

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 85, 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. 92

By Order dated April 18, 2019, the Supreme Court of Pennsylvania amended Rules 102, 104, 205, 206, 208, 209, 213—219, 301, 401, and 403 of the Pennsylvania Rules of Disciplinary Enforcement related to the realignment of the Board's Executive Office. 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 Executive Director 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*.

*By The Disciplinary Board of the
Supreme Court of Pennsylvania*

JESSE G. HEREDA,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

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

Board Prothonotary—The Prothonotary of the Disciplinary Board.

Board Rule—Any provision of this subpart.
Censure—Public censure by the Supreme Court.

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

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

Conservator—A conservator appointed under § 91.121 (relating to appointment of conservator to protect interests of clients of absent attorney).

Court—The Supreme Court of Pennsylvania.

Court Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Disciplinary Counsel—The Chief Disciplinary Counsel and [**assistant disciplinary counsel**] **Disciplinary Counsel within the Office of Disciplinary Counsel.**

Disciplinary District—One of the four districts into which this Commonwealth is divided for disciplinary purposes as set forth in § 93.1 (relating to disciplinary districts).

Disciplinary Rule—The provisions of the Code of Professional Responsibility, as adopted by the Supreme Court of Pennsylvania on May 20, 1970, 438 Pa. XXV, as amended from time to time by special order of the Court and governing lawyer conduct occurring or beginning on or before March 31, 1988, as well as the provisions of the Rules of Professional Conduct, as adopted by the Supreme Court of Pennsylvania on October 16, 1987, Pa. , and effective on April 1, 1988, as amended from time to time by special order. See Chapter 81 (relating to rules of professional conduct).

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

Executive Office—The Office of the Disciplinary Board established by § 93.51 (relating to Executive Office), referred herein as the "Executive Office."

Experienced hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has served [**as a member of a panel of hearing committee members for at least one year and**] on **at least one** hearing committee that has conducted [**at least one**] a hearing into formal charges of misconduct by a respondent-attorney.

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

Legal Counsel—Counsel to the Board and Special Counsel.

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

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

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

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

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

[Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.]

Public Reprimand—Public reprimand by the Board.

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

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

Rules—The provisions of this subpart.

[Secretary—The Secretary of the Board.]

Senior hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has **[previously]** served either (i) as a member of the Board, or (ii) **[a full three-year term on a panel of hearing committee members and]** on **[at least two]** hearing committees that have conducted **[at least two]** hearings into formal charges of misconduct by respondent-attorneys.

Special Master—**[A special master assigned] Asigned under § 93.91 (relating to special masters), includes former Board members, former or retired justices or judges not on senior status, Special Counsel, and former senior hearing committee members.**

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§ 85.4. Information and special instructions.

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

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

(2) The **Executive Office [of the Secretary]**, with respect to matters which have become the subject of formal proceedings.

§ 85.5. Location of Office of Disciplinary Counsel.

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(b) *Disciplinary District Offices*. The present locations of the district offices of the Office of Disciplinary Counsel

[and the office of the Assistant Disciplinary Counsel] for each such disciplinary district are:

- (1) District I Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337
(215-560-6296)
(fax: 215-560-4528)
- (2) District II Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
Suite 170
820 Adams Avenue
Trooper, PA 19403-2328
(610-650-8210)
(fax: 610-650-8213)
- (3) District III Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
PO Box 62675
Harrisburg, PA 17106-2675
(717-772-8572)
(fax: 717-772-7463)
- (4) District IV Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219-6002
(412-565-3173)
(fax: 412-565-7620)

§ 85.6. Location of **Executive Office [of the Secretary]**.

The location of the **Executive Office [of the Secretary]** is:

Executive Office [of the Secretary]
The Disciplinary Board of the
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625
(717-231-3380)
(fax: 717-231-3381)

§ 85.12. Filings with the Supreme Court.

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(c) *Centralized filing*. Enforcement Rule 104(c) provides that all filings with the Supreme Court under this Subpart shall be made only with the **[prothonotary] Court Prothonotary**, and the person making a filing shall not distribute copies to the members of the Court.

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

COMPLAINTS

§ 87.4. Preliminary screening and docketing of complaints.

Complaints received by the Office of Disciplinary Counsel against Disciplinary Counsel involving alleged violations of the Disciplinary Rules shall be transmitted forthwith to the **Executive Office [of the Secretary]** for disposition pursuant to § 93.52(d)(2) (relating to communications and filings generally). All other complaints shall be assigned a docket number consisting of the letter “C”, the number of the disciplinary district to which the matter will be assigned, the last two digits of the calendar year in which the matter is docketed, and the serial number of the matter in such disciplinary district in such calendar year, e.g.: “C4-73-1,” etc.

§ 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.

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(c) *Contents of statement of position.* All statements of position shall be in writing and sufficiently detailed as to advise Disciplinary Counsel and any reviewing hearing committee member that the **[Board Secretary] Executive Office** may appoint under § 87.32 (relating to action by reviewing hearing committee member) of the nature of any defense. The respondent-attorney should include with the statement any corroborating documentation and may include in the statement mitigating factors and any relevant facts or circumstances that may assist Disciplinary Counsel in determining under § 87.8(b) the action to be taken or the disposition recommended.

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§ 87.8. District office action or recommendation.

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(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent of complaint), the **[Assistant]** Disciplinary Counsel assigned to the district office shall promptly complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

- (1) Dismissal for lack of jurisdiction.
- (2) Dismissal because frivolous.
- (3) Dismissal on the basis of prosecutorial discretion.
- (4) Dismissal on the basis of Board policy.
- (5) Dismissal for any other reason.

(6) Conditional or unconditional informal admonition, private reprimand, or public reprimand. An informal admonition, private reprimand, or public reprimand shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.

(7) Prosecution of formal charges before a hearing committee or special master.

(c) *Selection of form.* Action under paragraphs (b)(1), (2), (3), (4), or (5) of this section may be recommended by the assigned **[Assistant]** Disciplinary Counsel and taken with the written concurrence of the **[Assistant]** Disciplinary Counsel-in-Charge, any other **[Assistant]** Disciplinary Counsel designated to serve in his or her absence or unavailability, the Chief Disciplinary Counsel, or an **[Assistant]** Disciplinary Counsel designated by the Chief Disciplinary Counsel to review such recommendations. In such cases the district office shall prepare and attach to the file Form DB-4 (Final Disposition of Complaint). In other cases where disposition under subsection (b)(1), (2), (3), (4), or (5) may be appropriate, the assigned **[Assistant]** Disciplinary Counsel shall prepare a Form DB-5 (Recommendation on Final Disposition of Complaint) and forward such form and the related file to Chief Disciplinary Counsel or his or her designee for review and action. In all other cases, **[Assistant]** Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member).

