

CHAPTER 91. MISCELLANEOUS MATTERS

Subchap.		Sec.
A.	SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS	91.1
B.	ATTORNEYS CONVICTED OF CRIMES	91.31
C.	RECIPROCAL DISCIPLINE	91.51
D.	DISABILITY	91.71
E.	FORMERLY ADMITTED ATTORNEYS	91.91
F.	PROTECTION OF THE INTERESTS OF CLIENTS	91.121
G.	EMERGENCY PROCEEDINGS	91.151
H.	FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION	91.171

Subchapter A. SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS

IN GENERAL

- | Sec. | |
|-------|---|
| 91.1. | Substituted service. |
| 91.2. | Subpoenas and investigations. |
| 91.3. | Determination of validity of subpoena. |
| 91.4. | Appeal of challenges to subpoenas. |
| 91.5. | Confidentiality. |
| 91.6. | Discovery procedures inapplicable. |
| 91.7. | Production of testimony and documents for use in disciplinary proceedings in other jurisdictions. |

DEPOSITIONS

- | | |
|--------|--|
| 91.11. | Depositions. |
| 91.12. | Notice and application. |
| 91.13. | Authorization of taking deposition. |
| 91.14. | Officer before whom deposition is taken. |
| 91.15. | Oath and reduction to writing. |
| 91.16. | Scope and conduct of examination. |
| 91.17. | Status of deposition as part of record. |
| 91.18. | Fees of officers and deponents. |

IN GENERAL

§ 91.1. Substituted service.

Enforcement Rule 212 provides that in the event a respondent-attorney cannot be located and personally served with notices required under the Enforcement Rules and these rules, such notices may be served upon the respondent-attorney by addressing them to the address furnished in the last registration statement filed by the respondent-attorney in accordance with § 93.142(b) (relating to filing of annual statement by attorneys) or, in the case of foreign legal consultant, by serving them pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

Source

The provisions of this § 91.1 amended August 5, 2005, effective September 1, 2005, 35 Pa.B. 4301. Immediately preceding text appears at serial page (309925).

§ 91.2. Subpoenas and investigations.

(a) *General rule.* Enforcement Rule 213(a) provides that:

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

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

(b) *Procedure.* Enforcement Rule 213(b) provides that subpoenas shall be obtained by filing with the Prothonotary in the district of the Supreme Court where the subpoena is to be returnable a statement calling for the issuance of the subpoena (Form DB-14) (Request for Issuance of Subpoena); that on the same day that such statement is filed with the Prothonotary, the party seeking the subpoena shall send by certified mail a copy of such statement to either Disciplinary Counsel or the respondent-attorney, as the case may be; that upon the filing of Form DB-14, the Prothonotary shall forthwith issue the subpoena (Form DB-15) (Subpoena/Subpoena Duces Tecum) and it shall be served in the regular way; and that a subpoena issued pursuant to subsection (a)(2) shall not be returnable until at least ten days after the date of its issuance.

(c) *Investigatory hearing committee.* On application by the Office of Disciplinary Counsel or of a respondent-attorney, where no petition for discipline has yet been filed under these rules, the Office of the Secretary shall appoint an investigatory hearing committee for the purpose of conducting an investigatory hearing under subsection (a)(1).

(d) *Notice and scheduling of investigatory hearings.* An investigatory hearing committee shall schedule an initial hearing on the matter to be held not later than 20 days after the committee is appointed pursuant to subsection (c). The committee shall give all persons affected at least four days written notice of each hearing held by the committee. Such a hearing may be held on less than four days notice if the chair of the committee determines that the shorter period is reasonably necessary under the circumstances.

(e) *Cross reference.* See § 95.2 (relating to investigation of the conversion of funds).

Source

The provisions of this § 91.2 amended March 29, 1979, effective May 26, 1979, 9 Pa.B. 1665; amended November 4, 1988, effective November 5, 1988, 18 Pa.B. 4938; 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; amended June 11, 1993, effective immediately, 23 Pa.B. 2729; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial pages (203540) and (198419).

§ 91.3. Determination of validity of subpoena.

(a) In General. Enforcement Rule 213(d) provides that any attack on the validity of a subpoena issued under these rules shall be handled as follows:

(1) A challenge to a subpoena authorized by § 91.2(a)(1) (relating to subpoenas and investigations); shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable.

(2) A challenge to a subpoena authorized by § 91.2(a)(2) shall be heard and determined by a member of a hearing committee in the disciplinary district in which the subpoena is returnable.

(3) A determination under paragraph (1) or (2) may not be appealed to the Board, but may be appealed to the Supreme Court under § 91.4 (relating to appeal of challenges to subpoenas) within ten days after service of the determination on the party bringing the appeal.

(b) *Procedure.*

(1) A motion attacking a subpoena must be filed with the Office of the Secretary within ten days after service of the subpoena. A copy of the motion must be served on the other party to the investigation or proceeding.

(2) Any answer to the motion must be filed with the Office of the Secretary within five days after service of the motion on the other party under paragraph (1).

(3) The Office of the Secretary must transmit the motion and any answer to the person designated in subsection (a)(1) or (2) to hear the motion, who must schedule a hearing on the motion within ten days after the date by which an answer must be filed. A report with findings of fact and conclusions of law must be filed with the Office of the Secretary within ten days after the conclusion of the hearing.

Source

The provisions of this § 91.3 amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009; amended June 11, 1993, effective immediately, 23 Pa.B. 2729; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended March 31, 2006, effective immediately, 36 Pa.B. 1490. Immediately preceding text appears at serial page (317741).

§ 91.4. Appeal of challenges to subpoenas.

Enforcement Rule 213(g) provides that:

(1) Either Disciplinary Counsel or a respondent-attorney may petition the Supreme Court to enforce a subpoena or to review a determination under § 91.3 (relating to determination of validity of subpoena) on the validity of a subpoena, and no attack on the validity of a subpoena will be considered by the Court unless previously raised as provided in § 91.3. See also § 91.151(e) (relating to contempt of the Board).

Official Note: The reference to § 91.151(e) is intended to make clear that, where the person who is resisting complying with a subpoena is the respondent-attorney, the provisions of this rule are cumulative of those in § 91.151(e).

(2) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena is directed, returnable within ten days, why the person should not be held in con-

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

(3) A petition for review of a determination made under § 91.3 must set forth in detail the grounds for challenging the determination. Upon timely receipt of a petition for review, the Court shall issue a rule to show cause upon the party to the proceeding who is not challenging the determination, returnable within ten days, why the determination should not be reversed. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

Source

The provisions of this § 91.4 amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009; amended June 11, 1993, effective immediately, 23 Pa.B. 2729; amended March 11, 2005, effective immediately, 35 Pa.B. 1656. Immediately preceding text appears at serial page (198419).

§ 91.5. Confidentiality.

(a) *General rule.* Enforcement Rule 213(c) provides that:

(1) A subpoena issued under these rules shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under the Enforcement Rules, and that it is regarded as contempt of the Supreme Court or grounds for discipline under the Enforcement Rules for a person subpoenaed to in any way breach the confidentiality of the investigation.

(2) It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(3) The subpoena and deposition procedures under these rules shall be subject to the confidentiality requirements of Chapter 93 Subchapter F (relating to confidentiality).

(b) *Exception.* Subsection (a)(1) shall not apply to a subpoena issued in connection with a proceeding that is open to the public under § 93.102(a) (relating to access to disciplinary information and confidentiality).

Source

The provisions of this § 91.5 amended June 11, 1993, effective immediately, 23 Pa.B. 2729; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial page (309928).

§ 91.6. Discovery procedures inapplicable.

Enforcement Rule 213(h) provides that any rule of the Supreme Court or any statute providing for discovery shall not be applicable in disciplinary proceedings, which proceedings shall be governed by the Enforcement Rules alone.

Source

The provisions of this § 91.6 amended June 11, 1993, effective immediately, 23 Pa.B. 2729. Immediately preceding text appears at serial page (147055).

§ 91.7. Production of testimony and documents for use in disciplinary proceedings in other jurisdictions.

