THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 85, 89, 91 AND 93]

Amendments to Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court of Pennsylvania

Order No. 69

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated March 26, 2009 and April 16, 2009, the Supreme Court of Pennsylvania amended Pa.R.D.E. 321, 322, 324, 325, 327, 328, 102, 201, 204, 205, 217, 218 and 219, respectively. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

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

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***Administrative suspension*—Status of an attorney, after Court order, who: failed to pay the annual fee and/or file the form required by subdivisions (a) and (d) of Enforcement Rule 219; was reported to the Court by the Pennsylvania Continuing Legal Education Board under Rule 111(b), Pa.R.C.L.E., for having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education; failed to pay any expenses taxed pursuant to Enforcement Rule 208(g); or failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or a military attorney.**

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

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

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

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§ 85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement Rules extends to:

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

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§ 85.8. Types of discipline.

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(c) *Limited In-House Corporate Counsel License.* Enforcement Rule 204(c) provides that a reference in the

Enforcement Rules and these rules to disbarment, suspension, temporary suspension, **administrative suspension,** or transfer to or assumption of **retired or** inactive status shall be deemed to mean, in the case of a respondent-attorney who holds a Limited In-House Corporate Counsel License, expiration of that license; and that a respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

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CHAPTER 89. FORMAL PROCEEDINGS

Subchapter C. HEARING PROCEDURES

ABBREVIATED PROCEDURE

§ 89.181. Abbreviated procedure.

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

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Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.271. Reinstatement only by Court order.

Enforcement Rule 218(a) provides that **[no attorney suspended for a period exceeding one year, transferred to inactive status more than three years prior to resumption of practice or transferred to inactive status as a result of the sale of his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or disbarred may resume practice until reinstated by order of the Supreme Court after petition therefor pursuant to the Enforcement Rules.] an attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to Rule 218 if the attorney was:**

(1) suspended for a period exceeding one year;

(2) retired, on inactive status or on administrative suspension for more than three years;

(3) transferred to inactive status as a result of the sale of his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct; or

(4) disbarred.

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§ 89.273. Procedures for reinstatement.

(a) **[** ***General rule.*** **]** Enforcement Rule 218(c) **[and (d) provide] provides** that **the procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows**:

(1) Petitions for reinstatement **[by formerly admitted attorneys]** shall be filed with the Board.

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

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall file a response thereto with the Board and serve a copy on the formerly admitted attorney. Upon receipt of the response, the Board shall refer the petition and response to a hearing committee appointed by the Office of the Secretary pursuant to § 93.81(c) (relating to hearing committees) in the disciplinary district in which the formerly admitted attorney maintained an office at the time of the disbarment**[,] or** suspension **[or transfer to inactive status]**. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

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

(3) The hearing committee shall promptly schedule a hearing at which**[:**

(i) A] a disbarred or suspended attorney shall have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. **When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 579, 506 A.2d 872, 875 (1986) and its progeny applies.**

[(ii) A formerly admitted attorney who has been on inactive status shall have the burden of demonstrating that such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth.]

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

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(6) In the event the Board recommends reinstatement and the Supreme Court, after consideration of that recommendation, is of the view that a rule to show cause should be served upon the **[respondent-attorney] petitioner-attorney** why an order denying reinstatement should not be entered, the same shall be issued setting forth the areas of the Court's concern. A copy of the rule shall be served on Disciplinary Counsel (see § 89.27 (relating to service upon Disciplinary Counsel)). Within 20 days after service of the rule, **[respondent-attorney] petitioner-attorney**, as well as Disciplinary Counsel, may submit to the Supreme Court a response thereto. Unless otherwise ordered, matters arising under Enforcement Rule 218 will be considered without oral argument.

[(7) A petition for reinstatement to active status from inactive status by a formerly admitted attorney who has not been suspended or disbarred shall be considered by a single senior or experienced hearing committee member who shall perform the functions of a hearing committee under this subsection (a).

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

(b) Enforcement Rule 218(d) provides that the procedure for petitioning for reinstatement from retired status for more than three years, inactive status for more than three years or administrative suspension for more than three years, or after transfer to inactive status as a result of the sale of a law practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct is as follows:

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

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

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

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

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

(3) A formerly admitted attorney who has been on retired status, inactive status or administrative suspension shall have the burden of demonstrating that such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth.

(4) Upon receipt of a response under (b)(2)(i), the Board shall refer the petition and response to a single senior or experienced hearing committee member in the disciplinary district in which the formerly admitted attorney maintained an office at the time of transfer to or assumption of retired or inactive status, or transfer to administrative suspension; the single senior or experienced hearing committee member shall promptly schedule a hearing during which the hearing committee member shall perform the functions of a hearing committee under this subsection (b). If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

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

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

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

(7) Upon receipt of a report and recommendation for an order of reinstatement, the Court may enter an order reinstating the formerly admitted attorney to active status; the Chief Justice may delegate the processing and entry of orders under this paragraph (b)(7) to the Prothonotary.

(c) Enforcement Rule 218(e) provides that in all proceedings upon a petition for reinstatement, cross-examination of the petitioner-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

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

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

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

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

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[(c)] (e) *Attorneys on inactive status,* ***retired status or administrative suspension*** *for* **[** ***less than three***

years*] *three years or less. Enforcement Rule **[218(g)] 218(h)** provides that attorneys who have been on inactive status**, retired status or administrative suspension** for three years or less may be reinstated pursuant to § 93.145 (relating to **[reinstatement] administratively suspended attorneys**) **[or],** § 93.146**[(b)]** (relating to **[reactivation)] voluntarily retired or inactive attorneys), and § 93.112(c) (relating to reinstatement upon payment of taxed costs),** as **[appropriate] applicable**. This subsection **[(c)] (e)** does not apply to any attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.

§ 89.274. Notice of reinstatement proceedings.

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

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(4) The **[president] executive director** of the bar association of the county in which such attorney practiced.

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

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§ 89.275. Completion of questionnaire by **[respondent-attorney] petitioner-attorney**.

(a) *General rule.* If the petition for reinstatement does not have attached thereto a fully completed Form DB-36 (Reinstatement Questionnaire), the Office of the Secretary shall forward to the formerly admitted attorney four copies of Form DB-36 which shall require such attorney to set forth fully and accurately the following information and such other information as the Office of Disciplinary Counsel may require:

(1) Name, address, age and residence of the **[respondent-attorney] petitioner-attorney**.

(2) Name, address, age, residence, number and relationship of dependents of the **[respondent-attorney] petitioner-attorney**.

(3) If the formerly admitted attorney was disbarred or suspended **for disciplinary reasons**, the offense or misconduct upon which the disbarment or suspension was based, together with the date of the disbarment or suspension order and the caption and docket number of the proceeding in which entered. A certified copy of the disbarment**[,] or** suspension **[or transfer to inactive status]** order shall be attached to the questionnaire.

(4) The names and addresses of all complaining witnesses in any proceedings which resulted in disbarment or suspension and the names of:

(i) the hearing committee of the Board**[, or the local grievance committee, committee of censors or other similar body existing prior to the establishment of the Board,]** which heard the evidence in the disciplinary proceedings; and

(ii) the trial judge and prosecuting attorney, if disbarment or suspension was based on conviction of a crime.

(5) The nature in detail of the occupation of the **[respondent-attorney] petitioner-attorney** during the period of disbarment, suspension**, administrative suspension, retired status** or inactive status, with names of all partners, associates in business, and employers, if any, and dates and duration of all such **business** relationships and employments.

