

CHAPTER 89. FORMAL PROCEEDINGS

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GENERAL MATTERS

§ 89.1. Construction of chapter.

(a) *General rule.* This chapter is promulgated for the purpose of assisting the Office of Disciplinary Counsel, the respondent-attorney and the Board to develop

the facts relating to, and to reach a just and proper determination of, grievances brought to the attention of the Board. The Board recognizes the temptation in disciplinary matters to raise procedural defenses where substantive defenses would be unavailing and, therefore, the Board will not hold action of a hearing committee, hearing committee member or special master invalid by reason of any nonprejudicial irregularity, or for any error not resulting in a miscarriage of justice.

(b) *Relationship to informal proceedings.* The filing of a petition for discipline under this chapter shall be conclusive evidence that all conditions precedent thereto under Chapter 87 (relating to investigations and informal proceedings) have been satisfied. Failure to comply with any requirement of Chapter 87 shall not affect the validity of proceedings under this chapter and no proceeding or other matter under Chapter 87 shall be an issue in formal proceedings under this chapter.

Source

The provisions of this § 89.1 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (198369) to (198370).

§ 89.2. Equity procedure to apply.

Except where inconsistent with these rules, formal proceedings before hearing committees, special masters and the Board shall conform generally to the practice in actions in equity under the Pennsylvania Rules of Civil Procedure.

Source

The provisions of this § 89.2 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143974).

§ 89.3. Filings generally.

(a) *General rule.* The filing of pleadings, briefs and other documents in connection with a formal proceeding under these rules shall be as follows:

(1) Except as otherwise requested by the Office of the Secretary, at the time any pleading or other document is filed in a formal proceeding that is not at the time in the hands of a hearing committee, there shall be furnished to the Office of the Secretary an original and three conformed copies thereof, including all exhibits, if any.

(2) Except as otherwise provided by these rules in the case of briefs, at the time any document is filed in a formal proceeding that is at the time in the hands of a hearing committee, there shall be furnished to the hearing committee an original and three conformed copies thereof, including all exhibits, if any, and one conformed copy with exhibits, if any, shall be filed with the Office of the Secretary.

(3) Except as otherwise provided by these rules in the case of briefs, at the time any document is filed in a formal proceeding that is at the time in the hands of a special master, there shall be furnished to the special master an

original and one conformed copy thereof, including all exhibits, if any, and one conformed copy with exhibits, if any, shall be filed with the Office of the Secretary.

(4) Notwithstanding paragraphs (2) and 3, it shall not be necessary to file with the Office of the Secretary a copy of any prepared testimony or documentary exhibits submitted in connection with a hearing.

(5) Briefs shall be filed in accordance with § 89.164 (relating to filing and service of briefs).

(b) *Timely filing required.* Pleadings, briefs or other documents in formal proceedings required or permitted to be filed under these rules must be received for filing at the Office of the Secretary within the time limits, if any, for such filing. The date of receipt by the Office of the Secretary and not the date of deposit in the mails is determinative.

(c) *Copies furnished to hearing committee members.* Where copies of pleadings, briefs or other documents are furnished to members of a hearing committee, each member shall retain possession of one complete set of papers and, following conclusion of the work of the committee with respect to a particular proceeding, each such member shall independently transmit his or her set of papers to the Office of the Secretary.

(d) *Papers of special masters.* Following conclusion of his or her work with respect to a particular proceeding, a special master shall transmit his or her papers regarding the proceeding to the Office of the Secretary.

Source

The provisions of this § 89.3 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial pages (143974) to (143975).

§ 89.4. Representation of respondent-attorney.

(a) *Appearance in propria persona.* When a respondent-attorney appears pro se in a formal proceeding such attorney shall file with the Office of the Secretary, with proof of service of a copy upon the Office of Disciplinary Counsel, an address at which any notice or other written communication required to be served upon such attorney may be sent.

(b) *Representation of respondent by counsel.* When a respondent-attorney is represented by counsel in a formal proceeding counsel shall file with the Office of the Secretary, with proof of service of a copy upon the Office of Disciplinary Counsel, a written notice of such appearance, which shall state the name, address and telephone number of such counsel, the name and address of the respondent-attorney on whose behalf such counsel appears, and the caption and docket number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent-attorney may be sent to the counsel of record for such respondent-attorney at the stated address of the

counsel in lieu of transmission to the respondent-attorney. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the respondent-attorney shall also be served upon or furnished to such counsel (or one of such counsel if the respondent-attorney is represented by more than one counsel) in the same manner as prescribed for the respondent-attorney, notwithstanding the fact that such communication may be furnished directly to the respondent-attorney.

(c) *Restrictions on representation.* Members of the Board, partners or employes of any firm in which a member of the Board practices, hearing committee members and special masters shall not appear as counsel for a respondent-attorney.

Source

The provisions of this § 89.4 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (198371) to (198372).

§ 89.5. Format of pleadings and documents.

(a) *In general.* Pleadings and documents other than exhibits filed in formal proceedings shall be in a typeface not less than 10-points, on unglazed paper 8 1/2 inches wide by 11 inches long and with margins of at least 1 inch. The text shall be double-spaced except for indented quotations. Pleadings and documents other than correspondence shall be bound in a manner that may be taken apart easily.

(b) *Incorporation by reference.* Any document on file with the Board in a formal proceeding may, subject to the restrictions of Chapter 93 Subchapter F (relating to confidentiality), be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another document which incorporates it by reference.

(c) *Identification.* Pleadings or other documents filed in a formal proceeding shall set forth:

- (1) The caption and docket number of the proceeding.
- (2) A brief description title of the pleading or document.
- (3) The name of the agency or person in whose behalf the filing is made.

Source

The provisions of this § 89.5 adopted January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial pages (309900) to (309901).

§ 89.6. Execution.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original copy of each pleading or other document shall be signed in ink by

the party in interest, or by counsel for such party, and shall show the office, post office address and telephone number of such party or counsel. All other copies filed shall be fully conformed thereto.

(b) *Effect.* The signature of the person subscribing any document filed in a formal proceeding constitutes a certificate by such individual that the subscriber has read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, the subscriber believes them to be true.

(c) *Penalty.* All statements of fact in pleadings or other documents filed in a formal proceeding are subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), and it shall not be necessary to verify under oath any such document.

(d) *Cross reference.* See § 85.13 (relating to verification by respondent-attorneys).

Source

The provisions of this § 89.6 amended July 13, 2001, effective immediately, 31 Pa.B. 3731. Immediately preceding text appears at serial page (198373).

§ 89.7. Continuances.

(a) *Avoidance of delay.* All formal proceedings under these rules shall be as expeditious as possible, but the failure of the Office of the Secretary or the Board to comply with any of the procedural time periods in these rules shall not result in the dismissal of a petition for discipline or a lessening of the charges set forth therein. Only the Board Chair may extend the time for hearing or grant any other extension of time in a formal proceeding.

(b) *Notice to other tribunals.* Upon receipt of notice fixing a date in connection with a formal proceeding (including a hearing date before a hearing committee or special master or oral argument before the Board) or the date of a meeting of the Board, any involved person within 48 hours thereafter shall deliver written notice (which shall not identify the respondent-attorney) of the fixing of such date to the clerk, prothonotary, court administrator, chairman or other appropriate administrative officer of any court, administrative agency or other body with which a conflict might reasonably arise, and shall file a copy of such notice with the Office of the Secretary.

(c) *Application for continuance.* An application for continuance of a hearing shall be made either in writing or on the record at the hearing and shall set forth the basis for the application and the facts supporting it. The application shall be addressed to the chair of the hearing committee or the special master conducting the hearing, who may deny it or recommend its approval to the Board Chair. A denial by the chair of a hearing committee or special master may be reviewed by the Board Chair. A continuance of a hearing other than adjournment to a day cer-

tain not more than 15 days hence shall not be granted by a hearing committee or special master without the concurrence of the Board Chair.

(d) *Grounds for continuances.* Enforcement Rule 208(i) provides that all formal proceedings under this chapter be conducted as expeditiously as possible; that ordinarily the engagement of an involved person will be recognized as a basis for continuance of a formal proceeding or meeting of the Board only where the involved person is actually engaged before an appellate court of this Commonwealth or a court of the United States; and that engagement of an involved person 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.

(e) *Definition.* As used in this section, the term “involved person” includes a member of the Board, a hearing committee member assigned to act on any aspect of the matter, a special master assigned to the matter and counsel for the respondent-attorney, as well as the respondent-attorney.

Source

The provisions of this § 89.7 amended through May 18, 1979, effective May 26, 1979, 9 Pa.B. 1665; amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; 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. Immediately preceding text appears at serial pages (281369) to (281370).

SERVICE OF DOCUMENTS

§ 89.21. Service by the Board.

Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be served by the Office of the Secretary by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at the address of record of such person. When service is not accomplished by mail, personal service may be effected by any one duly authorized by the Office of the Secretary in the manner provided in 231 Pa. Code Rule 1504 (relating to service of process in actions in equity).

§ 89.22. Service by a participant.

All pleadings, briefs and other documents, filed in formal proceedings, when filed or tendered to the Board for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy to each participant.

Source

The provisions of this § 89.22 amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2335. Immediately preceding text appears at serial page (147011).

§ 89.23. Effect of service upon counsel.

When any participant has appeared by counsel, service upon such counsel shall be deemed service upon the participant as provided in § 89.4(b) (relating to representation by respondent-attorney) and separate service on the party may be omitted as provided in such subsection.

§ 89.24. Date of service.

The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

§ 89.25. Proof of service.

There shall accompany and be attached to the original of each pleading or other document filed with the Board, when service is required to be made by the parties, a certificate of service in the form prescribed by § 89.26 (relating to form of certificate of service). All other copies filed shall be fully conformed thereto.

