# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT

### [ 204 PA. CODE CH. 83 ]

### Proposed Amendments to the Rules of Disciplinary Enforcement to Require Certain Attorneys Who Become Debtors in Bankruptcy to Provide Written Notice of the Bankruptcy Filing

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania ("Disciplinary Board") is considering a recommendation to the Supreme Court of Pennsylvania that the Court amend Rules 208 and 218 of the Pennsylvania Rules of Disciplinary Enforcement ("Enforcement Rules"), as set forth in Annex A. In addition, the Disciplinary Board and the Board of The Pennsylvania Lawyers Fund for Client Security ("Fund") are considering jointly recommending to the Court that the Court adopt new Enforcement Rule 532, as set forth in Annex B. The intent of the revisions is that the Disciplinary Board and the Fund receive timely notice of a bankruptcy filing in which either agency or both agencies have an interest in order that action can be taken to contest the dischargeability of the debt, thereby promoting the disciplinary system's penal and rehabilitative interests, preserving the Fund's interest in securing restitution, and helping to defray the expense of agency proceedings.

*Amendment to Enforcement Rule 208(g) (Annex A)*:

Subsections (g)(1)—(5) of Enforcement Rule 208 provide for the taxation of expenses incurred in the investigation and prosecution of a proceeding that results in discipline, an administrative fee, and assessed penalties on unpaid taxed expenses and administrative fees. Attorneys with unpaid judgments under this Enforcement Rule who attempt to discharge the debt in bankruptcy should be required to give timely written notice of the attorney's filing for bankruptcy protection to the Executive Director of the Disciplinary Board as set forth in proposed subsection (g)(6) of Enforcement Rule 208, for three reasons.

First, establishing a uniform procedure for notice eliminates any uncertainty about the person to whom notice is to be directed as well as any potential problems arising from a bankruptcy court's sending notice of a bankruptcy filing to any one of a number of agency locations, such as a district office many years after the entry of the judgment. Designating the Executive Director, who oversees all agency operations and finances, as the recipient of the notice ensures that the agency will have an opportunity to adequately assess and take appropriate steps to protect the agency's disciplinary and financial interests.

Second, prompt receipt of notice strengthens the Disciplinary Board's ability to take timely action in the bankruptcy proceeding, when warranted, to contest the dischargeability of the debt in furtherance of the goals of discipline. The Eleventh Circuit Court of Appeals has held that the costs and expenses assessed against an attorney under Enforcement Rule 208(g)(1) are nondischargeable in bankruptcy because they are in the nature of a fine or penalty, are "rolled into the overall sanction imposed against an attorney who engages in misconduct," and promote the Commonwealth's penal and rehabilitative interests. *Disciplinary Board v. Allen L. Feingold (In re Feingold)*, 730 F.3d 1268, 1273-77 (11th Cir. 2013). *See also In re Iulo*, 564 Pa. 205, 214, 766 A.2d 335, 340 (2001) (". . .Pennsylvania concerns itself with punishment as a prerequisite to rehabilitation.") The rehabilitative component of Enforcement Rule 208(g) is further illustrated in D.Bd. Rules § 89.272(c), which provides that the Disciplinary Board will not entertain a petition for reinstatement filed before a formerly admitted attorney has paid in full any costs taxed in relation to formal proceedings.

Third, disciplinary enforcement and administration is funded almost exclusively through the annual attorney registration fees collected by the Disciplinary Board pursuant to Enforcement Rule 219(a). Collection of taxed expenses, administrative fees, and assessed penalties helps to defray the expense of government and to maintain the attorney disciplinary system's self-sustaining status.

*Amendment to Enforcement Rule 218(f) (Annex A)*:

The Board will also not entertain a petition for reinstatement filed before the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) or under § 89.278 (relating to expenses of reinstatement proceedings) with respect to any previous reinstatement proceeding and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement). Subsections (f)(2)-(3) of Enforcement Rule 218 provide for the taxation of necessary expenses incurred in the investigation and processing of a petition for reinstatement and the assessment of a penalty, levied monthly on the unpaid principal balance. Attorneys with an unpaid judgment under this Enforcement Rule who attempt to discharge the debt in bankruptcy should be required to give timely written notice of the attorney's filing for bankruptcy protection to the Executive Director of the Disciplinary Board as set forth in proposed subsection (f)(4) of Enforcement Rule 218, as all three considerations identified in the previous discussion—establishing a uniform procedure for notice, enhancing the Disciplinary Board's ability to contest dischargeability of the debt, and defraying the cost of government—apply with equal force to this proposed subsection. With respect to the second consideration, expenses taxed and penalties assessed under Enforcement Rule 218(f) further Pennsylvania's rehabilitative goal and should not be dischargeable in bankruptcy because their payment is a logical extension of the rehabilitative process. *Cf.* D.Bd. Rules § 89.272(c) (providing in part that the Disciplinary Board will not entertain a petition for reinstatement filed before a formerly admitted attorney has paid in full any costs taxed in connection with any *previous* reinstatement proceeding).

