

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Regarding Permanent Resignation From the Bar

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) plans to recommend to the Supreme Court of Pennsylvania that it adopt amendments to the Pennsylvania Rules of Disciplinary Enforcement (“Enforcement Rules”) relating to permanent resignation of an attorney from the bar of the Commonwealth of Pennsylvania, as set forth in Annexes A and B.

Currently, a Pennsylvania attorney may resign from the bar pursuant to Pennsylvania Bar Admission Rule 201(b), which states “An attorney who is not the subject of any investigation into allegations of misconduct may voluntarily cease to be a member of the bar of this Commonwealth by delivering to the Administrative Office a written resignation from the office of attorney at law.”

Although an attorney’s ability to resign is contained in the Bar Admission Rules, which fall under the aegis of the Pennsylvania Board of Law Examiners (“Law Examiners”), the Law Examiners historically have not played a role in the resignation process; instead, the Board processes resignations, through its Attorney Registration Office.

To cure this anomaly, the Board and the Law Examiners determined that removing resignation from the Bar Admission Rules and placing it in the Enforcement Rules best addresses the reality of the resignation process and more accurately reflects the missions of the boards: the Law Examiners to admit attorneys; and the Board to facilitate post-admission matters, such as discipline and annual attorney registration.

The Board’s proposal creates new Enforcement Rule 404, titled “Permanent Resignation.” The proposed rule adopts the concept contained in current Pa.B.A.R. 201(b) and refines the language, providing more specificity to attorneys who wish to resign from the bar. With this proposed rule change, the Board emphasizes that permanent resignation is completely voluntary in nature and available to attorneys who are not the subject of investigation into allegations of misconduct.¹

Pursuant to proposed subdivision (a), an attorney who is not the subject of any investigation into allegations of misconduct may permanently resign from the bar by submitting a written resignation to the Attorney Registration Office, along with a \$250 administrative fee. Subdivision (b) provides that an attorney who is administratively suspended for failure to comply with the Enforcement Rules (regarding annual attorney registration) or the Pennsylvania Rules for Continuing Legal Education (regarding annual CLE compliance) and who is not the subject of any investigation into allegations of misconduct

¹ Pa.R.D.E. 215(a) references “voluntary resignation” with regard to discipline on consent, and allows an attorney who is the subject of an investigation into allegations of misconduct to resign and be disbarred on consent by the Supreme Court of Pennsylvania. Thereafter, the attorney is a “disbarred” attorney and may seek reinstatement to the bar through the processes set forth in the Enforcement Rules.

may permanently resign by submitting a written resignation and paying the \$250 administrative fee.

The word “permanent” is not in the language of Pa.B.A.R. 201(b); however, the Board proposes adding this language to new Rule 404 to underscore and clarify that an attorney who resigns pursuant to the new rule is no longer a member of the bar of the Commonwealth of Pennsylvania and therefore has no ability to seek reinstatement to the bar under the Enforcement Rules. In line with that concept, proposed subdivision (c) provides that an attorney who has permanently resigned and who desires to be readmitted to the bar must apply pursuant to the Bar Admission Rules.

The Board proposes changes to a set of Enforcement Rules to reflect the new status created in Rule 404. Rules 102 (Definitions), 201(a)(3) (Jurisdiction), 204(c), (Types of Discipline), and 217(d)(3)(Note) (Formerly Admitted Attorneys) are amended to conform to proposed Rule 404.

Interested persons are invited to submit written comments by email to Dboard.comments@pacourts.us on or before June 26, 2020.

*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 B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter D. MISCELLANEOUS PROVISIONS

(Editor’s Note: The following rule is proposed to be added and printed in regular type to enhance readability.)

Rule 404. Permanent Resignation.

(a) *Resignation while in good standing.* An attorney who is not the subject of any investigation into allegations of misconduct may permanently resign from the bar of this Commonwealth by submitting a written resignation along with a non-refundable administrative fee of \$250 to the Attorney Registration Office.