(6) A statement showing the approximate monthly earnings and other income of the **[respondent-attorney] petitioner-attorney**, and the sources from which all such earnings and income were derived during such period, or during the ten years preceding the filing of the petition for reinstatement, whichever is less.

(7) A statement showing all residences maintained by the **[respondent-attorney] petitioner-attorney** during the ten years preceding the filing of the petition for reinstatement, with the names and addresses of landlords, if any. The statement shall also indicate the county in which any such residence in Pennsylvania is located.

(8) A statement showing all financial obligations of the **[respondent-attorney] petitioner-attorney** at the date of the filing of the petition, together with the dates when such obligations were incurred and the names and addresses of all creditors.

(9) A statement showing the dates, general nature and final disposition of every civil action during the period of disbarment, suspension, administrative suspension, retired status or inactive status wherein the **[respondent-attorney] petitioner-attorney** was either a party plaintiff or defendant or in which such attorney had or claimed an interest, together with dates of filing of complaints, titles of courts and causes and the names and addresses of all parties plaintiff and defendant, names and addresses of attorneys for said parties and of the trial judge, or judges, and names and addresses of all witnesses who testified in such actions.

(10) A statement showing the dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of the **[respondent-attorney] petitioner-attorney** during the period of disbarment, suspension**, administrative suspension, retired status** or inactive status for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges.

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

(12) A statement of any procedure of inquiry, during said period, concerning the standing of the **[respondent-attorney] petitioner-attorney** as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of the **[respondent-attorney] petitioner-attorney**; and as to each, the

dates, facts, and the disposition thereof, and the names and address of the authority in possession of the record thereof.

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

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

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

[*Official Note*: For purposes of allowing the Office of Disciplinary Counsel to begin its investigation of the petition for reinstatement, the Office of the Secretary will accept a preliminary questionnaire that lists courses or lectures that the respondent-attorney is registered to take in the future if proof of that registration, such as receipted bills or canceled checks, is attached to the questionnaire. The questionnaire, however, will not be considered completed and properly filed for purposes of commencing the running of the time periods in § 89.273 (relating to procedures for reinstatement) until the respondent-attorney has actually attended those courses or lectures.]

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§ 89.276. Procedures before the Board.

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

§ 89.277. Abbreviated reinstatement procedure.

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

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

(c) *Procedures.*

(1) Immediately after the conclusion of the hearing the hearing committee **member** shall, if practicable and if neither the formerly admitted attorney nor staff counsel object thereto, **[temporarily recess the proceedings and]** determine **[in private]** the findings and recommendations of the **hearing** committee **member**.

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

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

(4) If a timely objection is made as provided in paragraph (3) of this subsection the participants may file briefs, the official reporter shall be directed to prepare a transcript and the hearing committee **member** shall submit to the Board formal findings and recommendations in the manner and within the time otherwise provided by these rules.

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

(6) Thereafter the Board shall either:

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

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

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§ 89.278. Expenses of reinstatement proceedings.

Enforcement Rule **[218(e)] 218(f)** provides that the Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of the petition for reinstatement be paid by the **[respondent-attorney] petitioner-attorney; a reinstatement fee of $300 shall be assessed against a petitioner-attorney who was administratively suspended at the time of the filing of the petition; and the annual fee required by Enforcement Rule 219(a)**

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

§ 89.279. Evidence of competency and learning in law.

(a) *General rule.* Except as provided in subsection (b), in order to permit the Board to determine under Enforcement Rule 218 (relating to reinstatement) whether a formerly admitted attorney who has been disbarred or suspended for more than one year or who has been on **administrative suspension, retired status or** inactive status for more than three years possesses the competency and learning in the law required for reinstatement to practice in this Commonwealth, such a formerly admitted attorney shall within one year preceding the filing of the petition for reinstatement take **[(and prior to hearing on the petition, complete)]** courses meeting the requirements of the current schedule published by the Office of the Secretary under subsection (c).

(b) *Exceptions.*

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

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

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

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§ 89.280. Notice of reinstatement.

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

(b) *Transmission of notice to local president judge.* Enforcement Rule **[218(i)] 218(j)** provides that the Board when appropriate shall promptly transmit to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced a copy of:

(1) the certification filed with the Prothonotary of the Supreme Court under § 93.145**(a)(2)** (relating to reinstatement **of an attorney who has been administratively suspended for three years or less**) or § 93.112(c) (relating to reinstatement upon payment of taxed costs); or

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

RESUMPTION OF PRACTICE

§ 89.285. Resumption of practice by justices and judges.

(a) *General rule.* Enforcement Rule **[219(m)] 219(n)** provides that a former or retired justice or judge who is not the subject of an outstanding order of discipline affecting his or her right to practice law and who wishes to resume the practice of law shall file with the **[Administrative] Attorney Registration** Office a notice in writing to that effect.

(b) *Notice.* Enforcement Rule **[219(m)] 219(n)** further provides that the notice shall:

(i) describe:

(**[(a)]A)** any discipline imposed within six years before the date of the notice upon the justice or judge by the Court of Judicial Discipline **[or the former Judicial Inquiry and Review Board]**;

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

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CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter E. 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, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension**, administrative suspension** or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension**, administrative suspension** or transfer to inactive status and shall advise 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).

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§ 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**, administrative 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**, administra-**

tive 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).

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§ 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.

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

Enforcement Rule 217(d) provides that orders imposing suspension, disbarment**, administrative suspension** or transfer to inactive status shall be effective 30 days after entry; that the formerly admitted attorney, after entry of the disbarment, suspension**, administrative suspension** or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature; 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.

§ 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:

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§ 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 **[(Form DB-26) (Notice of Suspension, Disbarment 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.

§ 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.

§ 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.

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§ 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 **[Court Administrator of Pennsylvania] 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.

Subchapter F. PROTECTION OF THE INTERESTS OF CLIENTS

§ 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; **and**

(2) **[[Reserved];] any of the following applies:**

(i) the attorney is made the subject of an order under § 91.151 (relating to emergency interim suspension orders and related relief); **or**

(ii) the president judge of the court of common pleas pursuant to § 91.97 (relating to action to protect clients of formerly admitted attorneys) 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**[, or disappears or dies]**; and

(3) no partner or other responsible successor to the practice of the attorney is known to exist.

* * * * *

(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:

[(1)] (i) [are not representing] shall not represent any party who is adverse to any known client of the absent attorney; and

[(2)] (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 **court** of this Commonwealth on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

(1) the application for appointment of a conservator is granted, and

(2) substitute counsel actually files an appropriate document in a court or magisterial district **court** within 30 days after executing a receipt for the file relating to the matter.

(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).

§ 91.122. Duties of conservator.

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

* * * * *

[(3) The conservator shall send written notice to all clients of the absent attorney of the fact of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel; that 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; that the conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active; that 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; that the conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge; and that 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.]

(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.

* * * * *

(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 subsection (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 **[30] 60** days until discharge.

(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).

§ 91.124. Bank and other accounts.

Enforcement Rule 324 provides that:

* * * * *

(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.

* * * * *

§ 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**.

§ 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 **[Disciplinary Rules] Rules of Professional Conduct** with respect to information acquired as conservator.

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§ 91.128. Compensation and expenses of conservator.