*New Enforcement Rule 532 (Annex B)*:

Proposed Enforcement Rule 532 applies to an attorney who is either the subject of a claim pending with the Fund or who has received notice that the Fund has made a disbursement in connection with a claim against the attorney and the attorney has not repaid the Fund in full plus interest ("Covered Attorney"). The new rule would require the Covered Attorney to give timely written notice of the Covered Attorney's filing for bankruptcy protection to the Executive Director of the Fund.

The Fund's receipt of the notice required by proposed Enforcement Rule 532 would allow the Fund to be

proactive in protecting the Fund's ability to collect an existing obligation owed to the Fund, or to protect the Fund's potential subrogation interest in a pending claim. A claimant who has a pending claim with the Fund may receive notice of the Covered Attorney's bankruptcy filing and may not understand the significance of the deadlines set forth on the notice. A claimant may not be inclined, or may not have the financial resources, to discuss the bankruptcy filing notice with an attorney. If the claimant does not file a proof of claim in the Covered Attorney's bankruptcy and an award is subsequently approved and paid, the Fund, by virtue of a subrogation agreement with the claimant, will stand in the shoes of the claimant and may have lost the opportunity to file a proof of claim or a Complaint in Nondischargeability. This lost opportunity may inhibit the Fund's ability to recover the obligation that is owed to the Fund by the Covered Attorney.

By receiving a notice of the filing of a bankruptcy, particularly when a claim is pending with the Fund, the Fund may enter an appearance in the Covered Attorney's bankruptcy as a party in interest in order to request an extension of the deadline to file a proof of claim or adversary proceeding. The Fund could also choose to expedite the review of the claim(s) pending with the Fund regarding the Covered Attorney who is now a debtor in bankruptcy, to be able to assess the Fund's potential subrogation rights should the pending claim(s) appear to fall within the definition of a Reimbursable Loss.

Finally, recoveries obtained from Covered Attorneys increase the Fund's available financial resources in order to accomplish the Fund's mission of reimbursing misappropriated client funds to the victims. Restitution, which is a condition for reinstatement under Enforcement Rule 531, also furthers the disciplinary system's goal of rehabilitation.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382), Email address Dboard.comments@pacourts.us on or before December 4, 2020.

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

*By the Pennsylvania Lawyers Fund for Client Security*

JESSE G. HEREDA,
*Executive Director*

KATHRYN PEIFER MORGAN,
*Executive Director and Counsel*

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT**

**Subpart B. DISCIPLINARY ENFORCEMENT**

**CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

**Subchapter B. MISCONDUCT**

**Rule 208. Procedure.**

* * * * *

(g) *Costs—*

(1) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses taxed under this paragraph pursuant to orders of suspension that are not stayed in their entirety or disbarment shall be paid by the respondent-attorney within 30 days after notice transmitted to the respondent-attorney of taxed expenses. In all other cases, expenses taxed under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

(2) In the event a proceeding is concluded by informal admonition, private reprimand or public reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules.

(3) Failure to pay taxed expenses within 30 days after the date of the entry of the order taxing such expenses in cases other than a suspension that is not stayed in its entirety or disbarment will be deemed a request to be administratively suspended pursuant to Rule 219(l).

(4) In addition to the payment of any expenses under paragraph (1) or (2), the respondent-attorney shall pay upon final order of discipline an administrative fee pursuant to the following schedule:

| | |
|---|---|
| Informal Admonition: | $250 |
| Private Reprimand: | $400 |
| Public Reprimand: | $500 |
| Public Censure: | $750 |
| Suspension (1 year or less): | $1,000 |
| Suspension (more than 1 year): | $1,500 |
| Disbarment: | $2,000 |
| Disbarment on Consent: | $1,000 |
| Transfer to Inactive Status following discipline | $1,000 |

(i) Where a disciplinary proceeding concludes by Joint Petition for Discipline on Consent other than disbarment prior to the commencement of the hearing, the fee imposed shall be reduced by 50%.

(ii) Where a disciplinary proceeding concludes by Joint Petition for Discipline on Consent other than disbarment subsequent to the commencement of the hearing, the Board in its discretion may reduce the fee by no more than 50%.

