

THE COURTS

TITLE 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

[204 PA. CODE CH. 71]

Proposed Amendment to Pennsylvania Bar Admission Rule 322

Notice is hereby given that the Pennsylvania Board of Law Examiners is considering recommending to the Pennsylvania Supreme Court that it amend Rule 322 of the Pennsylvania Bar Admission Rules concerning authorized activities of certified legal interns (interns) as set forth in Annex A. Additions to the text of the rule are shown in bold and underlined, and deletions are in bold and brackets.

The proposed amendment would permit interns with an additional opportunity to participate in oral advocacy before the appellate courts of the Commonwealth of Pennsylvania (appellate courts). Currently, interns representing the Commonwealth are permitted to participate in oral advocacy before the appellate courts, however, interns representing the indigent are not. This distinction has caused some confusion as some have interpreted the rule to prohibit any oral advocacy before the appellate courts by any intern, including those who represent the Commonwealth. The proposed amendment to Pa.B.A.R. 322 would clarify that interns representing the Commonwealth are permitted to provide oral advocacy before the appellate courts and would expressly permit interns representing indigents to also provide oral advocacy in those courts. It also clarifies the duties of the supervising attorney and provides the supervising attorney with the ability to designate another attorney in his or her office with the ability to supervise the intern in representation of clients before the courts.

Interested persons are invited to submit written comments regarding the proposed amendments to the Counsel to the Board, Pennsylvania Board of Law Examiners, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 3600, P.O. Box 62535, Harrisburg, PA 17106-2535, no later than April 13, 2021.

*By The Pennsylvania Board of Law Examiners
Supreme Court of Pennsylvania*

GICINE P. BRIGNOLA,
Executive Director

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) Ensure that a licensed attorney employed by his or her office is personally 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. 21-222. Filed for public inspection February 12, 2021, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 85]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 100

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania amends its Board Rules and Procedures to modify Rule § 85.10 related to stale matters.

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

§ 85.10. Stale matters.

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

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

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

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

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

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

[Pa.B. Doc. No. 21-223. Filed for public inspection February 12, 2021, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

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

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 99

By Order dated October 29, 2020, effective November 28, 2020, the Supreme Court of Pennsylvania adopted Rule 404 of the Pennsylvania Rules of Disciplinary Enforcement and amended Rules 102, 201, 204, 217 and 219 of the Pennsylvania Rules of Disciplinary Enforcement related to permanent resignation. By this Order, the Board amends its Board Rules and Procedures to reflect the adoption of those amendments and modifies Rules § 85.2 related to definitions; § 85.3 related to jurisdiction; § 85.8 related to types of discipline; § 91.95 related to additional steps to be taken to disengage from the practice of law; and § 93.141 related to annual registration.

Further, by this Order, the Board amends its Board Rules and Procedures to modify Rules § 89.3 related to filings; § 89.164 related to filing and service of briefs; § 89.202 related to content and form of briefs on exceptions; and § 93.27 related to conference telephone meetings.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(12), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Executive Director shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

By the Disciplinary Board of the Supreme Court of Pennsylvania

JESSE G. HEREDA,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

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

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§ 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:

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

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§ 85.8. Types of discipline.

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(c) *Limited In-House Corporate Counsel License.* Enforcement Rule 204(c) provides that a reference in the Enforcement Rules and these rules to disbarment, suspension, temporary suspension, administrative suspension, **permanent resignation**, or transfer to or assump-

tion of retired or inactive status shall be deemed to mean, in the case of a respondent-attorney who holds a Limited In-House Corporate Counsel License, expiration of that license; and that a respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

(1) shall be deemed to be a formerly admitted attorney for purposes of Subchapter 91E (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Subchapter 89F (relating to reinstatement and resumption of practice) or §§ 93.145 (relating to reinstatement) or 93.112(c) (relating to reinstatement upon payment of taxed costs) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

GENERAL MATTERS

§ 89.3. Filings generally.

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

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

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Subchapter C. HEARING PROCEDURES

ORAL ARGUMENT AND BRIEFS

§ 89.164. Filing and service of briefs.

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

Subchapter D. ACTION BY BOARD AND SUPREME COURT

§ 89.202. Content and form of briefs on exceptions.

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

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter E. FORMERLY ADMITTED ATTORNEYS

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

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

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

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

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

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

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

that would constitute the unauthorized practice of law if engaged in by a nonlawyer. In relation to formerly admitted attorneys who are disbarred, suspended for a period exceeding one year, temporarily suspended under Enforcement Rule 208(f) or 213(g), or transferred to disability inactive status, the requirements of paragraph (b)(1) of this section continue throughout the term of the disbarment, suspension, temporary suspension, or disability inactive status, thereby precluding any new appointment or engagement.

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

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.27. Conference telephone meetings.

One or more members of the Board may participate in a meeting of the Board [**(other than a meeting for the purpose of hearing oral argument)**] by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Subchapter G. FINANCIAL MATTERS

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.141. Annual registration.

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(b) [**Inapplicable to justices and judges**] **Exemptions.** Enforcement Rule 219(b) provides that the following shall be exempt from the annual fee:

(1) Justices or judges serving in the following Pennsylvania courts of record shall be exempt for such time as they serve in office: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and justices or judges serving an appointment for life on any federal court;

(2) retired attorneys; [**and**]

(3) **permanently resigned attorneys under Enforcement Rule 404; and**

[(3)] (4) military attorneys holding a limited certificate of admission issued under Pa.B.A.R. 303 (relating to admission of military attorneys).

Official Note: The exemption created by subdivision (b)(1) does not include Pittsburgh Municipal Court judges, magisterial district judges, arraignment court magistrates or administrative law judges.

[Pa.B. Doc. No. 21-224. Filed for public inspection February 12, 2021, 9:00 a.m.]