointing court, as to both the method, and duration, of publication. The conservator shall deliver proofs of publication to the appointing court at the time of filing the application for discharge.

(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files.

(d) Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

(1) Make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship.

(2) Represent such a client in connection with:

(i) any matter identified during the conservatorship; or

(ii) any other matter during or for a period of three years after the conclusion of the conservatorship.

(e) The conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in Subdivisions (a) through (c) of this rule. If those duties have not been accomplished, then the conservator shall state what progress has been made in that regard. Thereafter, the conservator shall file a similar written report every 60 days until discharge.

(f) In the case of a deceased attorney, the conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with Rule 328(b) (relating to compensation and expenses of conservator).

Source

The provisions of this Rule 322 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended March 26, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial pages (280364) to (280365).

Rule 323. Cooperation with conservator.

Any absent attorney who is capable of cooperating with the conservator and any partner, associate, personal representative or guardian of an absent attorney shall cooperate to the best of his or her ability with the conservator in identifying the clients and client files (including records with respect to funds of clients) of the absent attorney and any unexpended funds of such clients. Wilful failure to so cooperate shall constitute a separate violation of these rules for the purposes of Enforcement Rule 203(b)(3) (relating to grounds for discipline).

Official Note: Under Rule 329(b) (relating to review by Supreme Court), review in the Supreme Court, unless otherwise ordered, does not stay the operation of this rule or any other aspect of the conservatorship.

Rule 324. Bank and other accounts.

(a) A conservator shall notify all banks and financial institutions in which the absent attorney maintained either professional or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement or deposit among such bank or financial institu-

tion, the absent attorney and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the absent attorney with such bank or financial institution. The appointing court on application may by order direct that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

(b) The conservator shall cause all funds of clients in the custody of the absent attorney to be returned to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the absent attorney.

(c) The conservator may engage the services of a certified public accountant when considered necessary to assist in the bookkeeping and auditing of the financial accounts and records of the absent attorney.

(1) If the state of the financial accounts and records of the absent attorney, or other relevant circumstances, render a determination as to ownership of purported client funds unreasonable and impractical, the conservator shall petition the appointing court for permission to pay all funds held by the absent attorney in any trust, escrow, or IOLTA account, to the Pennsylvania Lawyers Fund For Client Security. Any petition filed under this subsection shall be served by publication, the specific method and duration of which shall be approved by the appointing court.

(d) Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the absent attorney, and otherwise to complete the conservatorship and pay its expenses authorized under Enforcement Rule 328 (relating to compensation and expenses of conservator), the conservator shall permit the absent attorney or his or her estate to take full possession of any remaining funds.

Source

The provisions of this Rule 324 amended December 12, 1983, effective December 12, 1983, 13 Pa.B. 3996; amended March 26, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial pages (280365) to (280366).

Rule 325. Duration of conservatorship.

Appointment of a conservator pursuant to these rules shall be for a period of no longer than six months. The appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months. Any order granting such an extension shall include findings of fact in support of the extension. No additional extensions shall be granted absent a showing of extraordinary circumstances.

Source

The provisions of this Rule 325 amended March 26, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial page (280366).

Rule 326. Discharge of conservator.

(a) The conservator shall apply to the appointing court for discharge when in the opinion of the conservator, nothing more remains to be done to protect the funds and other interests of the clients of the absent attorney.

(b) An application for discharge shall set forth a full accounting of all funds disbursed to clients of the absent attorney, expended in the conservatorship or released to the full control of the absent attorney, and a summary of all other actions taken by the conservator.

Rule 327. Liability of conservator.

A conservator appointed under these rules shall:

(1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that the conservator shall be bound by the obligation of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as conservator.

(2) Have no liability to the clients of the absent attorney except for injury to such clients caused by intentional, wilful, or grossly negligent breach of duties as a conservator.

(3) Be immune to separate suit brought by or on behalf of the absent attorney. Any objections by or on behalf of the absent attorney or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

Source

The provisions of this Rule 327 amended March 26, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial page (280366).