§ 89.26. Form of certificate of service.

I hereby certify that I have this day served by _____ (indicate method of service) _____ the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code § 89.22 (relating to service by a participant).

Dated this _____ day of _____, 19__.

(Signature)

Of counsel for

§ 89.27. Service upon Disciplinary Counsel.

Whenever any provision of these rules refers to service of any pleading, petition or other document upon Disciplinary Counsel, such service shall be made by, and these rules shall be deemed to require, service of the pleading, petition or other document in accordance with this subchapter separately upon both the Office of the Secretary and Disciplinary Counsel.

Source

The provisions of this § 89.27 reserved May 17, 1991, effective May 18, 1991, 21 Pa.B. 2335; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 730. Immediately preceding text appears at serial page (157310).

AMENDMENT OR WITHDRAWAL OF PLEADINGS**§ 89.31. Amendments of pleadings.**

No amendment of any petition for discipline or other pleading may be made except on leave granted by the Board Chairman or the hearing committee or special master before which the matter is then pending.

Source

The provisions of this § 89.31 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143980).

§ 89.32. Withdrawal of petition for discipline.

(a) *General rule.* Chief Disciplinary Counsel may at any stage of the proceedings apply for leave to withdraw a petition for discipline when it shall appear that it was improvidently filed. The application shall be set forth on Form DB-44 (Application for Leave to Withdraw Petition for Discipline), shall set forth briefly the grounds relied upon by the Office of Disciplinary Counsel for recommending withdrawal, and shall be filed with the Office of the Secretary.

(b) *Action by Board.* The office of the Secretary shall transmit the Form DB-44, any answer thereto, and related file to a member of the Board designated by the chairman, who shall consider and act upon the application on behalf of the Board. The Office of the Secretary shall notify the parties of the action taken by the Board.

Subchapter B. INSTITUTION OF PROCEEDINGS

Sec.

- 89.51. Grounds for institution of formal proceedings.
- 89.52. Petition for discipline.
- 89.53. Service of petition on respondent-attorney.
- 89.54. Answer.
- 89.55. No other pleadings.
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§ 89.51. Grounds for institution of formal proceedings.

The Office of Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under § 89.52 (relating to petition for discipline) in either of the following cases:

- (1) Pursuant to a referral from the Supreme Court under § 91.35(a) (relating to institution of formal proceedings upon conviction of serious crime) following the conviction of the respondent-attorney for a crime. See Chapter 91 Subchapter B (relating to attorneys convicted of crimes).

(2) Pursuant to a determination to institute formal proceedings made under Chapter 87 (relating to investigations and informal proceedings).

Source

The provisions of this § 89.51 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended April 21, 1989, effective April 22, 1989, 19 Pa.B. 1719. Immediately preceding text appears at serial page (83163).

§ 89.52. Petition for discipline.

(a) *Caption.* A petition for discipline shall be captioned as follows:

**BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT
OF PENNSYLVANIA**

Office of Disciplinary Counsel,	:	
Petitioner	:	Docket
vs.	:	
James Roe,	:	No.
Respondent	:	
	:	

(b) *Contents.* Enforcement Rule 208(b)(1) provides that a petition for discipline shall set forth with specificity the charges of misconduct against the respondent-attorney. The petition shall set forth the Disciplinary Rules or Enforcement Rules alleged to have been violated.

(c) *Prayer for relief.* A petition for discipline may contain a specific prayer for relief or may contain a general prayer for such disciplinary action as may be just and proper in the circumstances.

§ 89.53. Service of petition on respondent-attorney.

Enforcement Rule 208(b)(2) provides that a copy of the petition for discipline shall be personally served upon the respondent-attorney. Service shall be effected by the Office of Disciplinary Counsel. The service copy of the petition shall be endorsed with a notice to plead within 20 days after service of the petition.

Source

The provisions of this § 89.53 amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948. Immediately preceding text appears at serial page (198377).

§ 89.54. Answer.

(a) *General rule.* Enforcement Rule 208(b)(3) provides that within 20 days after service of the petition, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. (See also subsection (d) of this section.) Such answer shall be filed in the Office of the Secretary. The respondent-attorney and Disciplinary Counsel may stipulate to only one extension, not to exceed 20 days, of the 20 day period in which to file the answer, which stipulation shall be filed in the Office of the Secretary.

(b) *Contents of answer.* All answers shall be in writing, and so drawn as fully and completely to advise the participants and the Board as to the nature of the defense. They shall admit or deny specifically and in detail each material allegation of the petition and state clearly and concisely the facts and matters of law relied upon.

(c) *Request to be heard in mitigation.* The respondent-attorney may include in the answer a request that a hearing be held on the issue of mitigation.

(d) *Effect of failure to answer.* Enforcement Rule 208(b)(3) provides any factual allegation that is not timely answered shall be deemed admitted.

Source

The provisions of this § 89.54 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948. Immediately preceding text appears at serial page (198378).

§ 89.55. No other pleadings.

Pleadings shall be limited to a petition for discipline (or for reinstatement) and answer thereto.

§ 89.56. Assignment for hearing.

(a) *General rule.* Enforcement Rule 208(b)(4) provides that following 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. The Office of the Secretary shall transmit copies of the file of the Board by means of Form DB-9 (Reference for Disciplinary Hearing) to the members of the hearing committee appointed to hear the matter or a special master in the appropriate disciplinary district not later than five days after the date on which the answer of the respondent-attorney is due under § 89.54(a) (relating to answer).

(b) *Composition of committee.* The Secretary of the Board shall appoint the members of the hearing committee to which the matter is assigned as provided by § 93.81(c) (relating to hearing committees). As provided by § 93.86 (relating to disqualification of reviewing member to sit on hearing in same matter), the hearing committee shall not include the hearing committee member who passed upon Disciplinary Counsel's recommended disposition of the matter. The Secretary shall also designate which member of the hearing committee will conduct the prehearing conference.

Source

The provisions of this § 89.56 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (302914) and (293525).

§ 89.57. Scheduling of hearing and prehearing conference.

The date, time and place of hearing on a petition for discipline shall be scheduled by the Office of the Secretary at the time the members of the hearing committee are appointed. The date fixed for the hearing shall not be later than 90 days

after the file is transmitted to a hearing committee under § 89.56 (relating to assignment for hearing), unless an extension has been granted by the Board Chair at the request of any party. At the time that the hearing is scheduled, the Office of the Secretary shall also schedule a prehearing conference for a date not less than 30 days before the scheduled date of the hearing.

Source

The provisions of this § 89.57 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; 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 October 18, 2002, effective immediately, 32 Pa.B. 5175; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial page (293525).

§ 89.58. Notice of hearing and prehearing conference.

The Office of the Secretary shall serve or cause to be served notice of the hearing and prehearing conference required by § 89.57 (relating to scheduling of hearing and prehearing conference) by means of Form DB-34 (Notice of Hearing and Prehearing Conference) upon the respondent-attorney, at least seven days in advance of the date fixed for the prehearing conference. The notice shall indicate the dates, times and places of the prehearing conference and the hearing and shall state that the respondent-attorney is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in the respondent-attorney's own behalf. A copy of the notice shall at the same time be transmitted to staff counsel. See § 89.7(b) (relating to continuances).

Source

The provisions of this § 89.58 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended December 7, 1990, effective immediately, 20 Pa.B. 6042; amended October 18, 2002, effective immediately, 32 Pa.B. 5175. Immediately preceding text appears at serial page (198379).

Subchapter C. HEARING PROCEDURES

CONFIDENTIALITY

Sec.
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CONFIDENTIALITY

§ 89.65. Proceedings confidential.

Proceedings before a hearing committee or special master shall be governed by Chapter 93 Subchapter F (relating to confidentiality).

Source

The provisions of this § 89.65 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143985).

PREHEARING CONFERENCES

§ 89.71. Conferences to expedite proceedings.

In order to provide opportunity for the submission and consideration of facts, arguments, offers for settlement of any of the issues in a proceeding, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

Source

The provisions of this § 89.71 amended through May 18, 1979, effective May 26, 1979, 9 Pa.B. 1665. Immediately preceding text appears at serial page (31723).

§ 89.72. Subjects which may be considered at conferences to expedite hearings.

At the prehearing conference required by § 89.57 (relating to scheduling of hearing and prehearing conference) and any other conferences which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement permitted under § 89.71 (relating to conferences to expedite proceedings) and any applications for protective orders under § 93.104 (relating to protective orders), the possibility of the following:

- (1) The simplification of the issues.
- (2) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (3) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(4) The limitation of the number of witnesses and the identification of expert witnesses. The member of a hearing committee presiding at a conference may order the parties to exchange the names and addresses of all expert witnesses and to provide the opposing party with copies of all expert reports. The order may provide that failure to comply with it shall have the consequences described in § 89.93(c) (relating to exclusion of evidence).

(5) The discovery or production of data.

(6) Such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

Source

The provisions of this § 89.72 amended through May 18, 1979, effective May 26, 1979, 9 Pa.B. 1665; amended December 7, 1990, effective immediately, 20 Pa.B. 6042; amended August 18, 1995, effective immediately, 25 Pa.B. 3335; amended October 18, 2002, effective immediately, 32 Pa.B. 5175; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial page (309908).

§ 89.73. Initiation of conferences.

(a) *General rule.* The hearing committee or special master, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the respondent-attorney and staff counsel to appear thereat to consider any or all of the matters enumerated in § 89.72 (relating to subjects which may be considered at conferences to expedite hearings). Due notice of the time and place of such conference shall be given to the respondent-attorney and staff counsel. Where a proceeding is in the hands of a hearing committee, the conference may be conducted by the chair of the hearing committee or by a single senior or experienced hearing committee member designated in writing by the chair.

