

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

[204 PA. CODE CH. 71]

Order Amending Rule 322 of the Pennsylvania Bar Admission Rules; No. 825 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 15th day of January, 2020, upon the recommendation of the Board of Law Examiners, the proposal having been published for public comment in the *Pennsylvania Bulletin* at 49 Pa.B. 5700 (October 5, 2019):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 322 of the Bar Admission Rules is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendments shall be effective in thirty (30) days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter C. RESTRICTED PRACTICE OF LAW CERTIFIED LEGAL INTERNS

Rule 322. Authorized activities of certified legal interns.

(a) *General rule.* Subject to the restrictions of this subdivision, a certified legal intern may with the approval of a supervising attorney:

(1) Appear before any **court or other** government unit [**(other than the Supreme, Superior or Commonwealth Courts)**] in any civil or criminal matter on behalf of any indigent, if the person on whose behalf the legal intern is appearing consents to such appearance. [**The supervising attorney must be personally present throughout the proceedings where the legal intern is appearing on behalf of the defendant in a criminal matter where the defendant has the right to counsel under any provision of law.**]

(2) Appear in any civil or criminal matter on behalf of the Commonwealth, if the Attorney General (or the prosecuting attorney in the case of a criminal matter) or his or her authorized representative consents to such appearance.

The approval of the supervising attorney and the consent of the party represented required by this subdivision shall be in writing and filed of record in the matter and shall be brought to the attention of the judge or magisterial district judge or the presiding officer of the other government unit. **Appearances pursuant to this rule include provision of oral argument.**

(b) *Preparation of papers.* A certified legal intern may engage in other activities, [**under the general supervision of a member of the bar of this Commonwealth, but outside the personal presence of the attorney,**] including **the following**:

(1) Preparation of pleadings and other documents to be filed in any matter in which the legal intern is eligible to appear and in any appeals therefrom in the Supreme, Superior or Commonwealth Courts.

(2) Except when the assignment of counsel is required under any provision of law, **provision of** assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance shall be supervised by the attorney of record.

Each pleading or other document shall contain the name of the legal intern who has participated in drafting it. If the legal intern participated in drafting only a portion of it, that fact may be stated. All pleadings or other documents shall be signed by the supervising attorney.

(c) *Supervising attorney.* The attorney under whose supervision a certified legal intern performs any of the services permitted by this rule shall [:]

(1) Be approved in writing as a supervising attorney for the purposes of this rule by the dean of the law school in which the legal intern is or was enrolled.

(2) Assume personal professional responsibility for the guidance of the legal intern in any work undertaken and for supervising the quality of the work of the legal intern.

(3) Assist the legal intern in his or her preparation to the extent the supervising attorney considers necessary.

(4) Assure that the certified legal intern is fully prepared and appropriately supervised.

(5) Be present during any appearance the certified legal intern makes before any tribunal.

Official Note: Based on former Supreme Court Rule 11 A, D and E and makes no change in substance.

[Pa.B. Doc. No. 20-141. Filed for public inspection January 31, 2020, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 83, 85, 89, 91 AND 93]

Proposed Amendments to the Disciplinary Board Rules and the Rules of Disciplinary Enforcement to Update the Disciplinary Board Rule Identifying the Procedure Applicable to Formal Proceedings; to Increase Efficiency In Formal Disciplinary Proceedings by Prohibiting Certain Types of Prehearing and Hearing Motions; to Clarify the Meaning and Application of the Board Rule Designating the Manner of Service of Documents Originating With the Board; and to Amend Certain Provisions of the Enabling Rules to Conform to the Rules That Allow a Single Board Member to Act for the Board on an Interlocutory Appeal

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania (Board) is considering amending Disciplinary Board Rules (“D.Bd. Rules”) §§ 85.11, 89.2, 89.21, 89.55, 89.93, 91.3, 93.22 and 93.23 as set forth in Annex A, and planning to recommend to the Supreme Court of Pennsylvania that the Court amend Rules 205, 208 and 213 of the Pennsylvania Rules of Disciplinary Enforcement (“Enforcement Rules” or “Pa.R.D.E.”), as set forth in Annex B.

The reference to “action in equity” in D.Bd. Rules § 89.2 is obsolete.

D.Bd. Rules § 89.2, titled “Equity procedure to apply,” currently provides that except where inconsistent with the Disciplinary Board Rules, “formal proceedings before hearing committees, special masters and the Board shall conform generally to the practice in action in equity under the Pennsylvania Rules of Civil Procedure.” The “practice in action in equity” language provides no guidance in discerning the procedure to be followed in modern-day practice before the Board because “[t]he action in equity has been abolished. Equitable relief may be obtained through a civil action, Rule [Pa.R.C.P.] 1001 et seq.” See Note after Pa.R.C.P. 1501 (Rescinded). The Supreme Court merged actions in equity with civil actions by Order dated December 16, 2003, effective July 1, 2004. *In re: Consolidation of the Action in Equity with the Civil Action*, No. 402 Civil Procedural Rules Docket No. 5, 34 Pa.B. 9 (January 3, 2004). Attempting to extrapolate “equity practice” or even “equitable procedures” from the Rules of Civil Procedure for application to attorney disciplinary proceedings is an impossible task. In summary, the term “action in equity” is obsolete, no longer provides tangible guidance on procedure, and therefore should be deleted from D.Bd. Rules § 89.2.

Substituting “civil action” for “action in equity” would be counterproductive.

As explained above, in 2003 the Court abolished the separate action in equity and merged it into the civil action such that equitable causes of action now require analysis of the Rules of Civil Procedure governing the civil action—*i.e.*, Pa.R.C.P. 1001 et seq. With respect to D.Bd. Rules § 89.2, replacing the “action in equity” procedure with the “civil action” procedure as set forth in the Rules of Civil Procedure would be counterproductive

because the civil action rules contain a number of detailed procedural requirements that are not inconsistent with the Board Rules but foreign to established Board practice, such as attaching a writing to a pleading when a claim or defense is based thereon. See Pa.R.C.P. 1019(h). Adding such procedural requirements to the Board Rules would likely give rise to motions and litigation over a party’s nonconformity with the civil action rules, contrary to the purpose of these proposed amendments, which is to streamline the procedure in formal proceedings rather than to burden it.

Proposed rewrite of D.Bd. Rules § 89.2 via new Enforcement Rule 208(c).

To remedy the obsolete and uncertain language of current D.Bd. Rules § 89.2, the Board plans to recommend to the Court that Enforcement Rule 208(c), which is titled “Hearing procedures,” be retitled “Prehearing and hearing procedures”; provide that the rule govern the procedure in “formal” proceedings before “the Board” in addition to proceedings before hearing committees and special masters; and further provide that the procedure in proceedings before all three tribunals be governed by the Board Rules, the Enforcement Rules, and the decisional law of the Court and the Board in attorney discipline and reinstatement matters. If the Court adopts the Board’s recommendation, the Board would replace current D.Bd. Rules § 89.2 with proposed subdivision (a) of D.Bd. Rules § 89.2, which would reaffirm the applicable sources of procedural law established by new Enforcement Rule 208(c).

Including the Enforcement Rules within new Pa.R.D.E. 208(c) is appropriate because procedure applicable to formal proceedings can be found throughout the Enforcement Rules. *E.g.*, Pa.R.D.E. 214(f)(1) (hearing on a petition for discipline based on a criminal conviction “shall be deferred until sentencing and all direct appeals from the conviction have been concluded”); *id.* 213(g)(1) (party may file a motion to enforce subpoena if witness does not comply with a subpoena); *id.* 218(e) (“In all proceedings upon a petition for reinstatement, cross-examination of the petitioner-attorney’s witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.”). The Board is confident that the procedural framework established by the current Board Rules and Enforcement Rules is sufficient to bring a discipline or reinstatement proceeding to a prompt and fair resolution in a procedurally uniform manner. *E.g.*, D.Bd. Rules § 89.92 (relating to order of procedure in a discipline matter and requiring Office of Disciplinary Counsel (ODC) to initiate the presentation of evidence while allowing ODC to present rebuttal evidence). Inclusion of the decisional law of the Court and the Board as a third source of disciplinary and reinstatement procedure serves as a supplement of and complement to the rules. See, *e.g.*, *Office of Disciplinary Counsel v. Duffield*, 644 A.2d 1186, 1188 (Pa. 1994) (the Board reviews a hearing committee’s actions on a *de novo* basis); *Office of Disciplinary Counsel v. Zdrok*, 645 A.2d 830, 833 (Pa. 1994) (holding that ODC is not required to charge a violation of Enforcement Rule 214(d) in a petition for discipline based on a criminal conviction because Rule 214(d) is a procedural rule rather than a substantive rule of law; ODC’s reference to Rule 214(d) and Rule 203 in the “Charge” section of the petition “clearly gives proper notice” of the charge); *Office of Disciplinary Counsel v. Frederick Seth Lowenberg*, No. 9 DB 2017, D.Bd. Rpt. 11/1/17, FOF 11 at pp. 4-5, p. 7 (a respondent-attorney who receives notice that he or she is to receive an informal admonition, does not exercise his or her right to

demand the institution of a formal proceeding, and does not appear for the imposition of the informal admonition, is conclusively deemed to have violated the Rules of Professional Conduct and the Enforcement Rules found to have been violated during the informal review) (S.Ct. Order 12/26/17).

The proposed Note after subdivision (a) of D.Bd. Rules § 89.2 provides that the Pennsylvania Rules of Civil Procedure relating to pleading and motion practice are *not* applicable to formal proceedings. This Note is designed to dispel any misunderstanding, possibly encouraged by current subdivision (a)'s reference to the Pennsylvania Rules of Civil Procedure, that the Pennsylvania Rules of Civil Procedure are applicable to pleading and motion practice within the disciplinary system. Parenthetically, Enforcement Rule 213(h) and D.Bd. Rules § 91.6 provide that any rule of the Court providing for discovery—which would include Rules of Civil Procedure providing for depositions, discovery, interrogatories, production of documents and things, and inspection (Pa.R.C.P. 4001–4025)—shall not be applicable to disciplinary proceedings.

Limiting the types of motions permitted by the Rules of Civil Procedure.

Uncertainty about the meaning of “equity procedure” promotes confusion about the permissible types of motions. Prehearing and hearing motions permitted by the Rules of Civil Procedure, such as motions for summary judgment and motions for directed verdict, are not specifically authorized or contemplated by Board rules and are foreign to established disciplinary practice. With a view toward streamlining the pre-hearing and hearing process by eliminating procedures that could be cumbersome or diversionary and impede the prompt disposition of a case, new proposed subdivision (b) of § 89.2 identifies several types of prehearing motions, and new proposed subdivision (c) of § 89.2 identifies several types of hearing motions, that are not to be accepted for filing, but if accepted for filing by the Board Prothonotary—who is not expected to screen every motion submitted for filing—are not to be entertained. The language of subdivision (b) that precludes “any motion attacking the validity of the proceedings or pre-petition [for discipline] procedures, or any similarly-styled motion,” is consistent with D.Bd. Rules § 89.1(b), which provides that the filing of a petition for discipline shall be conclusive evidence that all conditions precedent thereto have been satisfied and the failure to comply with any pre-petition requirement shall not affect the validity of formal proceedings. Proposed subdivision (b) does not preclude a party from filing a pre-hearing motion *in limine* for a ruling on the admissibility of evidence.

D.Bd. Rules § 89.93(a) provides, in pertinent part, that at the time of hearing, a party shall have a “right of presentation of evidence, cross-examination, objection, *motion* and argument.” (Emphasis added.) A proposed Note after D.Bd. Rules § 89.93(a) cross-references proposed D.Bd. Rules § 89.2(c) to alert the participants of the existence of limitations on the types of hearing motions that may be filed. It is important to recognize that the proposed limitations on hearing motions do not preclude a party from making appropriate oral or written motions at the time of hearing, such as a motion for sequestration of witnesses or a motion to strike a witness's answer to a question when the party's hearing objection is sustained. Nor is a respondent precluded from arguing, either during oral argument at the close of the taking of testimony or in a post-hearing brief to the

hearing committee or special master, that the hearing committee or special master recommend to the Board that the charges be dismissed based on insufficient evidence to sustain the charges.

Limitation on pleadings.

D.Bd. Rules § 89.55, titled “No other pleadings,” limits pleadings in formal proceedings to a petition for discipline or for reinstatement and an answer thereto. A proposed Note to the Rule is designed to curtail the filing of preliminary objections to the petition for discipline and to relieve a party of filing a responsive pleading to an answer containing new matter.

The Board's “service” rule should be amended to clarify the meaning and application of the rule.

D.Bd. Rules § 89.21, which addresses “service” by the Board of orders, notices and other documents “originating with” the Board, provides that service is to be made by mail except when another method of service is specifically required by Board rules, and when service is attempted but not accomplished by mail, the Board may authorize another person to make personal service.

The Board proposes that D.Bd. Rules § 89.21 be amended for two purposes: first, to clarify the meaning and application of the Rule; and second, to change the method of service of filings in the form of original process issued by the Board. The language of the current Rule, which is captioned “Service by the Board,” appears to have been intended to apply to “service” by the Board of original process in the form of a petition or order generated by the Board on *its own motion*, such as a petition authorized by Pa.R.D.E. 301(d) (relating to disability proceedings) or a rule to show cause authorized by Pa.R.D.E. 208(f)(5) (relating to temporary suspension proceedings), and not the notice of orders and other documents that the Board, as an adjudicatory body, would be required to give to the participants in the normal course of a formal proceeding not initiated by the Board on its own motion. Hence, the Board proposes that D.Bd. Rules § 89.21 be amended to provide, in new subsection (a), that the Board may give “notice” of orders, notices and other documents generated by the Board to the participants by mail. In contrast, the Board would be required, under new subsection (b), to attempt personal service of original process documents generated by the Board, although if personal service could not be made after reasonable efforts, service could be made by delivering a copy of the original process to an employee, agent or other responsible person at the respondent-attorney's office, and if that method of service is unavailable, substituted service could be made by mail as permitted by Pa.R.D.E. 212. The proposed service amendments are patterned after the service requirements approved by the Court in Pa.R.D.E. 208(f)(1) (relating to temporary suspension proceedings).