Rule 328. Compensation and expenses of conservator.

(a) A conservator not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. When the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations in which extraordinary circumstances are shown to justify enhanced compensation.

(b) The necessary expenses (including, but not limited to, the fees and expenses of certified public accountant engaged pursuant to Enforcement Rule 324(c)) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate. Any expenses and any compensation of the conservator that are not reimbursed to the Board shall

be paid as a cost of disciplinary administration and enforcement. Payment of any costs incurred by the Board pursuant to this rule that have not been reimbursed to the Board may be made a condition of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

Source

The provisions of this Rule 328 amended December 12, 1983, effective December 12, 1983, 13 Pa.B. 3996; amended July 18, 1995, effective August 5, 1995, 25 Pa.B. 3092; amended March 26, 2009, effective upon publication, 39 Pa.B. 1846. Immediately preceding text appears at serial page (340351).

Rule 329. Review by Supreme Court.

(a) Any order entered by a court of common pleas upon an application for the appointment of a conservator, or arising out of the supervision, administration, operation or discharge of any conservatorship under these rules, shall be reviewable by the Supreme Court within the time and in the manner prescribed by the Pennsylvania Rules of Appellate Procedure for review of orders relating to the supervision of investigating grand juries.

(b) Review in the Supreme Court under this rule shall not stay proceedings below unless the court of common pleas or the Supreme Court or a justice thereof shall so order.

Official Note: See Rule 3331 (relating to review of special prosecutions or investigations) of the Pennsylvania Rules of Appellate Procedure.

Subchapter D. MISCELLANEOUS PROVISIONS

- Rule 401. Expenses.
- 402. Access to Disciplinary Information and Confidentiality.
- 403. [Reserved].
- 411. [Reserved].
- 412. [Reserved].

Rule 401. Expenses.

The salaries of the Secretary of the Board, Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of Enforcement Rule 219 (relating to periodic assessment of attorneys). The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with the Court.

Rule 402. Access to Disciplinary Information and Confidentiality.

(a) Except as provided in subdivisions (b), (d) and (k), all proceedings under these rules shall be open to the public after:

- (1) the filing of an answer to a petition for discipline;
- (2) the time to file an answer to a petition for discipline has expired without an answer being filed; or
- (3) the filing and service of a petition for reinstatement.

(b) Notwithstanding subdivision (a), an informal proceeding under these rules in which it is determined that private discipline should be imposed but that subsequently results in the filing of formal charges shall not be open to the public until or unless the Supreme Court enters its order for the imposition of public discipline.

(c) Until the proceedings are open under subdivision (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

- (1) the respondent-attorney requests that the matter be public, or waives confidentiality for a particular purpose specified in writing;
- (2) the investigation is predicated upon a conviction of the respondent-attorney for a crime or reciprocal discipline;
- (3) the proceeding is based on an order of temporary suspension from the practice of law entered by the Court pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief);
- (4) in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Enforcement Rule 301 (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated); or

(5) there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.

(d) This rule shall not be construed to:

(1) Deny access to relevant information at any point during a proceeding under these rules to:

(i) authorized agencies investigating the qualifications of judicial candidates,

(ii) the Judicial Conduct Board with respect to an investigation it is conducting,

(iii) other jurisdictions investigating qualifications for admission to practice;

(iv) law enforcement agencies investigating qualifications for government employment;

(v) lawyer disciplinary enforcement agencies in other jurisdictions investigating misconduct by the respondent-attorney; or

(vi) the Pennsylvania Lawyers Fund for Client Security Board investigating a claim for reimbursement arising from conduct by the respondent-attorney.

(2) Require Disciplinary Counsel to refrain from reporting to law enforcement authorities the commission or suspected commission of any criminal offense or information relating to a criminal offense.

(3) Prevent the Pennsylvania Lawyers Fund for Client Security from utilizing information obtained during any investigation to pursue subrogated claims.

