

**Subpart C. DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

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Authority

The provisions of this Subpart C issued under Supreme Court Rule 17-5(c)(9), unless otherwise noted.

Source

The provisions of this Subpart C adopted November 23, 1974, 3 Pa.B. 2683, amended through July 29, 1977, 7 Pa.B. 2112, unless otherwise noted.

CHAPTER 85. GENERAL PROVISIONS

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§ 85.1. Title and citation of subpart.

This subpart shall be known, and may be cited, as the “Disciplinary Board Rules.”

§ 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 the 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.

Active status—The license status of an attorney who is admitted in Pennsylvania and is registered as active under Enforcement Rule 219 (relating to

annual registration and assessment). An attorney on active status is eligible to practice law in Pennsylvania.

Administrative Office—The Administrative Office of Pennsylvania Courts.

Administrative suspension—The license status of an attorney, after Court order under Enforcement Rule 219(g), who: failed to pay the annual assessment and file the form required by subdivisions (b) and (c) of Enforcement Rule 219; failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education and was reported to the Court by the Pennsylvania Continuing Legal Education Board under Rule 111(b), Pa.R.C.L.E.; failed to pay any costs and fees 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 or legal services programs, a military attorney, or attorney spouse of an active-duty service member. An attorney on administrative suspension status is ineligible to practice law in Pennsylvania.

Attorney—Includes any person subject to these rules.

Attorney participant in defender or legal services programs—An attorney or the license status of 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 Pennsylvania Bar Admission Rule 301.

Attorney spouse of an active-duty service member—An attorney or the license status of 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.

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

Board Prothonotary—The Prothonotary of the Disciplinary Board.

Board Rule—Any provision of this subpart.

Censure—Public censure by the Supreme Court under Enforcement Rule 204(a)(3) (relating to types of discipline).

Chief Disciplinary Counsel—The Chief Disciplinary Counsel appointed by the Board or, in the absence of such Chief Disciplinary Counsel, the Disciplinary Counsel designated by the Chief Disciplinary Counsel to serve in his absence. In the case of vacancy in office, absence or inability of such Chief Disciplinary Counsel, the Disciplinary Counsel designated by the Board.

Complaint—A grievance concerning an attorney communicated to the Office of Disciplinary Counsel or considered by the Office of Disciplinary Counsel on its own motion.

Conservator—A conservator appointed under § 91.121 (relating to appointment of conservator to protect interests of clients of absent attorney).

Court—The Supreme Court of Pennsylvania.

Court Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Disability inactive status—The license status of an attorney who: has been transferred to this status by order of the Court under Enforcement Rule 301(c) after having been judicially declared incapacitated by another court; has been declared incapacitated by order of the Court under Enforcement Rule 301(d) from continuing the practice of law; is transferred to disability inactive status by order of the Court under Enforcement Rule 301(e) after contending during a pending disciplinary proceeding that he or she is suffering from a disability by reason of physical or mental infirmity or illness that makes it impossible for the attorney to prepare an adequate defense; or has been placed on disability inactive status in another jurisdiction and is transferred to disability inactive status by reciprocal order of the Court under Enforcement Rule 216. The term “disability inactive status” includes any transfer to inactive status based on disability under Rule 216 or 301. An attorney on disability inactive status is ineligible to practice law in Pennsylvania.

Disbarment—A type of discipline in which the Court withdraws the offending attorney’s privilege to practice law for an unspecified period of at least five years with no basis for an expectation to resume the practice of law.

Disciplinary Counsel—The Chief Disciplinary Counsel and Disciplinary Counsel within the Office of Disciplinary Counsel.

Disciplinary District—One of the four districts into which this Commonwealth is divided for disciplinary purposes as set forth in § 93.1 (relating to disciplinary districts).

Disciplinary Rules—The provisions of the Code of Professional Responsibility, as adopted by the Supreme Court of Pennsylvania on May 20, 1970, 438 Pa. XXV, as amended from time to time by special order of the Court and governing lawyer conduct occurring or beginning on or before March 31, 1988, as well as the provisions of the Rules of Professional Conduct, as adopted by the Supreme Court of Pennsylvania on October 16, 1987, 515 Pa. LXIX, and effective on April 1, 1988, as amended from time to time by special order of the Court. See Chapter 81 (relating to Rules of Professional Conduct).

Emeritus status—The license status of an attorney admitted in Pennsylvania who has elected emeritus status, pursuant to Enforcement Rule 403, in order to provide the type of pro bono services authorized by Enforcement Rule 403 (relating to emeritus status) and is current on all registration requirements under that rule.