§ 87.9. Office of Disciplinary Counsel action.

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(b) *Other cases.* In all other cases the Office of Disciplinary Counsel shall forward to the **Executive Office [of the Secretary]** a request for the assignment of a Reviewing Hearing Committee Member.

(c) *Review of dismissed complaints.* The Office of Disciplinary Counsel will review complaints dismissed under subsection (a) of this section upon request of the complainant. The request shall be in writing and submitted to the **[Assistant]** Disciplinary Counsel-in-Charge of the district office that dismissed the complaint. The request should specify the reason or reasons why Office of Disciplinary Counsel should reopen the investigation under § 87.6 and include any evidence that was not previously brought to the attention of Disciplinary Counsel. The **[Assistant]** Disciplinary Counsel-in-Charge or designated **[Assistant]** Disciplinary Counsel who concurred in the recommendation to dismiss the complaint pursuant to § 87.8(c) shall conduct the review and notify the complainant in writing of the decision to grant or deny the request. Where the request is denied by the **[Assistant]** Disciplinary Counsel-in-Charge, the complainant may direct a written request for further review to the Chief Disciplinary Counsel or his or her designee. The decision of the Chief Disciplinary Counsel or the designee shall be final for purposes of this subsection.

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Subchapter B. REVIEW OF RECOMMENDED DISPOSITION OF COMPLAINT

§ 87.31. Transmission to reviewing hearing committee member.

Upon receipt of a request from the Office of Disciplinary Counsel for the assignment of a reviewing hearing committee member to review the disposition of a complaint recommended by the Office of Disciplinary Counsel, the **Executive Office [of the Secretary]** shall assign a reviewing hearing committee member and forward the file with the recommendation of the Office of Disciplinary Counsel to the assigned reviewing hearing committee member for action.

§ 87.33. Appeal by Office of Disciplinary Counsel from modification of recommendation.

(a) General rule. Enforcement Rule 208(a)(4) provides that Disciplinary Counsel may appeal the recommended disposition directed by a reviewing hearing committee member to a reviewing panel composed of three members of the Board. The appeal shall be set forth on Form DB-8 (Appeal from Determination of Reviewing Member), shall state briefly the grounds relied upon by the Office of Disciplinary Counsel for recommending modification of the determination of the reviewing hearing committee member. The appeal shall be filed with the [Office of the Secretary] Board Prothonotary within 30 days after the determination of the reviewing hearing committee member has become effective. The preceding sentence is not applicable to a motion made by the Office of Disciplinary Counsel to dismiss formal charges, which motion may be made at any time.

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(c) Action by Board. The Executive Office [of the Secretary] shall transmit the Form DB-8 and related file to a panel of three members of the Board designated by the Chair, who shall consider the appeal and, as provided by Enforcement Rule 208(a)(4), order that the matter be concluded by dismissal, conditional or unconditional informal admonition or conditional or unconditional private reprimand, or conditional or unconditional public reprimand, or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

(d) Notice of Board action. The Executive Office [of the Secretary] shall return the Form DB-8 and related file, showing the action of the reviewing panel of the Board on the appeal, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

§ 87.34. Review of recommendation of private reprimand or public reprimand.

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(b) Procedure. Where a recommendation by a reviewing hearing committee member for a conditional or unconditional private or public reprimand is not appealed by Disciplinary Counsel, the Executive Office [of the Secretary] shall transmit the file to a panel of three members of the Board designated by the Chair, who shall consider the matter and, as provided by Enforcement Rule 208(a)(5), approve or modify the recommendation for private or public reprimand.

(c) Notice of Board action. The Executive Office [of the Secretary] shall return the file, showing the action of the reviewing panel of the Board, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

Subchapter C. FINAL DISPOSITION WITHOUT FORMAL PROCEEDINGS

§ 87.51. Notification of disposition of complaint.

(a) General rule. Upon completion of the procedures prescribed by Subchapter B (relating to review of recommended disposition of complaint), the Executive Office [of the Secretary] or the Office of Disciplinary Counsel, as appropriate, shall:

(1) Notify the complainant of the disposition of the complaint.

(2) Unless the disposition involves the institution of formal proceedings, notify the respondent-attorney:

(i) that the complaint has been dismissed; or

(ii) that the respondent-attorney shall appear in person before the Chief Disciplinary Counsel for the purpose of receiving an informal admonition or before the Board for the purpose of receiving a private or public reprimand. The respondent-attorney shall also be notified of the place and date to appear. The date fixed shall be not earlier than 20 days after the date of the notice to the respondent-attorney of the disposition of the complaint.

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§ 87.54. Demand by respondent-attorney for formal proceedings.

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(b) Procedure. A demand under subsection (a) of this section shall be in writing, shall be filed [in the Office of the Secretary] with the Board Prothonotary within 20 days after the date of the notice of the disposition of the complaint required by § 87.51 (relating to notification of disposition of complaint), which time limit is jurisdictional, and shall be accompanied by proof of service of a copy thereof upon the Office of Disciplinary Counsel.

Subchapter D. ABATEMENT OF INVESTIGATION

§ 87.72. Matters involving related pending civil or criminal litigation.

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(b) Procedure. An original and three conformed copies of an application for deferment of action under subsection (a) of this section shall be filed [in the Office of the Secretary] with the Board Prothonotary with proof of service on the Office of Disciplinary Counsel. The Office of Disciplinary Counsel may file and serve a written response thereto within 20 days thereafter.

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§ 87.73. Resignation 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 Prothonotary a verified statement stating that the attorney desires to resign and that:

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(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 Prothonotary.

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(c) Order of disbarment. Enforcement Rule 215(b) provides that upon receipt of the required statement, the [Secretary of the] Board Prothonotary shall file it with the Supreme Court and the Court shall enter an order disbaring 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 **Prothonotary** 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 **Prothonotary**; 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 of 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 A. PRELIMINARY PROVISIONS

GENERAL MATTERS

§ 89.3. Filings generally.

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

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

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

(3) Except as otherwise provided by these rules in the case of briefs, at the time any document is filed in a formal proceeding that is at the time in the hands of a special master, there shall be furnished to the special master an original and one conformed copy thereof, including all exhibits, if any, and one conformed copy with exhibits, if any, shall be filed with the [**Office of the Secretary**] **Board Prothonotary**.

(4) Notwithstanding paragraphs (2) and (3), it shall not be necessary to file with the [**Office of the Secretary**]

Board Prothonotary a copy of any prepared testimony or documentary exhibits submitted in connection with a hearing.

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

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

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

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

§ 89.4. Representation of respondent-attorney.