Amending D.Bd. Rules § 89.21 will require a minor revision to two other rules.

Section 89.21 appears elsewhere in the rules—namely, the first sentence of Enforcement Rule 213(d)(3) (relating to appeal of challenges to a subpoena) and the first sentence of that Rule's analog, D.Bd. Rules § 91.3(a)(3). Both references to § 89.21 will have to be changed to § 89.21(a) in light of the proposal to divide the Board's service rule into subparagraphs (a) and (b).

The two Board rules that permit an interlocutory appeal require revision.

Two Board rules authorize an interlocutory appeal to the Board from a hearing committee or special master

determination: D.Bd. Rules § 91.3(a)(3), which pertains to a challenge to a subpoena; and D.Bd. Rules § 85.11, which pertains to a motion to disqualify a hearing committee member or special master. Both rules require revision, as follows.

D.Bd. Rules § 91.3(a)(3)—as does its counterpart, Enforcement Rule 213(d)(3)—currently mentions an appeal only from a “hearing committee” but already has in place a well-defined procedure for pursuit of the appeal. Therefore, the only required revision to these two rules is to include “special master” as a person who may have presided over the initial attack on the subpoena.

In contrast, the language of D.Bd. Rules § 85.11(b) already includes an appeal from a special master but is lacking in procedure. This deficiency is remedied by new subparagraph (b)(4) of § 85.11, which includes a statement of the method of service to be employed by the appealing party and the time in which the non-appealing party may file a response. The proposed procedural additions are patterned after the procedure for appeal in D.Bd. Rules § 91.3(a)(3) and Enforcement Rule 213(d)(3). The new rule would also allow the Board Vice-Chair to decide the appeal when the Board Chair is unavailable, which would include the situation where the Board Chair is required to recuse him- or herself.

The enabling rules should be amended to allow a single Board member or a three-member panel to act for the Board on an appeal.

Both types of appeal under discussion are decided by a single Board member. An appeal from a challenge to a subpoena is decided by a designated lawyer-Member of the Board, while an appeal from a motion to disqualify is decided by the Board Chair.

The current enabling provisions of the Enforcement Rules do not clearly allow a single Board member to rule on an appeal if the appeal involves an issue of *substantive* law. Enforcement Rule 205(c)(12) gives the Board the power and duty “[t]o adopt rules of procedure not inconsistent with the [Enforcement R]ules. Such rules may provide for the delegation to the Board Chair or the Vice-Chair of the power to act for the Board on *administrative* and *procedural* matters.” (Emphasis added). In view of the possibility that any given appeal under either of the above-mentioned Board rules could require the interpretation or application of substantive law, the Board recommends that Enforcement Rule 205(b) and D.Bd. Rules § 93.22(a) be revised, and new Enforcement Rule 205(c)(16) and D.Bd. Rules § 93.23(a)(16) be added, to give the Board Chair, the Vice-Chair, a designated lawyer-Member of the Board, or a three-member panel of the Board the power to act for the Board on an appeal. The revisions are not intended to create new grounds for interlocutory appeal, as the proposed revisions to Enforcement Rule 205 delegate power to the Board member or panel to act only “when such appeal is permitted by the [Enforcement R]ules, the Board Rules, or other law.”

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 March 9, 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

§ 85.11. Recusal.

* * * * *

(b) *Procedure for recusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or a hearing committee member or a special master shall be made in accordance with these rules, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion. The procedures applicable to a motion for recusal shall be as follows:

(1) The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).

(2) In the case of a motion to disqualify a hearing committee member or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master **and must specify the grounds upon which the motion is based.**

(3) The motion shall be ruled upon by the challenged member or special master.

(4) An interlocutory appeal from the decision on the motion [, **which appeal shall be ruled upon by the Board Chair,] may be filed with the Board within five business days after the decision on the motion. The appealing party shall serve a copy of the appeal on the non-appealing party by mail on the date that the appealing party files the appeal, and the non-appealing party may file a response within five business days after delivery. The appeal shall be ruled upon by the Board Chair, or the Vice-Chair when the Chair is unavailable.**

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

GENERAL MATTERS

§ 89.2. [Equity procedure to apply] Procedure in formal proceedings to be governed by Board Rules, Enforcement Rules, and decisional law; limitations on motions.

[Except where inconsistent with these rules, formal proceedings before hearing committees, special masters and the Board shall conform generally to the practice in actions in equity under the Pennsylvania Rules of Civil Procedure.]

(a) Enforcement Rule 208(c) provides that the procedure in formal proceedings before hearing committees, special masters, and the Board shall be governed by these Rules, the Enforcement Rules, and the decisional law of the Court and the Board in attorney discipline and reinstatement matters.

Official Note: The Pennsylvania Rules of Civil Procedure relating to pleadings, answers to pleadings, motions, and responses to motions, are not applicable to formal proceedings before hearing committees, special masters, and the Board.

(b) Limitations on prehearing motions. A motion for summary judgment or judgment on the pleadings, a motion to strike the petition for discipline or portions thereof, a motion to dismiss based on insufficient evidence to proceed with formal charges, any motion attacking the validity of the proceedings or pre-petition procedures, or any similarly-styled motion, shall not be accepted for filing, but if accepted for filing, shall not be entertained.

(c) Limitations on hearing motions. A motion for directed verdict or nonsuit, a motion to dismiss based on insufficient evidence, any motion attacking the validity of the proceedings, or any similarly-styled motion, shall not be accepted for filing, but if accepted for filing, shall not be entertained.

SERVICE OF DOCUMENTS

§ 89.21. Notice by the Board to participants; Service of original process 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 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.]

(a) Notice to participants. The Board shall give notice of orders, notices, and other documents generated by the Board by mailing a copy to the participants.

(b) Service of original process on the Board's own motion. A copy of original process in the form of a petition filed, or order issued, by the Board on its own motion shall be personally served upon the respondent-attorney by anyone duly authorized by the Executive Office unless another method of service shall be specifically required by these Rules or the Enforcement Rules, provided, however, that if personal service cannot be made after reasonable efforts to locate and serve the respondent-attorney, service may be made by delivering a copy to an employee, agent, or other responsible person at the office of the respondent-attorney, and if that method of service is unavailable, then by mailing a copy in the manner provided in Enforcement Rule 212 (relating to substituted service).

Subchapter B. INSTITUTION OF PROCEEDINGS

§ 89.55. **No other pleadings.**

Pleadings shall be limited to a petition for discipline (or for reinstatement) and an answer thereto.

Official Note: Preliminary objections to the petition for discipline are not permitted. If an answer to a petition for discipline contains new matter, a reply to the new matter is not required.

**Subchapter C. HEARING PROCEDURES
HEARING**

§ 89.93. **Presentation by the parties.**

(a) *General rule.* The respondent-attorney and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

Official Note: See D.Bd. Rules § 89.2(c) for limitations on hearing motions.

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CHAPTER 91. MISCELLANEOUS MATTERS

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

§ 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).

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

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**CHAPTER 93. ORGANIZATION AND
ADMINISTRATION**

Subchapter B. THE DISCIPLINARY BOARD

§ 93.22. **Quorum and manner of acting.**

(a) *General rule.* Enforcement Rule 205(b) provides that seven members of the Board shall constitute a quorum and that, except when acting under § 93.23(a)(5), (7) [and], (8), and (16) (relating to powers and duties), the Board shall act only with the concurrence of not less than the lesser of:

- 1. seven members, or
- 2. a majority of the members in office who are not disqualified from participating in the manner or proceeding.

(b) *Determination of quorum.* Enforcement Rule 205(b) further provides that the presence of members who are disqualified from participating in one or more matters to be considered at a meeting shall nonetheless be counted for purposes of determining the existence of a quorum for the consideration of all matters on the agenda.

§ 93.23. Powers and duties.

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

* * * * *

(15) To recommend the temporary suspension of a respondent-attorney pursuant to Enforcement Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

(16) **To decide, through the Board Chair, the Vice-Chair, a designated lawyer-member of the Board, or a designated panel of three members, an interlocutory appeal to the Board when such appeal is permitted by the Enforcement Rules, these rules, or other law.**

(17) To exercise the powers and perform the duties vested in and imposed upon the Board by law.

(b) *Consultations with local bar associations.* Enforcement Rule 205(d) provides that the Board shall, to the extent it deems feasible, consult with officers of local bar associations in the counties affected concerning any appointment which it is authorized to make under the Enforcement 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 B. MISCONDUCT

Rule 205. The Disciplinary Board of the Supreme Court of Pennsylvania.

* * * * *

(b) The regular terms of members of the Board shall be for three years, and no member shall serve for more than two consecutive three-year terms. Except when acting under paragraph (c)(5), (7), (8) [**and**], (9), **and (16)** of this rule, the Board shall act only with the concurrence of not less than the lesser of:

- (i) seven members, or
- (ii) a majority of the members in office who are not disqualified from participating in the matter or proceeding.

Seven members shall constitute a quorum. The presence of members who are disqualified from participating in one or more matters to be considered at a meeting shall nonetheless be counted for purposes of determining the existence of a quorum for the consideration of all matters on the agenda.

(c) The Board shall have the power and duty:

* * * * *

(15) To recommend the temporary suspension of a respondent-attorney pursuant to Enforcement Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

(16) **To decide, through the Board Chair, the Vice-Chair, a designated lawyer-member of the Board, or a designated panel of three members, an interlocutory appeal to the Board when such appeal is permitted by these rules, the Board Rules, or other law.**

(17) To exercise the powers and perform the duties vested in and imposed upon the Board by law.

(d) The Board shall, to the extent it deems feasible, consult with officers of local bar associations in the counties affected concerning any appointment which it is authorized to make under these rules.

Rule 208. Procedure.

* * * * *

(c) [*Hearing procedures. Proceedings*] **Prehearing and hearing procedures.—The procedure in formal proceedings** before hearing committees [**and**], special masters, **and the Board** shall be governed by Board rules, **the Enforcement Rules, and the decisional law of the Court and the Board in attorney discipline and reinstatement matters.** [**except that, unless**] **Unless** waived in the manner provided by [**such rules**] **the Board Rules**, 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 hearing committee or special master.

* * * * *

Rule 213. Subpoena power, depositions and related matters.

* * * * *

(d) *Challenges; appeal of challenges to subpoena.* Any attack on the validity of a subpoena issued under this rule shall be handled as follows:

(1) A challenge to a subpoena authorized by subdivision (a)(1) 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. *See* D.Bd. Rules § 91.3(b) (relating to procedure).

(2) A challenge to a subpoena authorized by subdivision (a)(2) shall be heard and determined by a member of a hearing committee in the disciplinary district in which the subpoena is returnable in accordance with the procedure established by the Board. *See* D.Bd. Rules § 91.3(b) (relating to procedure).

(3) A determination under paragraph (1) or (2) may be appealed to a lawyer-Member of the Board, within ten days after service pursuant to D.Bd. Rules §§ [**89.21**] **89.21(a)** and 89.24 of the determination on the party bringing the appeal by filing a petition with the Board setting forth in detail the grounds for challenging the determination. The appealing party shall serve a copy of the petition on the non-appealing party by mail on the date that the appealing party files the appeal, and the non-appealing party shall have five business days after delivery to file a response. No attack on the validity of a subpoena will be considered by the Designated lawyer-Member of the Board unless previously raised before the

hearing committee or special master. The Board Member shall decide the appeal within five business days of the filing of the non-appealing party's response, if any. There shall be no right of appeal to the Supreme Court. Any request for review shall not serve to stay any hearing or proceeding before the hearing committee, special master, or the Board unless the Court enters an order staying the proceedings.

* * * * *

[Pa.B. Doc. No. 20-142. Filed for public inspection January 31, 2020, 9:00 a.m.]

**Title 204—JUDICIAL SYSTEM
GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CHS. 85, 91 AND 93]**

Amendments to Rules of Organization and Procedure of the Disciplinary Board of The Supreme Court of Pennsylvania; Order No. 93

By Order dated October 2, 2019, effective November 1, 2019, the Supreme Court of Pennsylvania amended Rules 102, 201, 217, and 219 of the Pennsylvania Rules of Disciplinary Enforcement related to the limited admission to the practice of law in Pennsylvania by attorney spouses of active-duty service members. 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.

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

Absent attorney—An attorney or formerly admitted attorney for whom a conservator has been sought or appointed under the Enforcement Rules.

Administrative Office—The Administrative Office of Pennsylvania Courts.

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

Attorney—Includes any person subject to these rules.

***Attorney participant in defender or legal services programs*—An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 311 (relating to limited admission of participants in defender or legal services programs).**

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

***Attorney spouse of an active-duty service member*—An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 304 (relating to limited admission of spouses of active-duty members of the United States Uniformed Services).**

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

* * * * *

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

Practice of law—Includes the provision of legal services as a foreign legal consultant [**or**], military attorney, [**or**] **attorney spouse of an active-duty service member, attorney participant in defender or legal services programs, or** pursuant to a Limited In-House Corporate Counsel License.

Private reprimand—Private reprimand by the Board.

* * * * *

§ 85.3. Jurisdiction.

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

(1) Any attorney admitted to practice law in this Commonwealth.

Official Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney, **attorney spouse of an active-duty service member, attorney participant in defender or legal services programs**, or a person holding a Limited In-House Corporate Counsel License. See the definitions of “attorney,” “practice of law” and “respondent-attorney” in § 85.2 (relating to definitions).

