THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 87, 89, 91, 93 AND 95]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 76

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 Order dated December 30, 2014, effective February 28, 2015, the Supreme Court of Pennsylvania amended Pa.R.D.E. 208, 213, 215, 217, 218, 219, and 221, 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)(12), 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 30 days after publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect on March 2, 2015 and shall govern all matters commenced on or after that date and, insofar as just and practicable, matters then pending.

(5) The amendments to Board Rules 91.93 and 91.95 shall apply to persons who are formerly admitted attorneys on the effective date of this Order and to persons becoming formerly admitted attorneys on or after the effective date of this Order.

(6) The amendments to Board Rule 93.142 relating to filing of annual form by attorneys shall be applicable beginning with the 2015-2016 assessment year.

By The Disciplinary Board of the Supreme Court of Pennsylvania

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 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

COMPLAINTS

§ 87.7. Notification to respondent-attorney of complaint and duty to respond**; duty to produce Pa.R.P.C. 1.15's required records and effect of failure to produce**.

* * * * *

(d) *Effect of failure to respond.* Enforcement Rule 203(b)(7) provides that failure by a respondent-attorney without good cause to respond to a request (Form DB-7) or supplemental request (Form DB-7A) by Disciplinary Counsel for a statement of the respondent-attorney's position shall be grounds for discipline. Failure to respond may also be a violation of Rule of Professional Conduct 8.1(b).

***Official Note*: [If] Except as provided in subsection (e) of this section, if** Disciplinary Counsel's request or supplemental request for a statement of position contains a separate request for production of records or documents **(other than required records under Pa.R.P.C. 1.15(c) and § 91.177 of Chapter 91 Subchapter H of these Rules)**, the respondent-attorney's nonproduction shall not be a basis for discipline under Enforcement Rule 203(b)(7) but may constitute evidence of non-cooperation with Disciplinary Counsel's inquiry. Disciplinary Counsel may obtain a subpoena to compel production of the records and documents requested in the Form DB-7 or DB-7A, and the respondent-attorney's wilful failure to comply with the subpoena would serve as a basis for discipline under RPC 8.4(d) and various provisions of the Enforcement Rules.

(e) *Duty to produce Pa.R.P.C. 1.15's required records and time for production.* Notwithstanding any other provision in this section, if Disciplinary Counsel requests records required to be maintained under Pa.R.P.C. 1.15(c), Enforcement Rule 221(e), and § 91.177(a) (all of which relate to required records) in a Form DB-7 (Request for Statement of Respondent's Position) or Form DB-7A (Supplemental Request for Statement of Respondent's Position), the respondent-attorney shall provide the records to Disciplinary Counsel within ten business days of receipt of the Form DB-7 or Form DB-7A, as the case may be, whether or not the respondent-attorney files the statement of position required to be filed under subsection (b) of this section. The Form DB-7 or Form DB-7A will be considered received for purposes of this subsection if: 1) personal service of the Form DB-7 or Form DB-7A on the respondent-attorney is accomplished; 2) a copy of the Form DB-7 or Form DB-7A is delivered to an employee, agent or other responsible person at the office of the respondent-attorney as determined by the address furnished by the respondent-attorney

in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(d) (relating to annual registration of attorneys); or 3) mailed by certified mail with return receipt requested to one or more of the addresses furnished by the respondent-attorney in the last registration statement and delivery is accepted as shown by electronic or paper return receipt containing the name or signature of the respondent-attorney or other person who accepted delivery. The time in which to produce the required records (ten business days) is separate from the time fixed for the filing of the respondent-attorney's statement of position under paragraph (b)(2).

(f) ***Effect of failure to produce Pa.R.P.C. 1.15's required records.*** **Enforcement Rule 221(g)(3) and § 91.179 of Chapter 91 Subchapter H of these Rules provide that failure to produce Pa.R.P.C. 1.15 records in response to a request or demand for such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f)(1) or (f)(5) (relating to emergency temporary suspension orders and related relief), the latter of which specifically permits Disciplinary Counsel to commence a proceeding for the temporary suspension of a respondent-attorney who fails to maintain or produce Pa.R.P.C. 1.15(c) records after receipt of a request or demand authorized by subdivision (g) of Enforcement Rule 221 or any provision of these Rules.**

Subchapter D. ABATEMENT OF INVESTIGATION

§ 87.73. Resignations by attorneys under disciplinary investigation.

(a) *Voluntary resignation.* Enforcement Rule 215(a) provides that an attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to **Disciplinary Counsel or the Secretary of** the Board a verified statement stating that the attorney desires to resign and that:

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

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

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

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

(5) The attorney is fully aware that the submission of the resignation statement is irrevocable and that the attorney can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

(6) The attorney is aware that pursuant to subsection (c) of Enforcement Rule 215, the fact that the attorney has tendered his or her resignation shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or the Secretary of the Board.

(7) Upon entry of the order disbarring the attorney on consent, the attorney will promptly comply with the notice, withdrawal, resignation, trust accounting, and cease-and-desist provisions of subdivisions (a), (b), (c) and (d) of Enforcement Rule 217.

(8) After the entry of the order disbarring the attorney on consent, the attorney will file a verified statement of compliance as required by subdivision (e)(1) of Enforcement Rule 217; and

(9) The attorney is aware that the waiting period for eligibility to apply for reinstatement to the practice of law under Enforcement Rule 218(b) shall not begin until the attorney files the verified statement of compliance required by Enforcement Rule 217(e)(1), and if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, then the waiting period will be deemed to have begun on that earlier date.

(b) *Representation by counsel.* The verified statement under subsection (a) shall indicate whether or not the attorney has consulted or followed the advice of counsel (naming such counsel, if any) in connection with the decision to resign.

(c) *Order of disbarment.* Enforcement Rule 215(b) provides that receipt of the required statement, the Secretary of the Board shall file it with the Supreme Court and the Court shall enter an order disbarring the attorney on consent.

(d) *Confidentiality of resignation statement.* Enforcement Rule 215(c) provides that **the fact that the attorney has submitted a resignation statement to Disciplinary Counsel or the Secretary of the Board for filing with the Supreme Court shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or the Secretary of the Board;** the order disbarring the attorney on consent shall be a matter of public record; and that, if the statement required by subsection (a) is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

(1) upon order by the Supreme Court**[.],**

(2) pursuant to an express written waiver by the attorney,

(3) upon a request of another jurisdiction for purposes of a reciprocal disciplinary proceeding,

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

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

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.272. Waiting period.

(a) *General rule* ***relating to disbarment***. Enforcement Rule 218(b) provides that a person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to § 91.51 (relating to reciprocal discipline and disability) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline. **Enforcement Rule 217(e)(3) and its Note, and Enforcement Rule 218(b) provide that after the entry of an order of disbarment, which order has been entered on or after February 28, 2015, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney files the verified statement required by § 91.96 (relating to proof of compliance); and that if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.**

(b) ***General rule relating to suspension for a period exceeding one year.*** **Enforcement Rule 217(e)(3) and its Note provide that after the entry of an order of suspension for a period exceeding one year, which order has been entered on or after February 28, 2015, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney files the verified statement required by § 91.96 (relating to proof of compliance); and that if the order of suspension contains a provision that makes the suspension retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.**

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

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

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter A. SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS

IN GENERAL

§ 91.3. Determination of validity of subpoena.