(e) Subdivision (a) shall not be construed to provide public access to:

(1) the work product of the Board, Disciplinary Counsel, hearing committee members, or special masters;

(2) deliberations of a hearing committee, special master, the Board or the Court; or

(3) information subject to a protective order issued by the Board under subdivision (f).

(f) The Board may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential, and the Board may direct that proceedings be conducted so as to implement the order, including requiring that a hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of a protective order.

(g) Except as provided in subsection (h), if nonpublic information is requested pursuant to subdivision (d)(1)(i), (iii), (iv) or (v) and the respondent-attorney has not signed an applicable waiver of confidentiality, the respondent-attorney shall be notified in writing at the last known address of the respondent-attorney of what information has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency or

board. The notice shall advise the respondent-attorney that the information will be released 20 days after mailing of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency or board obtains an order of the Supreme Court requiring its release or the respondent-attorney withdraws the objection.

(h) If an agency or board requesting the release of information under subdivision (d)(1) other than the Judicial Conduct Board and the Pennsylvania Lawyers Fund for Client Security Board has not obtained an applicable waiver of confidentiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

- (1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent-attorney;
- (2) the information is essential to that investigation; and
- (3) disclosure of the existence of the investigation to the respondent-attorney would seriously prejudice the investigation.

(i) The Board shall transmit notice of all public discipline imposed by the Supreme Court, transfers to or from inactive status for disability, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(j) This rule does not permit broadcasting, televising, recording or taking photographs during a proceeding under these rules, except that a hearing committee, a special master, the Board or the Supreme Court when conducting a proceeding may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration.

(k) If a formal proceeding results in the imposition of private discipline or dismissal of all the charges, the proceeding shall cease to be open to the public when the decision to impose private discipline or dismiss the charges becomes final, unless the respondent-attorney requests that the record of the proceeding remain open to the public.

Official Note: Paragraph (d)(2) is based on 18 Pa.C.S. § 5108 (relating to compounding). Otherwise Disciplinary Counsel may be in the anomalous position of violating Rule 8.4 of the Pennsylvania Rules of Professional Conduct.

Although subdivision (k) provides that a formal proceeding that becomes open to the public under subdivision (a) will subsequently be closed if it results in the imposition of private discipline or dismissal of all the charges, the closing of the proceeding cannot change the fact that the proceeding was open to the public for a period of time. Thus, subdivision (k) makes clear that the respondent-attorney may request that the record of the proceeding remain open to demonstrate that the charges were dismissed or only private discipline was imposed.

Source

The provisions of this Rule 402 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended October 21, 1988, effective November 12, 1988, 18 Pa.B. 5070; amended November 26, 1990, effective December 15, 1990, 20 Pa.B. 6142; amended October 26, 2005, effective upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement.

ment has not been filed; amended May 23, 2007, effective upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending; amended December 12, 2008, effective immediately, 38 Pa.B. 7079. Immediately preceding text appears at serial pages (327928) to (327930).

Rule 403. [Reserved].

Source

The provisions of this Rule 403 reserved October 10, 1980, effective February 8, 1981, 10 Pa.B. 4029. Immediately preceding text appears at serial pages (39530) and (31694).

Rule 411. [Reserved].

Source

The provisions of this Rule 411 adopted October 10, 1980, 10 Pa.B. 4029; reserved February 2, 1984, effective February 18, 1984, 14 Pa.B. 510. Immediately preceding text appears at serial pages (81629) to (81630).

Rule 412. [Reserved].

Source

The provisions of this Rule 412 adopted October 10, 1980, 10 Pa.B. 4029; reserved February 2, 1984, effective February 18, 1984, 14 Pa.B. 510. Immediately preceding text appears at serial page (81630).

Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

GENERAL PROVISIONS

- Rule 501. Definitions.
- 502. Pennsylvania Lawyers Fund for Client Security.
- 503. Pennsylvania Lawyers Fund for Client Security Board.
- 504. Confidentiality

DISHONEST CONDUCT OF ATTORNEY

- 511. Reimbursement of certain losses authorized.
- 512. Covered attorney.
- 513. Dishonest conduct.
- 514. Reimbursable losses.