Enforcement Rule 328 provides that:

(1) A conservator **[shall normally serve without compensation, but where a conservatorship is expected to be prolonged or require greater effort than normal the appointing court may, with the prior written approval of the Board Chairman, order that the conservator be compensated on an agreed basis. Any such agreement shall be filed with the Office of the Secretary] 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) Upon the completion of a conservatorship, the appointing court, with the prior written approval of the Board Chairman, shall have the power to award compensation or to increase compensation previously agreed to upon application of the conservator and upon demonstration by the conservator that the nature of the conservatorship was extraordinary and that failure to award or increase previously agreed compensation would work a substantial hardship on the conservator; and that in such event, compensation shall be awarded only to the extent that the efforts of the conservator have

exceeded those normally required or reasonably anticipated at the time the original compensation agreement was approved.

(3)] **(2)** The necessary expenses (including**, but not limited to,** the fees and expenses of a certified public accountant engaged pursuant to § 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 **[if not so paid, then upon certification by the president judge of the appointing court and approval by the Board Chairman, the] 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.**

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.23. Powers and duties.

(a) *General rule.* Enforcement Rule 205(c) provides that the Board shall have the power and duty:

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

* * * * *

(iii) consider a petition for reinstatement to active status from inactive status under § 89.273**[(a)(7)]** (relating to procedures for reinstatement).

* * * * *

Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.112. Failure to pay taxed expenses.

(a) *Action by Board.* Enforcement Rule 219(g) and **[(k)] (l)** provide that the Board shall:

(1) Transmit by certified mail, return receipt requested, to every attorney who fails to pay any expenses taxed pursuant to § 89.205(b) (relating to taxation of expenses), or § 89.209 (relating to expenses of formal proceedings), addressed to the last known address of the attorney, a notice stating:

(i) that unless the attorney shall pay all such expenses within 30 days after the date of the notice, such failure to pay will be deemed a request **[for transfer to inactive status] to be administratively suspended**, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will **[immediately]** enter an order **[transferring the attorney to inactive status] administratively suspending the attorney**; and

(ii) that upon entry of the order **[transferring the attorney to inactive status] of administrative suspension**, the attorney shall comply with Chapter 91 Subchapter E (relating to formerly admitted attorneys).

* * * * *

(b) *Action by Supreme Court.* Enforcement Rule 219(g) provides that upon certification to the Supreme Court of the name of any attorney pursuant to paragraph (a)(2), the Court shall **[immediately]** enter an order **[transferring such attorney to inactive status] administratively suspending the attorney**; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

(c) *Reinstatement upon payment of taxed costs.* Enforcement Rule 219**[(l)] (m)** provides that upon payment of all expenses taxed pursuant to § 89.205(b) and § 89.209 by a formerly admitted attorney **[transferred to inactive status] on administrative suspension** solely for failure to comply with paragraph (a)(1) of this section, the Board shall so certify to the Supreme Court; and that unless such person is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the Board with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.

ANNUAL ASSESSMENT OF ATTORNEYS

§ 93.141. Annual assessment.

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice law in this Commonwealth**[, other than a military attorney holding a limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys)]** shall pay an annual fee under such rule of $130.00; that the annual fee shall be collected under the supervision of the **[Administrative] Attorney Registration** Office, which shall send and receive, or cause to be sent and received, the notices and **[statements] forms** provided for in this Subchapter, and that the fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

(b) *Inapplicable to justices and judges.* Enforcement Rule 219(b) provides that **[justices and judges] the following** shall be exempt from the annual fee **[for such time as they serve in office.]:**

(1) Justices or judges serving in the following Pennsylvania courts of record shall be exempt for such time as they serve in office: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and justices or judges serving an appointment for life on any federal court;

(2) retired attorneys; and

(3) military attorneys holding a limited certificate of admission issued under Pa.B.A.R. 303 (relating to admission of military attorneys).

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

§ 93.142. Filing of annual **[statement] form** by attorneys.

(a) *Transmission of form.* Enforcement Rule 219(c) provides that on or before May 15 of each year the **[Admin-**

istrative] Attorney Registration Office shall transmit by ordinary mail to all persons required by the rule to pay an annual fee a form **[for completing the annual statement]** required by subsection (b) of this section.

(b) *Filing of annual* **[** ***statement*** **]** ***form***. Enforcement Rule 219(d) provides that on or before July 1 of each year all persons required by the rule to pay an annual fee shall file with the **[Administrative] Attorney Registration** Office a signed **[statement on the]** form prescribed by the **[Administrative] Attorney Registration** Office in accordance with the following procedures:

(1) The **[statement] form** shall set forth:

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

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

***Official Note*: The Note to Enforcement Rule 219(d)(1)(ii) explains that public web docket sheets will show the attorney's address as entered on the court docket.**

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

* * * * *

(vi) Such other information as the **[Administrative] Attorney Registration** Office may from time to time direct.

(2) Payment of the annual fee shall accompany the **[statement] form**. Where a check in payment of the annual fee has been returned to the Board unpaid, the annual fee shall not be deemed to have been paid until a collection fee shall also have been paid. The amount of the collection fee shall be established by the Board annually after giving due regard to the direct and indirect costs incurred by the Board during the preceding year for checks returned to the Board unpaid. On or before July 1 of each year the Office of the Secretary shall publish in the *Pennsylvania Bulletin* a notice of the collection fee established by the Board for the coming assessment year.

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

(4) Upon original admission to the bar of this Commonwealth, licensure as a **[foreign legal consultant] Foreign Legal Consultant**, **[or]** issuance of a Limited In-House Corporate Counsel License, **or limited admission as an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311,** a person shall concurrently file a **[statement] form** under this subsection for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

§ 93.143. Issue of certificate as evidence of compliance.

Enforcement Rule 219(e) provides that **[within 20 days of the] upon** receipt of a **[statement] form**, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of § 93.142 (relating to filing of annual **[statement] form** by attorneys), and of payment of any required annual fee **to practice law in this Commonwealth**, receipt thereof shall be acknowledged on a certificate **[issued by the Court Administrator of Pennsylvania, evidencing compliance with § 93.142(b) (relating to filing of annual statement)] or license**.

§ 93.144. **[Transfer to inactive status] Administrative suspension** for failure to comply.

(a) *Action by* **[** ***Administrative*** **]** ***Attorney Registration Office.*** Enforcement Rule 219(f) and (g) provide that the **[Administrative] Attorney Registration** Office shall:

(1) Transmit by **[certified] ordinary** mail**[, return receipt requested,]** to every attorney who fails to timely file the **[statement] form** and pay the annual fee required by this Subchapter, addressed to the last known **mailing** address of the attorney, a notice stating:

(i) That unless the attorney shall comply with the requirements of § 93.142 (relating to filing of annual **[statement] form** by attorneys) within 30 days after the date of the notice, such failure to comply will be deemed a request **[for transfer to inactive status] to be administratively suspended**, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will **[immediately]** enter an order **[transferring the attorney to inactive status] administratively suspending the attorney**.

(ii) That upon the entry of the order **[transferring the attorney to inactive status] of administrative suspension,** the attorney shall comply with Chapter 91 of Subchapter E (relating to formerly admitted attorneys), and that a copy of Enforcement Rule 217 (relating to formerly admitted attorneys) shall be enclosed with the notice.

* * * * *

(b) *Action by the Supreme Court.* Enforcement Rule 219(g) provides that upon certification to the Supreme Court of the name of any attorney pursuant to paragraph (a)(2) of this section, the Court shall **[immediately]** enter an order **[transferring such attorney to inactive status] administratively suspending the attorney**; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

§ 93.145. Reinstatement.