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

(1) A challenge to a subpoena authorized by § 91.2(a)(1) (relating to subpoenas and investigations)**[;]** shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable **in accordance with the procedure established by the Board in subsection (b)**.

(2) A challenge to a subpoena authorized by § 91.2(a)(2) shall be heard and determined by a member of a hearing committee in the disciplinary district in which the subpoena is returnable **in accordance with the procedure established by the Board in subsection (b)**.

(3) A determination under paragraph (1) or (2) may **[not]** be appealed to **a lawyer-Member of** the Board**[, but may be appealed to the Supreme Court under § 91.4 (relating to appeal of challenges to subpoenas)]** within ten days after service **pursuant to §§ 89.21 and 89.24** of the determination on the party bringing the appeal **by filing a petition with the Board setting forth in detail the grounds for challenging the determination**. **The appealing party shall serve a copy of the petition on the non-appealing party by mail on the date that the appealing party files the appeal, and the non-appealing party shall have five business days after delivery to file a response. No attack on the validity of a subpoena will be considered by the Designated lawyer-Member of the Board unless previously raised before the hearing committee. The Board Member shall decide the appeal within five business days of the filing of the non-appealing party's response, if any. There shall be no right of appeal to the Supreme Court. Any request for review shall not serve to stay any hearing or proceeding before the hearing committee or the Board unless the Court enters an order staying the proceedings.**

(b) *Procedure.*

(1) A motion attacking a subpoena must be filed with the Office of the Secretary within ten days after service of the subpoena. A copy of the motion must be served on the other party to the investigation or proceeding. **If a motion attacking a subpoena is filed by a third party to the investigation or proceeding who has been served with a subpoena, a copy of the motion must be served on Disciplinary Counsel and the respondent-attorney.**

(2) Any answer to the motion must be filed with the Office of the Secretary within five **business** days after **[service] receipt** of the motion **[on] served by** the other party under paragraph (1).

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

conclusions of law must be filed with the Office of the Secretary within ten **business** days after the conclusion of the hearing.

§ 91.4. Appeal of challenges to subpoenas.

Enforcement Rule 213(g) provides that:

(1) Either Disciplinary Counsel or a respondent-attorney may petition the Supreme Court to enforce a subpoena **[or to review a determination under § 91.3 (relating to determination of validity of subpoena) on the validity of a subpoena, and no attack on the validity of a subpoena will be considered by the Court unless previously raised as provided in § 91.3] that was not the subject of a challenge pursuant to paragraphs (a)(1) and (2) of § 91.3 (relating to validity of subpoena) or that was the subject of a challenge and has not been finally quashed by either the hearing committee or the Board Member designated to hear the appeal, provided that the party filing the petition to enforce attaches a certification in good faith that: a) the party exhausted reasonable efforts to secure the presence of the witness or the evidence within the witness's custody or control, b) the testimony, records or other physical evidence of the witness will not be cumulative of other evidence available to the party, and c) the absence of the witness will substantially handicap the party from prosecuting or defending the charges, or from establishing a weighty aggravating or mitigating factor. If the object of a petition to enforce is a subpoena directed to the respondent-attorney for, in whole or in part, production pursuant to Enforcement Rule 221(g)(2) of required records under RPC 1.15(c) and Enforcement Rule 221(e), no certification will be required for the subpoena or portion thereof that pertains to the required records.** See also § 91.151(e) (relating to contempt of the Board).

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

(2) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena is directed, returnable within ten days, why the person should not be held in contempt. **If the subpoena is directed to a respondent-attorney for production of required records and the respondent-attorney has not produced the records, the Court shall issue upon the respondent-attorney a rule to show cause why the respondent-attorney should not be placed on temporary suspension for failing to produce the records.** If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

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

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 **[by registered or certified mail, return receipt requested], or cause to be promptly notified,** 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] said** 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). **The notice required by this subsection (a) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt.**

***Official Note*: Notice may be accomplished, for example, by delivery in person with the lawyer securing a signed receipt, electronic mailing with some form of acknowledgement from the client other than a "read receipt," and mailing by registered or certified mail return receipt requested.**

(b) *Copies of notices **and proofs of receipt**.* **[The formerly admitted attorney shall file photocopies of such notices and returned receipts in the Office of the Secretary.] At the time of the filing of the verified statement of compliance required by § 91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.**

§ 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 **promptly** 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, administrative suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw; 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, Suspen-

sion, Administrative Suspension or Transfer to Inactive Status). **The notice required by this subsection (b) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. *See* Note after subsection (a) of § 91.91 (relating to notification of clients in nonlitigation matters).**

(b) *Copies of notices **and proofs of receipt***. **[The formerly admitted attorney shall file photocopies of such notices and returned receipts in the Office of the Secretary.] At the time of the filing of the verified statement of compliance required by § 91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.**

§ 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 **promptly** 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**, including but not limited to wards, heirs and beneficiaries,** 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**[.]; and**

(3) any other tribunal, court, agency or jurisdiction in which the attorney is admitted to practice.

(b) *Method of delivery.* Enforcement Rule 217(c) further provides that the notices required by subsection (a) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. *See* Note after § 91.91(a) of this Subchapter E.

(c) *Copies of notices and proofs of receipt.* Enforcement Rule 217(c) further provides that at the time of the filing of the verified statement of compliance required by § 91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.

[(b)] (d) *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] administratively suspended** or on inactive status.

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

(a) *Effective date.* Enforcement Rule **[217(d)] 217(d)(1)** 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.

(b) *Effect of verified statement on waiting period for reinstatement.* Enforcement Rule 217(e)(3) provides that after the entry of an order of disbarment or suspension for a period exceeding one year, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney files the verified statement required by subsection (a) of this section; and that if the order of disbarment or suspension contains a provision that makes the discipline retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.

***Official Note*: Subsection (b) of this section and the corresponding provisions in § 89.272(a) and (b) (relating to waiting period) apply only to orders entered on or after February 28, 2015.**

(*Editor's Note*: The following rule is new and printed in regular type to enhance readability.)

§ 91.95. Additional steps to be taken to disengage from the practice of law.

(a) *Cease and desist from using all forms of communication that convey eligibility to practice.* Enforcement Rule 217(d)(2) provides that in addition to the steps that a formerly admitted attorney must promptly take under other provisions of this section to disengage from the practice of law, a formerly admitted attorney shall promptly cease and desist from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania, including but not limited to professional titles, letterhead, business cards, signage, websites, and references to admission to the Pennsylvania Bar.

(b) *Additional steps for certain types of discipline or disability.* Enforcement Rule 217(d)(3) provides that in cases of disbarment, suspension for a period exceeding one year, temporary suspension under Enforcement Rule 208(f) or 213(g), or disability inactive status under Enforcement Rule 216 or 301, a formerly admitted attorney shall also promptly:

(1) resign all appointments as personal representative, executor, administrator, guardian, conservator, receiver, trustee, agent under a power of attorney, or other fiduciary position;

(2) close every IOLTA, Trust, client and fiduciary account;

(3) properly disburse or otherwise transfer all client and fiduciary funds in his or her possession, custody or control; and

(4) take all necessary steps to cancel or discontinue the next regular publication of all advertisements and telecommunication listings that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania.