(b) *Preparation for and action at conference.* All participants shall attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable.

Source

The provisions of this § 89.73 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. Immediately preceding text appears at serial pages (293528) to (293529).

§ 89.74. Authority of hearing committee member or special master at conferences.

(a) *General rule.* The senior or experienced hearing committee member presiding at any conference may dispose of by ruling, irrespective of the consent of the participants, any procedural matters which the chair of the committee is authorized to rule upon during the course of the proceeding, and which it appears may appropriately and usefully be disposed of at that stage. Where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, such advance distribution by a prescribed date may be directed at the discretion of the presiding hearing committee member. The presiding hearing committee member may also order the exchange of the names and addresses of expert witnesses and copies of all expert reports. An order for the distribution of exhibits and written testimony or the identification of expert witnesses and exchange of expert reports shall be made with due regard for the convenience and necessity of the respondent-attorney and staff counsel, and may provide that failure to comply with it shall have the consequences described in § 89.93(c) (relating to exclusion of evidence). The rulings of the presiding hearing committee member made at a conference shall control the subsequent course of the hearing, unless modified for good cause shown.

(b) *Special masters.* A special master may exercise at a conference all of the powers granted to a presiding hearing committee member by subsection (a).

Source

The provisions of this § 89.74 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended August 18, 1995, effective immediately, 25 Pa.B. 3335; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial page (302915).

HEARING**§ 89.91. Appearances.**

The hearing committee or special master shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

Source

The provisions of this § 89.91 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143987).

§ 89.92. Order of procedure.

(a) *Disciplinary proceedings.* In proceedings upon a petition for discipline the Office of Disciplinary Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence.

(b) *Reinstatement proceedings.* In proceedings upon a petition for reinstatement the respondent-attorney shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence.

§ 89.93. Presentation by the parties.

(a) *General rule.* The respondent-attorney and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) *Objections.* When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly, if so requested by the hearing committee or special master, and may be stated briefly if no such request is made. Formal exceptions are unnecessary and shall not be taken to procedural rulings.

(c) *Exclusion of expert evidence.* The hearing committee or special master may exclude the introduction of expert testimony or reports as to which a party has failed to comply with an order under §§ 89.72(4) (relating to subjects which may be considered at conferences to expedite hearings) or 89.74(a) (relating to authority of hearing committee member or special master at conferences).

(d) *Exclusion of factual evidence.* Enforcement Rule 208(b)(4) provides that 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. See § 89.54(d) (relating to effect of failure to answer).

Source

The provisions of this § 89.93 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended August 18, 1995, effective immediately, 25 Pa.B. 3335; amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948. Immediately preceding text appears at serial page (198384).

§ 89.94. Limiting number of witnesses.

The hearing committee or special master may limit appropriately the number of witnesses who may be heard upon any issue to eliminate unduly repetitious or cumulative evidence.

Source

The provisions of this § 89.94 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143987).

§ 89.95. Additional evidence.

At the hearing, the hearing committee or special master may, if deemed advisable, authorize any participant to file specific documentary evidence as a part of the record within a fixed time, expiring not less than ten days before the date fixed for filing and serving briefs. Any post-hearing document permitted or required by these rules to be filed of record shall become a part of the record.

Source

The provisions of this § 89.95 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143987).

TRANSCRIPT**§ 89.101. Recording of proceedings.**

Hearings shall be reported by an official reporter designated by the Office of the Secretary and except as provided in § 89.181 (relating to abbreviated procedure), a transcript of such report shall be a part of the record and the sole official transcript of the proceeding. Such transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed on the record by the hearing committee or special master. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in § 89.95 (relating to additional evidence) or changes in the transcript as provided in § 89.102 (relating to transcript corrections). Oral argument, if any, made pursuant to § 89.161 (relating to oral argument) shall not be included in the transcript of the hearing or become a part of the record unless so requested by a party after completion of the oral argument.

Source

The provisions of this § 89.101 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended May 27, 1994, effective immediately, 24 Pa.B. 2693. Immediately preceding text appears at serial page (147022).

§ 89.102. Transcript corrections.

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the hearing committee, at any time during the hearing or after the close of the hearing, as may be permitted by the hearing committee, but not less than ten days in advance of the time fixed for filing briefs. The hearing committee may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

Source

The provisions of this § 89.102 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143988).

§ 89.103. Copies of transcripts.

The Board will cause to be made a stenographic record of all hearings and such copies of the transcript thereof as it requires for its own purposes. A respondent-attorney desiring copies of such transcript may purchase such copies from the

official reporter. Any witness may purchase from the official reporter a copy of the transcript, or any part thereof, relating to the testimony of such witness.

EVIDENCE AND WITNESSES

§ 89.121. Oral examination.

Witnesses shall be examined orally unless the testimony is taken by deposition as provided in §§ 91.11—91.18 (relating to depositions) or the facts are stipulated in the manner provided in § 89.72 (relating to subjects which may be considered at conferences to expedite hearings) or in § 89.131 (relating to presentation and effect of stipulations). Pursuant to Enforcement Rule 213(e), witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

§ 89.122. Fees of witnesses.

Witnesses subpoenaed by the Office of Disciplinary Counsel shall be paid the same fees and mileage as are paid for like services in the courts of common pleas. Witnesses subpoenaed at the instance of a respondent-attorney shall be paid the same fees by the respondent-attorney at whose instance the witness is subpoenaed.

§ 89.123. Evidence by persons associated with Board.

Members and employes of the Board, hearing committee members and special masters shall not testify as a character witness in any proceeding under these rules.

Source

The provisions of this § 89.123 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial page (198386).

STIPULATIONS

§ 89.131. Presentation and effect of stipulations.

Independently of the orders or rulings issued as provided by § 89.72 (relating to subjects which may be considered at conferences to expedite hearings) the participants may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the participants with respect to the matters therein stipulated.

EVIDENCE GENERALLY**§ 89.141. Admissibility of evidence.**

(a) *General rule.* In any proceeding admissibility of evidence shall be governed by the rules of evidence observed by the courts of common pleas of this Commonwealth in nonjury civil matters at the time of the hearing.

(b) *Pleadings.* The petition for discipline and answer thereto, and similar formal documents upon which a hearing is fixed shall, without further action, be considered as parts of the record, but in no event shall pleadings, or any part thereof, be considered as evidence of any fact other than that of the filing thereof unless offered and received in evidence in accordance with these rules.

Source

The provisions of this § 89.141 amended through May 18, 1979, effective May 26, 1979, 9 Pa.B. 1665. Immediately preceding text appears at serial page (31728).

§ 89.142. Reception and ruling on evidence.

The hearing committee or special master shall rule on the admissibility of all evidence. The number of witnesses to be heard on any issue may be limited appropriately as provided in § 89.94 (relating to limiting number of witnesses).

Source

The provisions of this § 89.142 amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143990).

§ 89.143. Form and size of documentary evidence.

Wherever practicable, all exhibits of a documentary character received in evidence shall be on paper of good quality and so prepared as to be plainly legible and durable, and shall conform to the requirements of § 89.5(a) (relating to format of pleadings and documents) whenever practicable.

Source

The provisions of this § 89.143 amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial page (198387).

§ 89.144. Copies to participants.

Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the participants present at the hearing. In the case of a hearing before a hearing committee, three copies of each exhibit of documentary character shall be furnished for the use of the hearing committee. In the case of a hearing before a special master, one copy of each exhibit of documentary character shall be furnished for the use of the special master.

Source

The provisions of this § 89.144 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143990).

EVIDENCE ON TYPE OF DISCIPLINE**§ 89.151. Separate consideration of evidence relevant to type of discipline.**

(a) *General rule.* The receipt of evidence which is relevant solely on the issue of the type of discipline to be imposed shall be deferred until after the hearing committee or special master has found that the evidence establishes a prima facie violation of at least one of the disciplinary rules or enforcement rules alleged in the petition for discipline to have been violated. However, the hearing committee or special master need not specify the rule or rules found to have been violated before proceeding with the receipt of evidence under this rule.

(b) *Type of evidence desired.* While the participants may offer any evidence which is relevant and material on the issue of the type of discipline to be imposed, experience has shown that information concerning the respondent-attorney on the following subjects will be particularly helpful to the Board:

- (1) Address, age and residence.
- (2) Name, address, age and residence and relationship of dependents.
- (3) Schools attended and degrees obtained.
- (4) Date of admission in each jurisdiction to which admitted, and general history of the occupation of the respondent-attorney, with the names of all partners, associates in business and employers, if any, the dates and duration of all such relationships and employments during at least the preceding ten years.
- (5) If during the period covered by the response to paragraph (4) the respondent-attorney was, while admitted to the practice of law, also engaged in any other occupation, the approximate number of hours per week devoted to each type of occupation and the approximate proportion of income derived therefrom, stated separately for each period during which the information materially differs from such information applicable to other periods.
- (6) In cases involving charges of mishandling or misuse of funds of clients or others, a financial net worth statement of respondent-attorney summarizing assets and liabilities.
- (7) A statement showing the dates, general nature and final disposition of every civil action during at least the preceding ten years in which the respondent-attorney was or is a party defendant and which placed in issue his or her conduct or competency or charged a violation of any disciplinary rule.
- (8) A statement showing the dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of the respondent-attorney during the preceding ten years.

(9) A statement of every disciplinary proceeding or procedure of inquiry concerning the standing of the respondent-attorney as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license or discipline of the respondent-attorney; and as to each, the dates, facts and disposition thereof, except that no evidence shall be received of proceedings and dispositions under these rules where the official records thereof are under § 93.104(d) (relating to restrictions on available information) not available for use against the respondent-attorney.

