

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 208 of the Pennsylvania Rules of Disciplinary Enforcement; No. 227 Disciplinary Rules Docket

Order

Per Curiam

And Now, this 27th day of July, 2022, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; which followed the proposal to amend Pa.R.D.E. 208 having been published for comment in the *Pennsylvania Bulletin*, 52 Pa.B. 965 (February 12, 2022):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 208 of the Rules of Disciplinary Enforcement is amended in the attached form.

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

Additions to the rules are in bold and are underlined.

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 208. Procedure.

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(f) *Emergency temporary suspension orders and related relief.*

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(8) Where a respondent-attorney has been temporarily suspended pursuant to paragraph (1) or paragraph (5) and more than two years have passed without the commencement of a formal proceeding, and it appears by an affidavit demonstrating facts that:

(i) the respondent-attorney has not complied with conditions imposed in the order of temporary suspension or with the requirements of Enforcement Rule 217;

(ii) the order of temporary suspension was based, in whole or in part, on the respondent-attorney's failure to provide information or records, and the respondent-attorney has not provided the information or records, or otherwise cured the deficiency;

(iii) the respondent-attorney has engaged in post-suspension conduct, by act or omission, that mate-

rially delays or obstructs Disciplinary Counsel's ability to fully investigate allegations of misconduct against the respondent-attorney;

(iv) the respondent-attorney's whereabouts are unknown, in that despite reasonably diligent efforts, Disciplinary Counsel has not been able to contact or locate the respondent-attorney for information or to serve notices or other process at the address provided by the respondent-attorney in the verified statement required by Enforcement Rule 217(e)(1) or at any other known addresses that might be current;

(v) a conservatorship of the affairs of the respondent-attorney has been appointed pursuant to Enforcement Rule 321; or

(vi) the respondent-attorney has not participated in proceedings before the Pennsylvania Lawyers Fund for Client Security in which an adjudicated claim has resulted in an award,

Disciplinary Counsel may petition the Court for the issuance of a rule to show cause why an order of disbarment should not be entered. The provisions of paragraph (1) apply to service of the petition upon the respondent-attorney by Disciplinary Counsel. Upon the filing by Disciplinary Counsel of an affidavit establishing compliance with the service requirements of paragraph (1), the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be disbarred, which rule shall be returnable within thirty days. The respondent-attorney shall serve a copy of any response on Disciplinary Counsel, who shall have fourteen days after receipt to file a reply.

(9) If a rule to show cause has been issued under paragraph (8), and the period for response has passed without a response having been filed, or after consideration of any responses, the Court may enter an order disbarring the respondent-attorney from the practice of law, discharging the rule to show cause, or directing such other action as the Court deems appropriate.

[Pa.B. Doc. No. 22-1172. Filed for public inspection August 5, 2022, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Notice of Proposed Rulemaking

Notice is hereby given that the Pennsylvania Lawyers Fund for Client Security (the "Fund") is considering recommending to the Supreme Court of Pennsylvania

(“Supreme Court”) that the Supreme Court adopt amendments to Pennsylvania Rules of Disciplinary Enforcement 501, 502, 503, 504, 512, 514, 521, 531 and 532 as set forth in Annex A.

Rule 501—The proposed amendment to Rule 501 is administrative in nature and would add a definition for Supreme Court and modify the language used to define a Claimant.

Rule 502—The proposed amendment to Rule 502(b) would change terminology related to annual registration of attorneys to be consistent with proposed rule changes published by the Disciplinary Board in the *Pennsylvania Bulletin*, Volume 52, Number 7.

Rule 503—The proposed amendment to Rule 503(d)(1) would permit more than three Board members or members of the bar to sit as a hearing committee.

Rule 504—The proposed amendment to Rule 504 would eliminate subsection (e) as it is inconsistent with other subsections of Rule 504 and may have the effect of circumventing the rule’s confidentiality provisions. Subsection (a) of Rule 504 is very broad and provides:

All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.

Subsection (b) of Rule 504 permits the disclosure of limited information after an award is approved, but it does not permit the release of any documents or other materials. Subsection (e) appears to circumvent the confidentiality provisions of subsection (a) by permitting the release of the Fund’s documents and materials upon the issuance of a subpoena. The Fund is a resource for the public in order to recover a loss resulting from the dishonest conduct of their attorney. In order for the Board to have a complete record and as much information as possible when reviewing a claim, the staff will often request personal and confidential information and documentation from both the claimant and the attorney. Should it be determined that material in the Fund’s claim files is subject to a subpoena, potential claimants may be deterred from filing a claim and obtaining appropriate recovery. Additionally, attorneys may be deterred from fully cooperating with the concern that certain documentation may be obtained through a subpoena. Finally, the Fund is not subject to the Freedom of Information Act as it is not a federal agency, making the reference to that Act irrelevant.