Enforcement Rule 213(i) provides that:

(1) The Supreme Court may order a person domiciled or found within this Commonwealth to give testimony or a statement or to produce documents or

other things for use in a lawyer discipline or disability proceeding in another state, territory or province or in a court of the United States or any other jurisdiction.

(2) The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this Commonwealth, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of this subpart. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Court or before a commissioner appointed by a court or by an authorized disciplinary agency of another jurisdiction, any of whom shall have the power to administer any necessary oath.

(3) Any order to testify or to produce documents or other things issued as prescribed in this section may be enforced as any subpoena of the Supreme Court is enforced, upon petition of any party interested in the subject attorney discipline or disability proceeding.

Source

The provisions of this § 91.7 adopted March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended June 11, 1993, effective immediately, 23 Pa.B. 2729. Immediately preceding text appears at serial pages (147055) to (147056).

DEPOSITIONS

§ 91.11. Depositions.

Enforcement Rule 213(f) provides that with the approval of the hearing committee or special master, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other compelling reason, and that a complete record of the testimony so taken shall be made and preserved.

Source

The provisions of this § 91.11 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial page (144020).

§ 91.12. Notice and application.

Unless notice is waived, no deposition shall be taken except after at least ten days' notice to the participants if the deposition is to be taken within this Commonwealth, and 15 days' notice when a deposition is to be taken elsewhere. Such notice shall be given in writing (Form DB-16) (Notice of Deposition) by the participant proposing to take such deposition to the other participants and to the

hearing committee or special master. In such notice and application to take evidence by deposition, the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason why such deposition should be taken. The other participants may, within the time stated in this section, make any appropriate response to such notice and application.

Source

The provisions of this § 91.12 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 (144020) and (136811).

§ 91.13. Authorization of taking deposition.

If an application for the taking of a deposition so warrants, the hearing committee or special master will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the participants an authorization on Form DB-17 (Authorization to Take Deposition) naming the witness whose deposition is to be taken, and the time, place and notarial officer before whom the witness is to testify, but such time, place and notarial officer so specified may or may not be the same as those named in the Form DB-16. (Notice of Deposition).

Source

The provisions of this § 91.13 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 (136811).

§ 91.14. Officer before whom deposition is taken.

(a) *Within the United States.* Depositions may be taken before the hearing committee or special master, any notary public or any other person authorized to administer oaths not being counsel for any of the participants, or interested in the proceeding or investigation, according to such designation as may be made in the Form DB-17 (Authorization to take Deposition).

(b) *In foreign countries.* Where such deposition is taken in a foreign country, it may be taken before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such person or officer as may be designated in the Form DB-17 or agreed upon by the participants by stipulation in writing filed with and approved by the hearing committee or special master.

Source

The provisions of this § 91.14 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 (136811).

§ 91.15. Oath and reduction to writing.

(a) *General rule.* Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which such person shall testify, before any questions are put or testimony given. The testimony shall be reduced to writing by, or under the direction of, the notarial officer. When the testimony is fully transcribed the deposition shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all participants who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the notarial officer with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness, the notarial officer shall certify it in the usual form and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the hearing committee, special master or the Board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(b) *Transmission.* Unless otherwise directed in the Form DB-17 (Authorization to take Deposition), after the deposition has been certified, it shall, together with the number of copies specified in the authorization, the copies being made by, or under the direction of, such notarial officer, be forwarded by such notarial officer in a sealed envelope addressed to the Office of the Secretary at the address set forth in § 85.6 (relating to location of Office of Secretary), with sufficient stamps for postage affixed. Upon receipt thereof, the Office of the Secretary shall file the original in the proceeding and shall forward a copy to each participant and to each member of the hearing committee or the special master conducting the proceeding.

Source

The provisions of this § 91.15 amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009; amended June 11, 1993, effective immediately, 23 Pa.B. 2729. Immediately preceding text appears at serial pages (147058) to (147059).

§ 91.16. Scope and conduct of examination.

Unless otherwise directed in the Form DB-17 (Authorization to take Deposition), the deponent may be examined regarding any matter not privileged which is relevant to the subject matter of the proceedings. Participants shall have the right of cross-examination, objection and exception. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition,

but the notarial officer shall not have the power to decide on the competency of a witness or the relevancy or materiality of evidence. Objections to the competency of a witness or to the relevancy, or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which was known to the objecting party and which might have been obviated or removed if made at that time.

§ 91.17. Status of deposition as part of record.

No part of a deposition shall constitute a part of the record in the proceeding, unless offered in evidence before the hearing committee or special master. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any participant who was present or represented at the taking of the deposition or who had notice thereof. If only part of a deposition is offered in evidence by a participant, a participant with an adverse interest may require the offering participant to introduce any other part which ought in fairness to be considered with the part introduced, and any participant may introduce any other parts. The introduction in evidence of the deposition or any part thereof for any purpose other than contradicting or impeaching the deponent, makes the deponent the witness of the party introducing the deposition.

Source

The provisions of this § 91.17 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 (136812) to (136813).

§ 91.18. Fees of officers and deponents.

Deponents whose depositions are taken and the notarial officers taking such depositions shall be entitled to the same fees as are paid for like services in the courts of common pleas, which fees shall be paid by the participant at whose instance the depositions are taken.

Subchapter B. ATTORNEYS CONVICTED OF CRIMES

- Sec.
- 91.31. Notification by attorneys convicted of crimes.
 - 91.32. Notification by clerks of conviction of attorneys.
 - 91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.
 - 91.34. Temporary suspension upon conviction of serious crime.
 - 91.35. Institution of formal proceedings upon conviction of serious crime.
 - 91.36. Proceedings upon conviction of other crimes.
 - 91.37. Effect of reversal of conviction.
 - 91.38. Definition of "serious crime."

§ 91.31. Notification by attorneys convicted of crimes.

Enforcement Rule 214(a) provides that an attorney convicted of a serious crime shall report the fact of such conviction to the Secretary of the Board within 20 days after the date of sentencing; and that the responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to § 91.32 (relating to notification by clerks of conviction of attorneys).

Source

The provisions of this § 91.31 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. Immediately preceding text appears at serial page (136813).

§ 91.32. Notification by clerks of conviction of attorneys.

Enforcement Rule 214(b) provides that the clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court (Form DB-18) (Certification of Conviction of Attorney).

Source

The provisions of this § 91.32 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial page (136814).

§ 91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.

Enforcement Rule 214(c) provides that upon being advised that an attorney has been convicted of a crime within this Commonwealth, Disciplinary Counsel shall secure and file a Form DB-18 (Certification of Conviction of Attorney) in accordance with the provisions of § 91.32 (relating to notification by clerks of conviction of attorneys); and that if the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such conviction.

Source

The provisions of this § 91.33 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138. Immediately preceding text appears at serial page (61260).

§ 91.34. Temporary suspension upon conviction of serious crime.

(a) *Commencement of summary proceeding.* Enforcement Rule 214(d) provides that upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a serious crime, the Court may enter a rule directing the respondent-attorney to show cause why the

respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(b) *Subject of summary proceeding.* The Note to Enforcement Rule 214(d) provides that the subject of the summary proceedings authorized by this section is limited to whether the conditions triggering the application of this section exist, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged and that the offense is a serious crime, and will not include such subjects as mitigating or aggravating circumstances.

(c) *Disposition.* Enforcement Rule 214(d)(2) provides that if a rule to show cause has been issued under subsection (a), and the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under these rules.

(d) *Effect of temporary suspension.* Enforcement rule 214(d)(3) provides that any order of temporary suspension issued under subsection (c) shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension. The Note to Enforcement Rule 214(d) provides that permitting the respondent-attorney to continue representing existing clients for 30 days is intended to avoid undue hardship to clients and to permit a winding down of matters being handled by the respondent-attorney, and the permissible activities of the respondent-attorney are intended to be limited to only those necessary to accomplish those purposes.