(a) *General rule.* Enforcement Rule 219(h)**[(1)]** provides that **[upon compliance by a formerly admitted attorney with the provisions of § 93.142(b) (relating to filing of annual statement by attorneys), including payment of all arrears due from the date to which such person was last paid, the Administrative] the procedure for reinstatement of an attorney who has been administratively suspended for three years or less pursuant to the provisions of § 93.144(b) is as follows:**

(1) The formerly admitted attorney shall submit to the Attorney Registration Office the form required by § 93.142(b) along with payment of:

(i) the current annual fee;

(ii) the annual fee that was due in the year in which the attorney was administratively suspended;

(iii) the late payment penalty required by paragraph (b) of this section;

(iv) a reinstatement fee of $300.00.

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

(b) *Late payment penalty.* Enforcement Rule 219(h)**[(2)] (3)** provides that **[for the purposes of §§ 93.141—93.147 (relating to annual assessment of attorneys) arrearages shall include a late payment penalty payable by every attorney to whom a notice has been transmitted under § 93.144(a)(1) (relating to action by Administrative Office) plus the actual cost of any publication effected pursuant to § 91.96 (relating to publication of notice of suspension, disbarment or transfer to inactive status)] a formerly admitted attorney who is administratively suspended pursuant to § 93.142(b) must pay a late payment penalty with respect to that year**. The amount of the late payment penalty shall be established by the Board annually after giving due regard to such factors as it considers relevant, including the direct and indirect costs incurred by the Board during the preceding year in processing the records of attorneys who fail to timely file the **[statement] form** required by § 93.142(b). On or before July 1 of each year the Office of the Secretary shall publish in the *Pennsylvania Bulletin* a notice of the late payment penalty established by the Board for the coming assessment year.

§ 93.146. Voluntarily retired or inactive attorneys.

(a) **[*General rule.*] *Retired Status:*** Enforcement Rule 219(i) provides that:

(1) **[an] An** attorney who has retired**[, is not engaged in practice or who sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct]** shall file with the **[Administrative] Attorney Registration** Office **[a notice in writing (Form DB-28) (Notice of Voluntary Assumption of Inactive Status) that the attorney desires to voluntarily assume inactive status and discontinue the practice of law;] Form DB-27 (Application for Retirement).**

(2) **[upon] Upon** the transmission of **[such notice] the application** from the **[Administrative] Attorney Registration** Office to the Supreme Court, the Court shall enter an order transferring the attorney to **[inactive] retired** status, and the attorney shall no longer be eligible to practice law **[but shall continue to file the statement specified in § 93.142(b) (relating to filing of annual statement by attorneys) for six years thereafter in order that the formerly admitted attorney can be located in the event complaints are made about the conduct of such person while such person was engaged in practice;].**

(3) **[the] The [formerly admitted] retired** attorney will be relieved from the payment of the fee specified in § 93.141 (relating to annual assessment)**[;].**

(4) Chapter 91 Subchapter E (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Supreme Court in connection with the entry of an order of suspension or disbarment under another provision of the Enforcement Rules**[; and].**

(5) **An attorney on retired status for three years or less may be reinstated in the same manner as an inactive attorney, by filing a Form DB-29 (Application for Resumption of Active Status), except that the retired attorney shall pay the annual active fee for the three most recent years or such shorter period in which the attorney was on retired status instead of the amounts required to be paid by an inactive attorney seeking reinstatement.**

(6) [the] The Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

(b) **[*Reactivation*] *Inactive Status*.** Enforcement Rule 219(j) provides that:

(1) **[Upon the filing of Form DB-28, an] An attorney who is not engaged in practice in Pennsylvania, has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or is not required by virtue of his or her practice elsewhere to maintain active licensure in the Commonwealth may request voluntary inactive status or continue that status once assumed. The attorney shall file either the annual form required by § 93.142(b) and request voluntary inactive status or file Form DB-28 (Notice of Voluntary Assumption**

of Inactive Status). The attorney shall be removed from the roll of those classified as active until and unless such person **[requests] files [( ]**Form DB-29**[ )]** (Application for Resumption of Active Status) and is granted reinstatement to the active rolls.

(2) **An inactive attorney under this subsection (b) shall continue to file the annual form required by § 93.142(b) and shall pay an annual fee of $70.00. Noncompliance with this provision will result in the inactive attorney being placed on administrative suspension after the Attorney Registration Office provides notice in accordance with the provisions of § 93.144. An attorney who voluntarily assumed inactive status under former subsection (a) of this rule shall continue to file the annual form and pay an annual fee of $70.00 commencing with the next regular assessment year. Noncompliance with this paragraph will result in the inactive attorney being placed on administrative suspension after notice in accordance with the provisions of § 93.144(a)(1).**

(3) **[That reinstatement] Reinstatement** shall be granted, unless the **[formerly admitted] inactive** attorney is subject to an outstanding order of suspension or disbarment or unless the **[order] inactive status** has been in effect for more than three years, **[automatically]** upon the payment of **[any assessment in effect] the active fee** for the assessment year in which the **[request] Form DB-29 (Application for Resumption of Active Status)** is **[made] filed or the difference between the active fee and the inactive fee that has been paid for that year,** and any arrears accumulated prior to **[transfer to] the assumption of** inactive status. See § 93.145(b) (relating to late payment penalty).

[(3) That disciplinary proceedings may be initiated and maintained against a formerly admitted attorney who has voluntarily assumed inactive status. See § 85.3(a)(3) (relating to jurisdiction).]

(4) In transmitting the annual fee form under subsection (a) of § 93.142, the Attorney Registration Office shall include a notice of subdivision (j) of Enforcement Rule 219 (relating to request for voluntary inactive status).

***Official Note*: Under prior practice, an attorney who was neither retiring nor selling his or her law practice was given the option of assuming or continuing inactive status and ceasing the practice of law in Pennsylvania, and no annual fee was required. Under new paragraph (b)(2) of this section, payment of an annual fee is required to assume and continue inactive status, and failure to pay the annual fee required by § 93.146(b)(2) and file the form required by § 93.142(b) (relating to filing of annual form by attorneys) will result in an order administratively suspending the attorney.**

§ 93.147. Notification of suspension or inactivation.

Where **administrative** suspension is **[effected] ordered** under this Subchapter, the attorney shall comply with the requirements of Chapter 91 of Subchapter E (relating to formerly admitted attorneys). Public notice of such **administrative** suspension shall clearly state that suspension was **[effected] ordered** for failure to file the required annual **[statement or for failure to] form and** pay the required annual assessment**, or for failure to comply with § 93.112 (relating to failure to pay taxed expenses)**.

§ 93.148. Grace period.

Enforcement Rule 219(k) provides that on the effective date of that Rule, any attorney who is on inactive status:

(a) by order after having failed to pay the annual fee or file the form required by subdivisions (a) and (d) of Rule 219,

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

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

(d) by order after having failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender legal services programs pursuant to Pa.B.A.R. 311, or a military attorney, shall have a grace period of one year, commencing on July 1 of the year in which the next annual form under § 93.142(b) is due, in which to request reinstatement to active status under an applicable provision of Rule 219, or to be reinstated to active status under Rule 218(a), as the case may be. Failure to achieve active status before the expiration of the grace period shall be deemed a request to be administratively suspended. An attorney who is on inactive status by court order will not be eligible to transfer to voluntary inactive status under § 93.146(b) until the attorney first achieves active status. During the grace period, the inactive attorney shall remain ineligible to practice law. In transmitting the annual form under § 93.142(a), the Attorney Registration Office shall include a notice of Enforcement Rule 219(k).