Rule 512—The proposed amendment to Rule 512 is administrative in nature as it would insert the word “is” to correct a grammatical error in the last sentence.

Rule 514—The proposed amendment to Rule 514(b) would increase the maximum claim award from \$100,000 to \$150,000. The Board reviewed research that indicates that with a \$100,000 maximum award, the Fund has been able to fully reimburse 43.52%—less than one-half—of the eligible claimants since the maximum award was increased in January 2011. Had the maximum award been \$150,000 during this same ten-year period, the Fund would have been able to fully reimburse 65.28% of eligible claimants. Other leaders in the client protection field across the country are periodically reassessing the maxi-

um award. The most recent increase in Pennsylvania’s maximum award occurred in December 2010, increasing the maximum award from \$75,000 to \$100,000, effective January 2011, over ten years ago. Both New Jersey and New York have maximum awards of \$400,000. New York has over 300,000 licensed attorneys, however, New Jersey has approximately 99,000 licensed attorneys, compared to approximately 75,680 Pennsylvania-licensed attorneys. Wisconsin has a \$150,000 maximum award, as does Michigan, Minnesota, the state of Washington, and Wyoming. The Board believes increasing the maximum award to \$150,000 would solidify Pennsylvania’s Fund as a leader in the client protection field and would better serve the Fund’s mission of reimbursing victims of attorney dishonesty in the practice of law, preserving the integrity and protecting the good name of the legal profession, and promoting public confidence in the legal system and the administration of justice in Pennsylvania.

Rule 521—The proposed amendment to Rule 521(b) would clarify that a claim is filed with the Fund, and not against the Fund.

Rule 531—The proposed amendments to Rule 531 would emphasize that the obligation owed by a former attorney to the Fund is in the nature of a fine or penalty which must be repaid prior to being reinstated to the practice of law in Pennsylvania. The Fund has experienced an increase in recent years of former attorneys attempting to have their obligation owed to the Fund discharged in bankruptcy. If the former attorney does not agree to stipulate that the obligation is non-dischargeable, the Fund is forced to litigate the non-dischargeability of the obligation in order to recover the awards that have been paid to the former attorney’s clients. Section 523(a)(7) of the Bankruptcy Code provides that a fine or penalty payable to and for the benefit of a governmental unit, which is not compensation for actual pecuniary loss is non-dischargeable. The proposed modification of the language in Rule 531 would reinforce that the obligation to repay the Fund is a protective measure designed to ensure the former attorney has been accountable for the prior conduct and as one measure of fitness to resume the practice of law. The proposed language would support that the requirement to repay the Fund is designed to protect the public and is penal in nature. It is anticipated that by modifying the language in Rule 531 to reinforce the obligation to repay the Fund for the awards paid to the former attorney’s clients, plus the 10% interest, as a penalty will reduce the Fund’s litigation costs in prosecuting an adversary action in Bankruptcy Court and litigating the Board’s decisions before a Bankruptcy Judge.

Rule 531—The proposed amendments to Rule 532 would carry forward the modification in language being proposed for Rule 531.

Interested persons are invited to submit written comments regarding the proposed amendments to the Pennsylvania Lawyers Fund for Client Security, P.O. Box 62585, Harrisburg, PA 17106, fax number (717) 231-9511 or email to admin@palawfund.com, on or before September 6, 2022.

*By the Pennsylvania Lawyers
Fund for Client Security*

KATHRYN PEIFER MORGAN, Esquire,
Executive Director and Counsel

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

GENERAL PROVISIONS

Rule 501. Definitions.

The following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

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"Claimant." A person who [makes application] applies to the Board for a disbursement from the Fund.

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"Supreme Court." Supreme Court of Pennsylvania.

Rule 502. Pennsylvania Lawyers Fund for Client Security.

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(b) Additional [fee] Assessment. Every attorney who is required to pay an active annual [fee] assessment under Rule 219 (relating to annual registration [of attorneys] and assessment) shall pay an additional [fee] assessment of \$50.00 for use by the Fund. Such additional [fee] assessment shall be added to, and collected with and in the same manner as, the basic annual [fee] assessment. All amounts received pursuant to this subdivision shall be credited to the Fund.

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Rule 503. Pennsylvania Lawyers Fund for Client Security Board.