(e) *Dissolution or modification of temporary suspension.* Enforcement Rule 214(d)(4) provides that:

- (1) the respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension;
- (2) a copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board (see § 89.27 (relating to service upon Disciplinary Counsel));
- (3) a hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board;
- (4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing; and
- (5) upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

Source

The provisions of this § 91.34 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended April 21, 1989, effective April 22, 1989, 19 Pa.B. 1719; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 730; amended September 10, 2004, effective September 11, 2004, 34 Pa.B. 5013. Immediately preceding text appears at serial pages (198425) to (198426).

§ 91.35. Institution of formal proceedings upon conviction of serious crime.

(a) *General rule.* Enforcement Rule 214(f)(1) provides that upon receipt of a certificate of conviction of an attorney for a serious crime, the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of § 91.34 (relating to temporary suspension upon conviction of serious crime), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until all appeals from the conviction are concluded. The Office of the Secretary shall transmit the file to the Office of Disciplinary Counsel by means of Form DB-31 (Reference for Proceedings in Response to Conviction).

(b) *Accelerated disposition.* Enforcement Rule 214(f)(2) provides that:

(1) notwithstanding the provision of subsection (a) that a hearing shall not be held until all appeals from a conviction have been concluded, a respondent-attorney who has been temporarily suspended pursuant to § 91.34 shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition;

(2) within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline, if such a petition has not already been filed, and the matter shall be assigned to a hearing committee for accelerated disposition;

(3) the assignment to a hearing committee shall take place within seven days after the filing of such a notice or the filing of a petition for discipline, whichever occurs later;

(4) thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay; and

(5) if a petition for discipline is not timely filed or assigned to a hearing committee for accelerated disposition under this subsection (b), the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this Subchapter 91B.

Official Note: The Note to Enforcement Rule 214(f) provides that the “without appreciable delay” standard of subsection (b)(4) is derived from *Barry v. Barchi*, 443 U. S. 55, 66 (1979), and that appropriate steps should be taken to satisfy that requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

(c) *Evidence of conviction.* Enforcement Rule 214(e) provides that a certificate of a conviction of an attorney for a serious crime filed under § 91.32 (relating to notification by clerks of conviction of attorneys) or § 91.33 (relating to notification by Office of Disciplinary Counsel of conviction of attorneys) shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

Source

The provisions of this § 91.35 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended April 21, 1989, effective April 22, 1989, 19 Pa.B. 1719; amended November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009. Immediately preceding text appears at serial pages (136815) to (136817).

§ 91.36. Proceedings upon conviction of other crimes.

(a) Enforcement Rule 214(g) provides that upon receipt of a certificate of a conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted; and that the Court may in its discretion take no action with respect to convictions for minor offenses.

(b) The Official Note to Enforcement Rule 214(g) provides that the actions the Court may take under Subsection (a) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.

Source

The provisions of this § 91.36 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, 20 Pa.B. 2009; amended December 1, 2006, effective immediately, 36 Pa.B. 7233. Immediately preceding text appears at serial page (198428).

§ 91.37. Effect of reversal of conviction.

(a) *General rule.* Enforcement Rule 214(h) provides that an attorney suspended under the provisions of § 91.34 (relating to temporary suspension upon conviction of serious crime) may be reinstated immediately upon the filing by the Board with the Supreme Court of a certificate demonstrating that the underlying conviction has been reversed, but that the reinstatement shall not terminate any formal proceeding then pending against the attorney.

(b) *Service on Board of the Pennsylvania Lawyers Fund for Client Security.* A copy of the certificate filed by the Board with the Supreme Court under subdivision (a) shall be served on the Board of the Pennsylvania Lawyers Fund for Client Security.

Official Note: The purpose of service on the Board of the Pennsylvania Lawyers Fund for Client Security is to permit it to notify the Supreme Court if disbursements have been made from the Fund with respect to dishonest conduct by the attorney whose conviction has been reversed so that the Court may determine if restitution should be made a condition of reinstatement.

Source

The provisions of this § 91.37 adopted through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 731. Immediately preceding text appears at serial page (147064).

§ 91.38. Definition of “serious crime.”

As used in this Subchapter 91B, Enforcement Rule 214(i) provides that the term “serious crime” means a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction.

Source

The provisions of this § 91.38 adopted November 14 and 17, 1989 and December 6 and 20, 1989, 20 Pa.B. 2009.

Subchapter C. RECIPROCAL DISCIPLINE

Sec.

91.51. Reciprocal discipline.

§ 91.51. Reciprocal discipline.

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension or disbarment in another jurisdiction, the Supreme Court shall forthwith issue a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

(i) A copy of said order from the other jurisdiction.

(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline in this Commonwealth would be unwarranted, and the reasons therefor.

The Office of the Secretary shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with § 93.142(b) (relating to filing of annual statement by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

(2) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(3) Upon the expiration of 30 days from service of the Form DB-19 the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

- (i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject or
- (iii) that the imposition of the same or comparable discipline would result in grave injustice, or be offensive to the public policy of this Commonwealth.

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

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

(5) An attorney who has been disciplined by suspension or disbarment in another jurisdiction shall report the fact of such suspension or disbarment to the Secretary of the Board within 20 days after the date of the order imposing discipline.

Source

The provisions of this § 91.51 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended September 23, 1995, effective September 23, 1995, 25 Pa.B. 3967; amended September 10, 2004, effective September 11, 2004, 34 Pa.B. 5013; amended August 5, 2005, effective September 1, 2005, 35 Pa.B. 4301. Immediately preceding text appears at serial pages (305727) to (305728).

Subchapter D. DISABILITY

- Sec.
- 91.70. Preliminary provisions.
 - 91.71. Notification by clerks of declaration of incapacity.
 - 91.72. Notification by Office of Disciplinary Counsel of declaration of incapacity.
 - 91.73. Attorney subject to judicial determination of incapacity.
 - 91.74. Petition by Board for determination of professional competency.
 - 91.75. Effect of raising defense of disability in formal proceedings.
 - 91.76. Publication of notice of transfer to inactive status.
 - 91.77. Action to protect clients of disabled attorney.
 - 91.78. Procedure for reinstatement.
 - 91.79. Burden of proof.
 - 91.80. Waiver of privilege.

§ 91.70. Preliminary provisions.

(a) *Definition.* Enforcement Rule 301(k) provides that, as used in this subchapter, the term “disabled attorney” means an attorney transferred to inactive status under this subchapter.

(b) *Cross reference.* See Enforcement Rule 601(a) which suspends the act of July 9, 1976 (P. L. 817, No. 143), known as the Mental Health Procedures Act, to the extent it is inconsistent with the Enforcement Rules.

Source

The provisions of this § 91.70 adopted July 30, 1999, effective immediately, 29 Pa.B. 4053.

§ 91.71. Notification by clerks of declaration of incapacity.

(a) *Duty to report.* Enforcement Rule 301(a) provides that the clerk of any court within this Commonwealth that declares that an attorney is incapacitated or that orders involuntary treatment of an attorney on the grounds that the attorney is severely mentally disabled or that denies a petition for review of a certification by a mental health review officer subjecting an attorney to involuntary treatment shall within 24 hours of such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court by means of Form DB-20 (Certificate of Judicial Determination of Incompetency of Attorneys).

(b) *Local procedures.* The Official Note to Enforcement Rule 301(a) provides that it is the responsibility of each local court to adopt any necessary procedures so that mental health officers and individual judges notify the clerk of the court that the respondent in a matter is an attorney and that a certificate must accordingly be sent to Disciplinary Counsel under this section.

Source

The provisions of this § 91.71 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended July 30, 1999, effective immediately, 29 Pa.B. 4053. Immediately preceding text appears at serial page (198430).

§ 91.72. Notification by Office of Disciplinary Counsel of declaration of incapacity.

Enforcement Rule 301(b) provides that upon being advised that an attorney has been declared incapacitated or involuntarily committed to an institution on the grounds of incapacity or severe mental disability, Disciplinary Counsel shall secure and file a Form DB-20 (Certificate of Judicial Determination of Incompetency of Attorney) in accordance with the provisions of § 91.71 (relating to notification by clerks of declaration of incapacity); and that if the declaration of incapacity or commitment occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such declaration or commitment.