(10) Any history of substance abuse by the respondent-attorney, and any rehabilitation programs currently or previously participated in by the respondent-attorney.

Official Note: Where a respondent-attorney seeks to be placed on probation under § 89.291 (relating to probation), evidence under paragraph (b)(10) will be particularly important. The respondent-attorney should be prepared to offer evidence to assist the Board in fixing the conditions of probation, including the selection of a recognized or accredited residential treatment or rehabilitation program in which the respondent-attorney may be required to participate.

(c) *Responsibility of hearing committee or special master.* Where the hearing committee or special master concludes that the presentation of the participants does not appear to have developed an adequate background picture of the respondent-attorney the hearing committee or special master should consider the desirability of augmenting the record through appropriate questioning. The hearing committee or special master shall, in appropriate cases, make a finding on whether restitution has been made.

(d) *Procedure.* The hearing committee or special master may make appropriate provision for the timing of the receipt of evidence under this rule, *e.g.* by:

(1) immediately proceeding to the reception of evidence after announcement of a general adverse finding on the issue of misconduct in the manner provided by subsection (a).

(2) receiving written submissions by the participants within a fixed time (not to exceed 10 days) after service of findings and conclusions on the issue of misconduct, or

(3) reconvening the hearing where necessary to resolve a factual issue relevant to the type of discipline to be imposed.

The 60-day period of § 89.171 (relating to filing of report) runs from the conclusion of the hearing or briefing, as the case may be, on the issue of alleged misconduct and is not extended by the time required for any proceedings under this section.

Source

The provisions of this § 89.151 amended April 8, 1983, effective April 9, 1983, 13 Pa.B. 1244; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 243; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial pages (198388) to (198390).

ORAL ARGUMENT AND BRIEFS**§ 89.161. Oral argument.**

At the close of the taking of testimony in each proceeding the hearing committee or special master may hear oral argument on the issues in the proceeding. As provided by § 89.101 (relating to recording of proceedings) oral argument shall be excluded from the transcript and shall not become a part of the record. No other oral argument shall be heard by a hearing committee or special master.

Source

The provisions of this § 89.161 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143993).

§ 89.162. Time for filing of briefs.

(a) *General rule.* Unless waived by the participants at the close of the taking of testimony, or pursuant to § 89.181 (relating to abbreviated procedure), briefs may be filed with the hearing committee or special master and served pursuant to § 89.22 (relating to service by a participant) as follows:

- (1) By staff counsel within 20 days after the filing of the transcript of the hearing.
- (2) By the respondent-attorney within 20 days after the filing of the brief of staff counsel.

(b) *Reinstatement proceedings.* In reinstatement proceedings the order of the filing of briefs shall be the reverse of the order set forth in subsection (a).

Source

The provisions of this § 89.162 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143993).

§ 89.163. Content and form of briefs.

- (a) *General rule.* Briefs shall contain:
- (1) A concise statement of the case.
 - (2) An abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.
 - (3) Proposed findings and conclusions together with the reasons and authorities therefor, separately stated.

(b) *Exhibits.* Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analysis of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain.

(c) *Length.* Briefs (exclusive of any cover, table of contents, table of citations or appendix) shall be limited to 30 pages in length, except that for good cause shown the limitation on length may be altered or waived with respect to a particular brief upon application to and order of the Chair of the hearing committee or the special master at least ten days before the time fixed for the filing of the brief.

Source

The provisions of this § 89.163 amended August 18, 1995, effective immediately, 25 Pa.B. 3335; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (198390) and (281371).

§ 89.164. Filing and service of briefs.

Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing, except by special permission of the hearing committee or special master. In the case of a formal proceeding that is in the hands of a hearing committee, one copy of each brief shall be served on each member of the committee and one copy shall be filed with the Office of the Secretary. In the case of a formal proceeding that is in the hands of a special master, two copies of each brief shall be served on the special master and one copy shall be filed with the Office of the Secretary. A hearing committee or special master may permit or direct the service of a different number of copies of a brief on the members of the hearing committee or special master.

Source

The provisions of this § 89.164 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended July 13, 2001, effective immediately, 31 Pa.B. 3731. Immediately preceding text appears at serial pages (143994) and (198391).

REPORT

§ 89.171. Filing of report.

Enforcement Rule 208(c) provides that unless waived in the manner provided in § 89.181 (relating to abbreviated procedure) 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 committee or special master. Such report shall be filed with the Office of the Secretary no later than 60 days after the conclusion of the hearing and submission of briefs, if any. Failure to file a report within the time prescribed by this section shall not affect the validity of the report when filed or of the proceedings generally.

Source

The provisions of this § 89.171 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143994).

§ 89.172. Contents of report.

(a) *General rule.* The report of the hearing committee or special master shall be accompanied by Form DB-10 (Transmittal of Report of Hearing) and shall set forth:

- (1) A brief summary, not to exceed one page, of the nature of the case, the ultimate issue or issues involved, and the conclusions and recommendations as to disposition of the hearing committee or special master.
- (2) A concise statement of the case, including a citation of each Disciplinary Rule alleged or found to have been violated by the respondent-attorney.
- (3) The rulings on admission of evidence and other procedural matters, which may be set forth by reference to the pages of the transcript wherein such rulings are recorded.
- (4) Findings of fact.
- (5) Discussion.
- (6) Conclusions of law.
- (7) Recommended disposition of the petition.

(b) *Copy of the record.* The report shall have annexed to it one complete copy of the record before the hearing committee or special master.

Source

The provisions of this § 89.172 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial pages (143994) to (143995).

§ 89.173. Report a part of the record.

The report of the hearing committee or special master and the record before the hearing committee or special master shall become a part of the record of the proceeding on file with the Office of the Secretary.

Source

The provisions of this § 89.173 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143995).

§ 89.174. Service of report.

The Office of the Secretary shall serve copies of the report of the hearing committee or special master upon the respondent-attorney and staff counsel.

Source

The provisions of this § 89.174 amended January 26, 1990, effective January 27, 1990, 20 Pa.B. 343; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143995).

ABBREVIATED PROCEDURE**§ 89.181. Abbreviated procedure.**

(a) *Scope.* Experience has shown that frequently at the conclusion of the hearings it obvious to all participants that no showing of misconduct has been made or there has been adequate proof of a violation of § 85.7 (relating to grounds for discipline) and that some form of private discipline would be appropriate. In such circumstances the cost and delay of the preparation of a formal transcript is unnecessary and the preparation of a detailed report as provided by § 89.172 (relating to contents of report) is an unnecessary and time-consuming burden on the hearing committee and others. Where the participants can stipulate to an acceptable determination the procedures of this section minimize cost, effort and time for all participants. This section may be applicable to combined reinstatement and disciplinary hearings conducted before a hearing committee pursuant to § 89.273(b)(4) (relating to combined hearings in reinstatement matters where formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney).

(b) *General rule.* The respondent-attorney and staff counsel in the manner provided by subsection (c), may agree to waive the preparation of a transcript and the filing of formal findings and recommendations. In such situations, unless the Board directs otherwise, the committee may submit to the Board a summary determination of the committee and stipulation of discipline.

(c) *Procedures.*

(1) Immediately after the conclusion of the hearing the members of the hearing committee shall, if practicable and if neither the respondent-attorney nor staff counsel object to proceeding under this section, temporarily recess the proceedings and meet in private to determine whether a finding of misconduct should be made.

(2) The Committee shall immediately reconvene the proceedings and announce their conclusion on the issue of misconduct.

(3) If a violation of § 85.7 has been found the hearing committee shall immediately:

- (i) receive evidence pursuant to § 89.151 (relating to separate consideration of evidence relevant to type of discipline);
- (ii) temporarily recess the proceedings;
- (iii) meet in private to determine the type of discipline which the committee will recommend to the Board; and
- (iv) reconvene the proceedings and announce the discipline which the committee will recommend to the Board.

(4) Immediately after announcing that a violation of § 85.7 has not been found or the discipline that the committee will recommend to the Board, as the case may be, the committee shall deliver to the participants Form DB-43 (Hear-

ing Committee Determination Under Abbreviated Procedure) setting forth the summary determination of the committee. The official reporter shall be directed by the hearing committee not to prepare a transcript until receipt from the committee of specific instructions to do so.

(5) The participants shall be conclusively deemed to have accepted the summary determination of, and (if a violation of § 85.7 has been found) to have stipulated that the Board shall impose the type of discipline recommended by, the committee unless either the respondent-attorney or staff counsel shall, within five days after receipt of the Form DB-43 as provided in paragraph (4), file a copy of such Form DB-43 with objections to the summary determination of the hearing committee indicated thereon.

(6) If a timely objection is made as provided in paragraph (5) the participants may file briefs, the official reporter shall be directed to prepare a transcript and the hearing committee shall submit to the Board formal findings and recommendations in the manner and within the time otherwise provided by these rules.

(7) If no timely objection is made no briefs shall be filed, no formal findings and recommendations shall be prepared by the hearing committee and the official reporter shall not prepare a transcript. The chair of the hearing committee shall, however, prepare and file a brief summary of the case, in the form of a letter to the Board, which summary ordinarily should not exceed two pages in length, and the record of the proceedings shall forthwith be transmitted to the Office of the Secretary which shall serve upon the respondent-attorney and staff counsel copies of the brief summary of the case filed by the chair of the hearing committee.

(8) Thereafter the Board shall:

(i) affirm the finding that no violation of § 85.7 has been shown and dismiss the proceeding;

(ii) impose or cause to be imposed the type of private discipline, stipulated by the participants; or

(iii) remand the record to the hearing committee with instructions to fix a briefing schedule and to proceed as provided in paragraph (6), if for any reason the type of discipline stipulated by the parties is not accepted by the Board.

