

**CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS**

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**Subchapter A. PRELIMINARY PROVISIONS**

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**COMPLAINTS**

**§ 87.1. Initiation of investigations.**

(a) *At direction of Board.* Upon the order of the Board (with the concurrence of at least five members of the Board), the Office of Disciplinary Counsel shall promptly undertake and complete an investigation of such conduct of any attorney or attorneys as may be specified in the order.

(b) *By the Office of Disciplinary Counsel on its own motion.* Except as otherwise provided by § 87.4 (relating to preliminary screening and docketing of complaints) the Office of Disciplinary Counsel shall promptly undertake and complete an investigation of all matters involving alleged violations of the Disciplinary Rules called to its attention by written complaint filed pursuant to § 87.2 (relating to contents of complaint) and may timely undertake and complete an investigation of any other matters otherwise coming to the attention of such Office.

**Source**

The provisions of this § 87.1 amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 241. Immediately preceding text appears at serial pages (83152) and (42731).

**§ 87.2. Manner of filing, form, and contents of complaint.**

Any person who alleges misconduct against an attorney may file a complaint, which may be in either paper or electronic form.

(a) A written complaint may be in the form of a letter or other appropriate writing, or submitted on an official complaint form (Form DB-2). Complaints in paper form may be filed by mail, facsimile transmission, or delivery in person to the location identified in § 85.5(a) (relating to location of the Office of the Chief Disciplinary Counsel) or one of the locations identified in § 85.5(b) (relating to the locations of the Disciplinary District Offices).

(b) The filing of complaints electronically shall be conducted only through electronic means approved by the Board. Instructions for electronic filing and protocols shall be available on the Disciplinary Board's website.

(c) A complaint shall be signed by the complainant and shall contain a statement of the facts upon which the complaint is based. Submission of a complaint through electronic means signifies intent to sign. Verification of the complaint shall not be required. If necessary the Office of Disciplinary Counsel will assist the complainant in reducing the grievance to writing.

**Source**

The provisions of this § 87.2 amended August 4, 2017, effective in 30 days, 47 Pa.B. 4519. Immediately preceding text appears at serial page (376256).

**§ 87.3. Distribution of complaint forms.**

The Office of Disciplinary Counsel shall provide each person who alleges misconduct against an attorney with a blank paper complaint form, or direct such person to the electronic form.

**Source**

The provisions of this § 87.3 amended August 4, 2017, effective in 30 days, 47 Pa.B. 4519. Immediately preceding text appears at serial page (376256).

**§ 87.4. Preliminary screening and docketing of complaints.**

Complaints received by the Office of Disciplinary Counsel against Disciplinary Counsel involving alleged violations of the Disciplinary Rules shall be transmitted forthwith to the Executive Office for disposition pursuant to § 93.52(d)(2) (relating to communications and filings generally). All other complaints shall be assigned a docket number consisting of the letter "C", the number of the disciplinary district to which the matter will be assigned, the last two digits of the calendar year in which the matter is docketed, and the serial number of the matter in such disciplinary district in such calendar year, e.g.: "C4-73-1," etc.

**Source**

The provisions of this § 87.4 amended January 15, 1988, effective April 1, 1988, 18 Pa.B. 242; amended April 18, 2008, effective April 19, 2008, 38 Pa.B. 1812; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (387874) to (387875).

**§ 87.5. Transmission to disciplinary district office for investigation.**

Enforcement Rule 208(a)(1) provides that all investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel. The complaint shall be transmitted to the district office of the Office of Disciplinary Counsel for the appropriate district as determined by § 93.2 (relating to venue).

**Source**

The provisions of this § 87.5 amended August 4, 2017, effective 30 days after publication, 47 Pa.B. 4519. Immediately preceding text appears at serial page (376256).

**§ 87.6. Investigation.**

Subject to the policy supervision and control of the Chief Disciplinary Counsel, the investigative staff of the district office shall make such investigation of the complaint and report thereon as may be appropriate.