***Official Note*: Attorneys who voluntarily assumed inactive status under former § 93.146(a) are governed by the provisions of § 93.146(b). Attorneys who were transferred to inactive status by order after having failed to pay any expenses taxed pursuant to § 93.112 are governed by the provisions of that section.**

[Pa.B. Doc. No. 09-1404. Filed for public inspection August 7, 2009, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 83]

In re: Amendment of Rule 208(f)(1) of the Pennsylvania Rules of Disciplinary Enforcement; No. 78; Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 24th day of July, 2009, it is ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that:

1. Rule 208(f)(1) of The Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. To the extent that publication of a notice of proposed rulemaking would otherwise be required with respect to the amendment adopted by this Order, such publication is hereby found to be unnecessary because the immediate adoption of this Order is required in the interests of justice.

3. The amendment adopted herein shall take effect in 30 days.

JOHN V. VASKOV,
Deputy Prothonotary
Supreme Court of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 208. Procedure.

* * * * *

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

(1) Disciplinary Counsel, with the concurrence of a reviewing member of the Board, whenever it appears by an affidavit demonstrating facts that the continued practice of law by a person subject to these rules is causing immediate and substantial public or private harm because of the misappropriation of funds by such person to his or her own use, or because of other egregious conduct, in manifest violation of the Disciplinary Rules or the Enforcement Rules, may petition the Supreme Court for injunctive or other appropriate relief. A copy of the petition shall be personally served upon the respondent-attorney by Disciplinary Counsel. **If Disciplinary Counsel cannot make personal service after reasonable efforts to locate and serve the respondent-attorney, Disciplinary Counsel may serve the petition by delivering a copy to an employee, agent or other responsible person at the office of the respondent-attorney, and if that method of service is unavailable, then by mailing a copy of the petition by regular and certified mail addressed to the addresses furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Rule 219(d). Service is complete upon delivery or mailing, as the case may be.** 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. The Court, or any justice thereof, may, before or after issuance of the rule, issue**:**

(i) 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**[.]; and**

(ii) an order directing the president judge of the court of common pleas in the judicial district where the respondent-attorney maintains his or her principal office for the practice of law or conducts his or her primary practice, to take such further action and to issue such further orders as may appear necessary to fully protect the rights and interests of the clients of the respondent-attorney when:

(A) the respondent-attorney does not respond to a rule to show cause issued after service of the petition pursuant to subdivision (f)(1); or

(B) Disciplinary Counsel's petition demonstrates cause to believe that the respondent-attorney is unavailable to protect the interests of his or her clients for any reason, including the respondent-attorney's disappearance, abandonment of practice, incarceration, or incapacitation from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants.

Where the Court enters an order under (f)(1)(ii), the Board shall promptly transmit a certified copy of the order to the president judge, whose jurisdiction and authority under this rule shall extend to all client matters of the respondent-attorney.

Where the Court enters an order under (f)(1)(i) or (ii) before the issuance of a rule or before the entry of an order of temporary suspension under paragraph (f)(2), the Prothonotary shall serve a certified copy of the Court's order on the respondent-attorney by regular mail addressed to the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney and to an address where the respondent-attorney is located if that address is known.

* * * * *

[Pa.B. Doc. No. 09-1405. Filed for public inspection August 7, 2009, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

In Re: Amendment of Rule 234.2 Governing the Issuance and Service of Subpoenas; No. 514

Order

Per Curiam:

And Now, this 23rd day of July, 2009, Pennsylvania Rule of Civil Procedure 234.2 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective September 1, 2009.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 234.2. Subpoena. Issuance. Service. Compliance. Fees. Prisoners.

* * * * *

(b) A copy of the subpoena may be served upon any **[person] adult** within the Commonwealth by an adult**[.]**

***Official Note*: For service of a subpoena upon a minor who is a witness, see subdivision (e).**

* * * * *

(c) The fee for one day's attendance and round trip mileage shall be tendered upon demand at the time the person is served with a subpoena. If a subpoena is served by mail, a check in the amount of one day's attendance and round trip mileage shall be enclosed with the subpoena.

***Official Note*:** See 42 **[Pa.C.S.A.] Pa.C.S.** § 5903 for the compensation and expenses of witnesses. See also *Evans v. Otis Elevator Co.*, 403 Pa. 13, 168 A.2d 573 (1961), regarding the right of an expert witness to refuse to testify on behalf of an adverse party.

* * * * *

(e)(1) For the purposes of this subdivision, "guardian" shall mean any parent, custodian, or other person who has legal custody of a minor, or person designated by the court to be a temporary guardian for purposes of a proceeding.

(2)(i) Except as provided by subdivision (ii), if a witness is a minor, a copy of the subpoena shall be served upon the minor and the guardian of the minor within the Commonwealth by an adult in the manner prescribed in subdivision (b).

***Official Note*: See Rule 76 for definition of "minor."**

(ii) Upon prior court approval and good cause shown, a copy of the subpoena may be served upon a minor who is a witness without serving a copy of the subpoena on the guardian. The copy of the subpoena shall be served upon the minor within the Commonwealth by an adult in the manner prescribed in subdivision (b).

Explanatory Comment

To provide greater protection to minors, Rule 234.2 has been amended to provide a separate procedure for the issuance and service of a subpoena on a witness who is a minor. The amendment provides that a subpoena must be served upon the minor and the guardian of the minor. A subpoena may be served on a minor who is a witness without also serving the guardian if a court has reviewed and given prior approval for the issuance of the subpoena upon good cause shown.

By the Civil Procedural Rules Committee

STEWART L. KURTZ,
Chair

[Pa.B. Doc. No. 09-1406. Filed for public inspection August 7, 2009, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Proposed Amendment of Rule 212.3 Governing Pre-Trial Conferences and Promulgation of New Rules 212.5 and 212.6 Governing Settlement Conferences; Proposed Recommendation No. 239

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 212.3 governing pre-trial conferences be amended and that new Rules of Civil Procedure 212.5 and 212.6 governing settlement conferences be promulgated as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than October 2, 2009 to:

Karla M. Shultz, Esquire
Counsel
Civil Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Supreme Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 212.3. Pre-trial conference.

(a) In any action **at any time** the court, **[of its own motion] sua sponte** or on motion of any party, may direct the attorneys for the parties **or any unrepresented party** to appear for a conference to consider:

(1) The simplification of the issues;

(2) The **[necessity or desirability of amendments to the pleadings] entry of a scheduling order**;

* * * * *

(5) **[The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury] Settlement and/or mediation of the case**;

***Official Note*: See Rule 212.5 for procedures governing a settlement conference.**

(6) Such other matters as may aid in the disposition of the action.

(b) A court may require, pursuant to a court order, various parties to be present, including an insurance or similar representative, who has com-

plete authority to negotiate and settle the case, to attend the pre-trial conference.

(c) In the absence of a court order, at any pre-trial conference held after the filing of the pre-trial statements and that will involve settlement discussions:

(1) prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case;

(2) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and legal issues raised, and has the authority to act on behalf of the client shall attend the pre-trial conference; and

(3) an insurance or similar representative, who has complete authority to negotiate and settle the case, must either attend the pre-trial conference or be promptly available by telephone.

[(b)] (d) The court may make an order reciting the action taken at the conference, **[the amendments allowed to the pleadings, and]** the agreements made by the parties as to any of the matters considered and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

[(c)] (e) The court may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or extend it to all actions.

(*Editor's Note*: The following text is new and has been printed in regular print to enhance readability.)

Rule 212.5. Settlement Conference.