***Official Note*:** Paragraph (b) of this section does not preclude a respondent-attorney who voluntarily assumes

inactive or retired status, is placed on administrative suspension, is temporarily suspended under Enforcement Rule 214, or is suspended for one year or less, from completing existing appointments and accepting new appointments of the nature identified in paragraph (b)(1). Nonetheless, in order to comply with §§ 91.91 (relating to notification of clients in nonlitigation matters), 91.92 (relating to notification of clients in litigation matters), and 91.93 (relating to notification of other persons) of this Subchapter E, the formerly admitted attorney who desires to complete existing appointments or accept future appointments must give written notice of the formerly admitted attorney's registration status or change in that status to appointing and supervising judges and courts, wards, heirs, beneficiaries, interested third parties, and other recipients of the formerly admitted attorney's fiduciary services, as notice of the formerly admitted attorney's other-than-active status gives all interested parties an opportunity to consider replacing the formerly admitted attorney or enlisting a person other than the formerly admitted attorney to serve as the fiduciary in the first instance. Although the formerly admitted attorney would not be precluded by paragraph (b)(2) of this section from continuing to use a fiduciary account registered with the bank as an IOLTA or Trust Account, subsection (a) of this section and § 91.101(e)(4) (relating to prohibited activities of a formerly admitted attorney) prohibit the formerly admitted attorney from using or continuing to use account checks and deposit slips that contain the word "IOLTA," "attorney," "lawyer," "esquire," or similar appellation that could convey eligibility to practice in the state courts of Pennsylvania. Notwithstanding the specific prohibitions of § 91.101 (relating to law-related activities of formerly admitted attorneys), the formerly admitted attorney is authorized to perform those services necessary to carry out the appointment with the exception of any service that would constitute the unauthorized practice of law if engaged in by a nonlawyer. In relation to formerly admitted attorneys who are disbarred, suspended for a period exceeding one year, temporarily suspended under Enforcement Rule 208(f) or 213(g), or transferred to disability inactive status, the requirements of paragraph (b)(1) of this section continue throughout the term of the disbarment, suspension, temporary suspension, or disability inactive status, thereby precluding any new appointment or engagement.

(c) *Compliance records and submission thereof.* Enforcement Rule 217(d)(3) further provides that the formerly admitted attorney shall maintain records to demonstrate compliance with the provisions of subsections (a) and (b) of this section and shall provide proof of compliance at the time the formerly admitted attorney files the verified statement required by § 91.96 of this Subchapter E.

§ **[91.95] 91.96**. Proof of compliance.

(a) *General rule.* Enforcement Rule **[217(e)] 217(e)(1)** 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 **Secretary of the** Board a verified statement (Form DB-25) (Statement of Compliance) **[showing] and serve a copy on Disciplinary Counsel. In the verified statement, the formerly admitted attorney shall**:

(1) **[That] aver that** the provisions of the order and the Enforcement Rules have been fully complied with; **[and]**

(2) **[All] list all** other state, federal and administrative jurisdictions to which **[such person] the formerly admitted attorney** is admitted to practice**[.];**

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

(3) aver that he or she has attached copies of the notices required by subdivisions (a), (b), and (c)(1) and (c)(2) of Enforcement Rule 217 and proofs of receipt, or, in the alternative, aver that he or she has no clients, third persons to whom a fiduciary duty is owed, or persons with whom the formerly admitted attorney has professional contacts, to so notify;

(4) in cases of disbarment or suspension for a period exceeding one year, aver that he or she has attached his or her attorney registration certificate for the current year, certificate of admission, any certificate of good standing issued by the Prothonotary, and any other certificate required by subdivision (h) of Enforcement Rule 217 to be surrendered; or, in the alternative, aver that he or she has attached all such documents within his or her possession, or that he or she is not in possession of any of the certificates required to be surrendered;

(5) aver that he or she has complied with the requirements of paragraph (2) of subdivision (d) of Enforcement Rule 217, and aver that he or she has, to the extent practicable, attached proof of compliance, including evidence of the destruction, removal, or abandonment of indicia of Pennsylvania practice; or, in the alternative, aver that he or she neither had nor employed any indicia of Pennsylvania practice;

(6) in cases of disbarment, suspension for a period exceeding one year, temporary suspension under Enforcement Rule 208(f) or 213(g), or disability inactive status under Enforcement Rule 216 or 301, aver that he or she has complied with the requirements of paragraph (3) of subdivision (d) of Enforcement Rule 217, and aver that he or she has attached proof of compliance, including resignation notices, evidence of the closing of accounts, copies of cancelled checks and other instruments demonstrating the proper distribution of client and fiduciary funds, and requests to cancel advertisements and telecommunication listings; or, in the alternative, aver that he or she has no applicable appointments, accounts, funds, advertisements, or telecommunication listings;

(7) aver that he or she has served a copy of the verified statement and its attachments on the Office of Disciplinary Counsel;

(8) set forth the residence or other address where communications to such person may thereafter be directed; and

(9) sign the statement.

***Official Note*: A respondent-attorney who is placed on temporary suspension is required to comply with subsection (a) and file a verified statement. Upon the entry of a final order of suspension or disbarment, the respondent-attorney must file a supplemental verified statement containing the in-**

formation and documentation not applicable at the time of the filing of the initial statement, or all of the information and documentation required by subsection (a) if the respondent-attorney has failed to file the initial statement. Although the grant of retroactivity is always discretionary, a respondent-attorney who fails to file a verified statement at the time of temporary suspension should not expect a final order to include a reference to retroactivity.

(b) ***Required certification.*** **Enforcement Rule 217(e)(1) also provides that the statement shall contain an averment that all statements contained therein are true and correct to the best of the formerly admitted attorney's knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.**

(c) ***Cooperation required.*** **Enforcement Rule 217(e)(2) provides that a formerly admitted attorney shall cooperate with Disciplinary Counsel and respond completely to questions by Disciplinary Counsel regarding compliance with the provisions of this section.**

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

§ **[91.96] 91.97**. Publication of notice of suspension, disbarment, administrative suspension or transfer to inactive status.

Enforcement Rule 217(f) provides that the Board shall cause a notice of the suspension, disbarment, administrative suspension or transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced. If there is no such legal journal, the notice shall be published in the legal journal of an adjoining county. Upon entry of an order imposing suspension, disbarment, administrative suspension or transfer to inactive status, such notice shall be published forthwith and shall be transmitted to such courts as may be appropriate. **The cost of publication shall be assessed against the formerly admitted attorney.**

§ **[91.97] 91.98**. 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] 91.99**. Maintenance of records.

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

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

§ **[91.99] 91.100**. Indicia of licensure.

Enforcement Rule 217(h) provides that within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Attorney Registration Office under § 93.143 (relating to issue of certificate as evidence of compliance) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing), certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary), certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure), Limited In-House Corporate Counsel License issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license) or limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys). The Board may destroy the annual certificate issued under § 93.143, but shall retain any other documents surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

§ **[91.100] 91.101**. Law-related activities of formerly admitted attorneys.

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

* * * * *

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) any of the following applies:

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

(ii) the president judge of the court of common pleas pursuant to § **[91.97] 91.98** (relating to action to protect clients of formerly admitted attorney) by order directs Disciplinary Counsel to file an application under Enforcement Rule 321; or

* * * * *

Subchapter G. EMERGENCY PROCEEDINGS

§ 91.151. Emergency temporary suspension orders and related relief.