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

(b) *Representation of respondent-attorney by counsel.* When a respondent-attorney is represented by counsel in a formal proceeding counsel shall file with the [**Office of the Secretary**] **Board Prothonotary**, with proof of service of a copy upon the Office of Disciplinary Counsel, a written notice of such appearance, which shall state the name, address and telephone number of such counsel, the name and address of the respondent-attorney on whose behalf such counsel appears, and the caption and docket number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent-attorney may be sent to the counsel of record for such respondent-attorney at the stated address of the counsel in lieu of transmission to the respondent-attorney. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the respondent-attorney shall also be served upon or furnished to such counsel (or one of such counsel if the respondent-attorney is represented by more than one counsel) in the same manner as prescribed for the respondent-attorney, notwithstanding the fact that such communication may be furnished directly to the respondent-attorney.

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§ 89.7. Continuances.

(a) *Avoidance of delay.* All formal proceedings under these rules shall be as expeditious as possible, but the

failure of the [**Office of the Secretary or the**] Board to comply with any of the procedural time periods in these rules shall not result in the dismissal of a petition for discipline or a lessening of the charges set forth therein. Only the Board Chair may extend the time for hearing or grant any other extension of time in a formal proceeding.

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

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SERVICE OF DOCUMENTS

§ 89.21. Service by the Board.

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

§ 89.27. Service upon Disciplinary Counsel.

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

AMENDMENT OR WITHDRAWAL OF PLEADINGS

§ 89.32. Withdrawal of petition for discipline.

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

(b) *Action by Board.* The Executive Office [of the Secretary] shall transmit the Form DB-44, any answer thereto, and related file to a member of the Board designated by the Chair, who shall consider and act upon

the application on behalf of the Board. The Executive Office [of the Secretary] shall notify the parties of the action taken by the Board.

Subchapter B. INSTITUTION OF PROCEEDINGS

§ 89.54. Answer.

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

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§ 89.56. Assignment for hearing.

(a) *General rule.* Enforcement Rule 208(b)(4) provides that following service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. The Executive Office [of the Secretary] shall transmit copies of the file of the Board by means of Form DB-9 (Reference for Disciplinary Hearing) to the members of the hearing committee appointed to hear the matter or a special master in the appropriate disciplinary district not later than five days after the date on which the answer of the respondent-attorney is due under § 89.54(a) (relating to answer).

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

§ 89.57. Scheduling of hearing and prehearing conference.

The date, time and place of hearing on a petition for discipline shall be scheduled by the [**Office of the Secretary**] **Board Prothonotary** at the time the members of the hearing committee are appointed. The date fixed for the hearing shall not be later than 90 days after the file is transmitted to a hearing committee or special master under § 89.56 (relating to assignment for hearing), unless an extension has been granted by the Board Chair at the request of any party. At the time that the hearing is scheduled, the [**Office of the Secretary**] Board Prothonotary shall also schedule a prehearing conference for a date not less than 30 days before the scheduled date of the hearing.

§ 89.58. Notice of hearing and prehearing conference.

The [**Office of the Secretary**] **Board Prothonotary** shall serve or cause to be served notice of

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

**Subchapter C. HEARING PROCEDURES
TRANSCRIPT**

§ 89.101. Recording of proceedings.

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

ORAL ARGUMENT AND BRIEFS

§ 89.164. Filing and service of briefs.

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

REPORT

§ 89.171. Filing of report.

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

§ 89.172. Contents of report.

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

* * * * *

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

§ 89.173. Report a part of the record.

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

§ 89.174. Service of report.

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

ABBREVIATED PROCEDURE

§ 89.181. Abbreviated procedure.

* * * * *

(c) *Procedures.*

* * * * *

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

* * * * *

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

Subchapter D. ACTION BY BOARD AND SUPREME COURT

§ 89.201. Review by Board.

* * * * *

(f) *Participation by reviewing members.* Enforcement Rule 208(d)(1) provides that members of the Board who have participated on a review panel under § 87.33 (relating to appeal by Office of Disciplinary Counsel for modification of recommendation) or § 87.34 (relating to review of recommendation of private reprimand or **public reprimand**) shall not participate in further consideration of the same matter or decision thereof on the merits under this section. A Board member who pursuant to § 89.32(b) (relating to withdrawal of petition for discipline) denied an application for leave to withdraw a petition for discipline shall not participate in the consideration of or decision on the merits of that matter.

§ 89.202. Content and form of briefs on exceptions.

* * * * *

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

§ 89.204. Dismissal of proceeding.

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

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

(a) *General rule.* Enforcement Rule 208(d)(2)(ii) provides that in the event that the Board determines that the proceeding should be concluded by informal admonition, private reprimand, or public reprimand, the Board shall arrange to have the respondent-attorney appear in person before Disciplinary Counsel for the purpose of receiving informal admonition or before a designated panel of three members selected by the Board Chair pursuant to [Pa.R.D.E] Enforcement Rule 205(c)(11) for the purpose of receiving private reprimand or public reprimand, in which case the designated member shall deliver the private reprimand or public reprimand.

* * * * *

(c) *Notice to appear.*

(1) In the event that the Board determines that the proceeding should be concluded by public reprimand, the Executive Office [of the Secretary] shall notify the respondent-attorney and staff counsel by means of Form DB-12.2 (FP) (Notice to Appear for Public Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for public reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g., Rules 3.3, 3.4(c), and 3.5).

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

* * * * *

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

[of the Secretary] shall notify the respondent-attorney[,] and the Office of Disciplinary Counsel accordingly.

* * * * *

§ 89.206. Transmission of record to Supreme Court.

* * * * *

(b) *Procedure.* The Board [Chair] Prothonotary shall file the record, the briefs on exceptions and the briefs opposing exceptions, if any, and the finding and recommendations of the Board with the Supreme Court by means of Form DB-13 (Request for Supreme Court Action) and an appropriate letter of transmittal. Copies of such finding and recommendations and letter of transmittal shall be served by the [Office of the Secretary] Board Prothonotary upon the participants.

Subchapter E. REOPENING OF RECORD

§ 89.251. Reopening on application of party.

(a) *Petition to reopen.* At any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die*, any participant in the proceeding may file with the hearing committee or special master, if before issuance by the hearing committee or special master of the report to the Board required by § 89.171 (relating to filing of report), otherwise with the [Office of the Secretary] Board Prothonotary, a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

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

* * * * *

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.273. Procedures for reinstatement.

(a) Enforcement Rule 218(c) provides that the procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:

* * * * *

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall file a response thereto with the Board and serve a copy on the formerly admitted attorney. Upon receipt of the response, the Board shall refer the petition and response to a hearing committee appointed by the [Office of the Secretary] Board Prothonotary pursuant to § 93.81(c) (relating to hearing committee) in the disciplinary district in which the formerly admitted attorney maintained an office at the time of the disbarment or suspension. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the

combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

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

* * * * *

(4) At conclusion of the hearing, the hearing committee shall promptly file a report containing its findings and recommendations and transmit same [, **together with the record,**] to the Board.