(9) Where the proceeding is disposed of as provided by paragraph (8)(i) or (ii), the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

Source

The provisions of this § 89.181 amended through April 8, 1983, effective April 9, 1983, 13 Pa.B. 1244; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2332; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (309917) to (309918).

Subchapter D. ACTION BY BOARD AND SUPREME COURT

- Sec.
- 89.201. Review by Board.
 - 89.202. Content and form of briefs on exceptions.
 - 89.203. Action by Board.
 - 89.204. Dismissal of proceeding.
 - 89.205. Informal admonition or private reprimand following formal hearing.
 - 89.206. Transmission of record to Supreme Court.
 - 89.207. Review and action in the Supreme Court.
 - 89.208. Participation by the Board before the Supreme Court.
 - 89.209. Expenses of formal proceedings.

§ 89.201. Review by Board.

(a) *General rule.* Upon receipt of a report and recommendation from a hearing committee or special master, the Board shall, except as otherwise provided in this rule, set the dates for submission of briefs and for oral argument before the Board or a panel of at least three of its members designated by the Chairman.

(b) *Oral argument and briefs.* Enforcement Rule 208(d)(1) provides that 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, unless such right has been waived in the manner provided by these rules.

(c) *Waiver.* If neither the respondent-attorney nor the Office of Disciplinary Counsel objects to the findings and recommendations of the hearing committee or special master, oral argument and submission of briefs may be waived by stipulation, subject to approval by the Board. A participant will be conclusively deemed to have waived all objections to the findings and recommendations of the hearing committee or special master and to have stipulated to the waiver of oral argument and submission of briefs unless such participant files exceptions as provided in subsection (d).

(d) *Procedure to except to report of hearing committee or special master.* Any participant desiring to object to the findings and recommendations of a hearing committee or special master shall, within 20 days after the service of a copy of a report or such other time as may be fixed by the Board Chairman, file exceptions to the report or part thereof in a brief (designated "brief on exceptions"). "Briefs opposing exceptions" may be filed in response to briefs on exceptions within 20 days after the filing of briefs on exceptions or such other time as may be fixed by the Board Chairman. No further response will be entertained unless the Board, with or without motion, so orders.

(e) *Oral argument.* Unless otherwise ordered by the Board, oral argument shall be deemed waived unless expressly requested in a brief on exception or brief opposing exceptions.

(f) *Participation by reviewing members.* Enforcement Rule 208(d)(1) provides that members of the Board who have participated on a reviewing panel

under § 87.33 (relating to appeal by Office of Disciplinary Counsel for modification of recommendation) or § 87.34 (relating to review of recommendation of private reprimand) shall not participate in further consideration of the same matter or decision thereof on the merits under this section. A Board member who pursuant to § 89.32(b) (relating to withdrawal of petition for discipline) denied an application for leave to withdraw a petition for discipline shall not participate in the consideration of or decision on the merits of that matter.

Source

The provisions of this § 89.201 amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial pages (143997) to (143998).

§ 89.202. Content and form of briefs on exceptions.

(a) *Briefs on exceptions.*

(1) Briefs on exceptions shall contain:

- (i) A short statement of the case.
- (ii) A summary of the basic position of the party filing.
- (iii) The grounds upon which the exceptions rest.
- (iv) The argument in support of the exceptions with appropriate references to the record and legal authorities.

(2) There may also be included specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions.

(3) Exceptions to the form of recommended order shall specify the portions thereof to which exception is taken, and may set forth a form of order suggested in lieu of that recommended by the hearing committee or special master.

(b) *Briefs opposing exceptions.* Briefs opposing exceptions shall generally follow the same style prescribed for briefs on exceptions, but may omit a statement of the case if it was correctly stated in a brief on exceptions.

(c) *Length.* Briefs on exceptions and briefs opposing exceptions shall be self contained and limited to 30 pages in length, except that for good cause the limitation on length may be altered or waived for either class of briefs upon application to and order of the Board Chairman at least ten days before the time fixed for filing of the respective briefs.

(d) *Copies.* Eighteen copies of each brief shall be filed with the Office of the Secretary in addition to the copies served on the participants in the proceedings.

Source

The provisions of this § 89.202 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 13, 1991, effective November 16, 1991, 21 Pa.B. 5325. Immediately preceding text appears at serial pages (147033) to (147034).

§ 89.203. Action by Board.

Enforcement Rule 208(d)(2) provides that the Board shall either affirm or change in writing the recommendation of the hearing committee or special master within 60 days after the adjudication of the matter at a meeting of the Board.

Source

The provisions of this § 89.203 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (143999).

§ 89.204. Dismissal of proceeding.

Enforcement Rule 208(d)(2)(i) provides that in the event that the Board determines that a proceeding should be dismissed, it shall so notify the respondent-attorney. In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-11 (Notice of Dismissal of Formal Proceedings).

§ 89.205. Informal admonition or private reprimand following formal hearing.

(a) *General rule.* Enforcement Rule 208(d)(2)(ii) provides that 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 in person before Disciplinary Counsel for the purpose of receiving informal admonition or before the Board for the purpose of receiving private reprimand, in which case the Chairman shall deliver the private reprimand. In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12 (Notice to Appear for Admonition or Reprimand). The notice shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that wilful failure to appear before the Board or Disciplinary Counsel for private reprimand or informal admonition shall be an independent ground for discipline and that the Board and (when administering informal admonitions) Disciplinary Counsel are “tribunals” within the meaning of the Disciplinary Rules (see, e.g. DR 7-106(C)).

(b) *Taxation of expenses.* Enforcement Rule 208(g)(2) provides that 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, and that all expenses so taxed 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 taxable under this subsection shall be those prescribed by § 93.111 (relating to determination of reimbursable expenses).

(c) *Notice to appear.*

(1) In the event that the Board determines that the proceeding should be concluded by private reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12(FP) (Notice to Appear for Private Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for private reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. § 81.4 (relating to rules of professional conduct), Rules 3.3, 3.4(c) and 3.5).

(2) In the event that the Board determines that the proceeding should be concluded by informal admonition, the Office of Disciplinary Counsel shall notify the respondent-attorney and staff counsel by means of Form DB-12.1(FP) (Notice to Appear for Informal Admonition Following Formal Proceedings), which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before Disciplinary Counsel for informal admonition shall be an independent ground for discipline and that Disciplinary Counsel, when administering informal admonitions, constitutes a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. § 81.4, Rules 3.3, 3.4(c) and 3.5).

(3) The Office of the Secretary shall notify the respondent-attorney of the expenses of the proceeding which have been taxed under subsection (b) by means of Form DB-41 (Notice of Taxation of Expenses), which shall state that if the respondent-attorney fails to pay the taxed expenses on or before the date fixed for the appearance of the respondent-attorney before the Board or Disciplinary Counsel for private reprimand or informal admonition, action will be taken by the Board under § 93.112 (relating to failure to pay taxed expenses) which will result in the entry of an order transferring respondent-attorney to inactive status.

(d) *Appearance.* An attorney who is given notice to appear for informal admonition or private reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such informal admonition or private reprimand. A permanent record shall be made of the fact of and basis for such action as is taken. The fact of receipt of such admonition or reprimand shall not affect the good standing of the respondent attorney as an attorney and shall be kept confidential to the extent provided in Chapter 93 Subchapter F (relating to confidentiality).

(e) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear before Disciplinary Counsel for the purposes of informal admonition without good cause shall automatically convert the decision of the Board on informal admonition into one for private reprimand. The neglect or refusal of the respondent-attorney to appear before the Board for the purposes of private reprimand without good cause shall automatically convert the decision of the Board on private reprimand into a recommendation to the Supreme Court for censure,

and the Office of the Secretary shall notify the respondent-attorney and the Office of Disciplinary Counsel accordingly. The intention of a respondent-attorney to proceed further under subsection (d) shall not excuse the neglect or failure of the respondent-attorney to appear before the Board under this section.

(f) *Demand for Supreme Court review.*

(1) Enforcement Rule 208(d)(2)(iii) provides that a respondent-attorney who is unwilling to have the matter concluded by an informal admonition or private reprimand must file, within 30 days after notice of the determination of the Board, a notice of appeal in the Supreme Court.

(2) A respondent-attorney who objects to an order taxing expenses in connection with a matter concluded by informal admonition or private reprimand may file a petition for review of such order in the Supreme Court under 42 Pa.C.S. §§ 725(5) and 5105(a)(2) (relating to direct appeals from constitutional and judicial agencies and right to appellate review). See 210 Pa. Code Chapter 15 (relating to judicial review of governmental determinations) with respect to the time limits for seeking review and other applicable procedures.

Source

The provisions of this § 89.205 amended August 30, 1985, effective August 31, 1985, 15 Pa.B. 3080; amended January 15, 1988, effective April 1, 1988, 18 Pa.B. 242; amended December 7, 1990, effective immediately, 20 Pa.B. 6042; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial pages (198397) to (198399).

§ 89.206. Transmission of record to Supreme Court.

(a) *General rule.* Enforcement Rule 208(d)(2)(iii) provides that 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.

(b) *Procedure.* The Board Chairman shall file the record, the briefs on exceptions and the briefs opposing exceptions, if any, the finding and recommendations of the Board, and a statement of the Secretary of any expenses taxable under § 93.111 (relating to determination of reimbursable expenses) with the Supreme Court by means of Form DB-13 (Request for Supreme Court Action) and an appropriate letter of transmittal. Copies of such finding and recommendations, statement of taxable expenses, and letter of transmittal shall be served by the Office of the Secretary upon the participants.

Source

The provisions of this § 89.206 amended April 8, 1983, effective April 9, 1983, 13 Pa.B. 1244; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; 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 (198399) to (198400).

§ 89.207. Review and action in the Supreme Court.