PAYMENT OF CLAIMS

- 521. Investigation and payment of claims.

REINSTATEMENT

- 531. Restitution a condition for reinstatement.

Source

The provisions of this Subchapter E adopted April 30, 1982, effective May 15, 1982, 12 Pa.B. 1534, unless otherwise noted.

GENERAL PROVISIONS

Rule 501. Definitions.

The following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

“*Board.*” The Pennsylvania Lawyers Fund for Client Security Board.

“*Covered Attorney.*” An individual defined in Rule 512 (relating to covered attorney).

“*Claimant.*” A person who makes application to the Board for a disbursement from the Fund.

“*Dishonest Conduct.*” Conduct defined in Rule 513 (relating to dishonest conduct).

“*Fund.*” The Pennsylvania Lawyers Fund for Client Security.

“*Reimbursable Losses.*” Losses defined in Rule 514 (relating to reimbursable losses).

Source

The provisions of this Rule 501 amended March 11, 1993, effective May 22, 1993, 23 Pa.B. 2440; amended June 29, 2007, effective September 14, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial page (315204).

Rule 502. Pennsylvania Lawyers Fund for Client Security.

(a) *General rule.* The Supreme Court shall establish a separate fund to be known as the “Pennsylvania Lawyers Fund for Client Security.” The Fund shall consist of such amounts as shall be transferred to the Fund pursuant to this subchapter. The Fund is created by contributions of the members of the Bar to aid in ameliorating the losses caused to clients and others by defalcating members of the Bar acting as attorney or fiduciary. No Claimant or other person shall have any legal interest in such Fund or right to receive any portion thereof, except for discretionary disbursements therefrom directed by the Board or the Supreme Court, all payments from the Fund being a matter of grace and not of right. There shall be no appeal from a decision of the Board. A decision of the Board to grant or deny payment to a Claimant shall not be subject to judicial review by any court. The Supreme Court reserves the right to amend or repeal this subchapter.

(b) *Additional assessment.* Every attorney who is required to pay an active annual assessment under Rule 219 (relating to periodic assessment of attorneys; voluntary inactive status) shall pay an additional annual fee of \$35.00 for use by the Fund. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment, but the statement mailed by the Attorney Registration Office pursuant to Rule 219 shall separately identify the additional assessment imposed pursuant to this subdivision. All amounts received pursuant to this subdivision shall be credited to the Fund.

(c) *Transfers to Fund.* The Administrative Office and Attorney Registration Office shall transfer to the Fund all bequests and gifts hereafter made for use by the Fund. All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

(d) *Audit.* The Board shall annually obtain an independent audit of the Fund by a certified public accountant, and shall file a copy of such audit with the Supreme Court.

Source

The provisions of this Rule 502(b) adopted April 30, 1982, effective July 1, 1982, 12 Pa.B. 1534; amended April 29, 1983, effective July 1, 1983, 13 Pa.B. 1433; amended December 18, 1987, effective July 1, 1988, 18 Pa.B. 180; amended March 11, 1993, effective May 22, 1993, 23 Pa.B. 2440; amended March 27, 1995, effective immediately, 25 Pa.B. 1404; amended April 25, 1997, effective

immediately, 27 Pa.B. 2413; corrected March 31, 2006, 36 Pa.B. 1490; amended June 29, 2007, effective September 14, 2007, 37 Pa.B. 3218; amended April 1, 2008, effective for the 2008-2009 assessment, 38 Pa.B. 1701; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial pages (333756) to (333757).

Rule 503. Pennsylvania Lawyers Fund for Client Security Board.