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(d) Powers. The Board shall have the power and duty:

(1) To appoint hearing committees. Each committee shall consist of at least three members who are members of the bar of the Supreme Court or who are current members of the Board.

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Rule 504. Confidentiality.

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[(e) Requests for the release of confidential information by any person or entity, other than those identified in subsection (d), must be made to the Fund through the issuance of a subpoena; requests for same made under the Freedom of Information Act will not be honored.]

DISHONEST CONDUCT OF ATTORNEY

Rule 512. Covered Attorney.

This subchapter covers conduct of a member of the bar of the Supreme Court, including attorneys admitted pro hac vice and formerly admitted attorneys whose clients reasonably believed the former attorney to be licensed to practice when the Dishonest Conduct occurred, an active foreign legal consultant, an active military attorney, an active attorney who is the spouse of an active-duty service

member of the United States Uniformed Services, or a person holding an active Limited In-House Corporate Counsel License, which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct outside of this Commonwealth of a foreign legal consultant, military attorney, an attorney who is the spouse of an active-duty service member of the United States Uniformed Services, or person holding a Limited In-House Corporate Counsel License unless the conduct is related to the provision of legal services to a resident of this Commonwealth.

Rule 514. Reimbursable Losses.

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(b) Maximum Recovery. The maximum amount which may be disbursed from the Fund to any one Claimant with respect to the Dishonest Conduct of any one Covered Attorney shall be [\$100,000] \$150,000. The maximum amount which may be disbursed from the Fund as a result of any one Covered Attorney shall be \$1,000,000. The Board may request the Supreme Court of Pennsylvania to exceed the \$1,000,000 maximum when the Board determines, in the exercise of its discretion, that exceeding the maximum is necessary to adequately compensate all victims of the Dishonest Conduct of the Covered Attorney and exceeding the maximum will not unduly burden the Fund.

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PAYMENT OF CLAIMS

Rule 521. Investigation and Payment of Claims.

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(b) Hearing Committees. The Board may utilize a hearing committee to conduct any hearings under this subchapter for the purpose of resolving factual issues. Imposition of discipline under Rule 204 (relating to types of discipline) or otherwise shall not be a prerequisite for favorable action by the Board with respect to a claim [against] filed with the Fund, but the Covered Attorney involved shall be given notice of and an opportunity to contest any claim made with respect to his or her alleged Dishonest Conduct. Notice mailed to the Covered Attorney at the address of record with Attorney Registration per Rule of Disciplinary Enforcement 219 (relating to annual registration [of attorneys] and assessment) shall satisfy this notice requirement.

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REINSTATEMENT

Rule 531. Restitution a Condition for Reinstatement.

The Board shall file with the Supreme Court a list containing the names of all formerly admitted attorneys with respect to the Dishonest Conduct of which the Board has made unrecovered disbursements from the Fund. No person will be reinstated by the Supreme Court under Rule 218 (relating to reinstatement proceedings), Rule 219 (relating to [annual registration of attorneys] administrative changes in status), Rule 301(h) (relating to proceedings where an attorney is declared to be incapacitated or severely mentally disabled), Pennsylvania Rules for Continuing Legal Education[,] Rule 111(b) (relating to noncompliance with continuing legal education rules) or who has been suspended from the practice of law for any period of time, including, but not limited to suspensions under Rule 208(f) (relating to emergency

temporary suspension) and 219([f](g)) (relating to administrative suspension) until the Covered Attorney has paid in full a penalty to the Fund assessed in the amount of [has been repaid in full, plus 10% per annum interest, for] all disbursements made from the Fund with respect to the Dishonest Conduct of such [person] Covered Attorney, plus 10% per annum interest.

BANKRUPTCY FILING

Rule 532. Duty to Report Bankruptcy Filing.

If a Covered Attorney becomes a debtor in bankruptcy after having received notice either of a claim pending with the Fund against the Covered Attorney or of any disbursement by the Fund with respect to a claim against the Covered Attorney and the Covered Attorney has not [repaid] paid the full penalty to the Fund [in full

plus] including interest in accordance with Enforcement Rule 531, the Covered Attorney shall notify the Executive Director of the Fund in writing of the case caption and docket number within 20 days after the Covered Attorney files for bankruptcy protection. If the Covered Attorney receives notice of a pending claim or disbursement after the filing of the bankruptcy petition and before the conclusion of the bankruptcy case, the Covered Attorney shall give the written notice required by this rule within ten days after receipt of the notice of the pending claim or disbursement.

Additions are underlined and bold.

Deletions are bracketed and bold.

[Pa.B. Doc. No. 22-1173. Filed for public inspection August 5, 2022, 9:00 a.m.]