(5) The Board shall review the report of the hearing committee and the record and shall promptly file its own findings and recommendations, together with the briefs, if any, before the Board along with the entire record, **[and a statement of the Secretary of any expenses taxable under § 93.111 (relating to determination of reimbursable expenses),]** with the Supreme Court. See § 89.208 (relating to participation by the Board before the Supreme Court).

* * * * *

(b) Enforcement Rule 218(d) provides that the procedure for petitioning for reinstatement from retired status for more than three years; inactive status for more than three years; administrative suspension for more than three years, retired status, inactive status or administrative suspension if the formerly admitted attorney has not been on active status at any time within the past three years; or after transfer to inactive status as a result of the sale of a law practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, is as follows:

- (1) Petitions for reinstatement shall be filed with the Board.
- (2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall either:
 - (i) file a response thereto with the Board and serve a copy on the formerly admitted attorney; or
 - (ii) file a certification with the Board [**Secretary**] **Prothonotary** stating that after a review of the petition for reinstatement and reasonably diligent inquiry, Disciplinary Counsel has determined that there is no impediment to reinstatement and that the petitioner-attorney will meet his or her burden of proof under subsection (3) if the petition were to proceed to hearing under (4).

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

* * * * *

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

(i) If the Board Member decides that reinstatement should be denied or that a hearing on the petition is warranted, the designated Board Member shall issue a report setting forth the areas of the designated Board Member’s concern and direct [**the Board Secretary to**

schedule] **that** the matter **be scheduled** for hearing pursuant to paragraph (b)(4) of this section.

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

* * * * *

§ 89.274. Notice of reinstatement proceedings.

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

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

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

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

§ 89.275. Completion of questionnaire by petitioner-attorney.

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

* * * * *

§ 89.277. Abbreviated reinstatement procedure.

* * * * *

(c) *Procedures.*

* * * * *

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

* * * * *

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

§ 89.279. Evidence of competency and learning in law.

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

* * * * *

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

* * * * *

§ 89.280. Notice of reinstatement.

* * * * *

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

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

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

Subchapter G. PROBATION

§ 89.292. Violation of probation.

Enforcement Rule 208(h) provides that:

(1) Where it appears that a respondent-attorney who has been placed on probation has violated the terms of the probation, [**the Office of**] Disciplinary Counsel may file a petition with the Board detailing the violation and suggesting appropriate modification of the order imposing the probation, including without limitation immediate suspension of the respondent-attorney.

* * * * *

§ 89.293. Substance abuse probation.

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

(1) monitor the compliance by the respondent-attorney with the terms and conditions of the order imposing probation;

(2) assist the respondent-attorney in arranging any necessary professional or substance abuse treatment;

(3) meet with the respondent-attorney at least twice a month, and maintain weekly telephone contact with the respondent-attorney;

(4) maintain direct contact with the Alcoholics Anonymous or Narcotics Anonymous sponsor of the respondent-attorney if the respondent-attorney participates in either of those programs;

(5) file with the [**Secretary of the**] **Board Prothonotary** quarterly written reports; and

(6) immediately report to the [**Secretary of the**] **Board Prothonotary** any violations by the respondent-attorney of the terms and conditions of the probation.

* * * * *

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

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter A. SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS IN GENERAL

§ 91.2. Subpoenas and investigations.

* * * * *

(b) *Procedure.* Enforcement Rule 213(b) provides that subpoenas shall be obtained by filing with the **Court Prothonotary** in the district of the Supreme Court where the subpoena is to be returnable a statement calling for the issuance of the subpoena (Form DB-14) (Request for Issuance of Subpoena); that on the same day that such statement is filed with the **Court Prothonotary**, the party seeking the subpoena shall send by certified mail a copy

of such statement to either Disciplinary Counsel or the respondent-attorney, as the case may be; that upon the filing of Form DB-14, the Court Prothonotary shall forthwith issue a subpoena (Form DB-15) (Subpoena/Subpoena Duces Tecum) and it shall be served in the regular way; and that a subpoena issued pursuant to subsection (a)(2) shall not be returnable until at least ten days after the date of its issuance.

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

* * * * *

§ 91.3. Determination of validity of subpoena.

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

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

* * * * *

(b) *Procedure.*

(1) A motion attacking a subpoena must be filed with the [Office of the Secretary] Board Prothonotary 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] Board Prothonotary within five business days after receipt of the motion served by the other party under paragraph (1).

(3) The [Office of the Secretary] Board Prothonotary must transmit the motion and any answer to the person designated in 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] Board Prothonotary within ten business days after the conclusion of the hearing.

DEPOSITIONS

§ 91.15. Oath and reduction to writing.

* * * * *

(b) *Transmission.* Unless otherwise directed in the Form DB-17 (Authorization to take Deposition), after the deposition has been certified, it shall, together with the

number of copies specified in the authorization, the copies being made by, or under the direction of, such notarial officer, be forwarded by such notarial officer in a sealed envelope addressed to the Executive Office [of the Secretary] at the address set forth in § 85.6 (relating to location of Executive Office [of Secretary]), with sufficient stamps for postage affixed. Upon receipt thereof, the [Office of the Secretary] Board Prothonotary shall file the original in the proceeding and shall forward a copy to each participant and to each member of the hearing committee or the special master conducting the proceeding.

Subchapter B. ATTORNEYS CONVICTED OF CRIMES

§ 91.34. Temporary suspension upon conviction of a crime.

* * * * *

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

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

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

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

* * * * *

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

* * * * *

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

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

* * * * *

Subchapter C. RECIPROCAL DISCIPLINE AND DISABILITY

§ 91.51. Reciprocal discipline [and disability] .

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of a final adjudication of any court or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, disbarment, revocation of license or pro hac vice admission, or has resigned from the bar or otherwise relinquished his or her license to practice while under

disciplinary investigation in another jurisdiction or has been transferred to disability inactive status, the Supreme Court shall forthwith issue a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

(i) A copy of the final adjudication described in subdivision (1).

(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline or disability inactive status in the Commonwealth would be unwarranted, and the reasons [therefor] **therefore.** The **Executive Office [of the Secretary]** shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with § 93.142(b) (relating to filing of annual fee form by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

* * * * *

(5) An attorney who has been transferred to disability inactive status or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, shall report the fact of such transfer, suspension, disbarment, revocation or resignation to the [**Secretary of the Board**] **Executive Office** within 20 days after the date of the order, judgment or directive imposing or confirming the discipline or transfer to disability inactive status.