(a) *General rule.* The Supreme Court shall appoint a board to be known as the “Pennsylvania Lawyers Fund for Client Security Board” which shall consist of five members of the bar of this Commonwealth and two non-lawyer public members. One of the members shall be designated by the Court as Chair and another as Vice-Chair. A majority of the members of the Board shall designate a member of the Board to act as Treasurer.

(b) *Terms; manner of action.* The regular terms of members of the Board shall be for three years, and no member shall serve for more than two consecutive three-year terms. The terms of one-third of the members of the Board, as nearly as may be, shall expire in each year. The terms of members shall commence on April 1. The Board shall act with the concurrence of not less than a majority of the members in office. A majority of the members in office shall constitute a quorum.

(c) *Vacancies.* Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.

(d) *Powers.* The Board shall have the power and duty:

(1) To appoint hearing committees. Each committee shall consist of three members who are members of the bar of the Supreme Court or who are current members of the Board.

(2) To investigate applications by Claimants for disbursements from the Fund.

(3) To authorize disbursements from the Fund and to fix the amount thereof.

(4) To determine in January of each year, and to report to the Supreme Court, whether the Fund is of sufficient amount to pay adjudicated claims and other anticipated claims.

(5) To adopt rules of procedure not inconsistent with these rules. Such rules may provide for the delegation to the Chair or the Vice Chair of the power to act for the Board on administrative and procedural matters.

(6) To exercise the powers and perform the duties vested in and imposed upon the Board by the Supreme Court.

(7) With prior approval of the Supreme Court to give financial assistance to Pennsylvania non-profit corporations whose purpose it is to assist alcohol or drug impaired Pennsylvania lawyers and judges to regain their health and to restore them to professional competence, or to such other Supreme Court Committees or Boards as the Court may direct.

(8) To prudently invest, per the direction of the Investment Advisory Board or the Court, such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate.

(9) To prosecute claims for restitution to which the Fund is entitled.

(e) *Compensation; expenses.* Members of the Board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

(f) *Conflict of interest:*

(1) A member of the Board who has or has had a client-attorney relationship or a financial relationship with a Claimant or a Covered Attorney shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;

(2) A member of the Board who has or has had a relationship, other than as provided in subparagraph (1) above, with a Claimant or Covered Attorney, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Board member shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;

(3) Claims based upon alleged Dishonest Conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged dishonest conduct by Counsel to the Board or Staff shall be submitted directly to the Board for disposition.

(g) *Immunity.* Members of the Board, members of hearing committees, Counsel to the Board and Staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, Counsel to the Board or Staff relating to Dishonest Conduct by a Covered Attorney and all testimony given in a proceeding conducted pursuant to this subchapter shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 or Rule 504 (relating to confidentiality).

Official Note: The provisions of subdivision (g) of the Rule recognize that the submission and receipt of applications by Claimants for disbursements from the Fund, and investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (g) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirements of Rules 402 and 504 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.

Source

The provisions of this Rule 503 amended November 1, 1991, effective November 1, 1991, 21 Pa.B. 5405; amended March 11, 1993, effective May 22, 1993, 23 Pa.B. 2440; amended August 19, 1993, effective September 4, 1993, 23 Pa.B. 4204; amended May 8, 1997, effective immediately, 27 Pa.B. 2532; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial pages (318521) to (318522).

Rule 504. Confidentiality.

(a) All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things

made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.

(b) Notwithstanding subsection (a), the Fund, after an award is approved, may disclose the following information:

- (1) the name of the Claimant (if Claimant has granted permission to disclose);
- (2) the name of the Covered Attorney;
- (3) the amount claimed;
- (4) the amount awarded; and
- (5) a summary of the claim.

(c) Nothing in this Rule shall preclude the Fund from utilizing confidential information in the release of statistical data or in the pursuit of the Fund's subrogation rights.