(a) At any time, the court, sua sponte or on motion of any party, may enter an order in the form provided in Rule 212.6 scheduling a settlement conference, the purpose of which is to resolve the litigation. Prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case.

(b) At a settlement conference scheduled pursuant to this rule,

(1) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and legal issues raised, and has the authority to act on behalf of the client shall attend the settlement conference;

(2) an insurance or similar representative, who has complete authority to negotiate and settle the case must be present at the conference, unless the court permits the representative to ensure that he or she will be available by telephone; and

(3) the court shall have discretion to order the attendance of other individuals as reasonably necessary to accomplish resolution of the case.

***Official Note*:** Rule 212.3 governs a pre-trial conference which includes consideration of matters relating to the trial of a case. A settlement conference pursuant to this rule considers only the settlement of litigation.

Rule 212.6. Settlement Conference. Form of Order.

An order scheduling a settlement conference pursuant to Rule 212.5 shall be substantially in the following form:

(Caption)

Scheduling Order for Rule 212.5 Settlement Conference

For the above-captioned case, a settlement conference pursuant to Rule 212.5 has been scheduled before _____ at _____
(name of judge)
Courthouse at _____ o'clock. All parties shall be in compliance with the requirements of Rule 212.5(b).

_____
J.

Explanatory Comment

The success, or the lack thereof, of settlement negotiations often hinges on the preparation of the parties for such negotiations. To facilitate the settlement of cases, the Civil Procedural Rules Committee is proposing the amendment of Rule 212.3 governing pre-trial conferences to provide guidance to the parties when a court schedules a pre-trial conference for the purpose of settlement negotiations. Proposed new Rule 212.5 is intended to provide guidance to the parties for a conference scheduled specifically to settle litigation.

By the Civil Procedural Rules Committee

STEWART L. KURTZ,
Chair

[Pa.B. Doc. No. 09-1407. Filed for public inspection August 7, 2009, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendment of Rule 1020 Governing Pleading More Than One Cause of Action; Proposed Recommendation No. 240

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1020 governing the pleading of more than one cause of action be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than October 2, 2009 to:

Karla M. Shultz, Esquire
Counsel
Civil Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

PLEADINGS

Rule 1020. Pleading More Than One Cause of Action. Alternative Pleading. Failure to Join. Bar.

* * * * *

(d)**(1)** If a transaction or occurrence gives rise to more than one cause of action heretofore asserted in assumpsit and trespass, against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. Failure to join a cause of action as required by this subdivision shall be deemed a waiver of that cause of action as against all parties to the action.

***Official Note*:** Mandatory joinder is limited to related causes of action heretofore asserted in assumpsit and trespass. There is no mandatory joinder of related causes of action in equity.

See Rule 2226 et seq. governing joinder of parties.

See Rule 213(a) and (b) governing the consolidation and severance of causes of action.

(2) When personal injuries to a person and damage to that person's property arise from the same tortious act, the person who sustained both personal injuries and property damage must seek recovery for both in a single action. If a separate action is instituted for each category of damage, a judgment rendered in one such action bars recovery in the other action.

***Official Note*:** Subdivision (d)(2) applies the prohibition against splitting causes of action to a subrogee because a subrogee derives his or her right to recovery from the person who sustained both personal injuries and property damage. This subdivision supersedes ***State Farm Mutual Automobile Ins. Co. v. Ware's Van Storage*, 953 A.2d 568 (Pa. Super. 2008), which permitted a person injured in an automobile accident to pursue his personal injury claims in one lawsuit and the insurance company of the injured person to pursue a subrogated property damage claim in a second lawsuit.**

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 1020(d) so that the prohibition against splitting causes of action applies to a subrogee. The proposed amendment would require a single lawsuit so that a party is not required to defend multiple lawsuits for personal injuries and property damage by the same person for the same tortious act. In addition, the proposed amendment is intended to protect the trial courts from being encumbered by multiple actions arising from the same transaction or occurrence, and to create certainty that once a claim is settled additional litigation cannot be instituted.

By the Civil Procedural Rules Committee

STEWART L. KURTZ
Chair

[Pa.B. Doc. No. 09-1408. Filed for public inspection August 7, 2009, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Proposed Rescission of Rule 4014, Promulgation of New Rules 4014.1, 4014.2 and 4014.3 Governing Request for Admission, and Amendments of Rule 4019 Governing Sanctions; Proposed Recommendation No. 241

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 4014 be rescinded, that new Rules 4014.1, 4014.2 and 4014.3 governing the request for admission be promulgated, and that Rule 4019 governing sanctions be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than October 2, 2009 to:

Karla M. Shultz, Esquire
Counsel
Civil Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES

Rule 4014. Request for Admission.

[(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rules 4003.1 through 4003.5 inclusive set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the

party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it.

***Official Note*: The requirements of an answer are governed by this rule and not by Rule 1029(b).**

(c) The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

(d) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 212.3 governing pre-trial conferences, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining the action or defense on the merits. Any admission by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding] (Reserved).

(*Editor's Note*: The following text is new and has been printed in regular print to enhance readability.)

Rule 4014.1. Request for Admission. Statement or Opinion of Fact or Law. Genuineness of Document.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rules 4003.1 through 4003.5 inclusive set forth in the request that relate to statement or opinion of fact or of the application of law to fact, and including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county.

(b) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

Rule 4014.2. Response to Request for Admission. Denial.

(a) Each matter of which an admission is requested shall be separately set forth. Within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed shall serve upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated.

(b) The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

(c)(1) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny.

(2) A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it.

***Official Note*:** The requirements of an answer are governed by this rule and not by Rule 1029(b).

Rule 4014.3. Request for Admission. Motion to Compel Answer or to Determine Sufficiency of Answer or Objection.

If a party fails to serve an answer, a sufficient answer or proper objections to a request for admission, the court, on motion, may enter an order pursuant to Rule 4019(a). If the party fails to comply with the order entered pursuant to Rule 4019(a), the court may enter an appropriate order pursuant to Rule 4019(c), including an order that the matter as to which an admission was sought is admitted.

Rule 4019. Sanctions

(a)(1) The court may, on motion, make an appropriate order if

* * * * *

(viii) **a party fails to serve an answer, a sufficient answer or a proper objection to a request for admission under Rules 4014.1, 4014.2, and 4014.3;**

(ix) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.

* * * * *

(c) The court, when acting under subdivision (a) of this rule, may make

(1) an order that the matters regarding which the questions were asked **or the admissions were requested**, or the character or description of the thing or land, or the contents of the paper, or any other designated fact shall be taken to be established **or admitted** for the purposes of the action in accordance with the claim of the party obtaining the order;

* * * * *

Explanatory Comment

Current Rule 4014(b) provides for a request for admission to be deemed admitted if the party upon whom the request is served fails to serve an answer or objections. Rule 4014(d) provides that an admission is conclusively established unless a court on motion permits withdrawal or amendment of the admission. Subdivision (d) also provides that a court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby, and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining the action or defense on the merits.

The Civil Procedural Rules Committee is proposing that Rule 4014 be amended so that the procedure governing requests for admission follows that governing interrogatories and requests for production of documents. Using this new procedure, if a party does not respond to the request for admission or raises objections to the request, the party who has made the request will seek a court order compelling a response. Upon violation of the court order, the party making the request may obtain appropriate sanctions which may include that the matter is admitted.