**§ 87.7. Notification to respondent-attorney of complaint and duty to respond; duty to produce Pa.R.P.C. 1.15's required records and effect of failure to produce.**

(a) *Condition precedent to recommendation for discipline.* Disciplinary Counsel shall not recommend or undertake a disposition of discipline under Enforcement Rule 204 (relating to types of discipline) until the respondent-attorney has been notified of the allegations and the time for response under subdivision (b)(2) of this rule, if applicable, has expired.

(b) *Transmission of notice.* Except as provided in subsection (a) of this section, the district office shall prepare and forward to the respondent-attorney Form DB-7 (Request for Statement of Respondent's Position), advising the respondent-attorney of:

- (1) the nature of the grievance and if the investigation has not been initiated by the Office of Disciplinary Counsel pursuant to § 87.1(b) (relating to initiation of investigations), the name and address of the complainant; and
- (2) the requirement that the respondent-attorney respond to the allegations against the respondent-attorney by filing with the district office a statement of position. Unless a shorter time is fixed by the Chief Disciplinary Counsel in such notice, the respondent-attorney shall have 30 days from the date of such notice within which to file a statement of position in the district office.

The notice requirements of this subdivision (b) shall be applicable to any Form DB-7A (Supplemental Request for Statement of Respondent's Position), in which

case the notice shall advise the respondent-attorney of the requirement that the respondent-attorney respond to the supplemental allegations by filing with the district office a statement of position with respect thereto.

(c) *Contents of statement of position.* All statements of position shall be in writing and sufficiently detailed as to advise Disciplinary Counsel and any reviewing hearing committee member that the Executive Office may appoint under § 87.32 (relating to action by reviewing hearing committee member) of the nature of any defense. The respondent-attorney should include with the statement any corroborating documentation and may include in the statement mitigating factors and any relevant facts or circumstances that may assist Disciplinary Counsel in determining under § 87.8(b) the action to be taken or the disposition recommended.

(d) *Effect of failure to respond.* Enforcement Rule 203(b)(7) provides that failure by a respondent-attorney without good cause to respond to a request (Form DB-7) or supplemental request (Form DB-7A) by Disciplinary Counsel for a statement of the respondent-attorney's position shall be grounds for discipline. Failure to respond may also be a violation of Rule of Professional Conduct 8.1(b).

**Official Note:** Except as provided in subsection (e) of this section, if Disciplinary Counsel's request or supplemental request for a statement of position contains a separate request for production of records or documents (other than required records under Pa.R.P.C. 1.15(c) and § 91.177 of Chapter 91 Subchapter H of these Rules), the respondent-attorney's nonproduction shall not be a basis for discipline under Enforcement Rule 203(b)(7) but may constitute evidence of non-cooperation with Disciplinary Counsel's inquiry. Disciplinary Counsel may obtain a subpoena to compel production of the records and documents requested in the Form DB-7 or DB-7A, and the respondent-attorney's wilful failure to comply with the subpoena would serve as a basis for discipline under RPC 8.4(d) and various provisions of the Enforcement Rules.

(e) *Duty to produce Pa.R.P.C. 1.15's required records and time for production.* Notwithstanding any other provision in this section, if Disciplinary Counsel requests records required to be maintained under Pa.R.P.C. 1.15(c), Enforcement Rule 221(e), and § 91.177(a) (all of which relate to required records) in a Form DB-7 (Request for Statement of Respondent's Position) or Form DB-7A (Supplemental Request for Statement of Respondent's Position), the respondent-attorney shall provide the records to Disciplinary Counsel within ten business days of receipt of the Form DB-7 or Form DB-7A, as the case may be, whether or not the respondent-attorney files the statement of position required to be filed under subsection (b) of this section. The Form DB-7 or Form DB-7A will be considered received for purposes of this subsection if: 1) personal service of the Form DB-7 or Form DB-7A on the respondent-attorney is accomplished; 2) a copy of the Form DB-7 or Form DB-7A is delivered to an employee, agent or other responsible person at the office of the respondent-attorney as determined by the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(c) (relating to

annual registration of attorneys); or 3) mailed by certified mail with return receipt requested to one or more of the addresses furnished by the respondent-attorney in the last registration statement and delivery is accepted as shown by electronic or paper return receipt containing the name or signature of the respondent-attorney or other person who accepted delivery. The time in which to produce the required records (ten business days) is separate from the time fixed for the filing of the respondent-attorney's statement of position under paragraph (b)(2).

