

**Subpart C. DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

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Authority

The provisions of this Subpart C issued under Supreme Court Rule 17-5(c)(9), unless otherwise noted.

Source

The provisions of this Subpart C adopted November 23, 1974, 3 Pa.B. 2683, amended through July 29, 1977, 7 Pa.B. 2112, unless otherwise noted.

CHAPTER 85. GENERAL PROVISIONS

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§ 85.1. Title and citation of subpart.

This subpart shall be known, and may be cited, as the “Disciplinary Board Rules.”

§ 85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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

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

Board Rule—Any provision of this subpart.

Censure—Public censure by the Supreme Court.

Chief Disciplinary Counsel—The Chief Disciplinary Counsel appointed by the Board or, in the absence of such Chief Disciplinary Counsel, the Assistant Disciplinary Counsel designated by the Chief Disciplinary Counsel to serve in his absence. In the case of vacancy in office, absence or inability of such Chief Disciplinary Counsel, the Assistant Disciplinary Counsel designated by the Board.

Complaint—A grievance concerning an attorney communicated to the Office of Disciplinary Counsel or considered by the Office of Disciplinary Counsel on its own motion.

Conservator—A conservator appointed under § 91.121 (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 District—One of the four districts into which this Commonwealth is divided for disciplinary purposes as set forth in § 93.1 (relating to disciplinary districts).

Disciplinary Rule—The provisions of the Code of Professional Responsibility, as adopted by the Supreme Court of Pennsylvania on May 20, 1970, 438 Pa. XXV, as amended from time to time by special order of the Court and gov-

erning 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. See Chapter 81 (relating to rules of professional conduct).

Enforcement Rule—Any provision of Chapter 83 (relating to Pennsylvania rules of disciplinary enforcement).

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 Pennsylvania Bar Admission Rule 341 (relating to licensing of foreign legal consultants).

Formal Proceeding—A proceeding subject to Chapter 89 (relating to formal proceedings).

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

Grievance—Alleged misconduct.

Hearing Committee—A hearing committee designated under § 93.81 (relating to hearing committees).

Informal admonition—Private informal admonition by Disciplinary Counsel.

Inquiry—Information concerning an attorney communicated to the Office of Disciplinary Counsel which does not amount to a complaint.

Investigation—Fact finding under the direction of the Office of Disciplinary Counsel with respect to alleged misconduct or to reinstatement.

Investigator—Any person designated by the Office of Disciplinary Counsel to assist it in investigation of alleged misconduct or of reinstatement.

Limited In-House Corporate Counsel License—A license issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

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

Notarial officer—An officer authorized under § 91.14 (relating to officer before whom deposition is taken) to take depositions for use before a hearing committee.

Office of Disciplinary Counsel—The Office of Disciplinary Counsel established by § 93.61 (relating to Office of Disciplinary Counsel).

Office of the Secretary—The Office of the Secretary established by § 93.51 (relating to Office of the Secretary).

Participant—The respondent-attorney, any other person admitted by the Board to limited participation in a proceeding, and staff counsel.

Petition—A formal pleading filed by the Office of Disciplinary Counsel with the Board requesting action by the Board under the Disciplinary Rules, the Enforcement Rules or these rules.

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.

Proof of service—A certificate of service complying with § 89.26 (relating to form of certificate of service).

Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Respondent-attorney—Includes any person subject to the Enforcement Rules (See § 85.3(a) (relating to jurisdiction)).

Reviewing hearing committee member—A senior or experienced hearing committee member designated under these rules to review the disposition of a complaint recommended by the Office of Disciplinary Counsel.

Rules—The provisions of this subpart.

Secretary—The Secretary of the Board.

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 § 93.91 (relating to special masters).

Staff counsel—The attorneys constituting the Office of Disciplinary Counsel and, where appropriate, the attorney or attorneys of the Office of Disciplinary Counsel who are assigned to a particular investigation or proceeding.

Verified statement—A document filed with the Board or the Court under the Enforcement Rules or 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 § 85.2 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 242; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended July 29, 1994, effective July 30, 1994, 24 Pa.B. 3706; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended February 24, 2006, effective immediately, 36 Pa.B. 929; amended April 18, 2008, effective April 19, 2008, 38 Pa.B. 1812; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (333759) to (333762).