Enforcement Rule—Any provision of Chapter 83 (relating to Pennsylvania rules of disciplinary enforcement).

Executive Office—The Office of the Disciplinary Board established by § 93.51 (relating to Executive Office), referred herein as the “Executive Office.”

Experienced hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has served on at least one hearing committee that has conducted a hearing into formal charges of misconduct by a respondent-attorney or a hearing on a petition for reinstatement from discipline by a petitioner-attorney.

Foreign legal consultant—A person or the license status of a person who holds a current license as a foreign legal consultant issued under Pennsylvania Bar Admission Rule 341 (relating to the licensing of foreign legal consultants).

Formal Proceedings—Proceedings that commence with the filing of a petition for discipline. A formal proceeding does not include any of the submissions or documents generated during an informal proceeding unless they are made part of the record at the formal proceeding by motion, by stipulation, or by admission as an exhibit during a hearing. Pursuant to Enforcement Rule 402(a), formal proceedings are open to the public, except as provided in Enforcement Rules 402(b) and 402(k).

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

Grievance—Alleged misconduct.

Hearing Committee—A hearing committee designated under § 93.81 (relating to hearing committees).

Inactive status—The license status of an attorney who is admitted in Pennsylvania and has either elected inactive status under Enforcement Rule 219 (relating to annual registration and assessment) or has sold his or her practice by reason of disability pursuant to Rule 1.17(f) of the Pennsylvania Rules of Professional Conduct. An attorney on inactive status is ineligible to practice law in Pennsylvania.

Informal admonition—A type of private discipline administered by Disciplinary Counsel.

Informal Proceedings—Proceedings that commence with the submission of a complaint to the Office of Disciplinary Counsel or an investigation initiated by the Office of Disciplinary Counsel. An informal proceeding includes all proceedings up to the filing of a petition for discipline. Informal proceedings are not open to the public.

Inquiry—Information concerning an attorney communicated to the Office of Disciplinary Counsel which does not amount to a complaint.

Investigation—Fact finding under the direction of the Office of Disciplinary Counsel with respect to alleged misconduct or to reinstatement.

Investigator—Any person designated by the Office of Disciplinary Counsel to assist it in investigation of alleged misconduct or of reinstatement.

Judge status—The license status of a justice or judge serving on the following Pennsylvania courts of record: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and a justice or judge serving on the following federal courts: Supreme, Court of Appeals, Bankruptcy, and District Court, including full-time and part-time magistrate judges not otherwise engaged in the practice of law. This status includes a justice or judge who served on one of these courts and is granted senior status. An attorney on judge status is exempt from annual registration under Enforcement Rule 219(a)(2).

Legal Counsel—Counsel to the Board and Special Counsel.

Limited In-House Corporate Counsel—An attorney or the license status of an attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 302 (relating to limited admission of in-house corporate counsel).

Military attorney—An attorney or the license status of an attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys).

Notarial officer—An officer authorized under § 91.14 (relating to officer before whom deposition is taken) to take depositions for use before a hearing committee.

Office of Disciplinary Counsel—The Office of Disciplinary Counsel established by § 93.61 (relating to Office of Disciplinary Counsel).

Participant—The respondent-attorney, any other person admitted by the Board to limited participation in a proceeding, and staff counsel.

Permanent resignation—The license status of an attorney who has elected to permanently resign from the Pennsylvania bar under Enforcement Rule 404. An attorney on permanent resignation status is ineligible to practice law in Pennsylvania.

Petition—A formal pleading filed by the Office of Disciplinary Counsel with the Board requesting action by the Board under the Disciplinary Rules, the Enforcement Rules or these rules.

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, military attorney, 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—A type of private discipline imposed by the Board.

Proof of service—A certificate of service complying with § 89.26 (relating to form of certificate of service).

Public reprimand—A type of discipline imposed by the Board.

Respondent-attorney—Includes any person subject to the Enforcement Rules (See § 85.3(a) (relating to jurisdiction)).

Retired status—The license status of an attorney admitted in Pennsylvania who elects this status after having ceased the practice of law in Pennsylvania. An attorney on retired status is ineligible to practice law in Pennsylvania.

Reviewing hearing committee member—A hearing committee member designated under these rules to review the disposition of a complaint recommended by the Office of Disciplinary Counsel.

Rules—The provisions of this subpart.

Senior hearing committee member—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has served (i) either as a member of the Board, or (ii) on at least two hearing committees that have conducted hearings into formal charges of misconduct by respondent-attorneys or hearings on petitions for reinstatement from discipline by petitioner-attorneys.

Special Master—Assigned under § 93.91 (relating to special masters), includes former Board members, former or retired justices or judges not on senior status, Special Counsel, and former senior hearing committee members.