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

(i) Failure to pay taxed expenses within thirty days of the assessment becoming final in accordance with subdivisions (g)(1) and (g)(2) and/or failure to pay administrative fees assessed in accordance with subdivision (g)(4) 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.

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

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

**(6) An attorney who becomes a debtor in bankruptcy when the administrative fee, expenses or penalties taxed under this subdivision (g) or any other provision of these Rules have not been paid in full, shall notify the Executive Director of the Board in writing of the case caption and docket number within 20 days after the attorney files for bankruptcy protection.**

(h) *Violation of probation*. Where it appears that a respondent-attorney who has been placed on probation has violated the terms of the probation, 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. A hearing on the petition shall be held within ten business days before a member of the Board designated by the Board Chair. If the designated Board member finds that the order imposing probation should be modified, the following procedures shall apply:

* * * * *

**Rule 218. Reinstatement.**

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(f)(1) At the time of the filing of a petition for reinstatement with the Board, a non-refundable reinstatement filing fee shall be assessed against a petitioner-attorney. The filing fee schedule is as follows:

| | |
|---|---|
| Reinstatement from disbarment or suspension for more than one year: | $1,000 |
| Reinstatement from administrative suspension (more than three years): | $500 |
| Reinstatement from inactive/retired status (more than three years): | $250 |
| Reinstatement from inactive status pursuant to Enforcement Rule 301: | $250 |

(2) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of the petition for reinstatement be paid by the petitioner-attorney. After the Supreme Court Order is entered, the annual fee required by Rule 219(a) for the current year shall be paid to the Attorney Registration Office.

(3) Failure to pay expenses taxed under Enforcement Rule 218(f)(2) within thirty days of the entry of the Supreme Court Order 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 from time to time. The Board, for good cause shown, may reduce the penalty or waive it in its entirety.

**(4) An attorney who becomes a debtor in bankruptcy when the expenses or penalties taxed in connection with a reinstatement proceeding have not been paid in full, shall notify the Executive Director of the Board in writing of the case caption and docket number within 20 days after the attorney files for bankruptcy protection.**

(g)(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the formerly admitted attorney with the Board of averified statement showing compliance with all the terms and conditions of the order of suspension and of Enforcement Rule 217 (relating to formerly admitted attorneys), along with the payment of a non-refundable filing fee of $250, the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

**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 E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY**

**REINSTATEMENT**

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

**Rule 532. Duty to Report Bankruptcy Filing.**

If a Covered Attorney becomes a debtor in bankruptcy after having received notice either of a claim pending with the Fund against the Covered Attorney or of any disbursement by the Fund with respect to a claim against the Covered Attorney and the Covered Attorney has not repaid the Fund in full plus interest in accordance with Rule 531, the Covered Attorney shall notify the Executive Director of the Fund in writing of the case caption and docket number within 20 days after the Covered Attorney files for bankruptcy protection. If the Covered Attorney receives notice of a pending claim or disbursement after the filing of the bankruptcy petition and before the conclusion of the bankruptcy case, the Covered Attorney shall give the written notice required by this rule within ten days after receipt of the notice of the pending claim or disbursement.

[Pa.B. Doc. No. 20-1484. Filed for public inspection October 30, 2020, 9:00 a.m.]

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# Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

## PART V. PROFESSIONAL ETHICS AND CONDUCT

## [ 204 PA. CODE CH. 85 ]

### Proposal to Amend the Disciplinary Board's Rule of Procedure Pertaining to Stale Matters to Replace the Tolling Provision Applicable to Complaints Involving Civil Fraud, Ineffective Assistance of Counsel or Prosecutorial Misconduct

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania (Board) is considering amending Disciplinary Board Rules ("D.Bd. Rules") § 85.10, as set forth in Annex A. Section 85.10, which is titled "Stale matters," is the rule equivalent of a statute of limitations and, with limited exceptions, forbids the Office of Disciplinary Counsel (ODC) or the Board from entertaining any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint.

*Historical backdrop.*

At the inception of the current disciplinary system in 1972, the only exceptions to the four-year limitations period in D.Bd. Rules § 85.10 were "cases involving theft or misappropriation, conviction of a crime or a knowing act of concealment." These four exceptions still exist and appear in subsection (b)(1) of the current rule.

In 1994, the Board created a fifth exception by adopting a tolling provision for any period when there is litigation involving allegations of civil fraud by the respondent-attorney. According to the publication of the adoption of the rule amendment, 24 Pa.B. 2693 (May 28, 1994), and the earlier Notice of Proposed Rulemaking, 24 Pa.B. 1281 (March 12, 1994), the Board was anticipating that the rule would be relevant principally in cases where the Board had deferred a disciplinary proceeding under Enforcement Rule 211 pending the outcome of civil litigation but would also capture complaints filed with the Board after the completion of the independent litigation. This tolling provision currently appears in D.Bd. Rules § 85.10(b)(2).