§ 85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement 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 § 85.2 (relating to definitions).

- (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, the Enforcement Rules or these rules.

- (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 Inquiry and Review 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 service in this Commonwealth.

(b) *Exceptions.* Enforcement Rule 201(b) provides that nothing contained in the Enforcement 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 § 85.3 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended September 10, 2004, effective September 11, 2004, 34 Pa.B. 5013; amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (333762) to (333763).

§ 85.4. Information and special instructions.

Information as to procedure under these rules, and instructions supplementing these rules in special instances, will be furnished upon application to:

- (1) The Office of Disciplinary Counsel, except with respect to matters which have become the subject of formal proceedings.
- (2) The Office of the Secretary, with respect to matters which have become the subject of formal proceedings.

§ 85.5. Location of Office of Disciplinary Counsel.

(a) *Chief Disciplinary Counsel.* The location of the headquarters of the Office of Disciplinary Counsel and the office of the Chief Disciplinary Counsel is:

Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Suite 1400
200 North Third Street
Harrisburg, PA 17101
(717) 783-0990
(fax: 717-783-4963)

(b) *Disciplinary District Offices.* The present locations of the district offices of the Office of Disciplinary Counsel and the office of the Assistant Disciplinary Counsel for each such disciplinary district are:

- (1) District I Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
16th Floor, Seven Penn Center
1635 Market Street
Philadelphia, Pennsylvania 19103
(215) 560-6296
(fax: (215) 560-4528)
- (2) District II Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Suite 170
820 Adams Avenue
Trooper, PA 19403
(610) 650-8210
(fax: 610-650-8213)
- (3) District III Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Second Floor
Two Lemoyne Drive

- Lemoyne, Pennsylvania 17043
(717) 731-7083
(fax: (717) 731-7094)
- (4) District IV Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 565-3173
(fax: (412) 565-7620)

Source

The provisions of this § 85.5 amended through August 30, 1985, effective August 31, 1985, 15 Pa.B. 3080; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4448; amended March 13, 1991, effective November 16, 1991, 21 Pa.B. 5325; amended September 11, 1992, effective September 12, 1992, 22 Pa.B. 4624; amended July 11, 1993, effective immediately, 23 Pa.B. 2729; amended April 25, 1997, effective April 26, 1997, 27 Pa.B. 2037; amended February 21, 2003, effective February 22, 2003, 33 Pa.B. 967; amended April 18, 2008, effective April 19, 2008, 38 Pa.B. 1812. Immediately preceding text appears at serial pages (317703) to (317704).

§ 85.6. Location of Office of the Secretary.

The location of the Office of the Secretary is:

Office of the Secretary
The Disciplinary Board of the Supreme Court of Pennsylvania
First Floor
Two Lemoyne Drive
Lemoyne, Pennsylvania 17043
(717) 731-7073
(fax: (717) 731-7080)

Source

The provisions of this § 85.6 amended through July 2, 1982, effective July 3, 1982, 12 Pa.B. 2021; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4448; amended September 11, 1992, effective September 12, 1992, 22 Pa.B. 4624. Immediately preceding text appears at serial pages (164136) and (154495).

§ 85.7. Grounds for discipline.

(a) Enforcement Rule 203(a) provides that acts or omissions by a person subject to the Enforcement 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) Enforcement Rule 203(b) provides that the following shall also be grounds for discipline:

- (1) Conviction of a crime which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension.

- (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) (relating to licensing of foreign legal consultants).
 - (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) Enforcement Rule 203(c) provides that 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 § 85.7 amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948; amended August 5, 2005, effective September 1, 2005, 35 Pa.B. 4301; amended December 1, 2006, effective immediately, 36 Pa.B. 7233. Immediately preceding text appears at serial page (317705).

§ 85.8. Types of discipline.