* * * * *

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

(1) the Board on its own motion, or upon the petition of Disciplinary Counsel, may issue a rule to show cause why the respondent-attorney should not be placed on temporary suspension whenever it appears that the respondent-attorney has disregarded an applicable provision of the Enforcement Rules, **[refused] failed to maintain or produce the records required to be maintained and produced under Pa.R.P.C. 1.15(c) and subdivisions (e) and (g) of Enforcement Rule 221 in response to a request or demand authorized by Enforcement Rule 221(g) or any provision of these Rules, failed** to comply with a valid subpoena**,** or engaged in other conduct that in any such instance materially delays or obstructs the conduct of a proceeding under this Subpart;

(2) the rule to show cause shall be returnable within **[30] ten** days;

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

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

(5) the recommendation of the Board shall be reviewed by the Supreme Court as provided in § 89.207 (relating to review and action in the Supreme Court)**, although the time for either party to file with the Court a petition for review of the recommendation or determination of the Board shall be fourteen days after the entry of the Board's recommendation or determination, and any answer or responsive pleading shall be filed within ten days after service of the petition for review**.

* * * * *

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

§ 91.177. Required records.

(a) *In general*. Enforcement Rule 221(e) provides that an attorney shall maintain **and preserve for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later, the following records:**

(1) the writing required by Pa.R.P.C. 1.5 (relating to the requirement of a writing communicating the basis or rate of the fee);

(2) the records identified in Pa.R.P.C. 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter); and

(3) the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held:

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

[(2)] (ii) check register or separately maintained ledger, which shall include the payee, date**, purpose** and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction**; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements**.

(b) *Regular trial balance and monthly reconciliations.* Enforcement Rule 221(e) also provides that: a regular trial balance of the individual client trust ledgers shall be maintained; the total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; on a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account; and the reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing.

(c) *Preservation of records and computations.* Enforcement Rule 221(e) provides that a lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with the requirement of subsection (b).

[(b)] (d) *Form*. Enforcement Rule 221(f) provides that the records required by this **[rule] section** may be maintained in **[electronic or]** hard copy form **or by electronic, photographic, or other media provided that the records otherwise comply with this section and that printed copies can be produced**. **Whatever method is used to maintain required records must have a backup so that the records are secure and always available.** If records are kept only in electronic form, then such records shall be backed up **[at least monthly on a separate electronic storage device], on a separate electronic storage device, at least at the end of any day on which entries have been entered into the records**.

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

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

(*Editor's Note*: Rules 91.178 and 91.179 are new and printed in regular type to enhance readability.)

§ 91.178. Availability of required records and requirement to produce.

(a) *In general.* Enforcement Rule 221(g) provides that the records required to be maintained by Pa.R.P.C. 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel in a timely manner upon request or demand by either agency made pursuant to the Enforcement Rules, these Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

(b) *Request for production by letter.* Enforcement Rule 221(g)(1) provides that upon a request by Disciplinary Counsel under subdivision (g) of that Enforcement Rule, which request may take the form of a letter to the respondent-attorney briefly stating the basis for the request and identifying the type and scope of the records sought to be produced, a respondent-attorney must produce the records within ten business days after personal service of the letter on the respondent-attorney or after the delivery of a copy of the letter to an employee, agent or other responsible person at the office of the respondent-attorney as determined by the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(d) (relating to annual registration of attorneys), but if the latter method of service is unavailable, within ten business days after the date of mailing a copy of the letter to the last registered address or addresses set forth on the statement.

(c) *Request for production pursuant to Board Rule.* Enforcement Rule 221(g)(2) provides in part that when Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made under an applicable provision of these Rules, the respondent-attorney must produce the records and must do so within the time frame established by these Rules. *See* § 87.7(e) (relating to production of Pa.R.P.C. 1.15 records upon Disciplinary Counsel's request in a Form DB-7 (Request for Statement of Respondent's Position) or Form DB-7A (Supplemental Request for Statement of Respondent's Position)).

(d) *Request for production by subpoena.* Enforcement Rule 221(g)(2) provides in part that when Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made by subpoena under Enforcement Rule 213(a), the respondent-attorney must produce the records and must do so within the time frame established by Enforcement Rule 213 and these Rules. *See* Enforcement Rule 213(b) and § 91.2(b) (both of which relate to procedure for issuance of subpoenas).

§ 91.179. Effect of failure to produce required records.

Enforcement Rule 221(g)(3) provides that failure to produce Pa.R.P.C. 1.15 records in response to a request or demand for such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f)(1) or (f)(5) (relating to emergency temporary suspension orders and related relief), the latter of which specifically permits Disciplinary Counsel to commence a proceeding for the temporary suspension of a respondent-attorney who fails to maintain or produce Pa.R.P.C. 1.15 records after receipt of a request or demand authorized by subdivision (g) of Enforcement Rule 221 or any provision of these Rules; and that if at any time a hearing is held before the Board pursuant to Enforcement Rule 208(f) (or § 91.151 relating to emergency temporary suspension orders and related relief) as a result of a respondent-attorney's alleged failure to maintain or produce Pa.R.P.C. 1.15 records, a lawyer-Member of the Board shall be designated to preside over the hearing.

***Official Note*:** If Disciplinary Counsel files a petition for temporary suspension, the respondent-attorney will have an opportunity to raise at that time any claim of impropriety pertaining to the request or demand for records.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.111. Determination of reimbursable expenses.

(a) *General rule.* Enforcement Rule 208(g)(2) provides that expenses taxable by the Board pursuant to § 89.205(b) (relating to informal admonition or private reprimand following formal hearing) shall be prescribed by these rules. See also § 89.209 (relating to expenses of formal proceedings) and § 89.278 (relating to expenses of reinstatement proceedings).

(b) *Enumeration of expenses.* Taxable expenses under these rules shall include, but not be limited to, the following:

(1) court reporter fees and transcript costs;

(2) the fees and expenses of expert and other witnesses;

(3) the cost of serving subpoenas, pleadings and briefs;

(4) the charges by banks and other institutions for production of statements, checks and other records in response to subpoenas or otherwise;

(5) the cost of reproducing documents introduced or offered as evidence at hearings; **[and]**

(6) the cost of reproducing pleadings and briefs**[.]; and**

(7) the cost of publishing notices in the legal journal and a newspaper of general circulation as required by Enforcement Rule 217(f) (relating to publication of a notice of suspension, disbarment, administrative suspension or transfer to inactive status) or § 89.274(b) (relating to publication of a notice of reinstatement hearing).

(c) *Administrative fee.* Enforcement Rule 208(g)(3) provides that the expenses taxable under § 89.205(b) (relating to informal admonition, private reprimand, or public reprimand following formal hearing) or § 89.209 (relating to expenses of formal proceedings) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an informal admonition; and that the administrative fee shall be $250.

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.142. Filing of annual fee form by attorneys.

(a) *Transmission of form.* Enforcement Rule 219(c) provides that on or before May 15 of each year the Attorney Registration Office shall transmit to all attorneys required by the rule to pay an annual fee, except those

attorneys who have elected electronic filing, a form required by subsection (b) of this section; and that on or before May 15 of each year subsequent to the year in which an attorney elects electronic filing, the Attorney Registration Office shall transmit to such attorney a notice by e-mail to register by July 1.