Source

The provisions of this § 91.72 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended July 30, 1999, effective immediately, 29 Pa.B. 4053. Immediately preceding text appears at serial pages (198430) to (198431).

§ 91.73. Attorney subject to judicial determination of incapacity.

(a) *Transfer to inactive status.* Enforcement Rule 301(c) provides that where an attorney has been judicially declared incapacitated or involuntarily committed on the grounds of incapacity or severe mental disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of the Court; and that a copy of such order shall be served upon such formerly

admitted attorney, the guardian of such person, and/or the director of the institution to which such person has been committed in such manner as the Court may direct.

(b) *Summary reinstatement.* Where an attorney has been transferred to inactive status by an order in accordance with the provisions of subdivision (a) and, thereafter, in proceedings duly taken, the person is judicially declared to be competent, the Supreme Court upon application may dispense with further evidence that the disability has been removed and may direct reinstatement to active status upon such terms as are deemed proper and advisable.

Source

The provisions of this § 91.73 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended July 30, 1999, effective immediately, 29 Pa.B. 4053. Immediately preceding text appears at serial page (198431).

§ 91.74. Petition by Board for determination of professional competency.

Enforcement Rule 301(d) provides that whenever the Board shall petition the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate; that if, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to inactive status on the ground of such disability for an indefinite period and until the further order of the Court; that if examination of a respondent-attorney by a qualified medical expert reveals that the respondent lacks the capacity to aid effectively in the preparation of a defense, the Court may order that any pending disciplinary proceeding against the respondent shall be held in abeyance except for the perpetuation of testimony and the preservation of documentary evidence; that the order of abatement may provide for reexaminations of the respondent-attorney at specific intervals or upon motion by Disciplinary Counsel; and that the Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the respondent if the respondent is without adequate representation.

Source

The provisions of this § 91.74 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952. Immediately preceding text appears at serial page (83176).

§ 91.75. Effect of raising defense of disability in formal proceedings.

(a) *General rule.* Enforcement Rule 301(e) provides that if, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the

respondent to prepare an adequate defense, the Supreme Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the capacity of the respondent to continue to practice law in a proceeding instituted in accordance with the provisions of § 91.74 (relating to petition by Board for determination of professional competency); and that if the Court shall determine at any time that the respondent is able to aid effectively in the preparation of a defense or is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(b) *Procedure.* Whenever a respondent makes a contention within the scope of subsection (a) of this section, the Office of Disciplinary Counsel shall forward a certificate thereof to the Prothonotary of the Supreme Court by means of Form DB-21 (Certificate of Admission of Disability by Attorney).

Source

The provisions of this § 91.75 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952. Immediately preceding text appears at serial pages (83176) to (83177).

§ 91.76. Publication of notice of transfer to inactive status.

Enforcement Rule 301(f) provides that the Board shall cause a notice of transfer to inactive status (Form DB-22) (Notice of Transfer to Inactive Status upon Disability) to be published in the legal journal and a newspaper of general circulation in the county in which the disabled attorney practiced. If there is no such legal journal, the notice shall be published in the legal journal of an adjoining county. Such notice shall be published by the Office of the Secretary within 20 days after the transfer to inactive status becomes effective and shall be furnished to such courts as may be appropriate.

Source

The provisions of this § 91.76 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138. Immediately preceding text appears at serial pages (61265) and (61266).

§ 91.77. Action to protect clients of disabled attorney.

Enforcement Rule 301(g) provides that the Board shall promptly transmit a certified copy of the order of transfer to inactive status to the president judge of the court of common pleas of the judicial district in which the disabled attorney practiced and shall request such action under the provisions of Subchapter F (relating to protection of the interests of clients) as may be indicated in order to protect the interests of the disabled attorney and the clients of the disabled attorney.

Source

The provisions of this § 91.77 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138. Immediately preceding text appears at serial page (61266).

§ 91.78. Procedure for reinstatement.

Enforcement Rule 301(h) provides as follows:

(1) Except as provided in § 91.73(b) (relating to summary reinstatement), a disabled attorney may not resume active status until reinstated by order of the Supreme Court upon petition for reinstatement pursuant to Chapter 89 Subchapter F (relating to reinstatement).

(2) A disabled attorney shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to inactive status or any modification thereof.

(3) Such application shall be granted by the Court upon a showing by clear and convincing evidence that the disability of the formerly admitted attorney has been removed and such person is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the formerly admitted attorney's disability has been removed including a direction for an examination of the formerly admitted attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the formerly admitted attorney.

Source

The provisions of this § 91.78 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended July 30, 1999, effective immediately, 29 Pa.B. 4053. Immediately preceding text appears at serial pages (198433) to (198434).

§ 91.79. Burden of proof.

Enforcement Rule 301(i) provides that in a proceeding seeking a transfer to inactive status under this subchapter, the burden of proof shall rest with the Board; and that in a proceeding seeking an order of reinstatement to active status under this subchapter, the burden of proof shall rest with the respondent-attorney.

Source

The provisions of this § 91.79 reserved March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138. Immediately preceding text appears at serial page (61266).

§ 91.80. Waiver of privilege.

Enforcement Rule 301(j) provides that the filing of an application for reinstatement to active status by a formerly admitted attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the formerly admitted attorney during the period of disability; that the formerly admitted attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the formerly admitted attorney has been examined or treated since transfer to inactive status; and that the for-

merly admitted attorney shall furnish to the Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

Source

The provisions of this § 91.80 adopted July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138.

Subchapter E. FORMERLY ADMITTED ATTORNEYS

Sec.

- 91.91. Notification of clients in nonlitigation matters.
- 91.92. Notification of clients in litigation matters.
- 91.93. Notification of other persons.
- 91.94. Effective date of suspension, disbarment, administrative suspension or transfer to inactive status.
- 91.95. Proof of compliance.
- 91.96. Publication of notice of suspension, disbarment, administrative suspension or transfer to inactive status.
- 91.97. Action to protect clients of formerly admitted attorney.
- 91.98. Maintenance of records.
- 91.99. Indicia of licensure.
- 91.100. Law-related activities of formerly admitted attorneys.

§ 91.91. Notification of clients in nonlitigation matters.

(a) *General rule.* Enforcement Rule 217(a) provides that a formerly admitted attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise such clients to seek legal advice elsewhere. Such notices shall be in substantially the language of Form DB-23 (Nonlitigation Notice of Disbarment, Suspension, Administrative Suspension or Transfer to Inactive Status).

(b) *Copies of notices.* The formerly admitted attorney shall file photocopies of such notices and returned receipts in the Office of the Secretary.

Source

The provisions of this § 91.91 amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (198435).

§ 91.92. Notification of clients in litigation matters.

(a) *General rule.* Enforcement Rule 217(b) provides that a formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation

or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. Such rule further provides that the notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney; that in the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw; and that the notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney. Such notices shall be in substantially the language of Form DB-24 (Litigation Notice of Disbarment, Suspension, Administrative Suspension or Transfer to Inactive Status).

(b) *Copies of notices.* The formerly admitted attorney shall file photocopies of such notices and returned receipts in the Office of the Secretary.

Source

The provisions of this § 91.92 amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (198435).

§ 91.93. Notification of other persons.

(a) *General rule.* Enforcement Rule 217(c) provides that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

- (1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, administrative suspension or transfer to inactive status, and
- (2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

(b) *Responsibility to provide notice.* Enforcement Rule 217(c) further provides that the responsibility of the formerly admitted attorney to provide the notice required by this section shall continue for as long as the formerly admitted attorney is disbarred, suspended, administrative suspension or on inactive status.

Source

The provisions of this § 91.93 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198435) to (198436).

§ 91.94. Effective date of suspension, disbarment, administrative suspension or transfer to inactive status.

Enforcement Rule 217(d) provides that orders imposing suspension, disbarment or transfer to inactive status shall be effective 30 days after entry; that the formerly admitted attorney, after entry of the disbarment, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature; but that, during the period from the entry date of the order to its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

Source

The provisions of this § 91.94 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (198436).

§ 91.95. Proof of compliance.