Staff counsel—The attorneys constituting the Office of Disciplinary Counsel and, where appropriate, the attorney or attorneys of the Office of Disciplinary Counsel who are assigned to a particular investigation or proceeding.

Suspension—A type of discipline in which the Court withdraws the offending attorney's privilege to practice law for a period not exceeding five years. A suspended attorney may resume the practice of law only upon the entry of an order of the Court reinstating the attorney to active status.

Verified statement—A document filed with the Board or the Court under the Enforcement Rules or these rules containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) *Number; tense.* In these rules the singular shall include the plural, and the plural, the singular; and words used in the past or present tense shall include the future.

Source

The provisions of this § 85.2 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended January 15, 1988, effective April 1, 1988, 18 Pa.B. 242; amended April 13, 1990, effective April 14, 1990, 20 Pa.B. 2009; amended July 29, 1994, effective July 30, 1994, 24 Pa.B. 3706; amended March 11, 2005, effective March 12, 2005, 35 Pa.B. 1656; amended August 5, 2005, effective August 6, 2005, 35 Pa.B. 4301; amended February 24, 2006, effective February 25, 2006, 36 Pa.B. 929; amended April 18, 2008, effective April 19, 2008, 38 Pa.B. 1812; amended August 7, 2009, effective August 8, 2009, 39 Pa.B. 4725; amended August 5, 2011, effective August 6, 2011, 41 Pa.B. 4202; amended August 10, 2012, effective August 11, 2012, 42 Pa.B. 5156; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552; amended January 31, 2020, effective 30 days after publication, 50 Pa.B. 647; amended February 12, 2021, effective 30 days after publication, 51 Pa.B. 781; amended April 29, 2022, effective 30 days after publication, 52 Pa.B. 2581; amended December 15, 2023, effective 30 days after publication, 53 Pa.B. 7704. Immediately preceding text appears at serial pages (410107) to (410111).

§ 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).

- (2) Any attorney of another jurisdiction specially admitted by a court of this Commonwealth for a particular proceeding.

(3) Any formerly admitted attorney, with respect to acts prior to suspension, disbarment, temporary suspension, administrative suspension, permanent resignation, or transfer to or assumption of retired, inactive or disability 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.

(4) Any attorney who is a justice, judge or magisterial district judge, with respect to acts prior to taking office as a justice, judge or magisterial district judge, if the Judicial Conduct Board declines jurisdiction with respect to such acts.

(5) Any attorney who resumes the practice of law, with respect to nonjudicial acts while in office as a justice, judge or magisterial district judge.

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal service in this Commonwealth.

(b) *Exceptions.* Enforcement Rule 201(b) provides that nothing contained in the Enforcement Rules shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit bar associations from censuring, suspending or expelling their members from membership in the association.

Source

The provisions of this § 85.3 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended September 10, 2004, effective September 11, 2004, 34 Pa.B. 5013; amended August 5, 2005, effective August 6, 2005, 35 Pa.B. 4301; amended August 7, 2009, effective August 8, 2009, 39 Pa.B. 4725; amended January 31, 2020, effective 30 days after publication, 50 Pa.B. 647; amended February 12, 2021, effective 30 days after publication, 51 Pa.B. 781; amended December 15, 2023, effective 30 days after publication, 53 Pa.B. 7704. Immediately preceding text appears at serial pages (410111) to (410112).

§ 85.4. Information and special instructions.

Information as to procedure under these rules, and instructions supplementing these rules in special instances, will be furnished upon application to:

- (1) The Office of Disciplinary Counsel, except with respect to matters which have become the subject of formal proceedings.
- (2) The Executive Office, with respect to matters which have become the subject of formal proceedings.

Source

The provisions of this § 85.4 amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (376985) to (376986).

§ 85.5. Location of Office of Disciplinary Counsel.

(a) *Chief Disciplinary Counsel.* The location of the headquarters of the Office of Disciplinary Counsel and the office of the Chief Disciplinary Counsel is:

Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2700
P. O. Box 62485
Harrisburg, PA 17106-2485
(717) 783-0990
(fax: (717) 783-4963)

(b) *Disciplinary District Offices.* The present locations of the district offices of the Office of Disciplinary Counsel for each such disciplinary district are:

- (1) District I Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337
(215-560-6296)
(fax: 215-560-4528)
- (2) District II Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Suite 170
820 Adams Avenue
Trooper, PA 19403-2328
(610-650-8210)
(fax: 610-650-8213)
- (3) District III Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
PO Box 62675
Harrisburg, PA 17106-2675
(717-772-8572)
(fax: 717-772-7463)