(a) *General rule.* Enforcement Rule 208(e)(5) provides that the Supreme Court shall review the record, where appropriate consider oral argument, and enter an order. Enforcement Rule 208(a)(2)(iii) provides that 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.

(b) *Board recommendation of disbarment.* Enforcement Rule 208(e)(2) provides that in the event the Board recommends that the matter should be concluded by disbarment, the respondent-attorney may, within 20 days after service of the findings and recommendations of the Board under subsection (e), submit to the Supreme Court a request to present oral argument.

(c) *Board recommendations other than disbarment.* Enforcement Rule 208(e)(3) provides that in the event the Board recommends a sanction less than disbarment, and the Court, after consideration of the 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, such a rule shall be issued; that a copy of the rule shall be served on Disciplinary Counsel (see § 89.27 (relating to service upon Disciplinary Counsel)); that within 20 days after service of the rule either party may submit to the Supreme Court a response thereto; that within 10 days after service of a response, the other party may submit to the Supreme Court a reply thereto; and that respondent-attorney in such case shall have the absolute right upon request for oral argument.

(d) *Oral argument.* Enforcement Rule 208(e)(4) provides that, except as provided in subsections (b) and (c), the respondent-attorney will not be afforded the right of oral argument.

(e) *Service of papers.* Enforcement Rule 208(e)(1) provides that service of the findings and recommendations of the Board upon the respondent-attorney shall be governed by 210 Pa. Code Rules 121 and 122 (relating to filing and service and content and form of proof of service). See § 85.12 (relating to filings with the Supreme Court).

Source

The provisions of this § 89.207 adopted October 9, 1981, effective October 10, 1981, 11 Pa.B. 3500; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 730. Immediately preceding text appears at serial page (154516).

§ 89.208. Participation by the Board before the Supreme Court.

(a) *General rule.* In cases where Disciplinary Counsel elects to urge in the Supreme Court pursuant to § 93.63(b)(2) (relating to powers and duties of Office of Disciplinary Counsel) a position inconsistent with any finding or recommendation of the Board, the Board may obtain counsel, independent of the Office of Disciplinary Counsel, who shall seek to support before the Court the findings and recommendations of the Board.

(b) *Procedure.* Within 20 days after transmittal of the findings and recommendations of the Board to the Chief Justice of Pennsylvania pursuant to § 89.206(b) (relating to transmission of record to Supreme Court; confidentiality) or § 89.273(a)(5) (relating to procedures for reinstatement), Chief Disciplinary Counsel shall submit to the Board a memorandum describing any position contrary to the findings and recommendations of the Board which the Office of Disciplinary Counsel has elected to urge in the Supreme Court.

Source

The provisions of this § 89.208 adopted July 2, 1982, effective July 3, 1982, 12 Pa.B. 2021.

§ 89.209. Expenses of formal proceedings.

Enforcement Rule 208(g)(1) provides that 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, and that all expenses so taxed shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

Source

The provisions of this § 89.209 adopted April 8, 1983, effective April 9, 1983, 13 Pa.B. 1244; amended October 12, 1984, effective October 13, 1984, 14 Pa.B. 3749. Immediately preceding text appears at serial pages (81645) to (81646).

Subchapter E. REOPENING OF RECORD

Sec.

- 89.251. Reopening on application of party.
- 89.252. Reopening before filing of report.
- 89.253. Reopening by Board action.

§ 89.251. Reopening on application of party.

(a) *Petition to reopen.* At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, any participant in the proceeding may file with the hearing committee or special master, if before issuance by the hearing committee or special master of the report to the Board required by § 89.171

(relating to filing of report), otherwise with the Office of the Secretary, a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Responses.* Within ten days following the service of such petition, any other participant may file with the hearing committee or special master or the Office of the Secretary, an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

(c) *Action on petition.* As soon as practicable after the filing of responses to such petitions or default thereof, as the case may be, the hearing committee, special master or the Board will grant or deny such petition.

Source

The provisions of this § 89.251 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial pages (144004) to (144005).

§ 89.252. Reopening before filing of report.

At any time prior to the filing of the report to the Board required by § 89.171 (relating to filing of report) a hearing committee or special master, after notice to the participants, may reopen the proceeding for the reception of further evidence on its own motion, if the hearing committee or special master has reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

Source

The provisions of this § 89.252 amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009. Immediately preceding text appears at serial page (144005).

§ 89.253. Reopening by Board action.

At any time prior to the issuance by the Board of its decision in a proceeding the Board, after notice to the participants, may without motion reopen the proceeding and remand to a hearing committee or special master for the reception of further evidence, if the Board has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

**Subchapter F. REINSTATEMENT AND RESUMPTION
OF PRACTICE****REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS**

- Sec.
89.271. Reinstatement only by Court order.
89.272. Waiting period.
89.273. Procedures for reinstatement.
89.274. Notice of reinstatement proceedings.
89.275. Completion of questionnaire by petitioner-attorney.
89.276. Procedures before the Board.
89.277. Abbreviated reinstatement procedure.
89.278. Expenses of reinstatement proceedings.
89.279. Evidence of competency and learning in law.
89.280. Notice of reinstatement.

RESUMPTION OF PRACTICE

- 89.285. Resumption of practice by justices and judges.

§ 89.271. Reinstatement only by Court order.

Enforcement Rule 218(a) provides that an attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to Rule 218 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.

Official Note: Probation under § 89.291 (relating to probation) may be imposed in conjunction with a suspension which may be stayed in whole or in part. If probation is imposed in any particular case in conjunction with a suspension for more than one year that is not stayed and the probation runs for the full period of suspension unless violated, the probation will continue until the termination of any required reinstatement proceedings.

Source

The provisions of this § 89.271 amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 243; amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended March 1, 1991, effective March 2, 1991, 21 Pa.B. 827; amended April 12, 2002, effective immediately, 32 Pa.B. 1838; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (309919).

§ 89.272. Waiting period.

(a) *General rule.* Enforcement Rule 218(b) provides that 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 § 91.51 (relating to reciprocal discipline) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

(b) *Premature petitions.* Unless otherwise provided in an order of suspension or disbarment, the Board will not entertain a petition for reinstatement filed prior to the expiration of the period set forth in subsection (a), or more than nine months prior to the expiration of the term of suspension, as the case may be. The Board will also not entertain a petition for reinstatement filed before the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) or under § 89.278 (relating to expenses of reinstatement proceedings) with respect to any previous reinstatement proceeding and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

(c) *Second or subsequent petitions.* Where a petition for reinstatement has been finally denied, the Board, unless otherwise ordered by the Supreme Court in a specific case, will not entertain a second or subsequent petition for reinstatement until after the expiration of at least one year after the immediately preceding petition has been finally denied.

Source

The provisions of this § 89.272 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2333; amended April 26, 1996, effective immediately, 26 Pa.B. 1984; amended April 18, 1998, effective April 18, 1998, 28 Pa.B. 1834; amended July 24, 1998, effective immediately, 28 Pa.B. 3504. Immediately preceding text appears at serial pages (243509) to (243510).

§ 89.273. Procedures for reinstatement.

(a) Enforcement Rule 218(c) provides that 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.

Official Note: The Board will not treat a petition for reinstatement as properly filed for purposes of commencing the procedures set forth in this section unless and until the petition is accompanied by a completed reinstatement questionnaire as required by § 89.275 (relating to completion of questionnaire by petitioner-attorney).

(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 of the formerly admitted attorney. Upon receipt of the response, the Board shall refer the petition and response to a hearing committee appointed by the Office of the Secretary pursuant to § 93.81(c) (relating to 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 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. When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary counsel v. Keller*, 509 Pa. 573, 576, 506 A.2d 872, 875 (1986) and its progeny applies.

Official Note: The requirement that a hearing be scheduled “promptly” means that a hearing should ordinarily be held within 60 days after the response to the petition for reinstatement has been filed with the Board, unless the chair of the hearing committee extends that time for good cause shown.

(4) At 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, the entire record, and a statement of the Secretary of any expenses taxable under § 93.111 (relating to determination of reimbursable expenses), with the Supreme Court. See § 89.208 (relating to participation by the Board before 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 (see § 89.27 (relating to service upon 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 Enforcement Rule 218 will be considered without oral argument.

(b) Enforcement Rule 218(d) provides that 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 subsection (3) if the petition were to proceed to hearing under (4).

Official Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney under (b)(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 (b)(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 subsection (b). 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 paragraphs (a)(5) and (a)(6) of this section.

(6) Upon receipt of a certification filed by Disciplinary Counsel under paragraph (b)(2)(ii) of this section, 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 paragraph (b)(4) of this section.

(7) 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; the Chief Justice may delegate the processing and entry of orders under this paragraph (b)(7) to the Prothonotary.

(c) Enforcement Rule 218(e) provides that 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.

(d) *Attorneys suspended for less than one year.* Enforcement Rule 218(g) provides that:

(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 Chapter 91 Subchapter E (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 subsection 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.

(3) A verified statement may not be filed under paragraph (1) until the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

(e) *Attorneys on inactive status, retired status or administrative suspension for three years or less.* Enforcement Rule 218(h) provides that attorneys who have been on inactive status, retired status or administrative suspension for three years or less may be reinstated pursuant to § 93.145 (relating to administratively suspended attorneys) or § 93.146(b) (relating to reactivation) as appropriate. This subsection (e) does not apply to any attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.

Source

The provisions of this § 89.273 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2333; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 730; amended April 26, 1996, effective immediately, 26 Pa.B. 1984; amended July 13, 2001, effective immediately, 31 Pa.B. 3731; amended April 12, 2002, effective immediately, 32 Pa.B. 1838; amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (309920) to (309922).

§ 89.274. Notice of reinstatement proceedings.