(d) This Rule shall not be construed to preclude disclosure, at any time during any investigation and/or proceeding, for confidential information requested by the following entities:

- (1) authorized agencies investigating the qualifications of judicial candidates and any proceedings related thereto;
- (2) the Judicial Conduct Board and/or its counterpart in other jurisdictions conducting an investigation or proceeding;
- (3) authorized agencies investigating qualifications for government employment and any proceedings related thereto;
- (4) federal courts and/or other jurisdictions investigating qualifications for admission to practice law and any proceedings related thereto;
- (5) Office of Disciplinary Counsel and/or the Disciplinary Board and/or its committees;
- (6) lawyer discipline agencies and client protection funds in other jurisdictions investigating a disciplinary complaint, client protection claim or qualifications for admission or readmission to practice law and any proceedings related thereto; or
- (7) law enforcement authorities investigating and/or prosecuting the Covered Attorney for a criminal offense.

(e) Requests for the release of confidential information by any person or entity, other than those identified in subsection (d), must be made to the Fund through the issuance of a subpoena; requests for same made under the Freedom of Information Act will not be honored.

Source

The provisions of this Rule 504 adopted March 4, 1993, effective March 20, 1993, 23 Pa.B. 1300; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218; amended April 27, 2009, effective immediately, 39 Pa.B. 2318. Immediately preceding text appears at serial pages (333758) and (328865).

DISHONEST CONDUCT OF ATTORNEY

Rule 511. Reimbursement of certain losses authorized.

The Board in its discretion may authorize a disbursement from the Fund in an amount not exceeding the Reimbursable Loss caused by the Dishonest Conduct of a Covered Attorney.

Source

The provisions of this Rule 511 amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial page (310475).

Rule 512. Covered attorney.

This subchapter covers conduct of a member of the bar of the Supreme Court, including attorneys admitted pro hac vice and formerly admitted attorneys whose clients reasonably believed the former attorney to be licensed to practice when the Dishonest Conduct occurred, an active foreign legal consultant, an active military attorney, or a person holding an active Limited In-House Corporate Counsel License, which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct outside of this Commonwealth of a foreign legal consultant, military attorney or person holding a Limited In-House Corporate Counsel License unless the conduct related to the provision of legal services to a resident of this Commonwealth.

Source

The provisions of this Rule 512 amended March 17, 2005, effective September 1, 2005, 35 Pa.B. 1972; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial page (310475).

Rule 513. Dishonest conduct.

For the purposes of this subchapter, dishonest conduct means wrongful acts committed by a Covered Attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property or other things of value.

Source

The provisions of this Rule 513 amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appear at serial page (310475).

Rule 514. Reimbursable losses.

(a) *General rule.* For the purposes of this subchapter reimbursable losses consist of those losses of money, property or other things of value which meet all of the following requirements:

(1) The loss was caused by the Dishonest Conduct of a Covered Attorney when acting:

- (i) as an attorney-at-law;
- (ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or
- (iii) as an escrow agent or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so selected as a result of a client-attorney relationship.

(2) The loss was that of money, property or other things of value which came into the hands of the Covered Attorney by reason of having acted in the capacity described in paragraph (1) of this subdivision. Consequential or inci-

dental damages, such as lost interest, or attorney fees or other costs incurred in seeking recovery of a loss, may not be considered in determining the Reimbursable Loss.

(3) The loss, or the reimbursable portion thereof, was not covered by any insurance or by any fidelity or similar bond or fund, whether of the Covered Attorney, or the Claimant or otherwise.

(4) The loss was not incurred by:

(i) the spouse or other close relative, partner, associate, employer or employee of the Covered Attorney, or a business entity controlled by the Covered Attorney, or any entity controlled by any of the foregoing;

(ii) an insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing;

(iii) any government unit;

(iv) any financial institution that may recover under a “banker’s blanket bond” or similar commonly available insurance or surety contract; or

(v) an individual or business entity suffering a loss arising from personal or business investments not arising in the course of the client-attorney relationship.

(5) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, and consistent with the purpose of the Fund, recognize a claim which would otherwise be excluded under this subchapter.

(6) In cases where it appears that there will be unjust enrichment, or the Claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

(7) A payment from the Fund, by way of subrogation or otherwise, will not benefit any entity specified in paragraph (4) of this subdivision.