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

(1) The form shall set forth:

(i) The date on which the attorney was admitted to practice, licensed as 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 Attorney Registration Office shall refuse to accept a form that sets forth only a post office box number for either required address. A preferred mailing address different from those addresses may also be provided on the form and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, as well as telephone and fax number will be accessible through the website of the Board (http://www.padisciplinaryboard.org/) and by written or oral request to the Board. Upon an attorney's written request submitted to the Attorney Registration Office and for good cause shown, the contact information provided by the attorney will be nonpublic information and will not be published on the Board's website or otherwise disclosed.

***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] Financial Institution, as defined in § 91.171 (Definitions), within or outside this Commonwealth** in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the **[lawyer holds] attorney held** such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

***Official Note*: If an attorney employed by a law firm receives fiduciary funds from or on behalf of a client and deposits or causes the funds to be deposited into a law firm account, the attorney must report the account of deposit under this subparagraph.**

(iv) Every account not reported under subparagraph (iii), that held funds of a client or third party, and over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account, during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution (whether or not the entity qualifies as a "Financial Institution" under RPC 1.15(a)(4)), location, and account number.

(v) Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

[(iv)] (vi) A certification reading as follows: "I certify that all Trust Accounts that I maintain are in financial institutions approved by the Supreme Court of Pennsylvania for the maintenance of such accounts pursuant to Pennsylvania Rule of Disciplinary Enforcement 221 (relating to mandatory overdraft notification) and that each Trust Account has been identified as such to the financial institution in which it is maintained."

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

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

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

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

(2) Payment of the annual fee shall accompany the form. IOLTA, trust, escrow and other fiduciary account checks tendered in payment of the annual fee will not be accepted. If the form and payment are incomplete or if 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, and one or both of the late payment penalties prescribed in § 93.144(a)(1) and (2) of these rules if assessed, 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 registration year.

(3) Every attorney who has filed the form or elects to file the form electronically shall notify the Attorney Registration Office of any change in the information previously submitted, including e-mail address, within 30 days after such change.

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

CHAPTER 95. STATEMENTS OF POLICY

§ 95.2. Investigation of the **mishandling and** conversion of funds.

[Where the Office of Disciplinary Counsel receives evidence of the conversion of entrusted funds by a respondent-attorney, it is the policy of the Board that Disciplinary Counsel shall seek the issuance of a subpoena duces tecum to the respondent-attorney and any relevant financial institution for at least the following records:]

(a) Where the Office of Disciplinary Counsel has some factual basis to support a suspicion or concern that there has been improper commingling or mishandling of entrusted funds or a failure to promptly account for or distribute such funds by a respondent-attorney, it is the policy of the Board that Disciplinary Counsel shall make a request or demand to the respondent-attorney for all relevant records, including the records required to be maintained under Pa.R.P.C. 1.15(c), Enforcement Rule 221(e), and § 91.177(a) (all of which relate to required records), unless such a request or demand would jeopardize an ongoing investigation. Disciplinary Counsel shall utilize one or more of the procedures authorized by Enforcement Rule 221(g) and § 91.178 (relating to availability of required records and requirement to produce), and Enforcement Rule 213 and § 91.2 (relating to subpoenas).

***Official Note*: An administrative agency's request or demand for production of required records has been upheld if the agency has some factual basis to support a suspicion or concern that the law has been violated even if the evidence does not establish a violation, or the circumstances justify the agency's seeking assurances that the law has not been violated; 2) the records sought are reasonably relevant to the inquiry; and 3) the demand is not too indefinite or overbroad. *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643, 652 (1950), cited in *State Real Estate Com. v. Roberts*, 441 Pa. 159, 164-165, 271 A.2d 246, 248 (1970), *cert. denied*, 402 U.S. 905 (1971); *Unnamed Attorney v. Attorney Grievance Comm'n*, 313 Md. 357, 364-365, 545 A.2d 685, 689 (1988).**

(b) Where the Office of Disciplinary Counsel receives evidence of the misappropriation or conversion of entrusted funds by a respondent-attorney, it is the policy of the Board that Office of Disciplinary Counsel shall seek to obtain relevant records under the procedures in subsection (a), and, where deemed appropriate or necessary, seek the issuance of a subpoena duces tecum to the respondent-attorney and any relevant financial institution for some or all of the following records:

(1) all accounts into which the respondent-attorney may have deposited or otherwise transferred entrusted funds during a period reasonably related to that during which the **misappropriation or** conversion occurred; **[and]**

(2) those records which are required to be maintained under **[the Disciplinary Rules relating to the handling or holding of funds or other property.] Pa.R.P.C. 1.15(c), Enforcement Rule 221(e), and § 91.177(a)—(c); and**

[*Official Note*: The records referred to in paragraph (2) include those maintained under former DR 9-102 of the Code of Professional Responsibility and Rules 1.5(c) and 1.15 of the Rules of Professional Conduct.]

(3) all other records that may be relevant or necessary to confirming, corroborating or determining the extent of the misappropriation or conversion.

(c) *No limitation intended.* This section does not prohibit Disciplinary Counsel, at any stage of an investigation, from: 1) verbally requesting that a respondent-attorney voluntarily produce records; 2) seeking records from a financial institution or a person other than the respondent-attorney; or 3) seeking relevant records, by any authorized manner, of any type or nature and in relation to a suspected violation of a type other than one identified in this section.

§ 95.3. Monitoring of notices to be sent by formerly admitted attorneys.

It is the practice of the Office of the Secretary to monitor the filing by formerly admitted attorneys of the verified statement of compliance required under § **[91.95] 91.96** (relating to proof of compliance) and, if the statement is not filed within the prescribed period, the Office of the Secretary will mail to the formerly admitted attorney a reminder of the obligation under § **[91.95] 91.96** to file the statement. Failure by the Office of the Secretary to mail the reminder, or failure by the formerly admitted attorney to receive the reminder, shall not relieve the formerly admitted attorney of the obligation to file the verified statement of compliance. As required by § **[91.98] 91.99** (relating to maintenance of records), the Office of the Secretary will not accept for filing a petition for reinstatement until the formerly admitted attorney has filed the verified statement of compliance or obtained a waiver from the Board of the requirement to file the statement. **As required by Enforcement Rule 217(e)(3) and subsections (a) and (b) of § 89.272 (relating to waiting period), if an order of disbarment or suspension for a period exceeding one year is entered on or after February 28, 2015, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney who is the subject of that order files the verified statement of compliance required by § 91.96.**

[Pa.B. Doc. No. 15-152. Filed for public inspection January 30, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CLINTON COUNTY

Adult Probation and Parole Services Administrative Fee; No. AD-3-2014

Order of Court

And Now, this 8th day of December, 2014, pursuant to 42 Pa.C.S.A. § 9728(g), the Court hereby orders the imposition of a monthly probation administrative fee of Ten and 00/100 ($10.00) Dollars per month assessed against all offenders placed on probation, parole, accelerated rehabilitative disposition (ARD), probation without verdict (PWV), or intermediate punishment (IP). Said increase is to be effective thirty (30) days after publication in the *Pennsylvania Bulletin* and applied only to offenders sentenced or placed on ARD on or after the publication requirement has been satisfied. In support of this Order establishing a monthly probation administrative fee, the Court finds as follows:

1. That pursuant to 42 Pa.C.S.A. § 9728(g), any costs of the Adult Probation Department, including but not limited to, any reasonable administrative costs associated with the collection of restitution, reparation fees, costs, and fines, shall be borne by the offender.