(f) *Effect of failure to produce Pa.R.P.C. 1.15's required records.* Enforcement Rule 221(g)(3) and § 91.179 of Chapter 91 Subchapter H of these Rules provide that failure to produce Pa.R.P.C. 1.15 records in response to a request or demand for such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f)(1) or (f)(5) (relating to emergency temporary suspension orders and related relief), the latter of which specifically permits Disciplinary Counsel to commence a proceeding for the temporary suspension of a respondent-attorney who fails to maintain or produce Pa.R.P.C. 1.15(c) records after receipt of a request or demand authorized by subdivision (g) of Enforcement Rule 221 or any provision of these Rules.

#### Source

The provisions of this § 87.7 amended February 20, 2004, effective February 21, 2004, 34 Pa.B. 948; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687; 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 January 30, 2015, effective March 2, 2015, 45 Pa.B. 544; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552; amended December 15, 2023, effective 30 days after publication, 53 Pa.B. 7704. Immediately preceding text appears at serial pages (397801) to (397803).

### § 87.8. District office action or recommendation.

(a) *General rule.* Enforcement Rule 208(a)(2) provides that upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

- (1) Dismissal of the complaint.
- (2) A conditional or unconditional informal admonition of the attorney concerned.
- (3) A conditional or unconditional private reprimand by the Board of the attorney concerned.
- (4) A conditional or unconditional public reprimand by the Board of the attorney concerned.
- (5) The prosecution of formal charges before a hearing committee or special master.

(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent of complaint), the Disciplinary Counsel assigned to the district office shall promptly

complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

- (1) Dismissal for lack of jurisdiction.
- (2) Dismissal because frivolous.
- (3) Dismissal on the basis of prosecutorial discretion.
- (4) Dismissal on the basis of Board policy.
- (5) Dismissal for any other reason.
- (6) Conditional or unconditional informal admonition, private reprimand, or public reprimand. An informal admonition, private reprimand, or public reprimand shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.
- (7) Prosecution of formal charges before a hearing committee or special master.

(c) *Selection of form.* Action under paragraphs (b)(1), (2), (3), (4), or (5) of this section may be recommended by the assigned Disciplinary Counsel and taken with the written concurrence of the Disciplinary Counsel-in-Charge, any other Disciplinary Counsel designated to serve in his or her absence or unavailability, the Chief Disciplinary Counsel, or any Disciplinary Counsel designated by the Chief Disciplinary Counsel to review such recommendations. In such cases the district office shall prepare and attach to the file Form DB-4 (Final Disposition of Complaint). In other cases where disposition under subsection (b)(1), (2), (3), (4), or (5) may be appropriate, the assigned Disciplinary Counsel shall prepare a Form DB-5 (Recommendation on Final Disposition of Complaint) and forward such form and the related file to Chief Disciplinary Counsel or his or her designee for review and action. In all other cases, Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member).

#### Source

The provisions of this § 87.8 amended May 18, 1979, effective May 19, 1979, 9 Pa.B. 1607; amended August 30, 1985, effective August 31, 1985, 15 Pa.B. 3080; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 241; amended April 13, 1990, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective March 12, 2005, 35 Pa.B. 1656; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687; amended September 27, 2019, effective 30 days after publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (387877) to (387878) and (363133).

### § 87.9. Office of Disciplinary Counsel action.

(a) *Dismissal of the complaint.* If the district office or Chief Disciplinary Counsel or his or her designee, determines that the complaint should be dismissed under § 87.8(b)(1), (2), (3), (4) or (5) (relating to district office action or recommendation), the Office of Disciplinary Counsel shall notify the complainant of such disposition by letter and close the file on the matter. Wherever possible, the Office of Disciplinary Counsel shall advise the complainant that he or she may-

bring the matter to the attention of the authorities of the appropriate jurisdiction, to another agency or jurisdiction that has disciplinary authority over the respondent-attorney, to any fee disputes committee which may have been established for the county involved, to a criminal prosecution agency, or to any other duly constituted body which may be able to provide forum for the consideration of the grievance. Where the respondent-attorney has been previously notified of the pendency of the complaint by means of Form DB-7 (Request for Statement of Respondent's Position) or otherwise, the Office of Disciplinary Counsel notify the respondent-attorney of the dismissal and may transmit a copy of the dismissal letter to the respondent-attorney.