Subchapter D. DISABILITY

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

(a) *General rule.* Enforcement Rule 301(e) provides that if, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which make it impossible for the respondent to prepare an adequate defense, the respondent shall complete and file with the Court a certificate of admission of disability. The certificate shall:

* * * * *

Upon receipt of the certificate, the Supreme Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the capacity of the respondent to aid effectively in the preparation of a defense or to continue to practice law in a proceeding instituted in accordance with the provisions of § 91.74 (relating to petition by Board for determination of professional competency), unless the Court finds that the certificate does not comply with the requirements of Enforcement Rule 301(e), in which case the Court may deny the request for transfer to disability inactive status or enter any other appropriate order.

Before or after the entry of the order transferring the respondent to inactive status under Enforcement Rule 301(e), the Court may, upon application by [**disciplinary counsel**] **Disciplinary Counsel** and for good cause shown, take or direct such action as the Court deems necessary or proper to a determination of whether it is impossible for the respondent to prepare an adequate defense, including a direction for an examination of the respondent by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the respondent.

* * * * *

(b) *Procedure.* Whenever a respondent makes a contention within the scope of subsection (a) of this section, the respondent shall complete and file a certificate thereof with the **Court Prothonotary [of the Supreme Court]** by means of Form DB-21 (Certificate of Admission of Disability by Attorney). [**The certificate shall be available to the bar through the Office of the Secretary to the Board.**] The respondent shall serve a copy of the certificate on the Board and [**disciplinary counsel**] **Disciplinary Counsel.**

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

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

Subchapter E. FORMERLY ADMITTED ATTORNEYS

§ 91.91. Notification of clients in nonlitigation matters.

* * * * *

(b) *Copies of notices and proofs of receipt.* 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 **Prothonotary** and shall serve a conforming copy on [**the Office of**] Disciplinary Counsel.

§ 91.92. Notification of clients in litigation matters.

* * * * *

(b) *Copies of notices and proofs of receipt.* 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 **Prothonotary** and shall serve a conforming copy on [**the Office of**] Disciplinary Counsel.

§ 91.93. Notification of other persons.

* * * * *

(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 Prothonotary and shall serve a conforming copy on [the Office of] Disciplinary Counsel.

* * * * *

§ 91.96. Proof of compliance.

(a) General rule. Enforcement Rule 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 Prothonotary a verified statement (Form DB-25) (Statement of Compliance) and serve a copy on Disciplinary Counsel. In the verified statement, the formerly admitted attorney shall:

* * * * *

(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 Court 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;

* * * * *

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

* * * * *

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

Subchapter G. EMERGENCY PROCEEDINGS

§ 91.151. Emergency temporary suspension orders and related relief.

* * * * *

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

(1) Where the Court enters an order under Enforcement Rule 208(f)(1)(ii), the Board shall promptly transmit a certified copy of the order to the president judge, whose jurisdiction and authority under this rule shall extend to all client matters of the respondent-attorney.

(2) Where the Court enters an order under Enforcement Rule 208(f)(1)(i) or (ii) before the issuance of a rule or before the entry of an order of temporary suspension under paragraph (f)(2), the Court Prothonotary shall serve a certified copy of the Court's order on the respondent-attorney by regular mail addressed to the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney and to an address where the respondent-attorney is located if that address is known.

* * * * *

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

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

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

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

* * * * *

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

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

* * * * *

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter A. PRELIMINARY PROVISIONS

§ 93.3. Statements "under penalty."

Any form prepared by the Administrative Office, the Executive Office [of the Secretary] or the Office of Disciplinary Counsel for use under these rules, and which is intended to elicit facts upon the basis of which a public

officer or employee performs in an official capacity, may pursuant to 18 Pa.C.S. § 4904(b) (relating to statements “under penalty”) contain a statement to the effect that false statements made therein are punishable.

Subchapter B. THE DISCIPLINARY BOARD

§ 93.23. Powers and duties.

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

(1) To consider the conduct of any person subject to the Enforcement Rules after investigation by Disciplinary Counsel pursuant to Enforcement Rule 207(b)(1). Complaints filed directly with the Board shall be forwarded to **[the Office of]** Chief Disciplinary Counsel for assignment to a district office.

Official Note: In order to avoid the commingling of prosecutorial and adjudicative functions, which would be a violation of due process, *see Lyness v. Com. of Pa., State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992), the Office of Disciplinary Counsel is charged with the duty of investigating and prosecuting all disciplinary matters subject to adjudication by the Board. *See* Enforcement Rule 208(a)(1), (a)(2)(iv). Under Enforcement Rule 208(d)(1), Board Members appointed in a matter to review Disciplinary Counsel’s charging decisions or recommended disposition are precluded from further participation in that matter.

(2) To appoint **[a Secretary] an Executive Director**, a Chief Disciplinary Counsel, **Legal Counsel** and such **[assistant disciplinary counsel and]** staff as may from time to time be required to properly perform the functions prescribed in the Enforcement Rules.

(3) To appoint not less than 18 hearing committee members within each disciplinary district.

(4) To assign **[as]** special masters **[three or more former members of the Board or former or retired justices or judges who are not in senior judge status] pursuant to Enforcement Rule 206(d).**

(5) To assign formal charges or the conduct of an investigatory hearing to a hearing committee or special master, and to assign a reinstatement petition to a hearing committee. **[The assignment to a hearing committee of formal charges or the conduct of an investigatory hearing or a reinstatement petition may be delegated by the Board to its Secretary.]**

(6) To review the conclusions of hearing committees and special masters with respect to formal charges or petitions for reinstatement, and to prepare and forward its own findings and recommendations, together with the record of the proceeding before the hearing committee or special master, to the Supreme Court.

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

(i) **hearing committee members** to review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands, public reprimands and institution of formal charges;

(ii) **senior or experienced hearing committee members** to hear and determine attacks on the validity of subpoenas issued pursuant to § 91.2 (relating to subpoenas and investigations), as provided in § 91.3(a)(2) (relating to determination of validity of subpoenas); or

(iii) **senior or experienced hearing committee members** to consider a petition for reinstatement to active status from retired or inactive status, or administrative suspension, under § 89.273(b) (relating to procedures for reinstatement).

* * * * *

§ 93.24. Officers.

[(a)] Chair and Vice Chair. Enforcement Rule 205(a) provides that the Supreme Court shall designate the Board Chair and the Board Vice Chair. In case of the vacancy in office, absence, disability or other unavailability of the Board Chair, the Board Vice Chair shall exercise the powers and perform the duties of the Board Chair.

[(b) Secretary. The Secretary need not be a member of the Board and shall hold office at the pleasure of the Board.]

§ 93.26. Meetings of the Board.

(a) *Call and notice.* Meetings shall be held upon the call in writing of the Chair or of any two members of the Board at any place designated in the call or at any other place designated for such purpose by resolution of the Board or in the absence of such resolution as designated by the Chair. Notice of special meetings shall be given in person or by telephone **[or telegraph], mail, or electronic mail** to each member of the Board (at the address furnished to the **Executive Office [of the Secretary]** for that purpose) at least 24 hours prior to the time fixed for the special meeting. Notice of a special meeting may be waived in writing and shall be waived by attendance at the meeting.