(b) *Maximum recovery.* The maximum amount which may be disbursed from the Fund to any one Claimant with respect to the Dishonest Conduct of any one Covered Attorney shall be \$75,000.

(c) No lawyer shall accept payment for assisting a Claimant with the filing of a claim with the Fund, unless such payment has been approved by the Board.

Source

The provisions of this Rule 514 amended December 18, 1987, effective July 1, 1988, 18 Pa.B. 180; amended February 24, 2000, effective July 1, 2000, 30 Pa.B. 1357; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial pages (310475) to (310476).

PAYMENT OF CLAIMS

Rule 521. Investigation and payment of claims.

(a) *Cooperation with Disciplinary Board.* At the request of the Board, the Disciplinary Board of the Supreme Court of Pennsylvania shall make available to the Board all reports of investigations and records of formal proceedings conducted under these rules with respect to any attorney whose conduct is alleged to amount to Dishonest Conduct causing Reimbursable Loss to a Claimant, and shall otherwise cooperate fully with the Board. The Board shall cooperate fully

with the Disciplinary Board of the Supreme Court of Pennsylvania and shall preserve the confidential nature of any information which is required to be kept confidential under these rules.

(b) *Hearing committees.* The Board may utilize a hearing committee to conduct any hearings under this subchapter for the purpose of resolving factual issues. Imposition of discipline under Rule 204 (relating to types of discipline) or otherwise shall not be a prerequisite for favorable action by the Board with respect to a claim against the Fund, but the Covered Attorney involved shall be given notice of and an opportunity to contest any claim made with respect to his or her alleged Dishonest Conduct.

(c) *Subpoenas.* At any stage of an investigation under this subchapter the Board, a Claimant and a contesting Covered Attorney shall have the right to summon witnesses before a hearing committee and require production of records before the same by issuance of subpoenas in substantially the same manner, and with the effect provided by Rule 213(b), (e), (f), (g) and (h), and if applicable, (c) and (d) (relating to subpoena power, depositions and related matters).

(d) *Factors to be considered.* In exercising its discretion under Rule 511 (relating to reimbursement of certain losses authorized) the Board may consider, among other things:

- (1) The amount available and likely to become available to the Fund for payment to Claimants.
- (2) The size and number of claims which are likely to be presented in the foreseeable future.
- (3) The total amount of losses caused by Dishonest Conduct by any one Covered Attorney or associated group of Covered Attorneys.
- (4) The degree of hardship the Claimant has suffered by the loss.

(e) The Claimant or Covered Attorney may request a reconsideration of the denial or approval of an award. Such request for a reconsideration shall be made in writing and shall be received by the Fund within 30 days of the date of the notification of the Board's denial or approval of an award. If the Claimant or Covered Attorney fails to make such a request, or the request is denied, the decision of the Board is final and there is no further right of appeal.

(f) *Conditions.* In addition to such other conditions and requirements as it may impose, the Board shall:

- (1) require each Claimant, as a condition of payment, to execute such instruments, to take such action, and to enter into any agreements, including assignments of claims and subrogation agreements, as may be feasible in order to maximize the possibility that the Fund will be appropriately reimbursed for payments made from it. Amounts recovered pursuant to any such arrangements shall be paid to the Fund;
- (2) require each Claimant, as a condition of payment, to file a formal complaint with the Disciplinary Board of the Supreme Court of Pennsylvania against the Covered Attorney and to cooperate in the fullest with the Disciplinary Board or other authorities in connection with other investigations of the alleged Dishonest Conduct; and

(3) require a Claimant who has commenced an action to recover unreimbursed losses against the Covered Attorney, or another entity or third party who may be liable for the Claimant’s loss, to notify the Board of such action.

Source

The provisions of this Rule 521 amended January 13, 1993, effective January 30, 1993, 23 Pa.B. 538; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218. Immediately preceding text appears at serial pages (310476) and (280375).