In 2002, the Board extended the tolling provision of subsection (b)(2) to include complaints alleging ineffective assistance of counsel or prosecutorial misconduct, 32 Pa.B. 1838 (April 28, 2002), thereby increasing the number of exceptions to seven. The Board recognized that it may take more than four years for some cases of ineffective assistance of counsel or prosecutorial misconduct to come to the attention of the Board. *Id. See also* 31 Pa.B. 6031 (November 3, 2001) (Notice of Proposed Rulemaking).

*"Tolling" is ineffectual in cases of ethical misconduct.*

The Board now believes that the tolling provision in subsection (b)(2) is an ineffectual method of determining when ODC and the Board are allowed to proceed with a complaint, for several reasons. One reason is that the limitations period runs from the time of the misconduct, which could be prior to or during settlement, guilty plea proceedings, or trial, irrespective of whether the client has *discovered* the misconduct. Thus, for example, if trial counsel in a criminal case is incompetent or ineffective at the pretrial or trial stage, and the defendant is represented by the same counsel on direct appeal, the defendant may not discover (and consequently will not raise) the issue of trial counsel's incompetence or ineffectiveness until represented by competent counsel after the conclusion of the direct appeals, which could be years after the misconduct, when the four-year window to file a complaint has already closed. The Board has considered but rejected the adoption of a discovery provision because such a provision would likely spawn litigation over the precise date when the convicted defendant or civil client discovered or reasonably should have discovered the attorney's misconduct. Putting the focus on the finding of fraud or other misconduct provides a definitive *objective* trigger for determining the date of the finality of the litigation in which the finding is made while eliminating the need for collateral litigation over the former client's *subjective* state of mind.

Tolling is also inadequate to determine the viability of an ethics complaint because the lengths of time that are not tolled are dependent upon a number of fortuitous circumstances that vary from case to case and over which the client has little or no control. In the example where the criminal defendant is represented by incompetent or ineffective counsel on direct appeal, the four-year window for filing a complaint is closing during the appellate process, the length of which is influenced by circumstances such as the ability to secure pre-trial and trial transcripts, counsel's and the prosecutor's ability to promptly generate an appellate brief, the presence or absence of oral argument or a remand for the taking of additional evidence, and the appellate courts' grant or denial of a petition for reconsideration or review by the court *en banc*. There may be additional time that is not subject to tolling as a result of delays in sentencing or a hiatus between the exhaustion of the direct review and the commencement of a collateral proceeding for post-conviction relief. The same variables apply to the review of the conduct of the prosecutor, whose mishaps during pre-trial discovery or at trial may not be scrutinized until after the exhaustion of the direct and collateral state review process and the initiation of a federal habeas proceeding. Anecdotal evidence, which is confidential under Enforcement Rules 209(a) and 402, illustrates the existence of disciplinary complaints that warranted disciplinary consideration but were dismissed because they could not survive ODC's preliminary review conducted pursuant to the current rule's tolling provision. An effective attorney disciplinary agency must be in a position to thoroughly assess the need for disciplinary accountability for publicly adjudicated cases of unethical conduct.

Uncertainty can also arise in applying the tolling provision to a particular case, in that questions arise as to what proceedings or segments of sequential proceedings are to be tolled. Under the language of the current rule's tolling provision, time is excluded during any period of pending litigation "*that has resulted in* a finding that the subject acts or omissions involved civil fraud, ineffectiveness assistance of counsel or prosecutorial misconduct by the respondent-attorney." (Emphasis added). Hence, the tolling provision requires proof of a causal connection between the litigation and the finding of one of the three forms of misconduct. By way of hypothetical question, if state court review concludes without a finding of ineffective assistance or prosecutorial misconduct but such a finding is entered during subsequent federal review, does the state court review establish the requisite causal connection, such that the period of state court review is excluded when calculating the four-year limitations period? On the one hand, one could reasonably argue that the period of state court review should not be excludable because there was a break in the litigation chain and the filing of a federal habeas action was the commencement of a separate and distinct litigation. On the other hand, one could reasonably maintain that the period of state court review should be excludable time because the exhaustion of state court remedies is a necessary predicate of federal review, and *but for* the state court litigation, the federal remedy could not have been achieved. No clear rules guide the analysis.