- 4) District IV Office
Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219-6002
(412-565-3173)
(fax: 412-565-7620)

Source

The provisions of this § 85.5 amended through August 30, 1985, effective August 31, 1985, 15 Pa.B. 3080; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4448; amended November 15, 1991, effective November 16, 1991, 21 Pa.B. 5325; amended September 11, 1992, effective September 12, 1992, 22 Pa.B. 4624; amended June 11, 1993, effective June 12, 1993, 23 Pa.B. 2729; amended April 25, 1997, effective April 26, 1997, 27 Pa.B. 2037; amended February 21, 2003, effective February 22, 2003, 33 Pa.B. 967; amended April 18, 2008, effective April 19, 2008, 38 Pa.B. 1812; amended November 20, 2009, effective November 21, 2009, 39 Pa.B. 6654; amended August 10, 2012, effective August 11, 2012, 42 Pa.B. 5156; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2457; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (376986) to (376987).

§ 85.6. Location of Executive Office.

The location of the Executive Office is:

Executive Office
The Disciplinary Board of the Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625
(717-231-3380)
(fax: 717-231-3381)

Source

The provisions of this § 85.6 amended through July 2, 1982, effective July 3, 1982, 12 Pa.B. 2021; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4448; amended September 11, 1992, effective September 12, 1992, 22 Pa.B. 4624; amended November 20, 2009, effective November 21, 2009, 39 Pa.B. 6654; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial page (376987).

§ 85.7. Grounds for discipline.

(a) Enforcement Rule 203(a) provides that acts or omissions by a person subject to the Enforcement Rules, individually or in concert with any other person or persons, which violate the Disciplinary Rules shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

(b) Enforcement Rule 203(b) provides that the following shall also be grounds for discipline:

- (1) Conviction of a crime.

- (2) Wilful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand, or informal admonition.
 - (3) Wilful violation of any other provision of the Enforcement Rules.
 - (4) Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master.
 - (5) Ceasing to meet the requirements for licensure as a foreign legal consultant set forth in Pennsylvania Bar Admission Rule 341 (a)(1) or (3) (relating to licensing of foreign legal consultants).
 - (6) Making a material misrepresentation of fact or deliberately failing to disclose a material fact in connection with an application submitted under the Pennsylvania Bar Admission Rules.
 - (7) Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request (Form DB-7) or supplemental request (Form DB-7A) under § 87.7(b) of these rules for a statement of the respondent-attorney's position.
- (c) Enforcement Rule 203(c) provides that the Board, its hearing committees, special masters and (when administering informal admonitions) Disciplinary Counsel are "tribunals" within the meaning of the Disciplinary Rules.

Source

The provisions of this § 85.7 amended December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948; amended August 5, 2005, effective September 1, 2005, 35 Pa.B. 4301; amended December 1, 2006, effective December 2, 2006, 36 Pa.B. 7233; amended August 5, 2011, effective August 6, 2011, 41 Pa. Code 4202; amended August 10, 2012, effective August 11, 2012, 42 Pa.B. 5156. Immediately preceding text appears at serial pages (358043) to (358044).

§ 85.8. Types of discipline.

- (a) *General rule.* Enforcement Rule 204(a) provides that misconduct shall be grounds for any of the following:
- (1) Disbarment by the Supreme Court.
 - (2) Suspension by the Supreme Court for a period not exceeding five years.
 - (3) Public censure by the Supreme Court with or without probation.
 - (4) Probation by the Supreme Court under supervision provided by the Board.
 - (5) Public reprimand by the Board with or without probation.
 - (6) Private reprimand by the Board with or without probation.
 - (7) Private informal admonition by Disciplinary Counsel.
 - (8) Revocation of an attorney's admission or license to practice law in the circumstances provided in § 85.7(b)(6) (relating to grounds for discipline).
- (b) *Conditions attached to discipline.* Enforcement Rule 204(b) provides that conditions may be attached to an informal admonition, private reprimand, or public reprimand and that failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

(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 assumption of retired, inactive or disability 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 Chapter 91 Subchapter E (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Chapter 89 Subchapter F (relating to reinstatement and resumption of practice) or §§ 93.145 (relating to administrative change to active status) 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).

Source

The provisions of this § 85.8 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended August 5, 2005, effective August 6, 2005, 35 Pa.B. 4301; amended December 1, 2006, effective immediately, 36 Pa.B. 7233; amended August 7, 2009, effective August 8, 2009, 39 Pa.B. 4725; amended August 10, 2012, effective August 11, 2012, 42 Pa.B. 5156; amended October 29, 2020, effective 30 days after publication, 51 Pa.B. 781; amended December 15, 2023, effective 30 days after publication, 53 Pa.B. 7704. Immediately preceding text appears at serial pages (410114) to (410115).