2. That, heretofore, the Court never assessed a monthly probation administrative fee against offenders sentenced to probation, parole, ARD, PWV, or IP.

3. That the Adult Probation Department expends significant time and resources administering and collecting restitution, reparation fees, costs, and fines from offenders placed on probation, parole, ARD, PWV, and IP.

4. That the Court, through the Adult Probation Department, can no longer solely bear all of the costs of collecting restitution from offenders placed on probation, parole, ARD, PWV, and IP, and that it is fair and reasonable to assess a monthly probation administrative fee against offenders for this purpose.

The following guidelines shall be implemented in the assessment and collection of the monthly probation administrative fee:

1. All offenders placed on probation, parole, ARD, PWV, and IP shall be assessed a monthly probation administrative fee of Ten and 00/100 ($10.00) Dollars for every month or fraction thereof that an offender is under supervision.

2. Said monthly probation administrative fee shall be considered a condition of probation, parole, ARD, PWV, and IP. Failure to pay monthly probation administrative fees shall be considered by the Court to be a technical violation of an offender's conditions of supervision and may result in a revocation of a sentence of probation, parole, ARD, PWV, or IP.

3. The monthly probation administrative fee may be paid by the offender at one time or on a monthly basis.

4. When an offender's probation, parole, ARD, PWV, or IP is transferred to Adult Probation from another jurisdiction for supervision purposes, the monthly probation administrative fee shall be established from the date the case is accepted for supervision.

5. In those instances where an offender has multiple active cases, the monthly probation administrative fee shall be assessed on an offender only once, and the Adult Probation Department shall apportion the monthly probation administrative fee accordingly.

6. Any offender committed to, remanded to, or detained in a jail or prison for a violation of their probation, parole, ARD, PWV, or IP shall have their monthly probation administrative fee accrue until such time as the Court revokes said probation, parole, ARD, PWV, or IP. Upon release, the monthly probation administrative fee shall be re-assessed by the Adult Probation Department if the offender will be under the supervision of the Adult Probation Department.

7. The funds collected pursuant to this administrative order shall be deposited in a fund for the exclusive use by the Twenty-Fifth Judicial District of Pennsylvania. This fund shall be used to support the operation of the Court's Adult Probation Department, technology enhancement, and education and training for Adult Probation officers and staff. Expenditures from this account can be authorized only by the President Judge. An accounting of this administrative fee account shall be made quarterly by the Chief Probation Officer in writing to the President Judge.

By the Court

CRAIG P. MILLER,
President Judge

[Pa.B. Doc. No. 15-153. Filed for public inspection January 30, 2015, 9:00 a.m.]

UNION COUNTY

Judicial Administration; CP-60-AD-1-2015

Order

And Now, January 7, 2015, the 17th Judicial District Local Rule of Judicial Administration 17CR9756-UC, Reentry Plan, is adopted for use in Union County, Court of Common Pleas of the 17th Judicial District, Commonwealth of Pennsylvania, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The 17th Judicial District Court Administrator is Ordered and Directed to do the following:

1) File seven (7) certified copies of this Order and Rule with the Administrative Office of the Pennsylvania Courts.

2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Forward one (1) certified copy of this Order and Rule to the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

4) Copies shall be kept continuously available for public inspection in the Office of the Union County Prothonotary.

By the Court

MICHAEL T. HUDOCK,
President Judge

17CR9756-UC

UNION COUNTY COURT OF COMMON PLEAS

REENTRY PLAN

I—Sentencing Considerations

The Court of Common Pleas of and for Union County, in collaboration with the Union County Probation Department have created this reentry plan with a focus on certain attainable goals. First and foremost are the rehabilitative needs of the offender. Clearly all offenders sentenced to periods of confinement in our county jail will eventually be returned to the community. Most of these individuals will be reintegrated into the community as part of a parole plan, while a very small percentage of offenders will serve their maximum sentence in confinement and will be returned to the community without the benefit of a structured parole plan. In either case, the likelihood the individual will be successful in a return to society is increased dramatically if their rehabilitative needs are accurately identified and addressed while they are still in confinement.

Secondly, the Court must impose a sentence consistent with the protection of the public. Therefore, it is absolutely essential that individuals referred to the Union County Probation Department be subjected to a comprehensive Risk/Needs Assessment. This assessment shall be performed on all individuals referred to the field agency regardless of the manner in which their case is disposed. In cases where the Court has imposed a sentence of probation or intermediate punishment, there is a reasonable expectation that the individual is perceived to present a low risk to the public. Those individuals sentenced to confinement generally present an elevated risk to the public and through an approved assessment tool probation staff can identify areas of concern. Measures can then be taken to reduce those risk factors while the individual remains incarcerated.

Thirdly, when imposing a sentence of confinement the Court shall "consider the gravity of the offense as it relates to the impact on the life of the victim and on the community." This consideration moves a more punitive sentence to the forefront and places less emphasis on the rehabilitative needs of the offender or the risks the individual presents to the community at large. Nevertheless, planning for the eventual reentry of the individual into the community should begin immediately upon sentence commencement and shall include a Risk/Needs Assessment, goal identification and implementation of programming.

Finally, the inherent costs associated with housing inmates in the county jail must be weighed against the punitive and rehabilitative needs of the offender and the risks the individual poses to the public. Due to the limited capacity of the Union County Jail, the institutional population is constantly well beyond 100%, resulting in inmates being housed in neighboring county jails at per diems ranging from $60 to $100. If the risks and needs of the offender can be addressed short of incarceration, sentences of probation or intermediate punishment should be considered. If incarceration remains the most viable option, then reentry of the offender into the community must be given forethought and planning from the time of sentence commencement.

II—Programming

Among the most common obstacles facing Union County inmates are drug and/or alcohol addiction, lack of education, inadequate or no available housing, poor employment records coupled with lack of job skills, limited life skills and an absence of a positive support network. Additionally, some inmates struggle with mental health disorders including anger issues and/or poor impulse control. Many of these individuals are without the resources needed to obtain appropriate treatment and/or prescription medications.

Union County is fortunate to be in a somewhat unique position. In 2012, the county implemented a day reporting program which now provides programming for many of the obstacles facing inmates as they prepare for reentry. In April of 2013, all programming was moved to the Day Reporting Center at 480 Hafer Road, Lewisburg, PA. In a sense, Union County provides "one stop shopping" in a building which previously housed the local Army Reserve Unit. Unlike many county day reporting programs, Union County not only owns the facility and the five acres of land on which it sits, but they also employ the staff providing oversight for the various programs. Full time employees with offices at the Day Reporting Center include a program director, two adult probation officers (one whose primary focus is community service), a maintenance supervisor, and an administrative assistant. Contracted services provided at the center include G.E.D. instruction through the Central Susquehanna Intermediate Unit, Retail Theft Prevention contracted through the National Association For Shoplifting Prevention and Drug and Alcohol Counseling contracted through Gaudenzia, Inc. Additional non-contracted services include life skills through the Community Action Agency, job search using computers linked to Career Link, coordination of community service both on grounds and off, and Anger Management and Credit counseling as needed.