* * * * *

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter E. FORMERLY ADMITTED ATTORNEYS

§ 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), **limited certificate of admission issued under Pennsylvania Bar Admission Rule 304 (relating to limited admission of attorney spouses of active-duty service members), or limited certificate of admission issued under Pennsylvania Bar Admission Rule 311 (relating to attorney participants in defender or legal services programs)**. 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.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.142. Filing of annual fee form by attorneys.

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

to register electronically by July 1. Failure to receive notice shall not excuse the filing of the annual fee form or payment of the annual fee.

(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:

(1) The form shall set forth:

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

* * * * *

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

(5) Submission of the annual fee form through electronic means signifies the attorney’s intent to sign the form. By submitting the form electronically, the attorney certifies that the electronic filing is true and correct.

[Pa.B. Doc. No. 20-143. Filed for public inspection January 31, 2020, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of The Supreme Court of Pennsylvania; Order No. 94

By Order dated November 18, 2019, effective December 18, 2019, the Supreme Court of Pennsylvania amended Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement related to the form of payment to the Board. 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 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.142. Filing of annual fee form by attorneys.

(a) *Transmission of form.* Enforcement Rule 219(c) provides that on or before May 15 of each year the Attorney Registration Office shall transmit to all attorneys required by the rule to pay an annual fee a notice by e-mail to register electronically by July 1. Failure to receive notice shall not excuse the filing of the annual fee form or payment of the annual fee.

(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**] **payment** returned to the Board unpaid. On or before July 1 of each year the Executive Office 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.

(a) *Action by Attorney Registration Office.* Enforcement Rule 219(f) provides that when any attorney fails to complete the registration required by §§ 93.141 and 93.142 by July 16, the Attorney Registration Office shall:

(1) automatically assess against the attorney a non-waivable late payment penalty established by the Board;

(2) automatically add to the delinquent account of any attorney who has failed to complete registration by August 1, a second, non-waivable late payment penalty established by the Board;

(3) after August 1, certify to the Supreme Court the name of every attorney who has failed to comply with the registration and payment requirements of §§ 93.141 and 93.142 of these rules; and

(4) upon the Supreme Court's entry of an order of administrative suspension as provided in subsection (b) of this rule, transmit by certified mail, addressed to the last known mailing address of the attorney, or by electronic means, the order of administrative suspension and a notice that the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be included with the notice.

For purposes of assessing the late payment penalties prescribed by this section, registration shall not be deemed to be complete until the Attorney Registration Office receives a completed annual fee form and satisfactory payment of the annual fee and of all outstanding collection fees and late payment penalties. If [**a check in**] payment of the delinquency has been returned to the Board unpaid, a collection fee, as established by the Board under § 93.142(b)(2) of these rules, shall be added to the attorney's delinquent account and registration shall not be deemed to be complete until the delinquent account has been paid in full.

The amount of the late payment penalties shall be established by the Board annually pursuant to the provisions of § 93.145(b) of these rules.

(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:

* * * * *

(3) Where [**a check in**] payment of the fees and late payment penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2) of these rules, shall also have been paid.

(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 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.

* * * * *

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

(1) An attorney who is not engaged in practice in Pennsylvania, has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or is not required by virtue of his or her practice elsewhere to maintain active licensure in the Commonwealth may request inactive status or continue that status once assumed. The attorney shall file either the annual form required by § 93.142(b) and request inactive status or file Form DB-28 (Notice of Voluntary Assumption of Inactive Status). The attorney shall be removed from the roll of those classified as active until and unless such inactive attorney makes a request under paragraph (3) of this section for an administrative return to active status and satisfies all conditions precedent to the grant of such request; or files a petition for reinstatement under § 89.273(b) (relating to procedure for reinstatement of an attorney who has been on inactive status for more than three years, or who is on inactive status and had not been on active status at any time within the prior three years) and is granted reinstatement pursuant to the provisions of § 89.273(b) of these rules.

(2) An inactive attorney under this subsection (b) shall continue to file the annual form required by § 93.142(b), and shall file the form through the online system identified in § 93.141(a) and shall pay an annual fee of \$100.00 in the manner provided in § 93.142(b)(2). Noncompliance with this provision will result in the inactive attorney incurring late payment penalties, incurring a collection fee for any [**check in**] payment that has been returned to the Board unpaid, and being placed on administrative suspension in accordance with the provisions of § 93.144.

(3) *Administrative Change in Status from Inactive Status to Active Status:* An attorney on inactive status may request a resumption of active status by filing Form DB-29 (Application for Resumption of Active Status) with

the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office. Resumption of active status shall be granted unless the inactive attorney is subject to an outstanding order of suspension or disbarment, unless the inactive attorney has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct (see § 89.273(b)), unless the inactive status has been in effect for more than three years, or unless the inactive attorney had not been on active status at any time within the preceding three years (see § 89.273(b)), upon the payment of:

(i) the active fee for the registration year in which the application for resumption of active status is made or the difference between the active fee and the inactive fee that has been paid for that year; and

(ii) any collection fee or late payment penalty that may have been assessed pursuant to § 93.144 of these rules, prior to the inactive attorney's request for resumption of active status.

Where [**a check in**] payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to inactive status, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2), shall also have been paid.

Official Note: The Note to Enforcement Rule 219(j) explains that § 93.145 (relating to reinstatement of administratively suspended attorneys) and § 93.146 (relating to resumption of active status by retired or inactive attorneys) do not apply if, on the date of the filing of the request for reinstatement, the formerly admitted attorney has not been on active status at any time within the preceding three years. See § 89.273(e)(1).

§ 93.148. Administrative change in status from administrative suspension to inactive status.

(a) Enforcement Rule 219(k) provides that an inactive attorney who has been administratively suspended for failure to file the annual form and pay the annual fee required by § 93.146(b)(2) of these rules, may request an administrative change in status form from the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office and said Office shall change the status of an attorney eligible for inactive status under this subsection (a) upon receipt of:

(1) the annual form required by § 93.142 of these rules;

(2) payment of the annual fee required by § 93.141 of these rules;

(3) payment of the annual fee that was due in the year in which the attorney was administratively suspended;

(4) payment of all collection fees and late payment penalties assessed under § 93.142(b)(2) and § 93.144 of these rules; and

(5) payment of an administrative processing fee of \$100.00.

Where [**a check in**] payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney

to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2), shall also have been paid.

(b) Enforcement Rule 219(k) provides that an active attorney who has been administratively suspended for failure to file the annual form required by § 93.142 and pay the annual fee required by § 93.141 must comply with § 93.145 (relating to reinstatement of administratively suspended attorneys) before becoming eligible to register as inactive or retired.

[Pa.B. Doc. No. 20-144. Filed for public inspection January 31, 2020, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of The Supreme Court of Pennsylvania; Order No. 95

By Order dated December 18, 2019, effective January 17, 2020, the Supreme Court of Pennsylvania amended Rule 205 of the Pennsylvania Rules of Disciplinary Enforcement related to the composition of the Board and membership terms. 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 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.21. The Disciplinary Board.

Enforcement Rule 205(a) and (b) provide that the Supreme Court shall appoint a board to be known as “The Disciplinary Board of the Supreme Court of Pennsylvania” which shall be composed of [11] ten members of the bar of this Commonwealth and two non-lawyer electors; that the regular [terms] term of members of the Board shall be for [three years;] six years, unless otherwise specified by order of the Court; and that no member shall serve for more than [two consecutive three-year terms] one term.

[Pa.B. Doc. No. 20-145. Filed for public inspection January 31, 2020, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 37]

Amendments to Chapter 37 of the Pennsylvania Rules of Appellate Procedure, Business of the Commonwealth Court; No. 126 Misc. Doc. No. 3

Order

Per Curiam

And Now, this 17th day of January, 2020, it is Ordered pursuant to Pa.R.A.P. 104(a) that Chapter 37 of the Rules of Appellate Procedure, Business of the Commonwealth Court, is amended in the following form. These amendments shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 37. BUSINESS OF THE COMMONWEALTH COURT

IN GENERAL

Rule 3701. Amendments to Chapter.

This chapter may be added to or otherwise amended by order of the Supreme Court, or by order of the Commonwealth Court pursuant to [Rule 104 (rules of court)] Pa.R.A.P. 104 (Rules of Court).

THE COMMONWEALTH COURT

Rule 3702. Office of the Prothonotary.

All business of the Commonwealth Court, except as otherwise provided by law, by these rules or by order of

[**court**] **Court**, shall be administered through the Office of the [**Chief Clerk**] **Prothonotary** maintained by the [**court**] **Court** at the seat of government in the City of Harrisburg. All matters within the jurisdiction of the [**court**] **Court** may be filed in the Office of the [**Chief Clerk**] **Prothonotary**. Writs or other process issuing out of the [**court**] **Court** shall exit from the Office of the [**Chief Clerk**] **Prothonotary** and shall be returnable there.

Official Note: Based on former Commonwealth Court Rule 2 and makes no change in substance.

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

Rule 3702.1. Office of Chief Legal Counsel.

The Office of Chief Legal Counsel shall provide legal support and counsel to the Judges, the Prothonotary, and the Executive Administrator; assist the Court in reviewing and processing filings; prepare memos for the Court as directed; screen cases; certify cases to advise the Court of apparent conflicts; prepare memos to inform the Court of recent Supreme Court decisions; and accept such other responsibilities as may be assigned by the Court or President Judge.

Rule 3703. Regular Sessions.

Regular sessions of the [**court**] **Court**, including regular sessions to hear cases listed for argument, shall be held at the seat of government in the City of Harrisburg and in the cities of Philadelphia and Pittsburgh as fixed by court calendars adopted from time to time.

Official Note: Former Commonwealth Court Rule 10 renumbered.

Rule 3704. Special Sessions.

(a) *General rule.*—A special session of the [**court**] **Court** may [**also**] be held in any judicial district of the Commonwealth whenever the [**court**] **Court** deems such a session to be in the interests of justice because of the convenience of parties or witnesses or both or for any other reason.

(b) *Application.*—An application for such a special session shall state in detail the reasons therefor and shall contain a certification pursuant to 42 Pa.C.S. § 563(b) (other sessions) of the availability, without cost to the Commonwealth, of suitable courtroom and related facilities, a court reporter and necessary personnel.

Official Note: Based on former Commonwealth Court Rule 11 and makes no change in substance.

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

Rule 3706. Docketing Statement.

(a) The Prothonotary shall develop such Docketing Statement forms as may be necessary for the purposes of reviewing new matters filed in the Court's appellate and original jurisdiction and screening matters for the Court's Mediation Program.

(b) In counseled matters, the Prothonotary shall send, along with the notice of docketing as required by Pa.R.A.P. 907(a) or 1514(a)(3), the relevant Docketing Statement form to counsel for the appellant, petitioner or plaintiff.

(1) Counsel for the appellant, petitioner or plaintiff shall file an original and one copy of the Docketing

Statement and all required attachments within ten days of receipt of the notice of docketing.

(2) An unrepresented party shall not be required to file a Docketing Statement.

(c) The party filing the Docketing Statement shall include as attachments:

(1) A statement of issues that shall be no more than two pages in length, and shall set forth a brief summary of the issues and the case sufficient for an understanding of the nature of the appeal, petition for review or complaint. Information in the statement of issues shall be used to screen cases for the Mediation Program, shall not bind any party, and any issue omitted shall not constitute a waiver of the issue before the Court. The statement of issues shall follow the format required by Pa.R.A.P. 124(a).

(2) In matters addressed to the Court's appellate jurisdiction, a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency.

(3) Proof of Service of the Docketing Statement and all attachments indicating service on all parties in accordance with Pa.R.A.P. 121.

(d) Failure to file a Docketing Statement and all attachments as required may result in the dismissal of the matter.

Official Note: The Commonwealth Court Mediation Program is governed by Section 501 of the Internal Operating Procedures of the Commonwealth Court, 210 Pa. Code § 69.501 (Mediation). Counsel must draft the statement of issues so as to provide all the information required by paragraph (c)(1) and allow for adequate screening for mediation. Counsel should not simply attach a copy of the Pa.R.A.P. 1925(b) statement of issues complained of on appeal filed in the trial court, because that statement would not provide an adequate "summary of the issues and the case sufficient for an understanding of the nature" of the matter. The attachments required by paragraph (c)(2) may include, for example, the trial court order and opinion, the order and adjudication of a zoning hearing board, the decision of a Workers' Compensation Judge, and similar orders.

Rule 3707. Preargument Matters; Applications and Motions.

Prior to filing an application or a motion with the Court, a party shall confer with all counsel of record and any unrepresented parties to determine their position. Applications and motions shall include a paragraph indicating whether the other parties concur with the relief sought. If the other party does not respond to an inquiry regarding concurrence within a reasonable time, the party filing the application or motion shall set forth in detail the efforts made to obtain a response and that no response was received. This requirement shall not apply to preliminary objections, motions for judgments on the pleadings, motions for summary judgment or summary relief, petitions to open or strike judgments, applications for supersedeas, petitions to proceed in forma pauperis, and motions for post-trial relief. This requirement also shall not apply to actions involving incarcerated individuals.

BRIEFING AND LISTING OF CASES FOR ARGUMENT

Rule 3711. All Cases to be Heard on Fixed Date.

Cases shall be listed for argument on a fixed date during the regular sessions of the [**court**] **Court**.

Official Note: Former Commonwealth Court Rule 30 renumbered.

Rule 3712. [**Method**] **Manner** of Listing of Cases.

Subject to the time limitations and conditions of Pa.R.A.P. 3713 (argument en banc or before a panel) where applicable:

(1) Each appeal from a court of common pleas, each other matter which under the applicable law is required to be determined by the [**court**] **Court** upon the record before the government unit below, and each matter subject to Pa.R.A.P. 1542 [**(oral argument and evidentiary hearing)**] **(Evidentiary Hearing)** in which no order for an evidentiary hearing has been entered, shall be listed for argument by the [**Chief Clerk**] **Prothonotary** on a specified date, of which notice shall be given by the [**Chief Clerk**] **Prothonotary** to the parties.