(b) *Organization.* The Chair shall preside at meetings of the Board. In the absence of the Chair one of the following persons in the order stated shall preside:

(1) The Vice Chair.

(2) An acting chair selected by the Board for such purpose.

§ 93.28. Agenda.

An agenda for each meeting of the Board shall be prepared by the **Executive Office [of the Secretary]** with the approval of the Chair.

Subchapter C. **EXECUTIVE OFFICE** **[OF THE SECRETARY]**

§ 93.51. Executive Office [of the Secretary].

There shall be an **Executive Office [of the Secretary]**, which shall be the office of the **[Secretary of the Board] Executive Director, Legal Counsel, Board Prothonotary, Attorney Registration**, and all other staff of the Board who are not assigned to the Office of Disciplinary Counsel, and shall be maintained at the location specified in § 85.6 (relating to location of **Executive Office [of the Secretary]**). **[It] Non-legal staff** shall be supervised by the **[Secretary of the Board] Executive Director** who shall, either personally, by deputy, or by other duly authorized staff of the Board, or by duly authorized agent, exercise the powers and perform the duties vested in and imposed upon the **Executive Office [of the Secretary]** by these rules.

§ 93.52. Communications and filings generally.

(a) *General rule.* Except as otherwise provided in this section, all **pleadings shall be addressed to the Board**

Prothonotary. All other communications[,] and submittals[, and pleadings] should be addressed to the Board at the Executive Office [of the Secretary] unless otherwise specially directed. All communication and filings should clearly designate the docket number, or similar identifying symbols, if any, employed by the Board, and should set forth a short title. All communications shall include the address of the person communicating, the party such person represents, and how response should be sent to such person if not by first class mail.

(b) *Pleadings.* All pleadings and other documents filed pursuant to any provision of Chapter 89 (relating to formal proceedings) shall comply with the applicable provisions of such Chapter.

(c) *Incomplete documents.* In any proceeding when upon inspection the Board Prothonotary or Executive Office [of the Secretary] is of the opinion that a submittal or pleading tendered for filing does not comply with this Subpart such Office may decline to accept the document for filing and may return it unfiled, or such Office may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) *Disposition of complaints.*

(1) Except as otherwise provided in this subsection all complaints received by the Executive Office [of the Secretary] against attorneys shall be transmitted forthwith to the Office of Disciplinary Counsel. Thereafter correspondence concerning the complaint, the investigation thereof, and informal proceedings relating thereto should be addressed to the Office of Disciplinary Counsel.

(2) Complaints received by the Executive Office [of the Secretary] against Disciplinary Counsel involving alleged violations of the Disciplinary Rules or the Enforcement Rules shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition, as provided by Enforcement Rule 209(b).

(3) Complaints received by the Executive Office [of the Secretary] or the Office of Disciplinary Counsel against members of the Board involving alleged violations of Chapter 81 (relating to rules of professional conduct) or the Enforcement Rules shall, as provided by Enforcement Rule 209(b), be handled in the same manner as other complaints, except that if action is required by the Board, the [Secretary] Executive Office shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

§ 93.53. Dockets.

(a) *General rule.* The Executive Office [of the Secretary] shall maintain such dockets of matters considered by the Board as may be directed by the Board.

* * * * *

§ 93.54. Powers and duties of Executive Office [of the Secretary].

The Executive Office [of the Secretary] shall have the power and duty:

* * * * *

(3) To exercise the powers and perform the duties expressly vested in the [Secretary or the Office of the Secretary] Executive Office by these rules.

Subchapter D. OFFICE OF DISCIPLINARY COUNSEL

§ 93.61. Office of Disciplinary Counsel.

(a) *General rule.* There shall be an Office of Disciplinary Counsel, which shall be the office of the Chief Disciplinary Counsel and the following staff of the Board:

(1) [Assistant disciplinary counsel.] Disciplinary Counsel;

(2) Investigators[.]; and

(3) Such other staff of the Board as may be designated by the Board Chair.

(b) *Powers and duties.* The Office of Disciplinary Counsel shall be supervised by the Chief Disciplinary Counsel who shall, either personally, by [assistant disciplinary counsel] Disciplinary Counsel, or by other duly authorized staff of the Board, or by duly authorized agent, exercise the powers and perform the duties vested in and imposed upon the Office of Disciplinary Counsel by these rules.

(c) *Location.* The principal office and district offices of the Office of Disciplinary Counsel shall be maintained at the locations specified in § 85.5 (relating to location of Office of Disciplinary Counsel).

§ 93.63. Powers and duties of Office of Disciplinary Counsel.

(a) *General rule.* The Office of Disciplinary Counsel shall have the power and duty (pursuant to Enforcement Rule 207(b)):

(1) To investigate all matters involving alleged misconduct called to its attention whether by complaint or otherwise except, unless as otherwise directed by the Supreme Court or the Board, complaints against Disciplinary Counsel and members of the Board.

(2) To dispose of any matter that is governed by Enforcement Rules 214 (Attorneys convicted of crimes), 215 (Discipline on Consent), and 216 (Reciprocal discipline) in accordance with the substantive and procedural provisions of those rules, and to dispose of all other matters involving alleged misconduct by dismissal or (subject to review by a [senior or experienced] hearing committee member) by recommendation for informal admonition, private or public reprimand, or the prosecution of formal charges before a hearing committee or special master.

(3) To request the appointment of a special master, where appropriate, and to prosecute all disciplinary proceedings before hearing committees, the Board and the Supreme Court.

(4) To appear at hearings conducted with respect to petitions for reinstatement by formerly admitted attorneys, to cross-examine witnesses testifying in support of the petition and to marshal available evidence, if any, in opposition thereto.

(5) To maintain, through the Executive Office[of the Secretary], permanent records of all matters processed by the Office of Disciplinary Counsel and the disposition thereof. This paragraph shall not be construed to require the permanent retention of correspondence, memoranda, transcripts and other similar documents which underlie

the final disposition of a matter by the Office of Disciplinary Counsel and such materials may be retained or disposed of by the Office of Disciplinary Counsel in its discretion.

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Subchapter E. HEARING COMMITTEES AND SPECIAL MASTERS

HEARING COMMITTEES

§ 93.81. Hearing committees.