III—Reentry

In determining an offender's eligibility to participate in a formal reentry program, the Union County Probation Department (UCPD) shall first consider the criteria set forth under 61 Pa.C.S.A. 4503. If the offender meets these eligibility requirements the court shall, when imposing sentence, designate the offender as being eligible for formal reentry. Additionally, the sentencing authority shall order the offender to successfully participate in any and all mandated treatment or programming as directed by the UCPD. Any failure to do so will result in the offender's eligibility to participate in formal reentry being revoked as herein described. (Appendix A)

The general requirements for formal reentry shall include but may not be limited to the following:

1. The UCPD certified that it has conducted an appropriate assessment of the treatment needs and risks of the inmate using a standardized assessment tool.

2. The UCPD certified that it developed a program plan based on the assessment conducted under paragraph 1, that is designed to reduce the risk of recidivism through the use of Recidivism Risk Reduction Incentive (RRRI) programs authorized and approved by the Court.

3. The UCPD advised the inmate that he or she is required to successfully participate in the designated treatment and/or programs and successfully complete same.

4. The inmate has successfully participated in all required RRRI programs and, if an appropriate period of time was available, has successfully completed those programs.

5. The inmate has maintained a good conduct record following the imposition of the RRRI minimum sentence.

6. The reentry plan for the inmate is adequate.

7. Individual conditions and requirements for parole have been established.

8. The UCPD has certified that the inmate continues to be an eligible offender.

9. There is no reason to believe that the inmate poses an unreasonable risk to public safety.

Inmates designated as being eligible to participate in a formal reentry program shall be considered parole eligible in accordance with the provisions set forth under 61 Pa.C.S.A. 4505(c) referenced Recidivism Risk Reduction Incentive (RRRI)-minimum sentence. The RRRI minimum sentence shall be equal to 3/4th of the minimum sentence imposed. For purposes of these calculations, partial days shall be rounded to the nearest whole day.

APPENDIX A

Inmates designated by the Court as being eligible for formal reentry shall be expected to follow all rules and regulations imposed by the Warden of the Union County Jail or his designee, all rules and conditions imposed by the Union County Probation Department, and all directives from treatment or program providers. Furthermore, the inmate shall comply with all conditions ordered by the sentencing authority.

All allegations of misconduct shall be reported and documented in accordance with the Union County Prison-Inmate Disciplinary Procedures Policy. (Appendix B) Acts of misconduct which potentially could impact on an inmate's eligibility for formal reentry shall be reviewed jointly by Union County Prison staff and the Chief Probation Officer as set forth in Appendix B. Inmates found to be in noncompliance shall be sanctioned using an assignment of points with an accumulation of 5 points or more disqualifying an inmate from formal reentry eligibility (Appendix C). An added penalty for accruing 5 or more points shall be that the inmate will be ineligible for parole for one additional week beyond his or her minimum sentence for each accrued point. For purposes of calculation, the minimum sentence shall be the term imposed by the sentencing authority, not the RRRI minimum.

APPENDIX B

Policy: INMATE DISCIPLINARY PROCEDURES

Policy Number: 95.240

Attachments:

1 CLASS I CHARGES
2 CLASS II CHARGES
3 CLASS II CHARGES
4 MISCONDUCT & DISPOSITION FORMS

Date of Issue: 2-Apr-10
Revision Date: 4-Sep-12
Reviewed Annually: See annual review page

I. Policy

It is the policy of the Union County Prison to operate a disciplinary process that provides clear notice of prohibited behavior, outlines a fundamentally fair hearing process, and establishes consistent sanctions for violations of Prison rules and regulations. It is also the policy of the Prison that information concerning an inmate's criminal acts shall be forwarded to appropriate court or law enforcement officials for consideration for prosecution.

II. Procedures

Every inmate under the jurisdiction of the Prison is expected to follow Prison rules and regulations. In the event that an inmate violates Prison rules and regulations, the violation shall be reported and disposed of either by an informal or formal resolution process. The informal resolution process shall be used for those violations that are considered less serious in nature, while the formal resolution process shall be used for violations of a more serious nature. Attachment A provides a list of misconduct that may result in the commencement of disciplinary procedures. Only Class II and Class III charges are subject to informal resolution by the Lieutenant and Prison Supervisor. Class I charges must be disposed of formally by the Lieutenant and Prison Supervisor.

A. *Misconduct Reports*

1 Every misconduct is to be reported on a Misconduct Report. An inmate charged with any of the listed misconduct will receive a copy of the report.

2 The Misconduct Report is used to give notice to the inmate of the misconduct with which he/she has been charged and to report the facts upon which the charges are based. The Report will be used as evidence against the inmate during the misconduct hearing or the informal resolution meeting.

3 The Misconduct Report shall be written by either the charging staff member or contract personnel who has personal knowledge of the misconduct or by a staff member at the direction of a person who has personal knowledge of the misconduct.

4 The Misconduct Report will be written and submitted to the Lieutenant, Prison Supervisor or OIC before the tour of duty concludes on the same day/shift that the charging staff member or contract personnel have knowledge of the violation. If not, the Report must include a justification for the delay.

5 The Misconduct Report shall be investigated as required, reviewed and approved by the Lieutenant or Prison Supervisor prior to service of the Misconduct Report on the inmate. The Lieutenant or Prison Supervisor, as an alternative to approving the Misconduct Report, may refer the matter for informal resolution under this Policy.

6 The Lieutenant will enter all pertinent information regarding the misconduct into the Department misconduct tracking system.

B. *Service of Misconduct Report*

1 The inmate shall be personally served with the Misconduct Report the same day the report is written. If the Misconduct Report is not served the same day the report is written, the Lieutenant or Prison Supervisor must determine why the Report was not served and supply justification.

2 Someone other than the charging staff member will serve the Misconduct Report.

3 The staff member who serves the Misconduct Report shall record the date and time of service on the Misconduct Report immediately prior to giving the inmate a copy of the Misconduct Report.

C. *Informal Resolution of Misconduct*

1 The misconduct charge(s) eligible for informal resolution are:

a. all Class II charges and;

b. all Class III charges

2 The Lieutenant and Prison Supervisor will review all eligible Misconduct Reports for informal resolution. The staff member issuing the misconduct may recommend informal resolution for eligible charges, but the Lieutenant and Prison Supervisor, who will base his/her choice on the relative seriousness of the misconduct and the inmate's previous misconduct history, shall make the decision. The Lieutenant and Prison Supervisor must justify the reason why an eligible charge was not referred for informal resolution under the immediate action section of the Misconduct Report. All misconducts selected for informal resolution will be logged.

3 The Lieutenant and Prison Supervisor will meet with the inmate for disposition of the misconduct charge(s) within seven working days. The reporting staff member is encouraged, but not required, to attend the meeting. No assistance or witnesses are permitted at these meetings. The inmate will be permitted to give his/her version of the events at the meeting.

4 At the conclusion of the meeting, the Lieutenant and Prison Supervisor shall take one of the following actions and note the action taken on a General Report form:

a. no action

b. reprimand and warning;

c. up to seven days cell restriction

d. up to seven days loss of specified privileges (telephone, yard, dayroom, etc.);

e. one week loss of commissary;

f. assignment of additional work duties for which the inmate shall not be compensated; or

g. assess restitution for damaged or destroyed property of Union County or another inmate, provided that the inmate agrees to make restitution. If the inmate refuses to agree to make restitution, the matter shall be referred back to the Lieutenant and Prison Supervisor for formal resolution.