(2) An election [**case**] **matter** shall be argued before the [**judges**] **Judge or Judges** to whom it is assigned immediately after the record is closed and briefs shall be submitted to the [**court**] **Court** at or before argument as directed.

(3) An appeal or petition for review (except a matter subject to Paragraphs (1) or (2) of this rule) which under the applicable law may be determined in whole or in part upon the record made before the [**court**] **Court**, shall be listed for argument by the [**Chief Clerk**] **Prothonotary** on a specified date upon order of the [**judge**] **Judge** to whom [**the case was**] **it is** assigned or upon *praecipe* of either party certifying that it is at issue for argument, and notice shall be given by the [**Chief Clerk**] **Prothonotary** to the parties of the date fixed.

(4) A matter, except a matter subject to Pa.R.A.P. 1542, commenced in the [**court**] **Court** within its original jurisdiction when at issue for argument on preliminary matters or after the record has been made shall be listed by the [**Chief Clerk**] **Prothonotary** for argument upon the order of the President Judge or the [**judge**] **Judge** before whom the record has been made.

Official Note: Based upon former Commonwealth Court Rule 31A to D.

Rule 3713. Argument En Banc or Before a Panel.

On the initiative of the [**court**] **Court**, or at the request of either party and approved by the [**assigned judge**] **Judge to whom the matter is assigned**, argument after the record has been made may be heard by the [**court**] **Court** en banc or by a panel of at least three [**judges**] **Judges**.

Official Note: Based on former Commonwealth Court Rule 31E and makes no change in substance.

Rule 3714. Listing of Cases and Briefing Schedules.

(a) *Matters heard solely on certified record.* An appeal from a court of common pleas and each other matter which under the applicable law is required to be determined by the [**court**] **Court** upon the record before the government unit below shall be eligible for listing for argument after the record has been filed. When all briefs and reproduced records have been filed, the [**Chief Clerk**] **Prothonotary** shall list the [**case**] **matter** for oral argument on a specified date and shall give at least

ten days written notice by first class mail to all parties of the date scheduled for the argument. The [**court**] **Court** may direct any matter to be submitted on briefs without oral argument.

(b) *Original jurisdiction matters.* A matter commenced in whole or in part within the original jurisdiction of the [**court**] **Court** including matters under Pa.R.A.P. 1571 (determinations of the Board of Finance and Revenue) when at issue for argument on preliminary matters or after the record has been made [**shall**] **may** be listed for oral argument after the [**court**] **Court** establishes a briefing schedule.

(c) *Extensions of [Time to File Briefs or Reproduced Record] time to file briefs or reproduced record.* A party may submit a written request for an extension of time to file briefs or the reproduced record, which the [**chief clerk**] **Prothonotary** may grant, if the requested extension is: (1) for thirty days or less; (2) the first one sought; and (3) unopposed by all other parties. If any of the three enumerated criteria do not exist, the party must submit its extension request by formal application. The [**prothonotary, chief clerk or deputy prothonotary**] **Prothonotary or Chief Legal Counsel** may act on the formal application.

Official Note: Under Rule 105 the court may reduce or enlarge any of the time periods specified in the rule. Preliminary matters referred to in Subdivision (b) include preliminary objections, motions for judgment on the pleadings, motions for summary judgment and motions to quash.

See Pa.R.A.P. 123 regarding the form of an application for relief, which is necessary if the three requirements in Pa.R.A.P. 3714(c) cannot be met.

Rule 3715. Distribution of Briefs.

The [**Chief Clerk**] **Prothonotary** shall distribute to each [**judge**] **Judge** who is to hear an argument, whether *en banc* or before a panel, at least five days before the argument date, copies of all briefs and reproduced records that have been filed by the parties.

Official Note: Based on former Commonwealth Court Rule 33 and makes no change in substance.

Rule 3716. Citing Judicial Opinions in Filings.

(a) A reported opinion of the Commonwealth Court en banc or [**three-judge**] **three-Judge** panel may be cited as binding precedent.

(b) An unreported panel decision of this Court issued after January 15, 2008, may be cited for its persuasive value, but not as binding precedent.

(c) Any unreported opinion of this Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel.

(d) A reported single [**judge**] **Judge** opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(e) All other single [**judge**] **Judge** opinions of this Court, even if reported, shall be cited only for persuasive value and not as binding precedent.

Official Note: A special election panel is one designated by the president judge to hear election law matters on an expedited basis. Decisions by such panels are made by only the members of the panel without the participation of judges who are not part of the panel. See Internal

Operating Procedure § 112(b) (Courts En Banc and Panels; Composition), § 258 (Decision; Election Law Appeals), § 416 (Reporting of Unreported Opinions).

ARGUMENT BEFORE COURT EN BANC OR A PANEL

Rule 3721. Composition of Court.

Argument of cases shall be heard by the [**court**] **Court** en banc or by a panel as determined by the [**court**] **Court** in its discretion. The President Judge shall, insofar as practicable, assign the members of the [**court**] **Court** to panels in such fashion that each member sits substantially the same number of times with each other member.

Official Note: The first sentence of the rule is based on former Commonwealth Court Rule 41.

Rule 3722. Presiding Judge of [**Panels**] **Panel**.

The President Judge or [**his**] **the President Judge's** designee shall preside over any panel.

Rule 3723. Application for Reargument [**en**] **En** Banc.

In [**cases**] **matters** argued before a single [**judge**] **Judge**, as in petitions for review of determinations of government units which are determined in whole or in part upon the record made before the [**court**] **Court**, or in [**cases**] **matters** argued before a panel of [**judges**] **Judges**, the [**court**] **Court**, at any time on its own initiative before its order becomes final, or upon application for reargument pursuant to these rules, may allow reargument before the [**court**] **Court** en banc. Such action will be taken only for compelling and persuasive reasons.

Official Note: Based on former Commonwealth Court Rule 43. The time for applying for reargument is increased from ten to 14 days. See Rule 2542(a)(1) (time for application for reargument).

EVIDENTIARY HEARINGS

Rule 3731. Assignment of Judge.

Each matter which under the applicable law may be determined in whole or in part upon the record made before the [**court**] **Court**, and each election case shall be assigned by the President Judge to a [**judge**] **Judge**, who shall be responsible for all [**matters in the case**] **aspects of the matter** until such time as it is concluded by [**him**] **the Judge** or is at issue for argument.

Official Note: Based on former Commonwealth Court Rule 50 and makes no change in substance. See also 42 Pa.C.S. § 564 (evidentiary hearings) which provides that in any matter which requires the taking of testimony, the President Judge of the Commonwealth Court may assign a judge of the court, or another judge temporarily assigned to the court pursuant to 42 Pa.C.S. § 4121 (assignment of judges), to sit and receive evidence, and to perform such other duties as may be prescribed by rule or order of court.

Rule 3732. Setting of Hearing.

[**Unless an evidentiary hearing is set by the President Judge or by the assigned judge, such a hearing shall be held only**] **An evidentiary hearing shall be held when set by the President Judge or by the Judge to whom the matter is assigned or after a**

praecipe therefor has been filed by any party. If the President Judge has not set the time and place for an evidentiary hearing, the [**assigned judge**] **Judge to whom the matter is assigned** shall fix the time and place for hearing of each [**case assigned to him**] **matter**, subject to the approval of the President Judge as to space and staff limitations.

Official Note: Former Commonwealth Court Rule 51 renumbered.

Rule 3733. Rotation of Assignments.

Insofar as is practicable in view of the pending case loads of individual [**judges**] **Judges**, and the duties and responsibilities of the President Judge, assignments shall be made on a rotating basis to and among the [**judges of the court**] **Judges**.

Official Note: Former Commonwealth Court Rule 52 renumbered.

Rule 3734. Record in Evidentiary Hearing Cases.

In matters which under the applicable law may be determined in whole or in part upon the record made before the [**court**] **Court**, the record made before the [**court**] **Court** as transcribed and filed, together with the pleadings and other documents filed incident to the matter (including any record certified pursuant to Chapter 19 (preparation and transmission of the record and related matters)), shall comprise the record in the [**court**] **Court** and need not be reproduced for purposes of argument, except as prescribed in [**Rule**] **Pa.R.A.P. 2111(c)** (pleadings).

Official Note: Based on former Commonwealth Court Rule 81 and makes no change in substance.

Rule 3735. Jury Trials.

Upon notice from the Commonwealth Court that a matter in that [**court**] **Court** is to be tried by jury, the court of common pleas of a county in which the matter is to be tried shall provide courtroom facilities and a jury. The matter shall be tried as a Commonwealth Court case at such time as the president judge of the designated court of common pleas and the President Judge of the Commonwealth Court shall agree.

Official Note: The judge who presides over the trial of such a Commonwealth Court case will be a judge assigned under Rule 3731 (assignment of judge), who may be either a judge of the Commonwealth Court or another judge (whether or not of the judicial district which provides the jury) temporarily assigned to the Commonwealth Court pursuant to Rule 701 of the Pennsylvania Rules of Judicial Administration (assignment of judges to courts). See also note to Rule 3731 (assignment of judge).

POST DECISION

Rule 3740. Request to Report Unreported Opinion.

Within 30 days after an opinion has been filed as unreported, any person may file an application to report the opinion. Except as noted in the next sentence, grant of the application requires an affirmative majority vote of the [**commissioned judges**] **Commissioned Judges**. Grant of an application to report an opinion of a single [**judge**] **Judge** or an opinion of a special election panel requires an affirmative two-thirds vote of the [**commissioned judges**] **Commissioned Judges**.

* * * * *

Rule 3751. Taxation of Costs.

A party who desires costs to be taxed under Pa.R.A.P. 2762(b) (procedure for collection of costs on appeal) shall state them in an itemized and verified bill of costs which such party shall file with the [**Chief Clerk**] **Prothonotary** within 14 days after entry of the judgment or other final order.

Official Note: As to taxation of costs generally see Chapter 27 (fees and costs in appellate courts and on appeal).

ENFORCEMENT OF AGENCY ORDER

Rule 3761. Enforcement Proceedings.

* * * * *

(c) *Hearing and Notice.* Upon the filing of a petition to enforce, the [**court**] **Court** will issue an order setting a date for a hearing and a date by which the respondent must answer the petition. The petitioner shall serve the [**court's**] **Court's** order upon the respondent in the manner prescribed by Pa.R.A.P. 121 and 122.

(d) *Relief.* Following the hearing, the [**court**] **Court** will enter such orders as may be appropriate.

(e) *Discovery.* Discovery shall be allowed only upon leave of court.

* * * * *

SUMMARY AND FORMAL PROCEEDINGS AGAINST INSURERS

Rule 3771. Scope of Rules.

[**Rules**] **Pa.R.A.P.** 3771—3784 apply to all actions in the Commonwealth Court arising under Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, as amended, 40 P.S. §§ 221.1—221.63 (concerning summary and formal proceedings against insurers) (Article V). The rules are intended to govern practice and procedures in Article V proceedings. In the event of any inconsistency, the provisions of Article V control.

Rule 3772. Definitions.

* * * * *

(c) *Adversarial proceeding*—Any action (1) initiated by the rehabilitator or liquidator against persons other than the insurer, (2) asserting a right or interest afforded by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress, and (3) that the Court determines shall be governed by [**Rule**] **Pa.R.A.P.** 3783 (adversarial proceedings) as an adversarial proceeding.

(d) *Ancillary case docket*—A docket created when an adversarial proceeding is initiated or when a creditor files an objection to the liquidator's claim determination under [**Rule**] **Pa.R.A.P.** 3781(c) (claim procedure).

(e) *Court*—The Commonwealth Court of Pennsylvania.

(f) *Formal proceeding*—An action to rehabilitate or liquidate an insurer pursuant to Sections 515 or 520 of Article V, 40 P.S. §§ 221.15, 221.20.

(g) *Master service list*—The list maintained by the Commissioner or receiver, as the case may be, as directed in [**Rule**] **Pa.R.A.P.** 3778 (master service list).

* * * * *

Rule 3773. Filings; Number of Copies.

(a) *General rule.* Each paper filing shall consist of the original document, two (2) copies, and a labeled CD-ROM or USB flash drive containing a copy of the filing in portable document format (PDF).

(b) *Exception.* A copy on a labeled CD-ROM or USB flash drive is not required for a proof of service or report of the performance of a ministerial task.

(c) *No courtesy copies.* Courtesy copies of filings shall not be provided to the [**judge's**] **Judge's** chambers.

Official Note: Electronic Filing—The Court adopted these Rules before electronic filing became available. When electronic filing becomes available this Rule will be reviewed.

Rule 3775. Intervention in Formal Proceedings.

(a) *Intervention.* A person not named as a respondent in a formal proceeding who has a direct and substantial interest in the administration of the insurer's business or estate may request leave of court to intervene.

(b) *Application to intervene.* A request for leave to intervene, generally or for a limited purpose, shall be by application and answer, if any, in accordance with [**Rule**] **Pa.R.A.P.** 123 (application for relief). The application shall contain a concise statement of the interest of the applicant and the purposes for which the applicant seeks to intervene. A copy of the document to be filed if the Court allows intervention shall be attached to the application.

(c) *Action on application.* Intervention in a formal proceeding shall be allowed if the proven or admitted allegations of the application establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.

* * * * *

(d) Upon grant of an application to intervene, the document attached to the application to intervene, that is, the application for relief under [**Rule**] **Pa.R.A.P.** 3776 or complaint under [**Rule**] **Pa.R.A.P.** 3783, shall be deemed filed, and the Court shall direct the time for filing a response.