(b) *Other cases.* In all other cases the Office of Disciplinary Counsel shall forward to the Executive Office a request for the assignment of a Reviewing Hearing Committee Member.

(c) *Review of dismissed complaints.* The Office of Disciplinary Counsel will review complaints dismissed under subsection (a) of this section upon request of the complainant. The request shall be in writing and submitted to the Disciplinary Counsel-in-Charge of the district office that dismissed the complaint. The request should specify the reason or reasons why Office of Disciplinary Counsel should reopen the investigation under § 87.6 and include any evidence that was not previously brought to the attention of Disciplinary Counsel. The Disciplinary Counsel-in-Charge or designated Disciplinary Counsel who concurred in the recommendation to dismiss the complaint pursuant to § 87.8(c) shall conduct the review and notify the complainant in writing of the decision to grant or deny the request. Where the request is denied by the Disciplinary Counsel-in-Charge, the complainant may direct a written request for further review to the Chief Disciplinary Counsel or his or her designee. The decision of the Chief Disciplinary Counsel or the designee shall be final for purposes of this subsection.

(d) *No right to appeal.* A complainant shall have no right to appeal the dismissal or any other disposition of a complaint under § 87.8 (relating to district office action or recommendation) or a final decision under paragraph (c) of this subsection to deny a request to reopen the investigation.

#### Source

The provisions of this § 87.9 amended through May 18, 1979, effective May 26, 1979, 9 Pa.B. 1665; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended April 18, 2019, effective in 30 days from date of publication, Immediately preceding text appears at serial pages (363133) to (363134).

## INQUIRIES

### § 87.21. Inquiries.

Upon receipt of an inquiry concerning the conduct of an attorney the Office of Disciplinary Counsel shall make such written response as may be appropriate in the circumstances and, if appropriate, may furnish a copy of its response to the attorney involved.

**Subchapter B. REVIEW OF RECOMMENDED DISPOSITION OF COMPLAINT**

Sec.

- 87.31. Transmission to reviewing hearing committee member.
- 87.32. Action by reviewing hearing committee member.
- 87.33. Appeal by Office of Disciplinary Counsel from modification of recommendation.
- 87.34. Review of recommendation of private reprimand or public reprimand.

**§ 87.31. Transmission to reviewing hearing committee member.**

Upon receipt of a request from the Office of Disciplinary Counsel for the assignment of a reviewing hearing committee member to review the disposition of a complaint recommended by the Office of Disciplinary Counsel, the Executive Office shall assign a reviewing hearing committee member and forward the file with the recommendation of the Office of Disciplinary Counsel to the assigned reviewing hearing committee member for action.

**Source**

The provisions of this § 87.31 amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552. Immediately preceding text appears at serial page (364157).

**§ 87.32. Action by reviewing hearing committee member.**

(a) *General rule.* Enforcement Rule 208(a)(3) provides that, except where the complaint is dismissed because the complaint is frivolous or falls outside the jurisdiction of the Board, the reviewing hearing committee member may approve or modify the recommendation of the Office of Disciplinary Counsel concerning the disposition of a complaint.

(b) *Approval.*

(1) Failure of a reviewing hearing committee member to modify a recommendation within ten days after transmission by the Office of Disciplinary Counsel shall constitute approval of such recommendation.

(2) When in the judgment of the Chief Disciplinary Counsel prompt prosecution of formal charges is necessary for the protection of the public the Office of Disciplinary Counsel may reduce the period specified in paragraph (1) of this subsection to not less than 24 hours.