* * * * *

(c) *Terms.* Enforcement Rule 206(a) provides that when a hearing committee is required to handle a matter, the Board shall appoint a hearing committee consisting of three hearing committee members from the appropriate disciplinary district[; **that at**]. **Under exigent circumstances, the Board has the discretion to appoint a hearing committee member or members from outside the appropriate disciplinary district, or to require that a matter be transferred to another disciplinary district. At least one of the members of the hearing committee shall be a senior hearing committee member, and another member shall be either a senior hearing committee member or an experienced hearing committee member; the terms of hearing committee members shall be three years; [that] no member shall serve for more than two consecutive three-year terms; [that] a hearing committee member who has served two consecutive three-year terms may be reappointed after the expiration of one year; and [that] the terms of members shall commence on July 1. A hearing committee member whose term has expired may continue to serve until the conclusion of any matter commenced before the member prior to the expiration of such term, if so requested in writing by the **Executive Office [of the Secretary]**.**

§ 93.83. Powers and duties.

(a) *General rule.* Enforcement Rule 206(b) provides that each hearing committee shall have the power and duty:

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the [**Board or the Secretary of the Board**] **Executive Office.**

* * * * *

§ 93.87. Replacement of unavailable members.

Enforcement Rule 206(c) provides that if a member of a hearing committee becomes disqualified or otherwise unavailable to serve with respect to any particular matter, the [**Secretary**] **Executive Office** shall designate a replacement.

SPECIAL MASTERS

§ 93.91. Special masters.

(a) *Assignment.* Enforcement Rule 206(d) provides that a special master instead of a hearing committee may be assigned by the Board to conduct an investigatory hearing or formal proceeding[**where it appears that the hearing or proceeding may be protracted and should be conducted continuously from day to day until conclusion**].

(b) *Powers and duties.* Enforcement Rule 206(e) provides that a special master shall have the power and duty:

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the Board.

(2) To submit his or her conclusions set forth as prescribed by these rules[**, together with the record of the hearing into formal charges,**] to the Board.

Subchapter F. CONFIDENTIALITY

§ 93.101. Complaints confidential.

Enforcement Rule 209(a) provides that complaints submitted to the **Executive Office [of the Secretary]** or to the Office of Disciplinary Counsel shall be confidential unless the matter results in the filing of formal charges.

§ 93.102. Access to disciplinary information and confidentiality.

(a) *General rule.* Enforcement Rule 402(a) provides that, except as provided in subsections (b) and (d) and [§§] **§** 93.104 (relating to access by judicial system agencies to confidential information) and **§** 93.108 (relating to restoration of confidentiality), all proceedings under these rules shall be open to the public after:

* * * * *

(g) *Requests for documents.* Requests for copies of documents relating to disciplinary proceedings that are available to the public under this subchapter must be in writing and directed to the **Executive Office [of the Secretary]**. A copying fee, which shall be the same as the copying fee charged to respondent-attorneys, must be prepaid at the time a request is made.

(h) *Transcripts and exhibits.* The Board will not make available to the public copies of transcripts or exhibits introduced as evidence in a proceeding.

Official Note: Nothing in this Rule shall preclude any individual from obtaining copies of transcripts or exhibits through the official reporter designated by the **Executive Office [of the Secretary]**.

Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.111. Determination of reimbursable expenses.

* * * * *

(d) *Assessed Penalties on Unpaid Taxed Expenses and Administrative Fees.*

(1) Failure to pay taxed expenses within thirty days of the assessment becoming final in accordance with subdivisions (g)(1) and (g)(2) **of Enforcement Rule 208** and/or failure to pay administrative fees assessed in accordance with subdivision (g)(4) **of Enforcement Rule 208** within thirty days of notice transmitted to the respondent-attorney shall result in the assessment of a penalty, levied monthly at the rate of 0.8% of the unpaid principal balance, or such other rate as established by the Supreme Court of Pennsylvania, from time to time.

(2) Monthly penalties shall not be retroactively assessed against unpaid balances existing prior to the enactment of this rule; monthly penalties shall be assessed against these unpaid balances prospectively, starting 30 days after the effective date of the rule.

(3) The Disciplinary Board for good cause shown, may reduce the penalty or waive it in its entirety.

§ 93.112. Failure to pay taxed expenses.

* * * * *

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

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

EXPENSES GENERALLY

§ 93.121. Expenses.

[(a)] General. Enforcement Rule 401 provides that the salaries of [**the staff of the Office of the Secretary and of the Office of Disciplinary Counsel**] Disciplinary Board employees, their expenses, administrative costs, [**and the**] expenses of the members of the Board and of hearing committees, **and expenses and compensation, if any, of special masters** shall be paid by the Board out of the funds collected under the provisions of §§ 93.141[—] through 93.148 (relating to annual registration of attorneys) **and §§ 89.205(b), 89.209, and 89.278** (relating to costs and fees).

[(b) Special masters. Enforcement Rule 205(c)(4) provides that the expenses and compensation of special masters shall be paid as a cost of disciplinary administration and enforcement. See § 93.141(a) (relating to annual registration).]

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.142. Filing of annual fee form by attorneys.

* * * * *

(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 electronically with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

* * * * *

(2) Payment of the annual fee shall be made in one of two ways: a) electronically by credit or debit card at the time of electronic transmission of the form through the online system of the Attorney Registration Office, which payment shall include a nominal fee to process the electronic payment; or b) by check or money order drawn on a U.S. bank, in U.S. dollars using a printable, mail-in voucher. IOLTA, trust, escrow and other fiduciary account checks tendered in payment of the annual fee will not be accepted. If the annual fee form, voucher or payment is 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 shall also have been paid. The amount of the 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 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 Executive 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.

* * * * *

§ 93.144. Administrative suspension for failure to comply.

* * * * *

(b) Action by the Supreme Court. Enforcement Rule 219(g) provides that upon receipt of certification of the name of any attorney pursuant to paragraph (a)(3) of this section, the Supreme Court shall enter an order administratively suspending the attorney; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Court Prothonotary.

§ 93.145. Reinstatement of administratively suspended attorneys.

(a) General rule. An attorney who has been administratively suspended pursuant to § 93.144(b) of these rules for three years or less is not eligible to file the annual fee form electronically. Enforcement Rule 219(h) provides that the procedure for reinstatement is as follows:

* * * * *

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

* * * * *

(b) Late payment penalties. Enforcement Rule 219(h)(3) provides that a formerly admitted attorney who is administratively suspended must pay the late payment penalties incurred in the year in which the formerly admitted attorney is transferred to administrative suspension. The amount of the late payment penalties shall be established by the Board annually after giving due regard to such factors as it considers relevant, including the direct and indirect costs incurred by the Board during the preceding year in processing the records of attorneys who fail to timely file the form required by § 93.142(b). On or before July 1 of each year the Executive Office [**of the Secretary**] shall publish in the Pennsylvania Bulletin a notice of the late payment penalty established by the Board for the coming registration year.