Official Note: General or limited intervention—Intervention, whether general or limited in scope, may be granted for purposes such as, but not limited to:

* * * * *

(6) Compel the liquidator to issue a notice of determination if the liquidator has failed to do so in conformity with [**Rule**] **Pa.R.A.P.** 3781 (claim procedure).

Relief from stay—Intervention is a prerequisite to filing an application for relief from the stay of actions against the insurer that is imposed under Section 526, 40 P.S. § 221.26.

Rule 3776. Applications for Relief or Court Approval.

Relief or approval from the Court shall be requested by application. An application for relief or an application by the receiver for the Court's approval shall comply with [**Rule**] **Pa.R.A.P.** 123 (application for relief), except that a response, if any, shall be filed within thirty (30) days of service of an application for relief or an application for Court approval. Upon application, the Court may alter

the time for response. The application and any response may be supported by a memorandum of law.

Official Note: *Alteration of the time for response—* Requests based on an agreement of the parties are more likely to receive favorable consideration.

*Court approval—*From time to time, the receiver must obtain the Court's approval of an action proposed to be taken in the course of administering the estate, such as, but not limited to, making an interim distribution of assets.

Rule 3777. Docketing.

(a) *Administrative case docket.* Upon the filing of a petition to rehabilitate or liquidate an insurance company under Article V, the [**chief clerk**] **Prothonotary** shall create an administrative case docket and assign the petition a number thereon. All filings directly related to the Court's consideration of the petition for rehabilitation or liquidation shall be filed at that number, and this docket will contain all filings concerning the administration of the insurer's business or estate should the petition be granted.

* * * * *

(c) *Ancillary case docket.* When a complaint is filed by or against the receiver to commence an adversarial proceeding under [**Rule**] **Pa.R.A.P.** 3783 (adversarial proceeding), when the Court *sua sponte* directs that a dispute initiated by an application for relief under [**Rule**] **Pa.R.A.P.** 3776 (applications) be treated as an adversarial proceeding under [**Rule**] **Pa.R.A.P.** 3783 or when an objection is filed to a notice of determination under [**Rule**] **Pa.R.A.P.** 3781 (claim procedure), the [**chief clerk**] **Prothonotary** will note such filing on the administrative case docket, establish an ancillary case docket and assign a number for each such matter. The party initiating an ancillary case shall file a completed cover sheet that may be obtained from the [**chief clerk**] **Prothonotary** or at www.pacourts.us/T/Commonwealth/.

(d) *Case caption—ancillary dockets.* Matters that receive ancillary case docket numbers shall be captioned substantially in accordance with the following examples:

(1) An adversarial proceeding under [**Rule**] **Pa.R.A.P.** 3783 (adversarial proceedings) shall be captioned:

* * * * *

(2) An objection to the liquidator's determination on a proof of claim under [**Rule**] **Pa.R.A.P.** 3781 (claim procedure) shall be captioned:

* * * * *

Rule 3778. Master Service List.

(a) *General rule.* As soon as practicable after filing a petition to rehabilitate or liquidate an insurer, the Commissioner shall create and maintain a master service list. If the Court grants the petition to liquidate or rehabilitate, the receiver will assume the duty to maintain the master service list. The master service list shall include the name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address of counsel for each party and for each pro se party in the proceeding at the administrative case docket number.

The receiver is not required to include on the master service list any limited intervenor or [**his/her**] **the limited intervenor's** counsel.

Changes in contact information, including transfer of responsibilities to another attorney in the firm and requests to be removed from the master service list may be accomplished by notifying the Commissioner or receiver, as the case may be, by e-mail, fax or mail in accordance with the Commissioner's or receiver's instructions.

(b) *Request of non-party for inclusion on master service list.* Any interested person may be added to the master service list by sending a written request to the Commissioner or receiver, as the case may be, including name, address, telephone number, facsimile number and electronic mail address. A person included on the master service list pursuant to this subsection shall be designated thereon as a non-party.

(c) *Availability of master service list.* The Commissioner or receiver, as the case may be, shall post and maintain the master service list on any website established under [**Rule**] **Pa.R.A.P.** 3779 (website). If no website has been established, the master service list shall be available by e-mail upon request. A paper copy of the master service list shall be available for a standard fee.

Official Note: *Court Maintains Its Own Service List—* The master service list maintained by the Commissioner or receiver is not the Court's service list. The two lists are separately managed. Amendment or deletion of information on one list does not affect the other list. Notice of any change must be given to both the Commissioner or receiver and the Court.

Rule 3779. Website.

Unless otherwise ordered by the Court, when the Commissioner files a petition to rehabilitate or liquidate an insurer, the Commissioner shall establish and maintain a website for the purpose of listing filings with and orders of the Court in accordance with these rules, and when required, posting access to the listed documents. If the Court grants the petition to liquidate or rehabilitate, the receiver will maintain the website.

On the website, the receiver shall post: all documents filed at the administrative case docket number; a proof of claim form; a statement describing the procedure for filing claims pursuant to [**Rule**] **Pa.R.A.P.** 3781 (claim procedure); and a statement regarding the requirements in [**Rule**] **Pa.R.A.P.** 3781(c)(4) (corporate representation) and (5) (*pro hac vice*), for corporate representation and admission *pro hac vice* for attorneys.

The receiver shall note any ancillary docket number on the website and state the nature of the dispute. The receiver may but is not required to post filings at an ancillary case docket number.

Rule 3780. Service and Notice.

(a) *Service of parties.* All documents filed by any party shall be served on all other parties at the appropriate docket number assigned to the matter in accordance with [**Rule**] **Pa.R.A.P.** 121 (filing and service). Proof of service shall comply with [**Rule**] **Pa.R.A.P.** 122 (proof of service).

* * * * *

Rule 3781. Claim Procedure in Liquidation Proceedings.

* * * * *

(b) *Notice of determination.*

* * * * *

(2) The notice of determination shall include:

- (i) the allowed amount of the claim;
- (ii) the priority class assigned to the claim;

(iii) if the claim is disallowed in whole or in part, a brief statement of the reason(s) for the liquidator's determination;

(iv) a statement advising the claimant of the requirements set forth in [Rule] Pa.R.A.P. 3781(c)(1) (time for filing); and

(v) notice that if a claimant fails to file an objection with the Court within sixty (60) days from the mailing date on the notice of determination, the claimant cannot later object to the liquidator's determination.

(3) If the liquidator determines that the claim has been submitted to a state guaranty association, the liquidator may defer further review of the proof of claim until the guaranty association has made its final determination and has returned the closed claim file to the liquidator. In such a case, the liquidator shall notify the claimant of the decision to defer review.

(c) *Objections.*

* * * * *

(2) *Service.* The claimant shall serve a copy of the objection on the liquidator in accordance with [Rule] Pa.R.A.P. 121 (service).

* * * * *

(d) *Resolution of objections.*

(1) *Scheduling hearing.* Upon receipt of the liquidator's response to the objection, the Court shall establish a time for a hearing.

(2) *Assignment of [judge] Judge.* Objections may be assigned to a single [judge] Judge for disposition.

(3) *Assignment of referee.* Upon the parties' request or on its own initiative, the Court may appoint a referee to hear the objection and submit to the Court a recommended decision, which shall include findings of fact, conclusions of law, and a proposed order.

(e) *Referees.*

(1) *Compensation.* Referees serve at the pleasure of the Court and shall be compensated from the insurer's estate at an hourly rate to be set by the Court at the beginning of each calendar year and posted on the website created under [Rule] Pa.R.A.P. 3779 and on the Court's website. The hourly rate shall be clearly set forth in the appointment order, subject to any annual adjustment.

(2) *Litigation costs.* Each party shall bear its own costs associated with the hearing before the referee. Unless the Court orders otherwise, the parties shall share equally the costs for transcribing a hearing and any costs that may be incurred by a referee in complying with [Rule] Pa.R.A.P. 3781(e)(7) (maintaining a record) and (f)(4) (filing recommended decision).

* * * * *

(8) *Filing recommended decision.* The referee shall file and serve a recommended decision, a proposed order, and a list of all documents submitted by the parties and compiled in accordance with [Rule] Pa.R.A.P. 3781(e)(7) (maintaining a record).

* * * * *

(f) *Exceptions to the referee's recommended decision.*

* * * * *

(6) *Final order.* Upon completion of its review of exceptions, the Court will enter a final order sustaining or overruling exceptions in whole or in part. An order of Court sustaining or dismissing an objection as a sanction pursuant to [Rule] Pa.R.A.P. 3781(e)(9) is the final disposition of a claim.

* * * * *

Rule 3782. Claim Procedure in Rehabilitation Proceedings.

When an approved plan of rehabilitation includes the filing of claims by creditors, the rehabilitation plan shall follow the claim procedures set forth in [Rule] Pa.R.A.P. 3781, unless modified by the Court.

Rule 3784. Reporting.

(a) *Claims report.* At least annually, the liquidator shall file a report of the claims against the insurer's estate that have been resolved, with [his] the liquidator's recommendations ("Claims Report"). The Claims Report shall include the following: each claimant's name, address, priority class, allowed amount, and whether the claim determination was finalized because no objection was filed, no exceptions were taken to a referee's recommended decision, a recommended decision was sustained by the [court] Court or the parties agreed to a settlement. The liquidator shall serve a copy of the Claims Report on those listed on the master service list in accordance with these rules. No claim shall be paid, in part or in whole, until the report is approved by the Court.

(b) *Status report.* The receiver shall file a comprehensive report on the status of the insurer's business or the administration of the insurer's estate as frequently as ordered by the Court. The liquidator shall serve a copy of the Status Report on those listed on the master service list in accordance with these rules.

[Pa.B. Doc. No. 20-146. Filed for public inspection January 31, 2020, 9:00 a.m.]

**Title 210—APPELLATE
PROCEDURE**

**PART II. INTERNAL OPERATING PROCEDURES
[210 PA. CODE CH. 69]**

**Amendments to the Internal Operating Procedures
of the Commonwealth Court of Pennsylvania;
No. 126 Misc. Doc. No. 3**

Order

Per Curiam

And Now, this 17th day of January, 2020, it is Ordered that the Internal Operating Procedures of the Commonwealth Court of Pennsylvania are amended in the following form. These amendments shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 69. INTERNAL OPERATING
PROCEDURES OF THE COMMONWEALTH
COURT OF PENNSYLVANIA

ORGANIZATION AND ASSIGNMENT OF JUDGES

§ 69.101. Classification of Judges; Definitions.

For the purpose of these Internal Operating Procedures, the following terms shall have the meanings indicated:

“Assigned Judge” means a judge of the Commonwealth who has been assigned to serve this Court.

“Commissioned Judge” means a judge serving as a member of this [court] **Court** by gubernatorial appointment or, pursuant to election, during an elective term as a member of this [court] **Court**.

“Duty Judge” means the [judge] **Judge** currently designated for service by the duty roster established under § 69.121.

“Judge” shall include (1) each Commissioned Judge (2) each Senior Judge and Assigned Judge with respect to matters on which the Senior Judge or Assigned Judge has been designated to sit, and (3) each Assigned Judge with respect to designation as a Duty Judge.

“Mediation Judge” means a Judge of the Court, assigned on a periodic basis by the President Judge to conduct mediations under § 69.501 (Mediation).

“Senior Judge” means a [judge] **Judge**, formerly elected as a member of this [court] **Court** or another court of the Commonwealth, who has retired and is designated to sit as a [senior judge] **Senior Judge** on panels of this [court] **Court**, whether or not also designated to serve as a [duty judge] **Duty Judge**.

[**“Assigned Judge” means a judge, formerly elected as a member of this court or another court of the Commonwealth, who has been designated to serve as a duty judge, whether during active service upon such other court or after having attained retirement age.**

“Judge” shall include (1) each commissioned judge with respect to all matters, (2) each senior judge with respect to matters before any panel on which the senior judge has been designated to sit, and (3) each assigned judge with respect to designation as a duty judge.]

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

§ 69.102. Court Officers; Definitions.

“Chief Legal Counsel” means the officer appointed by this Court to provide legal support and counsel to the Court and to manage the Office of Chief Legal Counsel, as described in Pa.R.A.P. 3702.1.

“Prothonotary” means the officer appointed by this Court in accordance with Pa.R.A.P. 3111 to administer the clerical duties and responsibilities of the business of the Court as described in Pa.R.A.P. 3702. This includes overseeing the receipt, docketing, and maintenance of all documents filed with the Court, the scheduling of the

Court’s argument sessions, and the maintenance of caseload inventory and statistics.

§ 69.111. Courts En Banc and Panels; Number of Judges Assigned.

An en banc [court] **Court** shall consist of [seven commissioned judges] **no more than seven Commissioned Judges**. Panels of the [court] **Court** shall consist of three [judges] **Judges**, except in the circumstance of a two-member panel in accordance with Pa.R.A.P. 3102(b).

§ 69.112. Courts En Banc and Panels; Composition.

(a) The [president judge] **President Judge** shall structure the judicial membership of en banc [courts] **Courts** and panels to provide for rotation of [judges] **Judges**. Before the day of argument, [court] **Court** personnel shall not identify the judicial membership of en banc [courts] **Courts** and of panels to any other persons.

(b) The [president judge] **President Judge** may designate [judges] **Judges** to serve on a special court en banc or panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.

§ 69.121. Duty Rosters; Establishment.

The [president judge] **President Judge** shall annually establish a duty roster, which shall, on a weekly basis, provide for the assignment to each [judge] **Judge**, when designated as [duty judge] **Duty Judge** by the duty roster, all matters required by law or deemed necessary by the [president judge] **President Judge** for evidentiary hearing, oral argument or disposition on briefs or otherwise. The duty roster normally shall exclude weeks during which regular argument sessions of the [court] **Court** are scheduled. Court personnel shall not identify any designated [duty judge] **Duty Judge**, in advance of sitting, to any other person.

§ 69.122. [Duty Rosters;] Location of Proceedings.