(c) *Modification.* If the reviewing hearing committee member determines to modify the recommendation of the Office of Disciplinary Counsel, the member shall set forth the determination on Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member) together with a brief statement of the reasons therefor. Such determination shall be one of the following:

- (1) Dismissal of the complaint.
- (2) A conditional or unconditional informal admonition.
- (3) A conditional or unconditional private reprimand.
- (4) A conditional or unconditional public reprimand.
- (5) Prosecution of formal charges.



(d) *Return of file.* Upon making a determination, but in no event later than 48 hours after the expiration of the period set forth in subsection (b) of this section, the reviewing hearing committee member shall return the file to the originating district office of the Office of Disciplinary Counsel.

**Source**

The provisions of this § 87.32 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended August 11, 2012, effective immediately, 42 Pa.B. 5156. Immediately preceding text appears at serial pages (343804) to (343805).

**§ 87.33. Appeal by Office of Disciplinary Counsel from modification of recommendation.**

(a) *General rule.* Enforcement Rule 208(a)(4) provides that Disciplinary Counsel may appeal the recommended disposition directed by a reviewing hearing committee member to a reviewing panel composed of three members of the Board. The appeal shall be set forth on Form DB-8 (Appeal from Determination of Reviewing Member), shall state briefly the grounds relied upon by the Office of Disciplinary Counsel for recommending modification of the determination of the reviewing hearing committee member. The appeal shall be filed with the Board Prothonotary within 30 days after the determination of the reviewing hearing committee member has become effective. The preceding sentence is not applicable to a motion made by the Office of Disciplinary Counsel to dismiss formal charges, which motion may be made at any time.

(b) *Appeal administrative.* The appeal under subsection (a) shall be administrative and not adversary in nature. Copies of the appeal shall be available only to the Board and neither the respondent-attorney nor the reviewing hearing committee member shall be deemed a party to the appeal or have any right to be heard with respect thereto. See also § 93.103 (relating to identity of reviewing hearing committee member).

(c) *Action by Board.* The Executive Office shall transmit the Form DB-8 and related file to a panel of three members of the Board designated by the Chair, who shall consider the appeal and, as provided by Enforcement Rule 208(a)(4), order that the matter be concluded by dismissal, conditional or unconditional informal admonition or conditional or unconditional private reprimand, or conditional or unconditional public reprimand, or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

(d) *Notice of Board action.* The Executive Office shall return the Form DB-8 and related file, showing the action of the reviewing panel of the Board on the appeal, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

**Source**

The provisions of this § 87.33 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 241; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended March 11, 2005, effective immediately, 35 Pa.B. 1656; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended November 2, 2012, effective November 3, 2012, 42 Pa.B. 6864; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552. Immediately preceding text appears at serial page (364158).

**§ 87.34. Review of recommendation of private reprimand or public reprimand.**

(a) *General rule.* Enforcement Rule 208(a)(5) provides that a recommendation by a reviewing hearing committee member for a conditional or unconditional private or public reprimand shall be reviewed by a panel composed of three members of the Board who may approve or modify.

(b) *Procedure.* Where a recommendation by a reviewing hearing committee member for a conditional or unconditional private or public reprimand is not appealed by Disciplinary Counsel, the Executive Office shall transmit the file to a panel of three members of the Board designated by the Chair, who shall consider the matter and, as provided by Enforcement Rule 208(a)(5), approve or modify the recommendation for private or public reprimand.

(c) *Notice of Board action.* The Executive Office shall return the file, showing the action of the reviewing panel of the Board, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

**Source**

The provisions of this § 87.34 adopted July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended November 2, 2012, effective November 3, 2012, 42 Pa.B. 6864; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (364158) to (364159).

**Subchapter C. FINAL DISPOSITION WITHOUT FORMAL PROCEEDINGS**

Sec.

- 87.51. Notification of disposition of complaint.
- 87.52. Informal admonition.
- 87.53. Private reprimand or public reprimand without formal hearing.
- 87.54. Demand by respondent-attorney for formal proceedings.