(a) *General rule.* The Office of the Secretary shall forward a copy of the petition for reinstatement and Form DB-30 (Reference for Reinstatement Hearing) to:

- (1) The Office of Disciplinary Counsel.
- (2) The president judge of the court of common pleas of the judicial district in which the formerly admitted attorney practiced.
- (3) The chief judge of the United States district court for the district in which such attorney practiced.
- (4) The executive director of the bar association of the county in which such attorney practiced.
- (5) The Executive Director of the Pennsylvania Bar Association.
- (6) The Executive Director of the Lawyers Fund for Client Security.

(b) *Publication of notice.* The Office of the Secretary shall cause a notice to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced and in each county in Pennsylvania in which the formerly admitted attorney has resided since being disbarred or suspended for disciplinary reasons. The notice shall state and be confined to:

- (1) The name of such formerly admitted attorney.
- (2) That on or after a specified date (to be set forth in the notice) a hearing committee of the Board will consider a petition for reinstatement filed by such person.
- (3) The address of the district office of the Office of Disciplinary Counsel that is handling the reinstatement proceeding.

Source

The provisions of this § 89.274 amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2333; amended April 26, 1996, effective immediately, 26 Pa.B. 1984; amended July 13, 2001, effective immediately, 31 Pa.B. 3731; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (309923) and (281377).

§ 89.275. Completion of questionnaire by petitioner-attorney.

(a) *General rule.* If the petition for reinstatement does not have attached thereto a fully completed Form DB-36 (Reinstatement Questionnaire), the Office of the Secretary shall forward to the formerly admitted attorney four copies of

Form DB-36 which shall require such attorney to set forth fully and accurately the following information and such other information as the Office of Disciplinary Counsel may require:

- (1) Name, address, age and residence of the petitioner-attorney.
- (2) Name, address, age, residence, number and relationship of dependents of the petitioner-attorney.
- (3) If the formerly admitted attorney was disbarred or suspended for disciplinary reasons, the offense or misconduct upon which the disbarment or suspension was based, together with the date of the disbarment or suspension order and the caption and docket number of the proceeding in which entered. A certified copy of the disbarment or suspension order shall be attached to the questionnaire.
- (4) The names and addresses of all complaining witnesses in any proceedings which resulted in disbarment or suspension and the names of:
 - (i) the hearing committee of the Board which heard the evidence in the disciplinary proceedings; and
 - (ii) the trial judge and prosecuting attorney, if disbarment or suspension was based on conviction of a crime.
- (5) The nature in detail of the occupation of the petitioner-attorney during the period of disbarment, suspension, administrative suspension, retired status or inactive status with names of all partners, associates in business, and employers, if any, and dates and duration of all such business relationships and employments.
- (6) A statement showing the approximate monthly earnings and other income of the petitioner-attorney, and the sources from which all such earnings and income were derived during such period, or during the ten years preceding the filing of the petition for reinstatement, whichever is less.
- (7) A statement showing all residences maintained by the petitioner-attorney during the ten years preceding the filing of the petition for reinstatement, with the names and addresses of landlords, if any. The statement shall also indicate the county in which any such residence in Pennsylvania is located.
- (8) A statement showing all financial obligations of the petitioner-attorney at the date of the filing of the petition, together with the dates when such obligations were incurred and the names and addresses of all creditors.
- (9) A statement showing the dates, general nature and final disposition of every civil action during the period of disbarment, suspension or inactive status wherein the petitioner-attorney was either a party plaintiff or defendant or in which such attorney had or claimed an interest, together with dates of filing of complaints, titles of courts and causes and the names and addresses of all parties plaintiff and defendant, names and addresses of attorneys for said parties and of the trial judge, or judges, and names and addresses of all witnesses who testified in such actions.
- (10) A statement showing dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of the petitioner-attorney dur-

ing the period of disbarment, suspension, administrative suspension, retired status or inactive status for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges.

(11) A statement as to whether or not any applications were made during such period for a license requiring proof of good character for its procurement; and as to each such application, the dates, the name and address of the authority to whom it was addressed and the disposition thereof.

(12) A statement of any procedure of inquiry, during said period, concerning the standing of the petitioner-attorney as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of the petitioner-attorney; and as to each, the dates, facts, and the disposition thereof, and the name and address of the authority in possession of the record thereof.

(13) A statement as to whether or not any charges of fraud were made, or claimed, against the petitioner-attorney during the period of disbarment, suspension, administrative suspension, retired status or inactive status whether formal or informal, together with the dates and names and addresses of persons making such charges.

(14) A statement of any financial or other action taken by the petitioner-attorney in the nature of restitution or other appropriate relief.

(15) If the petitioner-attorney has been disbarred or suspended for more than one year or has been on administrative suspension, retired status or inactive status for more than three years, a statement of the dates, locations and names of the courses or lectures taken in satisfaction of the requirements of § 89.279 (relating to evidence of competency and learning in law).

(16) An itemization of any costs taxed under § 89.209 (relating to expenses of formal proceedings) and any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement), and a statement that all of those amounts have been paid in full.

(17) A concise statement of facts claimed to justify reinstatement to the bar of this Commonwealth.

(b) *Effect of questionnaire.* The questionnaire shall bear a notice under 18 Pa.C.S. § 4904(b) (relating to statements “under penalty”) to the effect that false statements made therein are punishable, and shall become a part of the record in the reinstatement proceeding.

Source

The provisions of this § 89.275 amended January 14, 1982, effective January 16, 1982, 12 Pa.B. 266; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2333; amended April 26, 1996, effective immediately, 26 Pa.B. 1984; amended July 13, 2001, effective immediately, 31 Pa.B. 3731; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (281377) to (281379).

§ 89.276. Procedures before the Board.

The provisions of these rules applicable to formal proceedings shall govern the procedure for hearings before one or more hearing committee members and subsequent review by the Board upon petitions for reinstatement.

Source

The provisions of this § 89.276 amended through March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (281379).

§ 89.277. Abbreviated reinstatement procedure.

(a) *Scope.* This section is applicable to formal proceedings for reinstatement of formerly admitted attorneys who have been on inactive status and who have never been on administrative suspension, retired status or suspended or disbarred. See § 89.273(b)(4) (relating to hearing before a single senior or experienced hearing committee member). This section shall not be available at any hearing conducted after review by a designated Board Member pursuant to § 89.273(b)(6)(i) (relating to hearing scheduled at the direction of the designated Board Member).

(b) *General rule.* The formerly admitted attorney and staff counsel in the manner provided by subsection (c) may agree to waive the preparation of a transcript and the filing of formal findings and recommendations. In such situations, unless the Board directs otherwise, the hearing committee member may submit to the Board a summary determination hearing of the committee member.

(c) *Procedures.*

(1) Immediately after the conclusion of the hearing the hearing committee member shall, if practicable and if neither the formerly admitted attorney nor staff counsel object thereto, determine the findings and recommendations of the hearing committee member.

(2) The hearing committee member shall deliver to the participants Form DB-46 (Hearing Committee Determination Under Abbreviated Reinstatement Procedure) setting forth in summary the findings and recommendations of the hearing committee member. The official reporter shall be directed by the hearing committee not to prepare a transcript until receipt from the hearing committee member of specific instructions to do so.

(3) The participants shall be conclusively deemed to have accepted and to have stipulated that the Board shall recommend to the Supreme Court the findings and recommendations of the hearing committee unless either the formerly admitted attorney or staff counsel shall, within five days after receipt of the Form DB-46 as provided in paragraph (2) file a copy of such Form DB-46 with objections to the findings and recommendations of the hearing committee member.

(4) If a timely objection is made as provided in paragraph (3) the participants may file briefs, the official reporter shall be directed to prepare a tran-

script and the hearing committee member shall submit to the Board formal findings and recommendations in the manner and within the time otherwise provided by these rules.

(5) If no timely objection is made no briefs shall be filed, no formal findings and recommendations shall be prepared by the hearing committee member and the official reporter shall not prepare a transcript. The hearing committee member shall, however, prepare and file a brief summary of the case, in the form of a letter to the Board, which summary ordinarily should not exceed two pages in length, and the record of the proceedings shall forthwith be transmitted to the Office of the Secretary which shall serve upon the formerly admitted attorney and staff counsel copies of the brief summary of the case filed by the hearing committee member.

(6) Thereafter the Board shall either:

(i) recommend to the Supreme Court the disposition stipulated by the participants; or

(ii) remand the record to the hearing committee member with instructions to fix a briefing schedule and to proceed as provided in paragraph (4), if for any reason the disposition stipulated by the parties is not accepted by the Board.

(7) Where the proceeding is disposed of as provided by paragraph (6)(i), the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

Source

The provisions of this § 89.277 adopted February 13, 1981, effective February 14, 1981, 11 Pa.B. 639; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (281379) to (281380).

§ 89.278. Expenses of reinstatement proceedings.

Enforcement Rule 218(f) provides that 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; and the annual fee required by Enforcement Rule 219(a) and the reinstatement fee, if applicable, shall be paid to the Attorney Registration Office after the Supreme Court order is entered.

Source

The provisions of this § 89.278 amended February 13, 1981, effective February 14, 1981, 11 Pa.B. 639; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (281380).

§ 89.279. Evidence of competency and learning in law.

(a) *General rule.* Except as provided in subsection (b), in order to permit the Board to determine under Enforcement Rule 218 (relating to reinstatement)

whether a formerly admitted attorney who has been disbarred or suspended for more than one year or who has been on administrative suspension, retired status or inactive status for more than three years possesses the competency and learning in the law required for reinstatement to practice in this Commonwealth, such a formerly admitted attorney shall within one year preceding the filing of the petition for reinstatement take courses meeting the requirements of the current schedule published by the Office of the Secretary under subsection (c).