All evidentiary hearings and arguments assigned to [the duty judge] **a Judge** shall be conducted at the seat of the [court] **Court** in Harrisburg unless [originally] ordered to be heard elsewhere or by [teleconference under § 69.124, or unless the president judge orders or approves the conducting of them elsewhere pursuant to Pa.R.A.P. 3704 or Pa.R.A.P. 3735] **a method specified under § 69.124.**

§ 69.123. Duty Rosters; Availability.

[**Each duty judge shall be present or available in Harrisburg throughout the week and shall make the prothonotary and chief clerk aware of where he or she can be reached when not at the Pennsylvania Judicial Center during regular hours.] Each Duty Judge shall be present in Harrisburg or otherwise available from 8:00 a.m. on the Monday commencing the Duty Judge’s duty week and remain available until 7:59 a.m. on the following Monday and shall make the Prothonotary and Chief Legal Counsel aware of where the Duty Judge can be reached when not at the Pennsylvania Judicial Center during regular hours. The [duty judge] **Duty Judge** shall be in charge of making administrative decisions when the [president judge] **President****

Judge is not available by telephone communication, but the [president judge] President Judge shall be consulted if major decision making is required.

§ 69.124. [Duty Rosters; Teleconference Proceedings] Video or Teleconference Proceedings.

[Where the presentation of evidence is not involved, a duty judge may conduct an argument by conference telephone equipped with loudspeaker, pursuant to an order fixing the argument date and time at which the court shall call counsel at their respective offices to proceed, and stating the location where the judge will sit, which shall be open to public access] A Judge may conduct a proceeding by use of video or telephone conference pursuant to an order fixing the argument date and the time.

§ 69.125. [Duty Rosters; Special Trial] Case Assignments.

[The president judge may specially assign the trial of a case within the court's original jurisdiction to a particular judge] The President Judge may assign a matter within the Court's original jurisdiction to a particular Judge. Any [judge] Judge so assigned (a) may be relieved of other responsibilities during the pretrial, trial and decision processes, and (b) shall be responsible for the management of the case by such authorized procedures as the [judge] Judge shall elect to apply, including a pretrial order under § 69.313.

§ 69.126. Emergency Applications.

* * * * *

(b) An emergency application shall include the following:

(1) An explanation of why an order of this Court is necessary, time sensitive and satisfies the threshold requirements set forth in (a)(1)—(2); and

(2) An explanation of how service has been perfected upon the opposing party or, if service has not been made, a summary of the efforts to perfect service or explanation of why service is impossible or impracticable; and

[(3) Unless already docketed with this Court, a stamped "filed" copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court;

(4) Unless already docketed with this Court, a copy of the relevant petition for review, whether addressed to this Court's appellate or original jurisdiction;

(5) The appropriate filing fee or a sufficient pauper's affidavit.

(c) Each duty judge shall be available from 12:01 a.m. on the Monday commencing his or her duty week and remain available until 12:00 midnight on the Sunday concluding the duty week. The duty judge shall be available in Harrisburg Monday through Friday or shall advise the prothonotary and chief clerk of a telephone number at which he or she may be reached when not present in the Court's Harrisburg offices. The assigned duty judge shall make decisions in all emergency applications.

(d) The filing of an emergency application should be made by contacting this Court's prothonotary, the chief clerk, or a deputy prothonotary who will

accept the papers by the most expeditious means available, including fax or e-mail attachment, and assign the matter a docket number, if needed.

(1) The Court officer accepting the filing shall contact the emergency judge to make arrangements for consideration and disposition of the emergency application.

(2) If the duty week judge is not available, the emergency application shall be referred to the president judge and then to the associate judges in descending order of seniority, if the president judge is not available.

(3) The telephone number of the court officer accepting the filing of emergency applications shall be made available through the Court's after hours telephone message system (717-255-1600 or 717-649-5153).]

(3) Unless already docketed with this Court:

(i) a stamped "filed" copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court; or

(ii) a copy of the relevant petition for review, whether addressed to this Court's appellate or original jurisdiction; and

(4) The appropriate filing fee or a sufficient affidavit to proceed in forma pauperis.

(c) The filing of an emergency application should be made by contacting this Court's Prothonotary or designee, at one of the phone numbers provided in (c)(2), who will accept the papers by the most expeditious means available.

(1) The Court officer accepting the filing shall contact the Duty Judge to make arrangements for consideration and disposition of the emergency application. If the Duty Judge is not available, the emergency application shall be referred to the President Judge and then to the other Judges in descending order of seniority, if the President Judge is not available.

(2) The telephone number of the Court officer accepting the filing of emergency applications shall be made available through the Court's after hours telephone message system (717-255-1600 or 717-649-5153).

APPELLATE JURISDICTION

§ 69.201. Permission to Appeal; Interlocutory Orders.

The [prothonotary] Chief Legal Counsel shall present each petition for permission to appeal, together with opposing briefs and any recommendation, to the [duty judge] Duty Judge for appropriate action. In the absence of a recommendation by the [prothonotary] Chief Legal Counsel, the disposition of such petitions shall follow the procedure for petitions for reargument, stated in § 69.291.

§ 69.211. Petition for Review; Clarification.

When the [chief clerk] Prothonotary receives a written communication that evidences an intention to appeal an adjudication of a state administrative agency but does not conform to the rules for an appellate petition for review, the [chief clerk] Prothonotary shall time-

stamp the written communication with the date of receipt. The [**chief clerk**] **Prothonotary** shall advise the party by letter (1) of the procedures necessary to perfect the appeal and (2) that the date of receipt of the communication will be preserved as the date of filing of the appeal if that party files a fully conforming petition for review within 30 days of the date of the [**chief clerk's**] **Prothonotary's** letter. If the party fails to file a fully conforming petition for review within that period, the [**chief clerk**] **Prothonotary** shall advise the party by letter that the [**court**] **Court** will take no further action in the matter.

§ 69.221. Preargument Matters; Applications, Motions and Petitions.

The [**chief clerk**] **Prothonotary** shall promptly, after filing, submit preargument applications, motions and petitions requiring consideration by a [**judge to the prothonotary. The prothonotary shall daily confer with the president judge or the duty judge**] **Judge to the Chief Legal Counsel. The Chief Legal Counsel shall daily confer with the President Judge or the Duty Judge** on such matters, who shall act by order granting or denying the relief or remedy sought, directing the matter to be decided on submitted briefs, or listing the matter for argument before, or in conjunction with, argument on the merits of the appeal. [**When required by law or rule, the judge shall defer acting upon the matter pending filing of an answer or until the time for answer has expired**] **Applications for extensions of time and/or continuances shall be acted upon as soon as practicable unless the Judge determines an answer is necessary, in which case the Court may order an expedited answer.**

§ 69.222. Preargument Matters; Arguments and Evidentiary Hearings.

If an application pending appeal merits or requires an evidentiary hearing or argument, the [**president judge or the duty judge**] **President Judge or the Duty Judge** shall list the matter for hearing **or argument** at the earliest opportunity consistent with appropriate notice [**of hearing**] and any applicable statutory provisions or procedural rules, for disposition consistent with the procedure governing matters within the original jurisdiction of the [**court**] **Court**.

§ 69.223. [Preargument Matters; Extensions of Time] (Reserved).

[**The chief clerk may grant a written request for an extension of time to file briefs or to file the reproduced record, where the requested extension is (a) for thirty days or less, (b) the first one sought, and (c) unopposed by all other parties. If any of the three enumerated requirements does not exist, the party shall submit the request by formal application upon which the prothonotary, chief clerk or deputy prothonotary may act for the court.**]

§ 69.231. Briefs; Advance Reading.

Briefs timely filed as to cases to be heard by the [**court**] **Court** at its regular argument sessions are read in advance of oral argument by the [**judges**] **Judges** participating in an en banc session as to cases so listed, and by the [**judges**] **Judges** participating in a panel session as to cases listed before the panel to which

a [**judge**] **Judge** is assigned. Counsel should prepare for oral argument consistent with [**this practice of the court**] **the practice of this Court**.

§ 69.232. Briefs; Submission of Cases on Briefs.

Where cases are to be submitted for decision upon the briefs without oral argument, either by determination of the [**court**] **Court** or by leave to do so at the request of one or more of the parties, the [**chief clerk**] **Prothonotary** shall so designate them if they appear upon argument lists. Apart from argument lists, the [**president judge**] **President Judge** shall appoint additional panels, designated as "Submission Panels," for the disposition of cases thus submitted.

§ 69.241. Arguments; Sessions.

[**Regular argument sessions of the court**] **Argument sessions of the Court** shall be annually fixed by order of the [**court**] **Court**, the particular days to be devoted to en banc and panel sessions, or combinations thereof, to be determined by the [**president judge. The president judge**] **President Judge. The President Judge** shall allocate cases to be heard by panels or by the [**court**] **Court** en banc, except as otherwise directed by the [**court**] **Court** as to particular cases.

§ 69.242. Arguments; Preparation of Lists.

To aid the [**president judge**] **President Judge** in the allocation of cases to be heard by the [**court**] **Court** en banc or by panels, the [**chief clerk**] **Prothonotary** shall submit an analysis of the procedural posture and issues raised in each case ready for argument. The [**prothonotary**] **Chief Legal Counsel** shall review the list of cases, and present to the [**president judge**] **President Judge** recommendations as to cases on the list to be heard by the [**court**] **Court** en banc or by a panel. The [**president judge**] **President Judge** shall review the proposed argument list and make any changes deemed necessary. As approved or as modified by the [**president judge, the chief clerk**] **President Judge, the Prothonotary** shall proceed to publish the argument list and give notice to litigants. The argument list as published shall disclose a day certain for argument of each case listed.

§ 69.243. Arguments; Number of Cases.

The [**president judge, the prothonotary and the chief clerk**] **President Judge and the Prothonotary** shall determine the number of cases to be listed at a regular argument session before the [**court**] **Court** en banc and before panels, on the basis of expediting the disposition of cases ready for argument, to the maximum extent feasible.

§ 69.244. Arguments; Time Allowed.

As a general rule, the presiding [**judge**] **Judge** normally shall allow the parties on each side, including intervening parties, fifteen (15) minutes for argument in cases before the [**court**] **Court** en banc and seven and one-half (7 1/2) to ten (10) minutes in cases before panels. Exercising discretion, the presiding [**judge**] **Judge** may nevertheless limit any argument to a shorter period pursuant to Pa.R.A.P. 2315(a) or may allow additional time.

§ 69.251. Decisions; Conferences and Assignments of Draft Opinions.

(a) After argument sessions and consideration of argued and submitted cases in a conference of the [judges] **Judges** comprising the respective [court] **Court** en banc or panel, the presiding [judge] **Judge** shall assign each case to a [judge] **Judge** who represents the expressed majority view at the conference, for the preparation of the opinion of the [court] **Court**.

(b) The opinion-writing [judge] **Judge** shall proceed to prepare a draft opinion in accordance with the decision of the [court] **Court** en banc or of the panel or expressing any different views which the [judge] **Judge** may reach after subsequent study of the case, designated as an "Opinion" or "Memorandum Opinion" in accordance with § 69.413 below. The draft opinion shall ordinarily be one to be signed by the writer when final, but in appropriate cases it may be a briefer opinion recommended by the writer to be handed down per curiam. Except in the case of adoption of the reasoning in the opinion of the trial court, or where the appeal is meritless, the opinion shall state, at least summarily, the nature of the case, the principal question or questions involved, the holding of the court or agency below and the rationale of this [court's] **Court's** decision.

§ 69.252. Decisions; Circulation of Draft Opinions.

When the draft opinion has been prepared, the opinion-writing [judge] **Judge** shall transmit it, normally within forty-five days after the date of assignment, to the other [judges] **Judges**, with a face sheet bearing the date the case was argued or submitted on briefs, and also with a memorandum in standardized form requesting them to inform the writer of (1) their agreement or disagreement with the opinion and order in accordance with these rules, together with any suggestions which they may desire to make with respect to the draft opinion, and (2) any disagreement as to the writer's recommendation concerning reporting, in accordance with § 69.412. The writer shall also indicate by memorandum (1) when the draft proposes a result different from the tentative conference vote, and (2) when a proposed panel decision would overrule a previous panel decision of this [court] **Court**. The other [judges] **Judges** shall respond to the opinion-writing [judge] **Judge** within fifteen days. If no response is received in that time, the opinion-writing [judge] **Judge** shall consider nonresponse as indicating that each [judge] **Judge** not responding is willing to have the opinion filed as circulated.

§ 69.253. Decisions; Concurrences and Dissents.

If a [judge on the court] **Judge on the Court** en banc or the panel before which a case was argued, or to which it was submitted, responds by stating an intention to write a concurring opinion or a dissenting opinion, the opinion-writing [judge] **Judge** shall hold the opinion for an additional twenty days, during which period the concurring or dissenting [judge] **Judge** shall submit an opinion to the opinion-writing [judge] **Judge**, to be filed on the same date as the opinion of the [court] **Court**. A dissenting or concurring [judge]s **Judges** shall also inform all other [judges] **Judges** of such intention and shall circulate the opinion to them when written. The opinion-writing [judge] **Judge** shall con-

sider concurrences and dissents and the reasons for them, and may revise the draft opinion and recirculate it. If a concurring opinion or dissenting opinion is not received by the opinion-writing [judge] **Judge** within the twenty-day period, [he or she] **the opinion writing Judge** shall consider the previous intent to be waived and [shall] **may** proceed to file the opinion of the [court] **Court** and any concurring opinions or dissenting opinions actually submitted to the opinion-writing [judge. A judge on the court] **Judge. A Judge on the Court** en banc or panel may join in a concurring or dissenting opinion and shall so notify the opinion-writing [judge] **Judge**, who shall be responsible for noting the joinder of that [judge] **Judge** in such concurring opinion or dissenting opinion. When a [judge] **Judge** circulates a concurring or dissenting opinion, the opinion of the [court] **Court** and any concurring or dissenting opinion may be filed no earlier than ten days after the circulation of the concurring or dissenting opinion.