§ 85.9. Immunity.

(a) *Board personnel.* Enforcement Rule 209(b) provides that members of the Board, members of hearing committees, special masters, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties; and that, for purposes of this subsection, the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules.

(b) *Other persons.* Enforcement Rule 209(b) further provides that all communications to the Board, a hearing committee, special master, or Disciplinary Counsel relating to misconduct by a respondent-attorney and all testimony given in a proceeding conducted pursuant to these rules shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony.

Official Note: The Note to Enforcement Rule 209 provides that the provisions of this rule recognize that the submission and receipt of complaints against attorneys, and the investigation, hearing decision and disposition of such complaints, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court. The immunity from civil suit recognized to exist in this rule is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding.

Source

The provisions of this § 85.9 amended April 13, 1990, effective April 14, 1990, 20 Pa.B. 2009; amended June 29, 1990, effective June 30, 1990, 20 Pa.B. 3576; amended July 29, 1994, effective July 30, 1994, 24 Pa.B. 3706; amended February 24, 2006, effective February 25, 2006, 36 Pa.B. 929; amended August 5, 2011, effective August 6, 2011, 41 Pa.B. 4202; amended April 29, 2022, effective 30 days after publication, 52 Pa.B. 2581. Immediately preceding text appears at serial pages (404217) to (404218).

§ 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.*

(1) 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) 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.

Source

The provisions of this § 85.10 amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 241; amended May 27, 1994, effective May 28, 1994, 24 Pa.B. 2693; amended April 12, 2002, effective April 13, 2002, 32 Pa.B. 1838; amended February 12, 2021, effective 30 days after publication, 51 Pa.B. 781. Immediately preceding text appears at serial page (397796).

§ 85.11. Recusal.

(a) *General rule.* Enforcement Rule 220(a) provides that a member of the Board or a hearing committee member or a special master shall withdraw from participating in a matter or proceeding where there is a substantial showing that the member or special master cannot participate in a fair and reasonable manner, including but not limited to instances where the member or special master:

(1) has a fixed bias or prejudice for or against the respondent-attorney, or personal knowledge of disputed evidentiary facts relating to the matter or proceeding;

(2) served as a lawyer in connection with any events relating to the matter or proceeding, or a lawyer with whom the member or special master practices law served as a lawyer in connection with any events relating to the matter or proceeding;

(3) individually or as a fiduciary, or any minor child of the member or special master living in his or her household or the spouse of the member or special master, has a financial interest in any events relating to the matter or proceeding.

(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 Chapter 89 Subchapter A (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 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 nonappealing party by mail on the date that the appealing party files the appeal, and the nonappealing 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.

Source

The provisions of this § 85.11 adopted April 13, 1990, effective April 14, 1990, 20 Pa.B. 2009; amended April 26, 1996, effective April 27, 1996, 26 Pa.B. 1984; amended March 11, 2005, effective March 12, 2005, 35 Pa.B. 1656; amended August 7, 2020, effective 30 days after publication, 50 Pa.B. 4014; amended December 15, 2023, effective 30 days after publication, 53 Pa.B. 7704. Immediately preceding text appears at serial pages (404219) to (404220).

§ 85.12. Filings with the Supreme Court.

(a) *General rule.* Enforcement Rule 104(a) provides that Rules 121 through 124 of the Pennsylvania Rules of Appellate Procedure shall be applicable to all filings with the Supreme Court under this Subpart.

(b) *Exception.* Enforcement Rule 104(b) provides that, notwithstanding subsection (a), any express procedural requirement in this Subpart shall be controlling over the applicable provision of the Rules of Appellate Procedure.

(c) *Centralized filing.* Enforcement Rule 104(c) provides that all filings with the Supreme Court under this Subpart shall be made only with the Court Prothonotary, and the person making a filing shall not distribute copies to the members of the Court.

Source

The provisions of this § 85.12 adopted December 7, 1990, effective December 8, 1990, 20 Pa.B. 6041; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3967; amended February 24, 2006, effective February 25, 2006, 36 Pa.B. 929; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial page (363127).

§ 85.13. Verification by respondent-attorneys.

Every pleading or response to a letter requesting statement of position under § 87.7(b) of these rules submitted by or on behalf of a respondent-attorney in any proceeding under these rules that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon the respondent-attorney's personal knowledge or information and belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information and belief as to the remainder.

Source

The provisions of this § 85.13 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3731.

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