(a) *General rule.* Enforcement Rule 217(e) provides that within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement (Form DB-25) (Statement of Compliance) showing:

- (1) That the provisions of the order and the Enforcement Rules have been fully complied with; and
- (2) All other state, federal and administrative jurisdictions to which such person is admitted to practice.

(b) *Notice of address.* Enforcement Rule 217(e) further provides that such Form DB-25 shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

(c) *Cross reference.* See § 95.3 (relating to monitoring of notices to be sent by formerly admitted attorneys).

Source

The provisions of this § 91.95 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended September 1, 1989, effective September 2, 1989, 19 Pa.B. 3758; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198436) and (333767).

§ 91.96. Publication of notice of suspension, disbarment, administrative suspension or transfer to inactive status.

Enforcement Rule 217(f) provides that the Board shall cause a notice of the suspension, disbarment, administrative suspension or transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced. If there is no such legal journal, the notice shall be published in the legal journal of an adjoining county.

Upon entry of an order imposing suspension, disbarment, administrative suspension or transfer to inactive status, such notice shall be published forthwith and shall be transmitted to such courts as may be appropriate.

Source

The provisions of this § 91.96 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (333767).

§ 91.97. Action to protect clients of formerly admitted attorney.

Enforcement Rule 217(g) provides that the Board shall promptly transmit a certified copy of the order of suspension, disbarment, administrative suspension or transfer to inactive status to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced; and that the president judge shall make such further order as may be necessary to fully protect the rights of the clients of the formerly admitted attorney.

Source

The provisions of this § 91.97 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (333767).

§ 91.98. Maintenance of records.

(a) *General rule.* Enforcement Rule 217(i) provides that a formerly admitted attorney shall keep and maintain records of the various steps taken by such person under the Enforcement Rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with the Enforcement Rules and with the disbarment, suspension, administrative suspension or transfer to inactive status order will be available; and that proof of compliance with the Enforcement Rules shall be a condition precedent to any petition for reinstatement.

(b) *Cross reference.* See § 95.3 (relating to monitoring of notices to be sent by formerly admitted attorneys).

Source

The provisions of this § 91.98 adopted July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended September 1, 1989, effective September 2, 1989, 19 Pa.B. 3758; amended March 13, 1991, effective November 16, 1991, 21 Pa.B. 5325; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (333767) to (333768).

§ 91.99. Indicia of licensure.

Enforcement Rule 217(h) provides that within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Attorney Registration Office under § 93.143 (relating to issue of certificate

as evidence of compliance) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing), certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary), certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure), Limited In-House Corporate Counsel License issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license) or limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys). The Board may destroy the annual certificate issued under § 93.143, but shall retain any other documents surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

Source

The provisions of this § 91.99 adopted March 13, 1991, effective November 16, 1991, 21 Pa.B. 5325; amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (333768).

§ 91.100. Law-related activities of formerly admitted attorneys.

(a) *General rule.* A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the requirements of this section.

(b) *Supervision.* Enforcement Rule 217(j)(1) provides that all law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this section. If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subsection.

(c) *Permissible activities.* Enforcement Rule 217(j)(2) provides that, for purposes of this section, the only law-related activities that may be conducted by a formerly admitted attorney are the following:

- (1) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;
- (2) direct communication with the client or third parties to the extent permitted by subsection (d); and
- (3) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a

matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(d) *Communications with clients.* Enforcement Rule 217(j)(3) provides that a formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(e) *Prohibited activities.* Enforcement Rule 217(j)(4) provides that, without limiting the other restrictions in this section, a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

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

(f) *Notice to Board.* Enforcement Rule 217(j)(5) provides that the supervising attorney and the formerly admitted attorney shall file with the Board a notice of engagement, identifying the supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with this section. The supervising attorney and the formerly admitted attorney shall file a notice with the Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

(g) *Jurisdiction over supervising attorney.* Enforcement Rule 217(j)(6) provides that the supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this section.

Official Note: This section limits and regulates the law-related activities performed by formerly admitted attorneys regardless of whether those formerly admitted attorneys are engaged as employees, independent contractors or in any other capacity. This section requires that a notice be filed with the Board when any law-related activities are performed by a formerly admitted attorney and when the engagement is terminated. This section is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. This section is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, this section is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

Source

The provisions of this § 91.100 adopted July 13, 2001, effective immediately, 31 Pa.B. 3731.

Subchapter F. PROTECTION OF THE INTERESTS OF CLIENTS

Sec.

- 91.121. Appointment of conservator to protect interests of clients of absent attorney.
- 91.122. Duties of conservator.
- 91.123. Cooperation with conservator.
- 91.124. Bank and other accounts.
- 91.125. Duration of conservatorship.
- 91.126. Discharge of conservator.
- 91.127. Liability of conservator.
- 91.128. Compensation and expenses of conservator.
- 91.129. Review by Supreme Court.

Source

The provisions of this Subchapter F amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782, unless otherwise noted. Immediately preceding text appears at serial page (31759).

§ 91.121. Appointment of conservator to protect interests of clients of absent attorney.

(a) *General rule.* Enforcement Rule 321(a) provides that upon application of Disciplinary Counsel or any other interested person with the written concurrence of Disciplinary Counsel, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

- (1) the attorney maintains or has maintained an office for the practice of law within the judicial district;
 - (2) any of the following applies:
 - (i) the attorney is made the subject of an order under § 91.151 (relating to emergency temporary suspension orders and related relief);
 - (ii) the president judge of the court of common pleas pursuant to § 91.97 (relating to action to protect clients of formerly admitted attorney) by order directs Disciplinary Counsel to file an application under Enforcement Rule 321; or
 - (iii) the attorney abandons his or her practice, disappears, dies or is transferred to inactive status because of incapacity or disability; and
 - (3) no partner or other responsible successor to the practice of the attorney is known to exist.
- (b) *Service of application.* Enforcement Rule 321(b) provides that a copy of the application for appointment of a conservator under that rule shall be personally served upon the absent attorney or the personal representative or guardian of the estate of a deceased or incompetent absent attorney; and that if personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by § 91.1 (relating to substituted service).
- (c) *Hearing.* Enforcement Rule 321(c) and (d) provide that the president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application; that at the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist for appointment of a conservator; that within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application; that the order shall contain findings of fact and a statement of the grounds upon which the order is based; and that if no appearance has been entered on behalf of the absent attorney, a copy of the order shall be served upon the absent attorney in the manner prescribed by subsection (b) of this section.
- (d) *Qualifications of conservator.* Enforcement Rule 321(e) provides that the conservator or conservators shall be appointed by the president judge, from among members of the bar of this Commonwealth who, subject to the following:
- (1) Non-disciplinary counsel conservators:
 - (i) shall not represent any party who is adverse to any known client of the absent attorney; and
 - (ii) shall have no adverse interest or relationship with the absent attorney or his or her estate.
- (e) *Tolling of limitation times.* Enforcement Rule 321(f) provides that the filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under the Enforcement Rules shall be deemed for the purposes of any statute of limitations or limitation on time for appeal as

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

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

(f) Enforcement Rule 321(g) provides that the filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:

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

(g) Enforcement Rule 321(h) provides that as used in this section, the term “government unit” has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).

Source

The provisions of this § 91.121 amended through July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198439) to (198440).

§ 91.122. Duties of conservator.

(a) *General rule.* Enforcement Rule 322(a)—(c) provides that:

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

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

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

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

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

(b) *Prohibited conduct.* Enforcement Rule 322(d) provides that neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

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

(2) Represent such a client in connection with:

(i) any matter identified during the conservatorship; or

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

(c) *Written report.* Enforcement Rule 322(e) provides that the conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in subsec-

tion (a) of this section; that if those duties have not been accomplished, then the conservator shall state what progress has been made in that regard; and that thereafter, the conservator shall file a similar written report every 60 days until discharged.

(d) Enforcement Rule 322(f) provides that in the case of a deceased attorney, the conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with § 91.128(3) (relating to compensation and expenses of conservator).

Source

The provisions of this § 91.122 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198440) to (198441).