(b) *Resignation while under Administrative Suspension.* An attorney who is administratively suspended for failure to comply with Pennsylvania Rules for Continuing Legal Education or Pennsylvania Rules of Disciplinary Enforcement and is not the subject of any investigation into allegations of misconduct may permanently resign from the bar of this Commonwealth by submitting a written resignation along with a non-refundable administrative fee of \$250 to the Attorney Registration Office.

(c) *Readmission.* An attorney who has permanently resigned from the practice of law in the Commonwealth pursuant to subdivision (a) or (b) of this rule and seeks readmission to the bar must apply pursuant to the Pennsylvania Bar Admission Rules.

Annex B

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter A. PRELIMINARY PROVISIONS

Rule 102. Definitions.

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"Formerly admitted attorney." A disbarred, suspended, administratively suspended, **permanently resigned**, retired or inactive attorney.

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Subchapter B. MISCONDUCT

Rule 201. Jurisdiction.

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

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

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Rule 204. Types of discipline.

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(c) A reference in these rules to disbarment, suspension, temporary suspension, administrative suspension, **permanent resignation**, or transfer to or assumption of retired or inactive status shall be deemed to mean, in the case of a respondent-attorney who holds a Limited In-House Corporate Counsel License, expiration of that license. A respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

(1) shall be deemed to be a formerly admitted attorney for purposes of Rule 217 (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Rule 218 (relating to reinstatement) or Rule 219 (relating to annual registration of attorneys) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302.

Rule 217. Formerly admitted attorneys.

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(d)(1) Orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

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(3) In cases of disbarment, suspension for a period exceeding one year, temporary suspension under Enforcement Rule 208(f) or 213(g), or disability inactive status under Enforcement Rule 216 or 301, a formerly admitted attorney shall also promptly:

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

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

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

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

The formerly admitted attorney shall maintain records to demonstrate compliance with the provisions of paragraphs (2) and (3) and shall provide proof of compliance at the time the formerly admitted attorney files the verified statement required by subdivision (e)(1) of this Rule.

Official Note: Paragraph (d)(3)(i) does not preclude a respondent-attorney who voluntarily assumes inactive or retired status, **permanently resigns**, is placed on administrative suspension, is temporarily suspended under Enforcement Rule 214, or is suspended for one year or less, from completing existing appointments and accepting new appointments of the nature identified in paragraph (d)(3)(i). Nonetheless, in order to comply with subdivisions (a), (b) and (c) of this Rule, the formerly admitted attorney who desires to complete existing appointments or accept future appointments must give written notice of the formerly admitted attorney's registration status or change in that status to appointing and supervising judges and courts, wards, heirs, beneficiaries, interested third parties, and other recipients of the formerly admitted attorney's fiduciary services, as notice of the formerly admitted attorney's other-than-active status gives all interested parties an opportunity to consider replacing the formerly admitted attorney or enlisting a person other than the formerly admitted attorney to serve as the fiduciary in the first instance. Although the formerly admitted attorney would not be precluded by paragraph (d)(3)(ii) from continuing to use a fiduciary account registered with the bank as an IOLTA or Trust Account, paragraph (2) of subdivision (d) and paragraph (4)(iv) of subdivision (j) of this Rule prohibit the formerly admitted attorney from using or continuing to use account checks and deposit slips that contain the word "IOLTA," "attorney," "lawyer," "esquire," or similar appellation that could convey eligibility to practice in the state courts of Pennsylvania. Notwithstanding the specific prohibitions of subdivision (j) of this Rule, the formerly admitted attorney is authorized to perform those services necessary to carry out the appointment with the exception of any service that would constitute the unauthorized practice of law if engaged in by a nonlawyer. In relation to formerly admitted attorneys who are disbarred, suspended for a period exceeding one year, temporarily suspended under Enforcement Rule 208(f) or 213(g), or transferred to disability inactive status, the requirements of paragraph (d)(3) continue throughout the term of the disbarment, suspension, temporary suspension, or disability inactive status, thereby precluding any new appointment or engagement.

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