§ 69.254. Decisions; Reassignments.

If, in connection with a draft opinion in circulation, a majority of the [judges] **Judges** who heard the case, or to whom it was submitted on briefs, decline to join in that opinion and favor a result or rationale contrary to it, the presiding [judge] **Judge** with respect to that case shall reassign it to a [judge] **Judge** who represents the new majority view.

§ 69.255. Decisions; Objections.

(a) If a [judge] **Judge** who is not a member of the en banc [court] **Court** or of the panel before which a case is argued, or to which it is submitted, responds with an objection to the draft opinion, the opinion-writing [judge] **Judge** shall consider the objection and reasons for it, and may revise the draft opinion and recirculate it as deemed necessary.

(b) An objecting [judge] **Judge** shall also inform all other [judges] **Judges** of the objection and the reasons for it. An objection, however, shall not entitle the objecting [judge] **Judge** to file a concurring or dissenting opinion.

§ 69.256. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections, or concurring opinions, the opinion-writing [judge] **Judge** shall not file the opinion but shall notify the [president judge] **President Judge** to list the case for consideration at the next judicial conference. For purposes of this subsection the notation "concur in result only" shall not be considered in the foregoing combination. If, pursuant to vote after judicial conference consideration, a majority of all of the [judges] **Judges**, as well as a majority of the [judges] **Judges** who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed. Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with § 69.254, the [president judge] **President Judge** shall list the case for reargument before the [court] **Court** en banc.

(b) When there exists a vacancy or a recusal among the [**commissioned judges**] **Commissioned Judges** that results in an even number of [**commissioned judges**] **Commissioned Judges** voting on a circulating panel opinion or en banc opinion, and when the vote of all participating [**commissioned judges**] **Commissioned Judges** results in a tie, the opinion shall be filed as circulated. The opinion shall contain a footnote on the first page indicating that the opinion is filed pursuant to this paragraph. Unless there is a majority vote of the participating [**commissioned judges**] **Commissioned Judges** to report, the opinion shall not be reported.

§ 69.257. Decisions; Overruling Previous Decisions.

Pursuant to the circulation of a draft opinion accompanied by a notation in accordance with § 69.252 that the proposed panel decision would overrule a previous panel decision, if a majority of the [**court**] **Court** agrees that such an overruling would result, the [**president judge**] **President Judge** shall list the matter on the agenda of the next judicial conference for consideration as to reargument.

§ 69.258. Decisions; Election Law Appeals.

The procedures of §§ 69.252—69.257 shall not apply to election law appeals heard by a special [**court**] **Court** en banc or panel. The members of a special [**court**] **Court** en banc or panel, under the supervision of the [**president judge**] **President Judge** or presiding [**judge**] **Judge**, shall reach and file their decision, together with concurrences and dissents, if any, as soon as possible, without circulation to, or participation by, the [**judges**] **Judges** not sitting on the respective special [**court**] **Court** en banc or panel.

§ 69.259. Decisions; Informational Circulation.

When circulating draft opinions, memoranda, responses, dissenting opinions, concurring opinions, comments and other matters pursuant to §§ 69.252—69.258, the [**judges**] **Judges** shall also circulate copies for information to [**senior judges**] **Senior Judges** not members of the respective [**court**] **Court** en banc or panel.

§ 69.261. Decisions; Notation of Recusals.

If a [**judge**] **Judge** anticipates recusal with respect to a case on which the [**judge**] **Judge** has been assigned to sit, the [**judge**] **Judge** shall notify the presiding [**judge of the court**] **Judge of the Court** en banc or panel as soon as possible. A [**commissioned judge**] **Commissioned Judge** may also be recused with respect to responding with an objection or no objection under § 69.255. For the information of the [**judge**] **Judge** who, as the writer of the opinion of the [**court**] **Court**, has the responsibility for preparing the opinions to be filed in accordance with § 69.262, a recused [**judge**] **Judge**, whether sitting on the particular [**court**] **Court** en banc or panel or not, shall communicate the fact of recusal by notation upon the response form or in writing otherwise. The [**judge**] **Judge** responsible for preparing the opinions to be filed shall have the non-participation of a [**judge**] **Judge** noted upon the majority opinion of the [**court**] **Court**, whether such [**judge**] **Judge** was sitting as a member of the [**court**] **Court** en banc or panel or not.

§ 69.262. Decisions; Filing.

When the opinion of the [**court**] **Court** and any accompanying concurring opinions or dissenting opinions are ready to be filed, the opinion-writing [**judge shall transmit to the president judge**] **Judge shall transmit to the Prothonotary** the original opinions and such number of copies as the [**president judge**] **Prothonotary** shall from time to time specify, with each opinion of the [**court**] **Court** bearing notations as to any [**judges**] **Judges** who dissent without opinion, who concur in the result only, and who are recused. The [**president judge shall transmit the original opinions and the copies for filing, docketing and distribution**] **Prothonotary shall file, docket, and distribute the opinions.** The writer shall sign the original of each opinion, except that, in the case of a per curiam opinion, the writer shall identify [**his**] authorship by accompanying memorandum. [**The opinion-writing judge shall also deliver one (1) copy of each such opinion to all other judges.**] To enable the opinion-writing [**judge**] **Judge** to carry out this responsibility, any [**judge**] **Judge** writing a concurring opinion or dissenting opinion shall deliver to the opinion-writing [**judge**] **Judge** a sufficient number of copies. The opinion-writing [**judge**] **Judge** shall date [**his or her**] **the** opinion and any concurring opinions or dissenting opinions with the filing date.

§ 69.291. Rearguments; Petitions for Reargument.

The [**president judge**] **President Judge** shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the [**court or the court en banc, to all judges of the court**] **Court or the Court en banc, to all Judges of the Court.** See **Pa.R.A.P. 2542 et seq.** After consideration pursuant to such circulation, the vote of the majority of the [**commissioned judges of the court**] **Commissioned Judges** to grant or deny the petition for reargument shall govern, although comments from the [**court's senior judges**] **Court's Senior Judges** shall be solicited. Where a party files [**a petition**] **an application** for reargument of an order issued by a single [**judge, the prothonotary shall submit the petition, together with any answer, to that judge for disposition**] **Judge, the Chief Legal Counsel shall submit the application, together with any answer, to that Judge for action, in accordance with Pa.R.A.P. 123(e).**

ORIGINAL JURISDICTION

§ 69.301. General; Applicability of Appellate Jurisdiction Procedures.

Sections 69.221 through 69.262, inclusive, of these Internal Operating Procedures under Appellate Jurisdiction, shall govern proceedings in original jurisdiction matters when those proceedings are before [**courts**] **Courts** en banc and panels. Election law matters assigned to a special [**court**] **Court** en banc or panel shall be subject to § 69.258.

§ 69.311. Pretrial Matters; Applications, Motions, Petitions and Praecipes.

The [**chief clerk**] **Prothonotary** shall promptly, after filing papers in original jurisdiction cases, submit

pretrial applications, praecipes for trial after a case is at issue, petitions for summary judgment or for judgment on the pleadings, statutory enforcement proceedings requiring a hearing before a [**judge**] **Judge**, praecipes for hearing in matters under Pa.R.A.P. 1571, and all other motions and matters requiring the consideration of a [**judge**] **Judge** before trial or argument on the merits, to the [**prothonotary**] **Chief Legal Counsel**, who shall, on a daily basis, confer with the [**president judge or duty judge**] **President Judge or Duty Judge** on such matters. Depending upon the nature of the matter, the [**president judge or the duty judge**] **President Judge or the Duty Judge** shall by order set the matter down for evidentiary hearing or formal trial, for argument before a single [**judge**] **Judge** in cases in which a single [**judge**] **Judge** may dispose of the matter, for argument before the [**court**] **Court** en banc or a panel, or for other disposition consistent with the applicable Rules of Appellate Procedure or Rules of Civil Procedure.

§ 69.312. **Pretrial Matters; Subpoenas.**

Subpoenas of the [**court**] **Court** may issue from the [**principal office of the prothonotary in Harrisburg**] **Office of the Prothonotary**.

§ 69.313. **Pretrial Matters; Pretrial Orders.**

To govern the expeditious disposition of [**substantial trials**] **matters filed within the Court's original jurisdiction**, pretrial orders may regulate discovery, set a pretrial conference, require consideration of settlement, make provision for the identification of issues, establish a procedure for the acceptance of evidence through stipulations, provide for the advance exchange of exhibits and experts' reports, and limit the number of witnesses, together with all other matters which the [**designated judge**] **Judge** shall deem proper.

§ 69.321. **Proceedings; Election Cases.**

Proceedings under the Pennsylvania Election Code within the [**court's**] **Court's** original jurisdiction (petitions for review in the nature of mandamus and objections to nomination petitions and papers) shall be under the direct supervision of the [**president judge, the prothonotary and the chief clerk**] **President Judge, the Prothonotary and the Chief Legal Counsel**. The **President Judge**, to dispose of such cases, shall establish a special election [**court**] **Court** schedule, assign [**judges**] **Judges** to hear cases or, when necessary, convene a special [**court**] **Court** en banc or panel to hear the same promptly.

§ 69.322. **Proceedings; Costs of Transcripts of Testimony.**

In any proceeding where a stenographer is present, the [**presiding judge or duty judge**] **Presiding Judge or Duty Judge** shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony, if the [**court**] **Court** orders transcription or the filing of a notice of an appeal requires it. Upon receipt of such an order, the [**chief clerk**] **Prothonotary** shall forthwith bill the responsible party. If the responsible party fails to pay the amount due

within thirty days of the date of the bill, the [**court**] **Court** shall impose appropriate sanctions to enforce payment.

§ 69.331. [**Reconsideration; Petitions for Reconsideration**] **Reargument; Applications for Reargument**.

When a party files [**a petition for reconsideration of an order issued by a single judge, the prothonotary shall submit the petition,**] **an application for reargument of an order issued by a single Judge, see Pa.R.A.P. 2541 et seq., the Chief Legal Counsel shall submit the application,** together with any answer, to the [**judge**] **Judge** for action, in accordance with Pa.R.A.P. 123(e). **When a party files an application for reargument of an order issued by a panel of the Court in its original jurisdiction, the President Judge shall distribute the application and any answers thereto, to all Judges of the Court, along with the recommendation of the authoring Judge.**

§ 69.341. **Process; Designation of Officials for Service of Process.**

The Commonwealth Court is a court of Statewide jurisdiction. Therefore, for purposes of Pa.R.C.P. No. 400(d), an action commenced in this [**court**] **Court** is deemed commenced in all counties of [**the**] **this** Commonwealth. Accordingly, where service is to be effectuated within this Commonwealth by a sheriff, the sheriff of any county where service may be made is authorized to serve process issuing from this [**court**] **Court** and does not need to be deputized.

§ 69.342. **Process; Designation of Officials for Execution of Bench Warrants of Arrest.**

By order in a particular case, a [**judge**] **Judge** may designate the Pennsylvania State Police or the sheriff of any county where the bench warrant may be executed as the official agency for the execution of a bench warrant of arrest.

DECISIONS

§ 69.401. **Issuance of Decisions; Orders and Opinions.**

On the day each order or opinion and order is filed, the [**chief clerk shall mail**] **Prothonotary shall send** a copy to each counsel of record or pro se litigant. In matters on appeal from a trial court, the [**chief clerk shall mail**] **Prothonotary shall send** a copy of the opinion to the trial judge. [**He**] **The Prothonotary** shall also promptly distribute copies of opinions, when designated to be reported, to the list of distributees of opinions of the Commonwealth Court, as from time to time approved by the [**president judge**] **President Judge**.

§ 69.412. **Reporting of Opinions; Determination as to Reporting.**

(a) Each [**judge**] **Judge** who is the author of an opinion of a panel or the [**court**] **Court** en banc shall indicate, in circulating the opinion to the other members of the [**court**] **Court**, the authoring [**judge's**] **Judge's** recommendation as to whether the opinion shall be reported. A decision generally should be reported when it:

* * * * *

The recommendation shall govern the determination as to reporting, unless a majority of the [**commissioned members of the court**] **Commissioned Judges** disagrees with it.

(b) Except as provided in subsection (c) (relating to single [**judge**] **Judge** opinions in election law matters), opinions of a single [**judge**] **Judge** shall be filed but not reported unless, because of the unique character of the case, the [**prothonotary or the authoring judge shall recommend that the opinion be reported and a two-thirds majority of the commissioned members of the court**] **Chief Legal Counsel or the authoring Judge shall recommend that the opinion be reported and two-thirds of the Commissioned Judges** shall concur with the recommendation.

(c) Opinions of a single [**judge or a special court**] **Judge or a special Court** en banc or panel in election law matters, original and appellate jurisdiction, shall be filed but not reported. Thereafter, the [**prothonotary or authoring judge**] **Chief Legal Counsel or authoring Judge** may recommend that the opinion be reported. The recommendation shall be transmitted to the [**court**] **Court**, together with a copy of the unreported opinion and order, requesting the [**judges**] **Judges** to indicate (1) their agreement or disagreement with the opinion and order, and (2) any disagreement as to the writer's recommendation concerning reporting. If [**a two-thirds majority of the commissioned members of the court agrees**] **two-thirds of the Commissioned Judges vote or agree** with the opinion and order and the recommendation concerning reporting, the unreported opinion and order shall be reported.

§ 69.413. Reporting of Opinions; Designation as to Reporting.

Each opinion which is to be reported shall be designated as an "OPINION." Each unreported opinion shall be designated as a "MEMORANDUM OPINION," its face sheet shall bear the advice, "OPINION NOT REPORTED," and the [**court's**] **Court's** docket shall note that it is an unreported opinion.