(b) *Exceptions.*

(1) If a formerly admitted attorney has passed the Pennsylvania Bar Examination subsequent to entry of the order of suspension, disbarment or administrative suspension, or assumption of retired or inactive status and within one year preceding the filing of the petition for reinstatement, the formerly admitted attorney shall be conclusively deemed to have proven that he or she has the competency and learning in law required under Enforcement Rule 218.

(2) The Chair of the Board may waive the requirements of subsection (a) for good cause shown in the case of a formerly admitted attorney who has been on administrative suspension, retired status or inactive status for more than three years.

(c) *Publication of schedule.* The Office of the Secretary shall publish in the *Pennsylvania Bulletin* a schedule of the minimum amount, type and subjects of continuing legal education courses that will satisfy the requirements of subsection (a).

(d) *Effect of taking required courses.* Evidence that a formerly admitted attorney has registered for and attended required courses and lectures or has viewed videotapes of them shall be considered in determining whether the formerly admitted attorney possesses the required competency and learning in law but shall not be conclusive on the issue.

Source

The provisions of this § 89.279 adopted January 14, 1982, effective January 16, 1982, 12 Pa.B. 266; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 956; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2333; amended January 17, 1997, effective immediately, 27 Pa.B. 288; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (224741).

§ 89.280. Notice of reinstatement.

(a) *Publication of notice.* Enforcement Rule 218(i) provides that the Board may cause a notice of a reinstatement to be published in one or more appropriate legal journals and newspapers of general circulation.

(b) *Transmission of notice to local president judge.* Enforcement Rule 218(j) provides that 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 of the Supreme Court under § 93.145 (relating to reinstatement of an attorney who has been administratively suspended for three years or less) or § 93.112(c) (relating to failure to pay taxed expenses); or
- (2) Any other order of reinstatement entered under these rules.

Source

The provisions of this § 89.280 adopted October 12, 1984, effective October 13, 1984, 14 Pa.B. 3749; amended August 7, 2009, effective immediately. Immediately preceding text appears at serial pages (224741) to (224742).

RESUMPTION OF PRACTICE

§ 89.285. Resumption of practice by justices and judges.

- (a) *General rule.* Enforcement Rule 219(n) provides that 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 a notice in writing to that effect.
- (b) *Notice.* Enforcement Rule 219(n) further provides that 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 § 89.285 amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (224742).

Subchapter G. PROBATION

- Sec.
- 89.291. Probation.
- 89.292. Violation of probation.
- 89.293. Substance abuse probation.
- 89.294. Termination of probation.

§ 89.291. Probation.

- (a) *Qualifications.* A respondent-attorney may be placed on probation if the respondent-attorney has demonstrated that he or she:

- (1) can perform legal services and the continued practice of law by the respondent-attorney will not cause the courts or profession to fall into disrepute;
 - (2) is unlikely to harm the public during the period of probation and the necessary conditions of probation can be adequately supervised; and
 - (3) is not guilty of acts warranting disbarment.
- (b) *Duration.* Probation shall be ordered for a specified period of time or until further order of the Board or the Supreme Court. If probation is imposed in conjunction with a suspension, the suspension may be stayed in whole or in part.

Official Note: A period of actual suspension may or may not be appropriate. Where the Board contemplates recommending an actual suspension period it will examine evidence concerning the impact of suspension on the respondent-attorney with particular attention to its effect on his or her continued rehabilitation. After consideration of these factors, the Board anticipates that there may be situations where a period of suspension is justified and will be recommended.

(c) *Conditions.* The order placing a respondent-attorney on probation shall state the conditions of probation. The conditions shall take into consideration the nature and circumstances of the misconduct and the history, character and condition of the respondent-attorney. The following conditions and such others as the Board or the Supreme Court deems appropriate, may be imposed:

- (1) periodic reports to the Board and Disciplinary Counsel;
- (2) psychological counseling and treatment;
- (3) supervision over trust accounts, if directed by the Supreme Court;
- (4) satisfactory completion of a course of study;
- (5) restitution;
- (6) compliance with income tax laws and verification thereof;
- (7) limitations on practice; and
- (8) the payment of expenses taxed under § 89.205(b) (relating to informal admonition or private reprimand following formal hearing) and § 89.209 (relating to expenses of formal proceedings).

Source

The provisions of this § 89.291 adopted January 15, 1988, effective January 16, 1988, 18 Pa.B. 243; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended June 8, 1990, effective June 9, 1990, 20 Pa.B. 3054; amended March 1, 1991, effective March 2, 1991, 21 Pa.B. 827. Immediately preceding text appears at serial pages (149422) to (149423).

§ 89.292. Violation of probation.

Enforcement Rule 208(h) provides that:

- (1) 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.
- (2) 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:

(i) 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.

(ii) 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 chapter.

Source

The provisions of this § 89.292 adopted March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended May 19, 2006, effective May 20, 2006, 36 Pa.B. 2368. Immediately preceding text appears at serial page (214524).

§ 89.293. Substance abuse probation.

(a) *General rule.* Probation in cases of alcohol or drug abuse shall be governed by § 89.291 (relating to probation) and this section.

(b) *Relevance of substance abuse.* Alcohol or drug abuse may be considered as a mitigating factor in determining appropriate discipline, but shall not be a defense to a Petition for Discipline. For alcohol or drug abuse to be considered as a mitigating factor, the respondent-attorney must prove, by clear and convincing evidence, that alcohol or drug abuse by the respondent-attorney was a factor in causing his or her misconduct. The respondent-attorney may present expert testimony to satisfy that burden of proof.

Official Note: The requirement that a respondent-attorney establish that alcohol or drug abuse was a factor in causing his or her misconduct is derived from *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989).

(c) *Sobriety monitor.* In addition to the conditions required by § 89.291(c) (relating to conditions), an order placing a respondent-attorney on probation in cases of alcohol or drug abuse shall appoint a sobriety monitor. The sobriety monitor shall be an attorney admitted to practice law in this Commonwealth, in good standing, and designated by the Drug and Alcohol Committee of the Pennsylvania Bar Association. The sobriety monitor shall:

- (1) monitor the compliance by the respondent-attorney with the terms and conditions of the order imposing probation;
 - (2) assist the respondent-attorney in arranging any necessary professional or substance abuse treatment;
 - (3) meet with the respondent-attorney at least twice a month, and maintain weekly telephone contact with the respondent-attorney;
 - (4) maintain direct contact with the Alcoholics Anonymous or Narcotics Anonymous sponsor of the respondent-attorney if the respondent-attorney participates in either of those programs;
 - (5) file with the Secretary of the Board quarterly written reports; and
 - (6) immediately report to the Secretary of the Board any violations by the respondent-attorney of the terms and conditions of the probation.
- (d) *Financial or practice monitor.* The sobriety monitor shall not have the duty to act as a financial monitor or as a practice monitor. In the event that the trust accounts or practice of a respondent-attorney require supervision, the Board shall designate another attorney admitted to practice law in this Commonwealth, in good standing, to act as a financial or practice monitor.

Official Note: Subsection (d) is intended to make clear that the purpose of the sobriety monitor is only to assist a respondent-attorney to recover from the disease of alcoholism or drug addiction, and not to act as a financial or practice monitor.

(e) *Additional conditions.* Where an order is entered placing a respondent-attorney on probation in cases of alcohol or drug abuse, the respondent-attorney shall:

- (1) abstain from using alcohol, drugs, or any other mood-altering or mind-altering chemicals;
- (2) regularly attend meetings of Alcoholics Anonymous or Narcotics Anonymous, or regularly participate in another acceptable type of treatment;
- (3) obtain a sponsor in Alcoholics Anonymous or Narcotics Anonymous if the respondent-attorney participates in either of those programs, and furnish the sobriety monitor with the sponsor's name, address and phone number;
- (4) provide written verification to the sobriety monitor of regular attendance at Alcoholics Anonymous or Narcotics Anonymous meetings or regular participation in another acceptable type of treatment;
- (5) undergo any counseling, out-patient or in-patient treatment prescribed by a physician or drug and alcohol counselor;
- (6) meet with his or her sobriety monitor at least twice a month, unless the sobriety monitor requests more frequent meetings, and maintain weekly telephone contact with the sobriety monitor;
- (7) provide his or her sobriety monitor with properly executed written authorizations as may be necessary for the sobriety monitor to verify the compliance by the respondent-attorney with any required professional or substance abuse treatment; and

(8) cooperate fully with the sobriety monitor.

(f) *Violation of probation.* The Secretary of the Board shall immediately forward any report by a sobriety monitor under subsection (c)(6) of a violation of the terms and conditions of probation by a respondent-attorney to the Office of Disciplinary Counsel who shall then proceed in accordance with § 89.292 (relating to violation of probation).

Source

The provisions of this § 89.293 adopted June 8, 1990, effective June 9, 1990, 20 Pa.B. 3034.

§ 89.294. Termination of probation.

(a) *Application for termination of probation.* At the expiration of the period of probation ordered, the respondent-attorney may apply to the Board for termination of the probation. The application shall be verified by the respondent-attorney, and shall state:

- (1) the date probation was ordered;
- (2) that the respondent-attorney has complied with all of the terms and conditions of probation;
- (3) whether or not formal proceedings for discipline are pending against the respondent-attorney; and
- (4) that the respondent-attorney requests termination of probation.

(b) *Conditions for granting termination of probation.* The Board shall order the termination of probation if:

- (1) all costs of the proceedings as previously ordered by the Supreme Court or the Board have been paid;
- (2) the respondent-attorney has complied with the terms of probation; and
- (3) no formal proceedings for discipline are pending against the respondent-attorney.

Source

The provisions of this § 89.294 adopted June 8, 1990, effective June 9, 1990, 20 Pa.B. 3054.

[Next page is 91-1.]