§ 91.123. Cooperation with conservator.

Enforcement Rule 323 provides that any absent attorney who is capable of cooperating with the conservator and any partner, associate, personal representative or guardian of an absent attorney shall cooperate to the best of his or her ability with the conservator in identifying the clients and client files (including records with respect to funds of clients) of the absent attorney and any unexpended funds of such clients; and that wilful failure to so cooperate shall constitute a separate violation of the Enforcement Rules for the purposes of Enforcement Rule 203(b)(3) (relating to grounds for discipline).

§ 91.124. Bank and other accounts.

Enforcement Rule 324 provides that:

(1) A conservator shall notify all banks and financial institutions in which the absent attorney maintained either professional or trustee accounts of the appointment of a conservator under these rules; that service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement or deposit among such bank or financial institution, the absent attorney and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the absent attorney with such bank or financial institution; and that the appointing court on application may by order direct that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

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

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

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

(4) Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the absent attorney, and otherwise to complete the conservatorship and pay its expenses authorized under § 91.128 (relating to compensation and expenses of conservator), the conservator shall permit the absent attorney or his or her estate to take full possession of any remaining funds.

Source

The provisions of this § 91.124 amended May 4, 1984, effective May 5, 1984, 14 Pa.B. 1547; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198441) to (198442).

§ 91.125. Duration of conservatorship.

Enforcement Rule 325 provides that appointment of a conservator pursuant to the Enforcement Rules shall be for a period of no longer than six months; that the appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months; and that any order granting such an extension shall include findings of fact in support of the extension; and that no additional extensions shall be granted absent a showing of extraordinary circumstances.

Source

The provisions of this § 91.125 amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (198442).

§ 91.126. Discharge of conservator.

Enforcement Rule 326 provides that:

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

(2) An application for discharge shall set forth a full accounting of all funds disbursed to clients of the absent attorney, expended in the conservator-

ship or released to the full control of the absent attorney, and a summary of all other actions taken by the conservator.

§ 91.127. Liability of conservator.

Enforcement Rule 327 provides that a conservator appointed under the Enforcement Rules shall:

- (1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that the conservator shall be bound by the obligation of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as conservator.
- (2) Have no liability to the clients of the absent attorney except for injury to such clients caused by intentional, wilful, or grossly negligent breach of duties as a conservator.
- (3) Be immune to separate suit brought by or on behalf of the absent attorney; and that any objections by or on behalf of the absent attorney or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

Source

The provisions of this § 91.127 amended January 15, 1988, effective April 1, 1988, 18 Pa.B. 242; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial page (198443).

§ 91.128. Compensation and expenses of conservator.

Enforcement Rule 328 provides that:

- (1) A conservator not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. When the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations in which extraordinary circumstances are shown to justify enhanced compensation.
- (2) The necessary expenses (including, but not limited to, expenses of a certified public accountant engaged under § 91.124(3) (relating to bank and other accounts)) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate; and any expenses and any compensation of the conservator that are not reimbursed to the Board shall be paid as a cost of disciplinary administration and enforcement. Payment of any costs incurred by the Board pursuant to Enforcement Rule 328 that have not been reimbursed to the Board may be made a condition

of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

Source

The provisions of this § 91.128 amended through May 4, 1984, effective May 5, 1984, 14 Pa.B. 1547; amended September 23, 1995, effective September 23, 1995, 25 Pa.B. 3967; amended August 7, 2009, effective immediately, 39 Pa.B. 4725. Immediately preceding text appears at serial pages (198443) to (198444).

§ 91.129. Review by Supreme Court.

Enforcement Rule 329 and 42 Pa.C.S. § 722(1) (relating to direct appeals from courts of common pleas) provide that:

(1) Any order entered by a court of common pleas upon an application for the appointment of a conservator, or arising out of the supervision, administration, operation or discharge of any conservatorship under these rules, shall be reviewable by the Supreme Court within the time and in the manner prescribed by 210 Pa. Code (relating to Appellate Procedure) for review of orders relating to the supervision of investigating grand juries (see 210 Pa. Code Rule 3331 (relating to review of special prosecutions or investigations)).

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

Subchapter G. EMERGENCY PROCEEDINGS

Sec.

91.151. Emergency temporary suspension orders and related relief.

91.152. Injunctive or other relief.

§ 91.151. Emergency temporary suspension orders and related relief.

(a) *General rule.* Enforcement Rule 208(f)(1) provides that:

(1) Disciplinary Counsel, with the concurrence of a reviewing member of the Board, whenever it appears by an affidavit demonstrating facts that the continued practice of law by a person subject to the Enforcement Rules is causing immediate and substantial public or private harm because of the misappropriation of funds by such person to his or her own use, or because of other egregious conduct, in manifest violation of the Disciplinary Rules or the Enforcement Rules, may petition the Supreme Court for injunctive or other appropriate relief;

(2) a copy of the petition shall be personally served upon the respondent-attorney by Disciplinary Counsel;

(3) the Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days; and

(4) the Court, or any justice thereof, may, before or after issuance of the rule, issue such orders to the respondent-attorney, and to such financial institutions or other persons, as may be necessary to preserve funds, securities or other valuable property of clients or others which appear to have been misappropriated or mishandled in manifest violation of the Disciplinary Rules.

(b) *Order of temporary suspension.* Enforcement Rule 208(f)(2) provides that if a rule to show cause has been issued under subsection (a) of this section, and the period for response has passed without a response having been filed or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under the Enforcement Rules.

(c) *Effect of temporary suspension.* Enforcement Rule 208(f)(3) provides that:

(1) any order of temporary suspension which restricts the respondent-attorney from maintaining an attorney or other trust account shall, when served on any bank or other financial institution maintaining an account against which the respondent-attorney may make withdrawals, serve as an injunction to prevent the financial institution from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court;

(2) any order of temporary suspension issued under Enforcement Rule 208(f) shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension; and

(3) such order may also provide that any fees or portion thereof tendered to the respondent-attorney during such 30-day period shall be deposited into a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court.

(d) *Dissolution or amendment.* Enforcement Rule 208(f)(4) provides that:

(1) the respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension;

(2) a copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing; and

(5) upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(e) *Contempt of the Board.* Enforcement Rule 208(f)(5) provides that:

(1) the Board on its own motion, or upon the petition of Disciplinary Counsel, may issue a rule to show cause why the respondent-attorney should not be placed on temporary suspension whenever it appears that the respondent-attorney has disregarded an applicable provision of the Enforcement Rules, refused to comply with a valid subpoena or engaged in other conduct that in any such instance materially delays or obstructs the conduct of a proceeding under this Subpart;

(2) the rule to show cause shall be returnable within 30 days;

(3) if the response to the rule to show cause raises issues of fact, the Chairman of the Board may direct that a hearing be held before a member of the Board who shall submit a report to the Board upon the conclusion of the hearing;

(4) if the period for response to the rule to show cause has passed without a response having been filed, or after consideration of any response and any report of a Board member following a hearing under paragraph (3), the Board may recommend to the Supreme Court that the respondent-attorney be placed on temporary suspension; and

(5) the recommendation of the Board shall be reviewed by the Supreme Court as provided in § 89.207 (relating to review and action in the Supreme Court).

(f) *Request for accelerated disposition.* Enforcement Rule 208(f)(6) provides that:

(1) a respondent-attorney who has been temporarily suspended pursuant to this section for conduct described in subsection (a), or pursuant to the procedures of subsection (e) where a formal proceeding has not yet been commenced, shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition;

(2) within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline under § 89.52 (relating to petition for discipline) and the matter shall be assigned to a hearing committee for accelerated disposition;

(3) thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay; and

(4) if a petition for discipline is not timely filed under paragraph (2), the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under Enforcement Rule 208.

(g) *Conclusion of formal proceedings.* Enforcement Rule 208(f)(7) provides that a proceeding involving a respondent-attorney who has been temporarily suspended pursuant to this section at a time when a formal proceeding has already been commenced shall proceed and be concluded without appreciable delay.