REINSTATEMENT

Rule 531. Restitution a condition for reinstatement.

The Board shall file with the Supreme Court a list containing the names of all formerly admitted attorneys with respect to the Dishonest Conduct of which the Board has made unrecovered disbursements from the Fund. No person will be reinstated by the Supreme Court under Rule 218 (relating to reinstatement), Rule 219 (relating to periodic assessment of attorneys; voluntary inactive status), Rule 301(h) (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated), Pennsylvania Rules of Continuing Legal Education, Rule 111(b) (relating to noncompliance with continuing legal education rules) or who has been suspended from the practice of law for any period of time, including, but not limited to suspensions under Rule 208(f) (relating to emergency temporary suspension) and 219(f) (relating to administrative suspension) until the Fund has been repaid in full, plus 10% per annum interest, for all disbursements made from the Fund with respect to the Dishonest Conduct of such person.

Source

The provisions of this Rule 531 amended April 1, 1983, effective April 2, 1983, 13 Pa.B. 1179; amended February 2, 2000, effective immediately, 30 Pa.B. 865; amended June 29, 2007, effective September 4, 2007, 37 Pa.B. 3218; amended April 16, 2009, effective May 1, 2009, 39 Pa.B. 2193. Immediately preceding text appears at serial page (328869).

Subchapter F. PROVISIONS OF LAW SAVED AND ABROGATED

- Rule 601. Statutes and other authorities suspended or abrogated.
- 602. Statutes saved from suspension.

Source

The provisions of this Subchapter F adopted February 2, 1984, effective February 18, 1984, 14 Pa.B. 510, unless otherwise noted.

Rule 601. Statutes and other authorities suspended or abrogated.

(a) The following statutes are hereby suspended to the extent inconsistent with these rules:

- Act of July 9, 1976 (P. L. 817, No. 143), known as the Mental Health Procedures Act, § 111 (50 P. S. § 7111)
- 72 Pa.C.S. § 1795 (confidential nature of contents)

Official Note: 72 Pa.C.S. § 1795 provides for the confidentiality of information relating to the contents of safe deposit boxes except for “official purposes to collect the taxes imposed by this chapter.” The effect of this suspension is to suspend the statute to the extent that the phrase “to collect the taxes imposed by this chapter” renders the scope of the term “official purposes” inapplicable to the otherwise covered “official purpose” of Supreme Court and Disciplinary Board supervision of the conduct of attorneys.

(b) The practice and procedure provided in all former statutes pertaining to disciplinary enforcement within the scope of these rules, which have been repealed by the Judiciary Act Repealer Act (“JARA”), act of April 28, 1978 (P. L. 202, No. 53), and which are now part of the common law of this Commonwealth by virtue of Section 3(b) of JARA (42 P. S. § 20003(b)), are hereby abolished and shall not continue as part of the common law of this Commonwealth.

(c) These rules are intended to provide a complete and exclusive procedure relating to the subject matter covered hereby and except as prescribed in Rule 602 (relating to Statutes saved from suspension), all statutes, rules of court and other laws relating to such subject matter are hereby suspended absolutely.

(d) The act of April 29, 1988 (P. L. 373, No. 59), known as the Interest on Lawyers’ Trust Accounts Act, is hereby suspended, effective September 1, 1996, to the extent it requires remittance to the IOLTA fund established under the act of interest earned on IOLTA accounts; and the act is hereby suspended in its entirety at such time after September 1, 1996 as all remaining monies in such IOLTA fund have been disbursed by the Lawyer Trust Account Board established under the act.

Source

The provisions of this Rule 601 amended July 17, 1996, effective September 1, 1996, 26 Pa.B. 3624. Immediately preceding text appears at serial page (212704).

Rule 602. Statutes saved from suspension.

No provision of these rules shall be construed to suspend any provision of Title 42 of the Pennsylvania Consolidated Statutes (relating to judiciary and judicial procedure) enacted prior to January 1, 1980.

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