5 When the Lieutenant and Prison Supervisor assess restitution for damaged or destroyed property of Union County or another inmate, 50% thereof can be taken from the current balance of the inmate's inmate account and 50% thereof in subsequent months until the debt is satisfied. However, funds shall not be deducted from the inmate account until such time as an appeal or the time for an appeal has passed.

6 The copy of the form designated for the inmate is given to him/her at the conclusion of the meeting. All other copies of the form are to be disseminated as indicated on the form.

7 The inmate may appeal the action taken at the meeting to the Warden, but only in those cases where the inmate believes that the action is disproportionate to the misconduct. The inmate has seven days to appeal.

D. *Misconduct Hearing*

1 A misconduct hearing shall be held for all Class I misconduct charges and as provided in Section II.C. of this Policy.

2 The Lieutenant and Prison Supervisor shall conduct the misconduct hearing.

3 The misconduct hearing shall be scheduled no less than 24 hours or no more than seven working days, excluding weekends and County holidays, after service of the Misconduct Report.

4 The inmate shall be informed of the time of the hearing 24 hours in advance of the scheduled misconduct hearing.

5 The inmate will be present during the misconduct hearing, unless the inmate waives that right in writing or refuses to attend.

6 If the charged inmate becomes disruptive at the hearing or refuses to follow the instructions given by the Lieutenant or Prison Supervisor, he/she will be removed and the hearing conducted without the inmate being present.

7 *Inmate Assistance—*

a. In cases when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his/her own behalf, assistance shall be permitted. The criterion for capability is the inability of the inmate to understand the English language or the inability to read or understand the misconduct charge(s) and/or the evidence.

b. The Lieutenant and Prison Supervisor will approve/disapprove requests for an inmate to have assistance at the hearing.

c. If approved by the Lieutenant and Prison Supervisor, the inmate shall be permitted assistance at the hearing from any staff member or any inmate in the same population status.

d. The inmate shall be permitted to meet with the assistant for an appropriate period of time before the hearing.

8 At the hearing, the misconduct charge(s) shall be read to the inmate. The Lieutenant or Prison Supervisor shall request the inmate's plea to each individual charge.

9 *Inmate Version*—The inmate may submit his/her version in writing or may orally present his/her version that shall be summarized as part of the hearing record.

10 *Witnesses—*

a. The inmate may request to have up to three witnesses or a written statement from witnesses for the hearing.

b. All witnesses shall be approved by the Lieutenant and Prison Supervisor.

c. The Lieutenant and Prison Supervisor may approve the presence of a staff member or witness only if the staff member or witness has knowledge of the incident, is present on facility grounds, and only if the testimony is needed to establish the guilt or innocence of the inmate.

d. Up to three relevant witnesses, who have been properly requested and approved, may be permitted. One of the three witnesses may be the staff member who witnessed the misconduct violation or the charging staff member.

e. If an inmate witness or assistant becomes disruptive at the hearing or refuses to follow the instructions given by the Lieutenant or Prison Supervisor, he/she shall be removed and the hearing conducted without the witness or assistant being present.

f. The Lieutenant or Prison Supervisor may question any witness. The charged inmate shall be permitted a reasonable opportunity to pose relevant questions to any adverse witness. The Lieutenant and Prison Supervisor shall control the extent of questioning.

g. The Lieutenant and Prison Supervisor shall make determinations of credibility of a witness.

h. All testimony shall be under oath.

i. If the inmate elects to plead guilty or waive his/her right to a hearing, no witnesses shall be required.

11 *Designee*—In the event the Lieutenant or Prison Supervisor is involved in the misconduct directly, the Warden will assign another staff member to replace the Lieutenant or Prison Supervisor at the hearing.

12 Any discipline shall be recorded and made part of the inmate's permanent record.

13 At the conclusion of the hearing, the Lieutenant and Prison Supervisor shall impose punishment as follows:

a. Loss of privileges, being those actions described in Section II.C.4 of this Policy; or

b. *Segregation*

14 Conditions in Segregation shall be as follows, except if safety or security is a concern:

a. The cell will be clean, well lighted, heated, ventilated and sanitary;

b. The cell shall be furnished with a mattress, bedding and toilet facilities;

c. Except in special circumstances, as for example a suspected suicide threat, the inmate shall wear prison issued clothing;

d. Three meals per day shall be provided, identical with the meals provided to the remainder of the jail population;

e. A bathing and shaving schedule shall be maintained, including the minimum twice weekly opportunities;

f. Toilet tissue and drinking water shall be provided;

g. The inmate shall have an opportunity to exercise;

h. The regular review of segregation shall be practiced, provided that the time interval shall not exceed five (5) days;

i. The segregation unit shall be adequately supervised;

j. Writing privileges shall not be denied to inmates in segregation;

k. The chaplain shall be permitted to visit regularly; and

l. The medical staff shall visit all inmates in segregation on his/her regularly scheduled visit to the prison.

m. When an inmate in disciplinary status and is deprived of any usual authorized items or activity a report of action is made to the prison administrator.

n. Inmates in disciplinary status are given the same meals served to the general population.

15 Corporal punishment, punishment by placing in a dark cell, and all cruel, inhumane or degrading punishments shall be completely prohibited.

APPENDIX C

Class 1 Misconduct Charges

Assignment of five points and immediate disqualification from formal reentry eligibility—

1. Commission of any act which results in the filing of felony or misdemeanor criminal charges.

2. Failure to return to the Union County Prison following an authorized release for purposes of employment or programming.

3. Inmate determined to be at a location other than that which was authorized as a condition of partial confinement.

4. Engaging in sexual acts with others or sodomy.

5. Assault against correctional staff.

6. Refusing to work or attend mandatory programs or encouraging others to do the same.

7. Possession of contraband including but not limited to tobacco, drug paraphernalia, any illicit or mind altering substance, alcohol, weapons or other items, which in the hands of an inmate, present a threat to the inmate, others, or to the security of the facility.

Class 2 Misconduct Charges

Assignment of two points—

1. Tattooing or other forms of self-mutilation.

2. Possessing tattooing instruments or materials.

3. Gambling or conducting a gambling operation or possessing gambling paraphernalia.

4. Extortion or blackmail.

5. Possessing or circulating a petition which is a document signed by two or more person's requesting or demanding that something happen or not happen without the authorization of the Warden.

6. Using abusive, obscene, or inappropriate language toward correctional or probation staff.

7. Violating the Union County Prison visitation regulations and/or policies.

8. Unauthorized use of mail or telephone including use of cell phone.

9. Refusing to obey an order from correctional or probation staff.

10. Theft of property from another inmate.

Class 3 Misconduct Charges

Assignment of one point—

1. Loaning or borrowing property from other inmates.

2. Lying to correctional or probation staff.

3. Failing to report the presence of contraband.

4. Body punching or horseplay.

5. Taking food from the food cart without authorization.

6. Possessing any item not authorized for retention or receipt by an inmate, not specifically enumerated as a Class 1 or 2 Misconduct Charge.

7. Any violation of a rule or regulation in the Union County Department of Corrections Inmate Handbook not specified as a Class 1 or 2 Misconduct Charge.

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