The format of Rule 4014 is also proposed to be revised by designating subdivisions (a), (b), and (c) of the current rule as new Rules 4014.1, 4014.2, and 4014.3 respectively. Subdivision (d) of the current rule would be deleted as unnecessary. The proposed format creates a "mini chapter" of rules and is intended to make its use easier for the practitioner. Rule 4019(a) and (c) governing sanctions would be amended to conform to the requirements of the proposed amendment of Rule 4014.

By the Civil Procedural Rules Committee

STEWART L. KURTZ,
Chair

[Pa.B. Doc. No. 09-1409. Filed for public inspection August 7, 2009, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 3 AND 5]

In Re: Order Amending Rules 120, 345, 348, 515 and 520 of the Rules of Juvenile Court Procedure; No. 475

Order

Per Curiam:

Now, this 28th day of July, 2009, upon the recommendation of the Juvenile Court Procedural Rules Committee and the proposal having been published for public comment before adoption at 38 Pa.B. 5594 (October 11, 2008), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 955, No. 2, October 10, 2008), and on the Supreme's Court web-page, and an *Explanatory Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to the Rules of Juvenile Court Procedure Rules 120, 345, 348, 515 and 520 are approved as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

ADULT is any person, other than a juvenile, eighteen years old or older.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are permitted to hear cases under these rules and magisterial district judges when issuing an arrest warrant pursuant to Rule 210. Juvenile Court shall have the same meaning as Court.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

DISPOSITION is a final determination made by the court after an adjudication of delinquency or any determination that ceases juvenile court action on a case.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a Magisterial District Judge.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

MINOR is any person, other than a juvenile, under the age of eighteen.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

Comment

Under the term "court," to determine if masters are permitted to hear cases, *see* Rule 187. See Rule 210 for the power of magisterial district judges to issue arrest warrants.

The term "disposition" includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case "with prejudice" prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

Neither the definition of "law enforcement officer" nor the definition of "police officer" gives the power of arrest to any person who is not otherwise given that power by law.

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of "delinquent act," *see* 42 Pa.C.S. § 6302.

***Official Note*: Rule 120 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately; amended March 23, 2007, effective August 1, 2007; amended February 26, 2008, effective June 1, 2008; amended July 28, 2009, effective immediately**.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court's Order at 37 Pa.B. 1485 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court's Order at 38 Pa.B. 1145 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART D(1). MOTION PROCEDURES

Rule 345. Filing and Service.

A. *Filings.*

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of courts' duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by represented juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the juvenile court file or make a docket entry, but shall forward it promptly to the juvenile's attorney.

4) *Method of filing.* Filing may be accomplished by:

a) personal delivery to the clerk of courts; or

b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

B. *Service.*

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.

2) *Method of service to parties.* Service on the parties shall be by:

a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

C. *Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and **[disposition] resolution**.

Under paragraph (B), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

For service of petitions, see Rule 331.

***Official Note*: Rule 345 adopted April 1, 2005, effective October 1, 2005; amended July 28, 2009, effective immediately**.

Committee Explanatory Reports:

Final Report explaining the amendment to Rule 345 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

Rule 348. **[Disposition] Determination** of Omnibus Motions.

Unless otherwise provided in these rules, all omnibus motions shall be determined before the adjudicatory hearing. If necessary for the determination of the omnibus motion, the court may postpone the adjudicatory hearing.

***Official Note*: Rule 348 adopted April 1, 2005, effective October 1, 2005; amended July 28, 2009, effective immediately**.

Committee Explanatory Reports:

Final Report explaining the amendment to Rule 348 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 515. Dispositional Order.

A. *Generally.* When the court enters a disposition **after an adjudication of delinquency pursuant to Rule 409(A)(2)**, the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

1) the terms and conditions of the disposition;

2) the name of any agency or institution that is to provide care, treatment, supervision, or rehabilitation of the juvenile;

3) a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1)(i) for limited public information;

4) the date of the order; and

5) the signature and printed name of the judge entering the order.

B. *Restitution.* If restitution is ordered in a case, the dispositional order shall include:

1) a specific amount of restitution to be paid by the juvenile;

2) to whom the restitution is to be paid; and

3) a payment schedule, if so determined by the court.

C. *Guardian participation.* The court shall include any obligation in its dispositional order imposed upon the guardian.

Comment

Pursuant to paragraph (A)(3), the court is to determine if the case is eligible for limited public information under

the requirements of 42 Pa.C.S. § 6307(b)(1)(i). *See* 42 Pa.C.S. § 6307(b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. § 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see http://www.jcjc.state.pa.us or http://www.dpw.state.pa.us or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

***Official Note*: Rule 515 adopted April 1, 2005, effective October 1, 2005; amended August 20, 2007, effective December 1, 2007; amended July 28, 2009, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 515 published with the Court's Order at 37 Pa.B. **[4866] 4868** (September 8, 2007).

Final Report explaining the amendment to Rule 515 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

PART C. POST-DISPOSITIONAL MOTIONS

Rule 520. Post-Dispositional Motions.

A. *Optional Post-Dispositional Motion.*

1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.

2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.

B. *Timing.*

1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the imposition of disposition.

2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed:

a) within thirty days of the entry of the order deciding the motion;

b) within thirty days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or

c) within thirty days of the entry of the order memorializing the withdrawal in cases in which a party withdraws the motion.

3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the imposition of disposition.

C. *Court Action.*

1) *Briefing Schedule and Argument.* Within ten days of the filing of the post-dispositional motion, the court shall:

a) determine if briefs, memoranda of law, or oral arguments are required; and

b) set a briefing schedule and dates for oral argument, if necessary.

2) *Failure to Set Schedule.* If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.

3) *Transcript.* If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments on the post-dispositional motion shall be delayed for transcript preparation.

D. *Time Limits for Decision on Motion.* The judge shall not vacate disposition pending the decision on the post-dispositional motion, but shall decide the motion as provided in this paragraph.

1) Except as provided in paragraph (D)(2), the judge shall decide the post-dispositional motion as soon as possible but within thirty days of the filing of the motion. If the judge fails to decide the motion within thirty days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.

2) Upon motion of a party within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided pursuant to Rule 167, **[forthwith]** shall serve a copy of the order on each attorney and the juvenile, if unrepresented, that the post-dispositional motion is deemed denied. This order is not subject to reconsideration.

4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 167.

5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 167.

E. *Contents of order.* An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

1) the right to appeal;

2) the time limits within which the appeal shall be filed; and

3) the right to counsel in the preparation of the appeal.

F. *After-discovered evidence.* A motion for a new adjudication on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

Comment

The purpose of this rule is to promote the fair and prompt **[disposition] resolution** of all issues relating

to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for court review, and by setting reasonable but firm time limits within which the motion is to be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

For the definition of "disposition," see Rule 120 and its Comment.

OPTIONAL POST-DISPOSITIONAL MOTION

See In re Brandon Smith, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. *See Commonwealth v. Lord,* 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion is to be filed within ten days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. *See* paragraph (D)(1).

TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion is to be filed within ten days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) are to be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile's direct appeal on all matters in that case is triggered by the judge's decision on the post-dispositional motion, the denial of the motion by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. *See* paragraph (B)(2).

If no timely post-dispositional motion is filed, the party's appeal period runs from the date disposition is imposed. *See* paragraph (B)(3).

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. *See* Rule 121(C).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony are to be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely **[disposition] resolution** of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the adjudicatory hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-dispositional motion. When oral argument is heard on the post-dispositional motion, the juvenile need not be present.

DISPOSITION

Under paragraph (D), once a party makes a timely written post-dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing disposition pending decision on the post-dispositional motion.