- (a) *General rule.* Enforcement Rule 204(a) provides that misconduct shall be grounds for any of the following:
- (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 the Disciplinary Counsel.
 - (7) Revocation of an attorney’s admission or license to practice law in the circumstances provided in § 85.7(b)(6) (relating to grounds for discipline).
- (b) *Conditions attached to discipline.* Enforcement Rule 204(b) provides that conditions may be attached to an informal admonition or private reprimand and that failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.
- (c) *Limited In-House Corporate Counsel License.* Enforcement Rule 204(c) provides that a reference in the Enforcement Rules and 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; and that a respondent-attorney who Limited In-House Corporate Counsel License expires for any reason:
- (1) shall be deemed to be a formerly admitted attorney for purposes of Subchapter 91E (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Subchapter 89F (relating to reinstatement and resumption of practice) or §§ 93.145 (relating to reinstatement) or 93.112(c) (relating to reinstatement upon payment of taxed costs) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

Source

The provisions of this § 85.8 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended December 1, 2006, effective immediately, 36 Pa.B. 7233; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (324316).

§ 85.9. Immunity.

(a) *Board personnel.* Enforcement Rule 209(a) provides that 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; and that, for purposes of this subsection, the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules.

(b) *Other persons.* Enforcement Rule 209(a) further provides that 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 Chapter 93 Subchapter F (relating to confidentiality).

Official Note: The Note to Enforcement Rule 209 provides that the provisions of this 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. The immunity from civil suit recognized to exist in this rule 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 Chapter 93 Subchapter F are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.

Source

The provisions of this § 85.9 amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009, effective April 14, 1990, 20 Pa.B. 2009; amended June 29, 1990, effective June 30, 1990, 20 Pa.B. 3576; amended July 29, 1994, effective July 30, 1994, 24 Pa.B. 3706; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial pages (312754) to (312755).

§ 85.10. Stale matters.

(a) *General matters.* The Office of Disciplinary Counsel or the Board shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint, except as provided in subsection (b).

(b) *Exceptions.* The four year limitation in subsection (a) shall:

(1) Not apply in cases involving theft or misappropriation, conviction of a crime or a knowing act of concealment.

(2) Be tolled during any period when there has been litigation pending that has resulted in a finding that the subject acts or omissions involved civil fraud, ineffective assistance of counsel or prosecutorial misconduct by the respondent-attorney.

Source

The provisions of this § 85.10 amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 241; amended May 27, 1994, effective immediately, 24 Pa.B. 2693; amended April 12, 2002, effective immediately. Immediately preceding text appears at serial page (214510).

§ 85.11. Recusal.

(a) *General rule.* Enforcement Rule 220(a) provides that a member of the Board or a hearing committee member 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 participate 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.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or a hearing committee member or a special master shall be made in accordance with these rules, 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. The procedures applicable to a motion for recusal shall be as follows:

(1) The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).

(2) In the case of a motion to disqualify a hearing committee member or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master.

(3) The motion shall be ruled upon by the challenged member or special master.

(4) An interlocutory appeal from the decision on the motion, which appeal shall be ruled upon the Board Chair, may be filed within five days after the decision on the motion.

Source

The provisions of this § 85.11 adopted November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended April 26, 1996, effective immediately, 26 Pa.B. 1984; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (302910) and (281367).

§ 85.12. Filings with the Supreme Court.

(a) *General rule.* Enforcement Rule 104(a) provides that Rules 121 through 124 of the Pennsylvania Rules of Appellate Procedure shall be applicable to all filings with the Supreme Court under this Subpart.

(b) *Exception.* Enforcement Rule 104(b) provides that, notwithstanding subsection (a), any express procedural requirement in this Subpart shall be controlling over the applicable provision of the Rules of Appellate Procedure.

(c) *Centralized filing.* Enforcement Rule 104(c) provides that all filings with the Supreme Court under this Subpart 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 § 85.12 adopted December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended September 23, 1995, effective September 23, 1995, 25 Pa.B. 3967; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial pages (312756) to (312757).

§ 85.13. Verification by respondent-attorneys.

Every pleading or response to a letter requesting statement of position under § 87.7(b) of these rules submitted by or on behalf of a respondent-attorney in any proceeding under these rules that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon the respondent-attorney's personal knowledge or information and belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information and belief as to the remainder.

Source

The provisions of this § 85.13 adopted July 13, 2001, effective immediately, 31 Pa.B. 3731.

[Next page is 87-1.]

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