*Proposed amendments to D.Bd. Rules § 85.10.*

To remedy the situation and capture those matters that would otherwise evade review, the Board proposes that the tolling provision in subsection (b)(2) be replaced with a provision that would allow ODC and the Board to entertain a complaint of civil fraud, ineffective assistance of counsel, or prosecutorial misconduct "if filed or opened within: i) four years of the subject acts or omissions; or ii) two years after the litigation in which the finding [of one of those three forms of misconduct] was made becomes final, whichever date is later." Subsection (b)(2)(ii) provides a two-year window for any former client or complainant who successfully litigates his or her claim in a civil or criminal forum. Any ambiguity over the calculation of when the litigation "becomes final" is addressed in

new subsection (c) of the proposed rule, which definition borrows heavily from § 9545(b)(3) of Pennsylvania's Post Conviction Relief Act, 42 Pa.C.S. § 9541 *et seq*. ("PCRA"). To be clear, the language of the PCRA provision addresses when a "judgment" becomes final for purposes of initiating collateral review under the PCRA, and is therefore not on point, although the statutory language with some modification, as set forth in new subsection (c), is well suited to provide the required guidance. Moreover, the definition is sufficiently general to be adaptable to post-conviction and post-verdict civil court procedures in all state and federal jurisdictions.

Irrespective of subsection (b)(2)(ii)'s two-year window, subsection (b)(2)(i) ensures that the limitations period for civil fraud, ineffective assistance of counsel, or prosecutorial misconduct is not reduced to less than four years, in that subsection (b)(2)(i) guarantees that a complainant will have not less than four years from the date of the misconduct in which to file a complaint. Hence, if a complainant were to obtain a finding of civil fraud, ineffective assistance of counsel, or prosecutorial misconduct within six months of the misconduct and no additional litigation over that finding was forthcoming, under subsection (b)(2)(i) the complainant would have three-and-one-half years remaining in which to file a complaint with the Board.

Finally, neither litigation nor a finding of misconduct is a prerequisite to the filing or entertaining of a disciplinary complaint. The Board proposes the addition of a Note following the rule as a preemptive strike to any attempt by a litigant to construe new subsection (b)(2) as imposing a requirement that a complainant institute litigation in a civil, criminal or administrative forum and obtain a finding of misconduct before his or her complaint may be entertained by Disciplinary Counsel or the Board.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3381), Email address Dboard.comments@pacourts.us on or before December 4, 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 C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA**

**CHAPTER 85. GENERAL PROVISIONS**

**§ 85.10. Stale matters.**

(a) *General matters*. The Office of Disciplinary Counsel or the Board shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint, except as provided in subsection (b).

(b) *Exceptions*. **[ The four year limitation in subsection (a) shall: ]**

(1) **[ Not ]** **The four year limitation in subsection (a) shall not** apply in cases involving involving theft or misappropriation, conviction of a crime or a knowing act of concealment.

(2) **[ Be tolled during any period when there has been litigation pending that ]** **When litigation** has resulted in a finding that the subject acts or omissions involved civil fraud, ineffective assistance of counsel or prosecutorial misconduct by the respondent-attorney**[ . ], a complaint may be entertained if filed or opened within: i) four years of the subject acts or omissions; or ii) two years after the litigation in which the finding was made becomes final, whichever date is later.**

**(c) Litigation "becomes final" within the meaning of subsection (b)(2)(ii) at the conclusion of direct or collateral review, including discretionary review in the Supreme Court of the United States and the highest state court, or at the expiration of time for seeking the review.**

***Official Note*: Litigation resulting in a finding of civil fraud, ineffective assistance of counsel or prosecutorial misconduct is not a prerequisite to Office of Disciplinary Counsel's or the Board's entertaining a complaint involving one of those three forms of misconduct, and subsection (b)(2) should not be read to impose such a requirement.**

[Pa.B. Doc. No. 20-1485. Filed for public inspection October 30, 2020, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## MONTGOMERY COUNTY

### Adoption of Local Rule of Criminal Procedure 530*. Duties and Powers of a Bail Agency.; No. AD-273-2020

**Order**

*And Now*, this 8th day of October, 2020, the Court hereby Adopts Montgomery County Local Rule of Criminal Procedure 530*—Duties and Powers of a Bail Agency. This Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

*By the Court*

THOMAS M. DelRICCI,
*President Judge*

**Rule 530*. Duties and Powers of a Bail Agency.**

The Montgomery County Pretrial Services Division is designated as the bail agency of the 38th Judicial District of Pennsylvania, Montgomery County, and shall have the duties and powers as set forth in Pa.R.Crim.P. 530.

[Pa.B. Doc. No. 20-1486. Filed for public inspection October 30, 2020, 9:00 a.m.]