Paragraph (D)(2) permits one 30-day extension of the 30-day time limit, for good cause shown, upon motion of a party. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, *sua sponte*, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that thirty days are required for a decision in most cases. The time limits for **[disposition] resolution** of the post-dispositional motion are the outer limits. Easily resolvable issues, such as a modification of disposition or an admission challenge, should ordinarily be decided in a much shorter period of time.

If the judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision on the post-dispositional motion: the time limits imposed by paragraphs (D)(1) and (D)(2) continue to run from the date the post-dispositional motion was originally filed. The judge's reconsideration, therefore, is to be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. *See* Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977). *See* Pa.R.A.P. 341.

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This

notice is intended to protect the party's right to appeal. The clerk of courts also is to comply with the filing, service, and docket entry requirements of Rule 167.

CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's withdrawal of a post-dispositional motion, contain written notice of the party's appeal rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at disposition and the resolution of the post-dispositional motion. *See also Commonwealth v. Miller,* 715 A.2d 1203 (Pa. Super. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-dispositional motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the party notice of the information required by paragraph (E). *See Commonwealth v. Miller, supra.*

MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with particularity. Motions alleging insufficient evidence, for example, are to specify in what way the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence are to specify why the findings were against the weight of the evidence.

Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. *See* paragraph (A)(2).

Issues properly preserved at the dispositional hearing need not, but may, be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify disposition, counsel carefully is to consider whether the record created at the dispositional hearing is adequate for appellate review of the issues, or the issues may be waived. *See Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790 (1995). As a general rule, the motion to modify disposition under paragraph (A)(1) gives the dispositional judge the earliest opportunity to modify the disposition. This procedure does not affect the court's inherent powers to correct an illegal disposition or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. *See, e.g., Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (court can, *sua sponte*, correct an illegal sentence even after the defendant has begun probation or placement) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a disposition has been modified or reimposed pursuant to a motion to modify disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify disposition in order to preserve an issue for appeal, as long as the issue was properly preserved at the time disposition was modified or reimposed.

***Official Note*: Rule 520 adopted May 17, 2007, effective August 20, 2007; amended July 28, 2009, effective immediately**.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 520 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

Final Report explaining the amendment to Rule 520 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 120, 345, 348, 515 and 520. The changes are effective July 28, 2009.

EXPLANATORY REPORT
JULY 2009

Rule 120—Definitions.

There is a new definition for "disposition." It was brought to the Committee's attention that there are several instances in which a case is terminated in juvenile court and the guidelines for the timing of appeals in those cases are unclear. The new definition clearly sets forth which cases could be included in a post-dispositional motion pursuant to Rule 520, which affects the timing of appeals.

A disposition includes all final determinations made by the court. The common interpretation of a disposition is when the court adjudicates the juvenile delinquent and finds the juvenile in need of treatment, supervision, or rehabilitation, and makes a decision to place the juvenile in a placement facility, on alternative care, or on probation. However, disposition also includes: 1) a finding that the juvenile did not commit a delinquent act; 2) a finding that the juvenile is not in need of treatment, supervision, or rehabilitation; 3) dismissal of the case "with prejudice" prior to the commencement of an adjudicatory hearing; or 4) any other action that terminates or closes the juvenile case.

The new definition and *Comment* alleviate confusion regarding this term and address the different types of dispositions.

Rule 345—Filing and Service.

Because of the new definition for "disposition," resolution has replaced disposition in the *Comment*.

Rule 348—Disposition of Omnibus Motion.

Because of the new definition for "disposition," determination has replaced disposition in the title to this Rule.

Rule 515—Dispositional Order.

The addition of "after an adjudication of delinquency pursuant to paragraph (A)(2)" indicates when a dispositional order will be entered under this rule. This rule is designed to address cases when the court has found the juvenile to have committed a delinquent act and that the juvenile is in need of treatment, supervision, and rehabilitation. With the new definition, it is important to clarify which type of disposition is governed by this rule.

Other types of cases will be disposed of differently and are not addressed in this rule. If the court finds that the juvenile did not commit the alleged delinquent acts pursuant to Rule 408(B), it will enter an order releasing the juvenile under Rule 408. If the court finds that the juvenile is not in need of treatment, supervision, or rehabilitation pursuant to Rule 409(A)(1), it will enter an order releasing the juvenile pursuant to Rule 409. If the court dismisses the case "with prejudice" prior to the

commencement of an adjudicatory hearing or terminates the case for any other reason, the court will enter an order to that effect.

Rule 520—Post-Dispositional Motions.

Because of the new definition for "disposition," resolution has replaced disposition in the *Comment*.

This proposed addition to the *Comment* of this Rule is a reference to the new definition of "disposition." All scenarios included under this definition trigger when a post-dispositional motion may be filed.

[Pa.B. Doc. No. 09-1410. Filed for public inspection August 7, 2009, 9:00 a.m.]

Title 255—LOCAL COURT RULES

PERRY COUNTY

In Re: Filing of New Criminal Complaints in Perry County by Capital Tax Collection Bureau; AD No. 1 of 2009

Administrative Order

And Now, this 30th day of June, 2009, it is hereby ordered as follows:

1. Effective July 1, 2009, all new criminal complaints filed in Perry County by Capital Tax Collection Bureau (CTCB) will be filed in the office of Magisterial District Judge Elizabeth Frownfelter.

2. All existing open cases in front of either Judges Howell or McGuire will continue to remain open with those respective offices.

By the Court

KATHY A. MORROW,
President Judge

[Pa.B. Doc. No. 09-1411. Filed for public inspection August 7, 2009, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated July 24, 2009, Bernard J. McBride, Jr., is Suspended on Consent from the Bar of this Commonwealth for a period of 1 year and 1 day, to be effective August 23, 2009. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the Supreme Court of Pennsylvania

[Pa.B. Doc. No. 09-1412. Filed for public inspection August 7, 2009, 9:00 a.m.]

SUPERIOR COURT

Change of Address

Effective August 26, 2009, the Middle District of the Superior Court of Pennsylvania will relocate. The new address for the Middle District filing office will change to Superior Court of Pennsylvania, Office of the Prothonotary, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 1600, P. O. Box 62435, Harrisburg, PA 17106-2435, (Physical location—17120-0901).

The addresses of the Eastern District filing office in Philadelphia and the Western District filing office in Pittsburgh will not change.

For additional information, call the Office of the Prothonotary at (717) 772-1294 or visit the Superior Court's web page at www.superior.court.state.pa.us or at www.aopc.org.

KAREN REID BRAMBLETT,
Prothonotary

[Pa.B. Doc. No. 09-1413. Filed for public inspection August 7, 2009, 9:00 a.m.]

In Re: Children's Fast Track Appeals; No. 1; Administrative Order; Doc. 2009

Order

And Now, this 27th day of July, 2009, in the interest of implementing the rules of appellate procedure governing children's fast track appeals and in the interest of reducing delay in these appeals, the Superior Court of Pennsylvania hereby establishes the following procedure:

When a notice of appeal involving a Children's Fast Track case as defined by Pa.R.A.P. 102 is received from the trial court by the Prothonotary of Superior Court, and it is determined that a Statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2) has not been filed with the notice of appeal, an administrative order shall be entered ordering the appellant to file and serve a Statement pursuant to that rule within ten days of the date of the order.

Failure of the appellant to comply with the order may result in waiver and/or dismissal of the appeal without further notice.

By the Court

KATE FORD ELLIOTT,
President Judge

[Pa.B. Doc. No. 09-1414. Filed for public inspection August 7, 2009, 9:00 a.m.]