(h) *Procedural requirements.* The Note to Enforcement Rule 208(f) provides that the “without appreciable delay” standard of subsections (f)(3) and (g) is derived from *Barry v. Barchi*, 443 U.S. 55, 66 (1979). Appropriate steps will be taken to satisfy this requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

Source

The provisions of this § 91.151 amended April 22, 1988, effective April 23, 1988, 18 Pa.B. 1915; amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended February 4, 1994, effective February 5, 1994, 24 Pa.B. 730; amended September 10, 2004, effective September 11, 2004, 34 Pa.B. 5013. Immediately preceding text appears at serial pages (198444) to (198446) and (279405).

§ 91.152. Injunctive or other relief.

(a) *General rule.* Enforcement Rule 218(j) provides that if Disciplinary Counsel shall have probable cause to believe that any formerly admitted attorney:

- (1) Has failed to comply with such rule or Subchapter 91E (relating to formerly admitted attorneys), or,
- (2) Is otherwise continuing to practice law; Disciplinary Counsel may bring an action in any court of competent jurisdiction for such injunctive and other relief as may be appropriate.

(b) *Appeals.* Appeals from orders entered in proceedings under subsection (a) are governed by 42 Pa.C.S. § 722(8) (relating to direct appeals from courts of common pleas).

Source

The provisions of this § 91.152 amended through October 12, 1984, effective October 13, 1984, 14 Pa.B. 3749; amended March 13, 1991, effective November 16, 1991, 21 Pa.B. 5325. Immediately preceding text appears at serial page (154527).

Subchapter H. FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION

Sec.

- 91.171. Definitions.
- 91.172. Maintenance of fiduciary accounts.
- 91.173. Approval and termination of Eligible Institutions.
- 91.174. Reports of overdrafts.
- 91.175. Fiduciary accounts.
- 91.176. Rules for determining reporting obligation.
- 91.177. Required records.

Source

The provisions of this Subchapter H adopted November 3, 1995, effective immediately, 25 Pa.B. 4696, unless otherwise noted.

§ 91.171. Definitions.

The following terms when used in this subchapter shall have the meanings given to them in this section:

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

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

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

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

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

Source

The provisions of this § 91.171 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial pages (312773) to (312774).

§ 91.172. Maintenance of fiduciary accounts.

Enforcement Rule 221(b) provides that a Trust Account may be maintained only in an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts.

Source

The provisions of this § 91.172 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial page (312774).

§ 91.173. Approval and termination of Eligible Institutions.

(a) *Approval.* Enforcement Rule 221 (h) provides that an Eligible Institution shall be approved as a depository for Trust Accounts if it shall file with the Board an agreement (in a form provided by the Board) in which the Eligible Institution agrees to make a prompt report to the Lawyers Fund for Client Security Board under the circumstances described in § 91.174 (relating to reports of overdrafts). Upon receiving a signed agreement from an Eligible Institution as required by this subsection, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order approving the Eligible Institution as a depository for Trust Accounts.

(b) *Termination of approval.* Enforcement Rule 221 (k) provides that a failure on the part of an Eligible Institution to make a report called for by this subchapter may be cause for termination of its approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action by any person who is proximately caused harm thereby. Upon learning that a financial institution has failed to make a report called for by this subchapter, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order terminating the approval of the financial institution as a depository for Trust Accounts.

(c) *List of approved Eligible Institutions.* The Board will periodically publish in the *Pennsylvania Bulletin* a list of Eligible Institutions that are approved at the time as depositories for Trust Accounts under this subchapter. The current list shall also be published in the *Pennsylvania Code* as an appendix to this section.

Source

The provisions of this § 91.173 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial page (312774).

APPENDIX A**List of Approved PA Financial Institutions Who Have Been Approved as Depositories for Fiduciary Accounts of Attorneys****Bank Code A.**

595	Abacus Federal Savings Bank
374	Abington Savings Bank
2	Adams County National Bank
572	Affinity Bank of Pennsylvania
302	Allegheny Valley Bank of Pittsburgh
548	Allegiance Bank of North America
579	Alliance Bank
375	Altoona First Savings Bank
376	Ambler Savings and Loan Association
532	American Bank of Lehigh Valley
502	American Eagle Savings Bank

581 American Home Bank, N.A.
 116 Ameriserv Financial
 377 Apollo Trust Company
 568 Arc Federal Credit Union

Bank Code B.

558 Bancorp Bank (The)
 485 Bank of America
 138 Bank of Canton
 155 Bank of Hanover & Trust Company
 3 Bank of Lancaster County, N.A.
 415 Bank of Landisburg (The)
 519 Beaver Valley Federal Credit Union
 501 BELCO Community Credit Union
 397 Beneficial Savings Bank
 582 Berkshire Bank
 391 Blue Ball Bank
 392 Brentwood Savings Bank
 495 Brown Brothers Harriman & Co.
 161 Bryn Mawr Trust Company
 156 Bucks County Bank

Bank Code C.

480 Cambria County Federal
 Savings & Loan Assoc.
 540 C & G Savings Bank
 459 Centra Bank
 394 Charleroi Federal Savings Bank
 599 Citibank N.A.
 238 Citizens and Northern Bank
 561 Citizens Bank of Pennsylvania
 420 Citizens National Bank—Myersdale
 206 Citizens Savings Bank
 353 Citizens Trust Company
 602 City National Bank of New Jersey
 576 Clarion County Community Bank
 16 Clearfield Bank & Trust Co.
 591 Clearview Federal Credit Union
 354 Coatesville Savings Bank
 603 Colonial American Bank
 17 Columbia County Farmers National
 Bank

250	Commerce Bank, PA, NA
18	Commerce Bank/Harrisburg, NA
223	Commercial Bank & Trust of Pennsylvania
310	Community Bank & Trust Company
21	Community Bank
204	Community Banks
533	Community First Bank, N.A.
430	Community National Bank of Northwestern PA
132	Community State Bank of Orbisonia
590	Continental Bank
23	County National Bank
380	County Savings Bank
382	CSB Bank

Bank Code D.

339	Dime Bank (The)
239	DNB First, N.A.
27	Dollar Bank
423	Dwelling House Savings & Loan Association

Bank Code E.

357	Eagle National Bank
569	Earthstar Bank
424	East Penn Bank
358	East Prospect State Bank
597	East River Bank
340	East Stroudsburg Savings Association
500	Elderton State Bank
567	Embassy Bank
541	Enterprise Bank
28	Ephrata National Bank (The)
383	ESB Bank, F.S.B.
601	Esquire Bank
552	Eureka Bank

Bank Code F.

31	Farmers & Merchants Trust Company
205	Farmers National Bank of Emlenton
436	Farmers National Bank of Kittanning

311	Fidelity Bank
34	Fidelity Deposit & Discount Bank
343	Fidelity Savings and Loan of Bucks County
583	Fifth Third Bank
174	First Citizens National Bank
191	First Columbia Bank & Trust Co.
539	First Commonwealth Bank
551	First Cornerstone Bank
369	First Federal Savings & Loan Assoc. of Bucks County
504	First Federal Savings & Loan Assoc. of Greene County
388	First Federal Savings Bank
525	First Heritage Federal Credit Union
228	First Keystone Bank
371	First Liberty Bank & Trust
263	First Merit Bank, N.A.
51	First National Bank & Trust Co. of Newtown (The)
42	First National Bank of Berwick (The)
52	First National Bank of Chester County
416	First National Bank of Fleetwood (The)
421	First National Bank of Fredericksburg
322	First National Bank of Greencastle
418	First National Bank of Liverpool (The)
43	First National Bank of Marysville
46	First National Bank of Mercersburg (The)
419	First National Bank of Mifflintown (The)
198	First National Bank of Minersville (The)
47	First National Bank of Newport (The)
426	First National Bank of Palmerton (The)
48	First National Bank of Pennsylvania
427	First National Bank of Port Alleghany (The)

175	First National Community Bank
549	First National Community Bank— Midland
170	First Penn Bank
592	First Resource Bank
40	First Savings Bank of Perkasio
349	First Star Savings Bank
158	First Summit Bank
408	First United National Bank
151	Firsttrust Bank
493	FNB Bank, N.A.
291	Fox Chase Bank
241	Franklin Mint Federal Credit Union
58	Fulton Bank

Bank Code G.