§ 69.414. Citing Judicial Opinions in Filings.

(a) An unreported opinion of this [**court**] **Court** may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of this [**court**] **Court** issued after January 15, 2008, for its persuasive value, but not as binding precedent.

(b) Except as provided in subsection (d) (relating to [**single judge**] **single-Judge** opinions in election law matters), a [**single-judge**] **single-Judge** opinion of this [**court**] **Court**, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single [**judge**] **Judge** filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only. For purposes of [**IOP § 414**] **§ 414**, "an election law matter" is one that involves the content of a ballot for the next ensuing election.

§ 69.415. Reporting of Opinions; Adoption of Trial Court Opinions.

When a reported opinion of the [**court**] **Court**, whether per curiam or signed by a [**judge**] **Judge**, adopts the trial court's opinion in its entirety, the opinion shall cite a publication containing the trial court opinion when possible; the citation may be to a reporter in which the trial court opinion has been published or to District & County Reports, if publication of the trial court opinion in that reporter is anticipated. If the opinion of this [**court**] **Court** so adopting a trial court opinion is unreported, the opinion shall include a reporter citation with respect to the trial court opinion only if it has in fact been reported in a publication.

§ 69.416. Reporting of Unreported Opinions.

After an opinion has been filed as unreported, the [**court**] **Court**, at any time on its own motion or on the [**motion**] **application** of any person, may order the opinion to be reported. [**Motions**] **Applications** to report unreported opinions shall be filed within 30 days after the filing of the opinion, and, except as otherwise provided in § 69.412(c), may be granted by majority vote of the [**commissioned judges**] **Commissioned Judges**.

MISCELLANEOUS

§ 69.501. Mediation.

[**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

IN RE: ORDER :
 ESTABLISHING : 126 M.D. No. 3
 MEDIATION PROGRAM :
 ORDER

And Now, this 15th day of September, 1999, It Is Hereby Ordered that effective January 1, 2000 counseled appeals of orders of the courts of common pleas and counseled petitions for review of state administrative agency action filed in Commonwealth Court's appellate jurisdiction and counseled actions filed in the Court's original jurisdiction may be referred at the discretion of the Court to the Court's Mediation Program to facilitate settlement and otherwise to assist in the expeditious resolution of matters before the Court. Cases that have not been selected by the Court for mediation may be referred at any time to the Mediation Program at the request of counsel or at the direction of any en banc or three-judge panel of the Court.

Tax appeals from orders of the Board of Finance and Revenue, which are now subject to a status conference program, and all pro se matters shall be exempt from the Mediation Program. Mediation shall be offered at no cost to the parties and shall be conducted by a senior or retired judge of the Court assigned on a periodic basis by the President Judge.

IT IS FURTHER ORDERED that within ten days after receipt of the notice of appeal, petition for review or complaint, the appellant, petitioner or plaintiff shall file with the Chief Clerk the required docketing statement on a form provided by the Court at the time of the notice of appeal, petition for review or complaint is filed. The appellant,

petitioner or plaintiff shall also file a Statement of Issues with the docketing statement. The Statement of Issues shall be no more than two pages in length and shall set forth a brief summary of the issues and a summary of the case necessary for an understanding of the nature of the appeal, petition for review or complaint. Service of the docketing statement and any attachments shall be made on all parties, and an original and one copy shall be filed with the Chief Clerk's Office along with a proof of service.

Cases shall be screened for referral to mediation immediately upon the filing of the docketing statement and any other form prescribed by the Court setting forth the issues and a summary of the case. After a case has been selected for mediation, the Chief Clerk shall notify counsel for all parties by letter of the referral to the Mediation Program and of the name of the mediation judge assigned to conduct mediation. The mediation judge shall promptly contact counsel to establish the location, date and time for mediation.

Within ten days of receiving notice of mediation, counsel shall provide the mediation judge with a mediation statement of no more than five pages, setting forth the positions of counsel as to the key disputed and undisputed facts and legal issues in the case and stating whether prior settlement negotiations have occurred. The mediation statement shall also identify any motions filed and their disposition; the mediation judge may dispose of only those motions related to scheduling or to the mediation process. In actions arising under the Court's appellate jurisdiction, counsel for the appellant or the petitioner shall attach as exhibits to the mediation statement a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency. Copies of the mediation statement need not be served upon opposing counsel unless so directed by the mediation judge. Documents prepared solely for mediation and the notes of the mediation judge shall not be filed with the Chief Clerk.

All cases referred to mediation shall remain subject to the Court's normal scheduling for briefing and/or oral argument. The Court's briefing and/or oral argument schedule shall not be modified by the Chief Clerk unless so directed by the mediation judge to accommodate mediation.

All mediation sessions must be attended by counsel for each party with authority to settle the matter and, if required, such other person with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit or an individual litigant. The mediation judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the mediation judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to be in attendance by the mediation judge. The mediation judge may in the alternative obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

No future mediation shall be conducted unless the mediation judge determines that further sessions are necessary to effectuate a settlement. The mediation judge assigned to mediate a case shall attend all future mediation sessions scheduled in the case. The mediation judge shall possess authority to impose any necessary sanctions for the failure of counsel to comply with the requirements of this order.

The mediation judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than to their clients or to co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and counsel shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. Where settlement is reached, counsel shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution counsel shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of counsel the mediation judge may enter an appropriate order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

Any case not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred. The mediation judge shall not participate in any decision on the merits of the case. Upon the termination of mediation either through settlement and dismissal or through a continuation of the case on the Court's docket, the mediation judge shall dispose of all documents obtained during mediation unless the mediation judge determines to retain any part of non-confidential documents until final disposition of a case. In any event, the mediation statements and any other confidential documents submitted to the mediation judge shall be destroyed immediately upon the termination of mediation.

The Court's order establishing a Mediation Program shall be published in the Pennsylvania Bulletin and in legal newspapers throughout the Commonwealth prior to the effective date of the Mediation Program. The order shall be posted in the Chief Clerk's Office and a copy thereof shall be mailed to all counsel whose cases have been selected for mediation. The Court also shall amend its Internal Operating Procedures to incorporate the mediation procedures and shall give notice thereof simultaneously with notice of the Court's order establishing the Mediation Program. This order may be amended at the discretion of the Court.]

(a) Scope; Costs; Mediation Judge; Form of Papers.

(1) To facilitate settlement and otherwise assist in the expeditious resolution of matters before the Commonwealth Court, appeals of orders of the courts of common pleas, petitions for review of state administrative agency decisions filed in the Court's appellate jurisdiction, and matters filed in

the Court's original jurisdiction may be selected for mediation by the Court's Mediation Program.

(2) Tax appeals from orders of the Board of Finance and Revenue, which are subject to a status conference program, shall be excluded from the Mediation Program.

(3) Mediation shall be offered at no cost to the parties.

(4) Mediation shall be conducted by a Mediation Judge. The Mediation Judge may dispose of motions related to the scheduling of mediation and the mediation process. The Mediation Judge shall have authority to impose any necessary sanctions for the failure of any attorney or party to comply with the requirements of the Mediation Program.

(5) The mediation statement required by this section, and any other documents prepared for submission to the Mediation Judge, shall follow the format required by Pa.R.A.P. 124(a).

(b) Selection of Cases and Scheduling; Mediation Statement.

(1) Counseled matters shall be screened for referral to mediation immediately upon the filing of the Docketing Statement and all attachments as required by Pa.R.A.P. 3706. Any matter not initially screened or selected for mediation may be referred to the Mediation Program at any time upon request of any party or at the direction of any Judge, en banc or three-judge panel of the Court.

(2) After a matter has been selected for mediation, the Prothonotary shall notify the parties of the referral to the Mediation Program and the name of the Mediation Judge assigned to conduct mediation. The Mediation Judge, when appropriate, shall promptly contact the parties to establish the location, date and time for mediation.

(3) Within ten days of receiving notice of mediation, or as otherwise directed, each party shall submit to the Mediation Judge a confidential mediation statement of no more than five pages, setting forth the positions of the party as to the key disputed and undisputed facts and legal issues in the matter, and stating whether prior settlement negotiations have occurred. The mediation statement shall focus on practical considerations in the matter and the party's good faith position on resolving issues by compromise and agreement. The mediation statement shall also identify any motions filed in Commonwealth Court and their disposition. The mediation statement shall not be filed with the Prothonotary or served upon opposing parties, and shall remain confidential.

(4) All matters referred to mediation shall remain subject to the Court's normal scheduling for briefing and oral argument. The Prothonotary shall not modify the Court's briefing or oral argument schedule unless so directed by the Mediation Judge to accommodate mediation.

(c) Sessions; Confidentiality; Settlement; Effect of Mediation.

(1) All mediation sessions must be attended by each unrepresented party and counsel for each represented party with authority to settle the matter and, if required, such other persons with actual authority to negotiate a settlement, whether involv-

ing the Commonwealth of Pennsylvania, a local government unit, or an individual litigant. The Mediation Judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the Mediation Judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to attend the mediation session. In the alternative, the Mediation Judge may obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

(2) No future mediation shall be conducted unless the Mediation Judge determines that further sessions are necessary to effectuate a settlement. The Mediation Judge assigned to mediate a matter shall attend all future mediation sessions scheduled in the case.

(3) All participants in the Mediation Program shall act with due diligence and in good faith.

(4) The Mediation Judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than their clients or co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and the parties shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. All mediation information, documents and communications are to be kept strictly confidential, not to be used or disclosed outside of mediation. All statements made in the course of mediation are for mediation purposes only and are not to be construed as representing the official position of the Mediation Judge, the Court, or any employee thereof.

(5) Where settlement is reached, the parties shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution or any necessary approval by a tribunal, the parties shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of a party, the Mediation Judge may enter an appropriate order approving the settlement or remanding the matter to the tribunal below for its approval, enforcement, or implementation.

(6) Any matter not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred.

(7) A Mediation Judge who reviewed a mediation statement or conducted a mediation session shall not participate in any decision on the merits of the matter. Upon the termination of mediation, either through settlement and dismissal or through a continuation of the matter and final disposition on the Court's docket, the Mediation Judge shall dispose of all documents obtained during mediation.

Official Note: The Commonwealth Court Mediation Program was established and initially gov-

erned by Order dated September 15, 1999, effective January 1, 2000. That Order has been withdrawn and supplanted by this section.

§ 69.502. Pennsylvania Cable Network (PCN) Guidelines.

(a) *General Provisions*

(1) From the date of these Guidelines until further order of this Court, the recording by PCN of en banc proceedings before Commonwealth Court for future broadcast on PCN is permissible only in accordance with these Guidelines.

(2) Three business days advance notice is required of a request to be present to record a scheduled en banc proceeding electronically for future broadcast on PCN electronically. Such requests must be submitted to the Executive Administrator for approval by the President Judge. The President Judge, or presiding [**judge**] **Judge** of the en banc panel will retain the authority, in [**his or her**] **the Judge's** sole discretion, to prohibit camera coverage of any proceeding.

(3) There shall be no coverage of an en banc proceeding involving any case that the Court has designated SEALED, or of any case involving the expungement or the refusal to expunge founded or indicated reports of child abuse.

(4) The President Judge, or presiding [**judge**] **Judge** of an en banc proceeding may limit or terminate coverage, or direct the removal of camera coverage personnel when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.

* * * * *

(8) All copyrights to the broadcasts are the possession of the Commonwealth Court of Pennsylvania and may not be used without the approval of the Commonwealth Court of Pennsylvania. PCN shall provide to the [**court**] **Court** DVD or videotape recordings of all sessions covered by PCN, whether or not broadcasted.

(9) This shall become effective November 1, 2006.

(b) *Limitations*

* * * * *

(2) There shall be no audio pickup or broadcast of conferences between co-counsel or among the [**judges**] **Judges**.

(c) *Equipment and Personnel*

* * * * *

(3) Except as otherwise approved by the Executive Administrator, or designee, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the [**court**] **Court** facility, or from a television camera's built-in microphone. If no technically suitable audio system exists in the [**court**] **Court** facility, microphones and related wiring

essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator or designee.

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[Pa.B. Doc. No. 20-147. Filed for public inspection January 31, 2020, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Regional Central Booking Program; Administrative Order No. 56; AD-1-20

Order

And Now, to wit, this 13th day of January, 2020, Administrative Order No. 56, promulgated on October 26th, 2009, and amended on May 11, 2015, is hereby amended as follows:

It is hereby ordered and directed that all defendants convicted of any misdemeanor or felony criminal offense or anyone accepted into Accelerated Rehabilitation Disposition in such matters, shall be assessed a fee of \$250.00 to offset costs of Central and/or Regional Booking Centers located throughout Bucks County. Said fees shall be assessed as court costs. This fee is in addition to all other authorized fines, costs and supervision fees legally assessed.

Fees so collected shall be paid into the General Fund of Bucks County. Each year, the Controller's Office shall proportionately disburse these funds to the participating jurisdictions in accordance with the Regional Booking Center Plan developed by those jurisdictions and approved by the Court.

This Order shall become effective March 1, 2020.

By the Court

WALLACE H. BATEMAN, Jr.,
President Judge

[Pa.B. Doc. No. 20-148. Filed for public inspection January 31, 2020, 9:00 a.m.]

**DISCIPLINARY BOARD
OF THE SUPREME COURT**

Notice of Suspension

Notice is hereby given that James Stephen DelSordo having been suspended from the practice of law in the State of Virginia; the Supreme Court of Pennsylvania issued an Order dated January 16, 2020 suspending James Stephen DelSordo from the practice of law in this Commonwealth for a period of one year and one day, effective February 15, 2020. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,
Board Prothonotary

[Pa.B. Doc. No. 20-149. Filed for public inspection January 31, 2020, 9:00 a.m.]