§ **93.146. Selection of retired or inactive status and resumption of active status.**

(a) *Retired Status.* Enforcement Rule 219(i) provides that:

* * * * *

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

* * * * *

§ **93.149. [Former or retired justice or judge and resumption of active status] Reserved.**

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

(1) describe:

(i) any discipline imposed within six years before the date of the notice upon the justice or judge by the Court of Judicial Discipline;

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

(2) include a waiver available through the Attorney Registration Office and signed by the justice or judge, if the notice discloses a proceeding described in subsection (1), of the confidentiality of the record in that proceeding for the limited purpose of making the record available to the Board in any subsequent proceeding under these rules.

An annual fee form will be provided by the Attorney Registration Office. The form must be filed by mail or delivered in person to said Office and be accompanied by payment of the full annual fee for the assessment year in which the notice is filed.]

CHAPTER 95. STATEMENTS OF POLICY

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

It is the practice of the Executive Office [of the Secretary] to monitor the filing by formerly admitted attorneys of the verified statement of compliance required under § 91.96 (relating to proof of compliance) and, if the statement is not filed within the prescribed period, the Executive Office [of the Secretary] will mail to the formerly admitted attorney a reminder of the obligation under § 91.96 to file the statement. Failure by the Executive 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 § 91.99 (relating to maintenance of records), the Executive 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. 19-1437. Filed for public inspection September 27, 2019, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT**

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated August 14, 2019, pursuant to Pennsylvania Rules of Disciplinary Enforcement 219 which requires that all attorneys admitted to practice in any court of this Commonwealth must pay an annual assessment of \$225.00. The Order became effective September 13, 2019.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been administratively suspended by said Order, was published in the appropriate county legal journal.

Agee, William Paul
Princeton, NJ

Arnold, Curtis, Jr.
Washington, DC

Bailey, Pamela Jean
Billings, MT

Baird, Macavan Alexander
Burlington, NC

Barnes, Thomas Woodford, III
Germantown, TN

Barringer, Karen A.
Milford, OH

Battaglini, Michael D.
Vero Beach, FL

Beaver, Myralinn
San Diego, CA

Blue, Dana Andrea
Wilmington, DE

Bogale, Tsedey Abai
New York, NY

Brown, Vanessa Renee
Wilmington, DE

Browndorf, Matthew C.
Irvine, CA

Buckley, Jocelyn Louise
The Woodlands, TX

Callahan, Glenn Patrick
Cape May Court House, NJ

Campbell, Charles Taylor
Houston, TX

Carson-Smith, Winifred Y.
Washington, DC

Cecchi, James Edward
Roseland, NJ

Chamberlain, Malcomb Jo
Houston, TX

Chase, Christine D.
Daytona Beach, FL

Colitti, Mario C.
Morristown, NJ

Conte, Michael Andrew
Pennington, NJ

Curci, Brian Eric
Princeton, NJ

Curtis, Michael Thomas
Elkins, WV

Cutinello, Katelyn Elizabeth
Morristown, NJ

Darout, Enante
Roselle Park, NJ

De Angulo, Marta Maria
Edcouch, TX

Dixon, Rodney Eric
Washington, DC

Duffy, Paul Rhodes
Liberty Corner, NJ

Dukes, Stephen William
Oceanside, CA

Emmett, Ryan Matthew
West Trenton, NJ

Fishman, Karen Susan
Raleigh, NC

Forbes, Lance Stuart
West Windsor, NJ

Foreman, Bryan Edwin
Greenbelt, MD

Grant, Melanie S.
Moorestown, NJ

Gunn, Susan Brahm
Galloway, OH

Gutekunst, Neil Thomas, Jr.
Portland, ME

Hayes, Tayanita Tara
San Mateo, CA

Hearon, James
New Egypt, NJ

Holmes, Rashonda
Parkville, MD

Hordis, Steven
Woodland Township, NJ

Hudock, Philip F.
Hyannis, MA

Huffman, David
Parkersburg, WV

Hung, Nicholas Fan Kwon
Canada

Jackson, Angela
Alexandria, VA

Jones, Michael Blake
Stamford, CT

Kamstra, John P.
Halifax, VT

Kearns, Nathan W.
Newport, RI

Kirkley, Kenneth A.
Silver Springs, MD

Kreger, Verne E., Jr.
Cincinnati, OH

Langer, Edward
Israel

Laudeman, Robert Allen
St. Louis, MO

Leister, Daniel A
University Heights, OH

Lemonious, Lauren Michelle
Detroit, MI

Little, William C., Jr.
Arlington, VA

Lovett, Lara Robyn
Lawrence Township, NJ

Lusenhop, Peter Andrews
Columbus, OH

Maher, Timothy
Miami Gardens, FL

Marconi, William J.
Moorestown, NJ

Martin, Quin Harry
Edison, NJ

Mininno, John R.
Collingswood, NJ

Mlotkowski, Michael John
McLean, VA

Myers, William Anthony
Youngstown, OH

O'Malley, Kathleen Marie
Columbia, MD

Orsen, Jonathan Allen
Trenton, NJ

Ostien, Paul Henry, III
Wilmington, DE

Pauley, Troy A.
Kansas City, MO

Perricone, Anthony Lawrence
New York, NY

Petersen, Steven R.
Katonah, NY

Piedra, Hillary Devorah
Boonton, NJ

Pina, Stephen A., II
Deptford, NJ

Ramnath, Fernette P.
North Port, FL

Reynolds, Matthew Roger
Houston, TX

Richards, Ryan Campbell
Naples, FL

Roselle, Jody
San Antonio, TX

Sanios, Vasilios Emmanuel
Davison, MI

Sawyer, David Michael
Weston, FL

Schirmacher, Walter D.
Brighton, NY

Schuh, Denise Brunson
Parker, CO

Shahlapour, Zahra
New York, NY

Soriano, Enrico Castor
Woodbridge, VA

Steenburg, David Michael
Washington, DC

Stuhldreher, Justin M.
Spring, TX

Tennent, Jeremy Tyler
Riverview, FL

Timms, Derek Guy
Marlton, NJ

Victor, Sydney Elizabeth
Materials Park, OH

Viets, Whitney Meredith
Huntington, NY

Walton, Noel Shaun
San Jose, CA

Warren, Bruce K., Jr.
Westville, NJ

Washington, Kathryn Ann
New Orleans, LA

Werbin, Stuart D.
Brooklyn, NY

West, Thomas Seelye
Saratoga Springs, NY

Wexberg, Marcia Julie
Cleveland, OH

Wilkinson, Wade Christopher
Long Beach, NY

Williams, Kevin Theodore
Warren, MI

Wilson, William T.
Oak Park, IL

Wu, Paloma
Jackson, MS

Yoon, Saejin
Arlington, VA

SUZANNE E. PRICE,
Attorney Registrar

[Pa.B. Doc. No. 19-1438. Filed for public inspection September 27, 2019, 9:00 a.m.]