588	Gateway Bank of Pennsylvania
499	Gratz National Bank (The)
593	Graystone Bank
498	Greenville Savings Bank

Bank Code H.

402	Halifax National Bank
244	Hamlin Bank and Trust Company
64	Harleysville National Bank and Trust Company
362	Harleysville Savings Bank
363	Hatboro Federal Savings
410	Herndon National Bank (The)
559	Home Savings & Loan Company
68	Honesdale National Bank (The)
350	HSBC Bank of USA
364	Huntingdon Valley Bank

Bank Code I.

365	Indiana First Savings Bank
575	Integrity Bank
557	Investment Savings Bank
200	Iron and Glass Bank
526	Iron Workers Bank
366	Irwin Bank & Trust Company

Bank Code J.

70	Jersey Shore State Bank
127	Jim Thorpe National Bank
488	Jonestown Bank and Trust Company
72	Juniata Valley Bank (The)

Bank Code K.

403	Keystone Nazareth Bank and Trust
414	Kish Bank

Bank Code L.

74	Lafayette Ambassador Bank
554	Landmark Community Bank
187	Lebanon Valley Farmers Bank
182	Leesport Bank
78	Luzerne National Bank

Bank Code M.

386	Malvern Federal Savings Bank
361	M & T Bank
510	Marion Center National Bank
81	Mars National Bank (The)
367	Mauch Chunk Trust Company
5	Mellon Bank, N.A.
555	Mercer County State Bank
192	Merchants National Bank of Bangor (The)
478	Merchants National Bank of Kittanning
294	Mid Penn Bank
511	Mifflin County Savings Bank
276	Mifflinburg Bank & Trust Company
457	Milton Savings Bank
345	Minersville Safe Deposit Bank and Trust Company
596	MoreBank
346	Morton Savings Bank
484	Muncy Bank & Trust Company (The)

Bank Code N.

337	National City Bank of Pennsylvania
88	National Penn Bank

347	Neffs National Bank (The)
372	Nesquehoning Savings Bank
536	New Century Bank
434	New Tripoli Bank (The)
15	NexTier Bank
545	Nittany Bank
492	North Penn Bank
439	Northumberland National Bank
93	Northwest Savings Bank
546	Nova Savings Bank

Bank Code O.

348	Old Forge Bank
323	Omega Bank, NA
489	OMEGA Federal Credit Union
94	Orrstown Bank

Bank Code P.

598	Parke Bank
267	Parkvale Bank
584	Parkview Community Federal Credit Union
580	Penn Liberty Bank
97	Penn Security Bank & Trust Company
168	Pennstar Bank
544	Pennsylvania Business Bank
445	Pennsylvania State Bank
99	PeoplesBank, A Codorus Valley Company
447	Peoples National Bank of Susquehanna County
491	Peoples State Bank (The)
556	Philadelphia Federal Credit Union
448	Phoenixville Federal Bank & Trust
79	PNC Bank, N.A.
534	Pocono Community Bank
528	Polonia Bank
449	Port Richmond Savings
454	Portage National Bank
451	Progressive Home Federal
456	Prudential Savings Bank

Bank Code Q.

107 Quakertown National Bank (The)
560 Quaint Oak Savings Bank

Bank Code R.

452 Reliance Savings Bank
220 Republic First Bank
208 Royal Bank America

Bank Code S.

153 S&T Bank
464 Scottsdale Bank & Trust Company
(The)
460 Second Federal Savings & Loan
Assoc. of Philadelphia
516 Sentry Federal Credit Union
458 Sharon Savings Bank
312 Sky Bank
462 Slovenian Savings & Loan Assoc. of
Franklin—Conemaugh
486 Somerset Trust Company
316 Sovereign Bank, FSB
518 Standard Bank, PASB
542 Stonebridge Bank
517 Sun National Bank
440 SunTrust
385 Susquehanna Bank
30 Susquehanna Bank PA
282 Susquehanna Patriot Bank
236 Swineford National Bank

Bank Code T.

143 TD Banknorth
594 Team Capital Bank
463 The Haverford Trust Company
26 Third Federal Savings Bank
467 Turbotville National Bank (The)

Bank Code U.

113 Union Bank and Trust Company
481 Union Building and Loan Savings
Bank

483	Union National Bank of Mount Carmel (The)
133	Union National Community Bank
472	United Bank of Philadelphia
475	United Savings Bank
600	Unity Bank
232	Univest National Bank & Trust Company

Bank Code V.

589	Valley Green Bank
136	Vartan National Bank

Bank Code W.

338	Wachovia
119	Washington Federal Savings Bank
121	Wayne Bank
553	Wesbanco Bank
122	West Milton State Bank
494	West View Savings Bank
473	Westmoreland Federal Savings
476	William Penn Bank
370	Willow Financial Bank
160	Wilmington Trust of PA
272	Woodlands Bank
573	Woori America Bank

Bank Code X.**Bank Code Y.**

571	Yardville National Bank
577	York Traditions Bank

Bank Code Z.**Source**

The provisions of this Appendix A adopted December 22, 1995, effective December 23, 1995, 25 Pa.B. 5916; amended April 25, 1997, effective April 26, 1997, 27 Pa.B. 2038; amended April 24, 1998, effective April 25, 1998, 28 Pa.B. 1933; amended April 16, 1999, effective April 17, 1999, 29 Pa.B. 2021; amended April 28, 2005, effective April 29, 2005, 35 Pa.B. 2625; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 1986; amended April 27, 2007, effective April 28, 2007, 37 Pa.B. 1963. Immediately preceding text appears at serial pages (318989) to (319000).

§ 91.174. Reports of overdrafts.

(a) *General rule.* Enforcement Rule 221(h) provides that an Eligible Institution shall report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of:

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

(b) *Timing of report.* Enforcement Rule 221(p) provides that the report required to be made under this subchapter shall be made by the Eligible Institution to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

(c) *Handling of report.* Enforcement Rule 22 (o) provides that a designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry regarding the report and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.

(d) *Effect of report or referral.* Enforcement Rule 221(o) also provides that neither a report filed with the Lawyers Fund for Client Security Board pursuant to this subchapter nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(e) *Immunity.* Enforcement Rule 221(l) provides that Eligible Institutions shall be immune from suit for the filing of any reports required by this subchapter or believed in good faith to be required by this subchapter. See § 91.173(b) (relating to termination of approval).

Source

The provisions of this Rule 91.174 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial pages (326994) to (326995).

§ 91.175. Fiduciary accounts.

(a) *Identification.* Enforcement Rule 221(d) provides that the responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

(b) *Service charge.* Enforcement Rule 221(m) provides that an Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this subchapter.

Source

The provisions of this § 91.175 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial page (326995).

§ 91.176. Rules for determining reporting obligation.

For purposes of this subchapter:

- (1) Enforcement Rule 221(i)(1) provides that a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncol-

lected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Enforcement Rule 221(i)(2) provides that funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the Eligible Institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) Enforcement Rule 221(i)(3) provides that a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(4) Enforcement Rule 221(j) provides that no report need be made when the Eligible Institution determines that an instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

Source

The provisions of this Rule 91.176 amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial pages (326995) to (326996).

§ 91.177. Required records

(a) *In general.* Enforcement Rule 221(e) provides that an attorney shall maintain the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held:

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

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

(b) *Form.* Enforcement Rule 221(f) provides that the records required by this rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

(c) *Availability.* Enforcement Rule 221(g) provides that the records required by this rule may be subject to subpoena and must be produced in connection with an investigation or hearing pursuant to these rules; and that failure to produce such records may result in the initiation of proceedings pursuant to § 91.151 (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

Source

The provisions of this Rule 91.177 adopted August 5, 2005, effective immediately, 35 Pa.B. 4301; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687. Immediately preceding text appears at serial page (326996).

[Next page is 93-1.]

91-48

(344964) No. 419 Oct. 09

Copyright © 2009 Commonwealth of Pennsylvania