**§ 87.51. Notification of disposition of complaint.**

(a) *General rule.* Upon completion of the procedures prescribed by Subchapter B (relating to review of recommended disposition of complaint), the Executive Office or the Office of Disciplinary Counsel, as appropriate, shall:

(1) Notify in writing the complainant, as to the final disposition of each disciplinary matter promptly after the matter has been concluded, notwithstanding provisions elsewhere in these Rules relating to confidentiality. Such notice shall specify whether the matter has been dismissed, or whether the matter has resulted in the imposition of a disciplinary sanction, and if so, a description of the sanction imposed. Unless the sanction imposed is public as provided pursuant to the Enforcement Rules and these Rules, the complainant shall be notified that all records and proceedings shall be private and confidential and shall not be subject to production in any later proceedings before any tribunal except future disciplinary proceedings involving the respondent-attorney before the Board or the Court where such prior proceedings may be relevant.

(2) Unless the disposition involves the institution of formal proceedings, notify the respondent-attorney:

- (i) that the complaint has been dismissed; or

(ii) that the respondent-attorney shall appear in person before the Chief Disciplinary Counsel for the purpose of receiving an informal admonition or before the Board for the purpose of receiving a private or public reprimand. The respondent-attorney shall also be notified of the place and date to appear. The date fixed shall be not earlier than 20 days after the date of the notice to the respondent-attorney of the disposition of the complaint.

(b) *Contents of notice.*

(1) The notice to appear for public reprimand shall be on Form DB-12.2(IP) (Notice to Appear for Public Reprimand Following Informal Proceedings) and shall contain the statement required by § 89.205(c)(1) (relating to notice to appear).

(2) The notice to appear for private reprimand shall be on Form DB-12(IP) (Notice to Appear for Private Reprimand Following Informal Proceedings) and shall contain the statement required by § 89.205(c)(2) (relating to notice to appear).

(3) The notice to appear for informal admonition shall be given by the Office of Disciplinary Counsel on Form DB-12.1(IP) (Notice to Appear for Informal Admonition Following Informal Proceedings) and shall contain the statement required by § 89.205(c)(3) (relating to notice to appear).

(4) The notice to appear for informal admonition or private reprimand shall advise the respondent-attorney of:

(i) The right of the respondent-attorney under § 87.54 (relating to demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

(ii) The limited availability of the record of informal admonition or private reprimand under § 93.104(d) (relating to restrictions on available information).

(5) The notice to appear for public reprimand shall advise the respondent-attorney of the right of the respondent-attorney under § 87.54 (relating to demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

#### Source

The provisions of this § 87.51 amended May 4, 1984, effective May 5, 1984, 14 Pa.B. 1547; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4449; amended December 7, 1990, effective immediately, 20 Pa.B. 6042; amended February 24, 2006, effective immediately, 36 Pa.B. 929; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552; amended April 29, 2022, effective in 30 days from date of publication, 52 Pa.B. 2581. Immediately preceding text appears at serial pages (397808) to (397809).

#### § 87.52. Informal admonition.

(a) *General rule.* A respondent-attorney who is given notice of informal admonition pursuant to § 87.51 (relating to notification of disposition of com-

plaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before Disciplinary Counsel, at the time and place fixed for the administration of the informal admonition. A record (Form DB-38) (Record of Informal Admonition) shall be made of the fact of and basis for the informal admonition, which record shall be available only as provided in § 93.104(d) (relating to restrictions on available information).

(b) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear for the purposes of informal admonition without good cause shall (as provided by Enforcement Rule 203(b)(2)) constitute an independent act of professional misconduct and shall automatically result in the institution of formal proceedings relating to such act of misconduct and to the grievance upon which such informal admonition was to relate.

#### Source

The provisions of this § 87.52 amended July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4449; amended February 24, 2006, effective immediately, 36 Pa.B. 929. Immediately preceding text appears at serial page (312759).

### § 87.53. Private reprimand or public reprimand without formal hearing.

(a) *General rule relating to private reprimand.* A respondent-attorney who is given notice of private reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the private reprimand. A record shall be made of the fact of and basis for the private reprimand, which record shall be available only as provided in § 93.104(d) (relating to restrictions on available information).

(b) *General rule relating to public reprimand.* A respondent-attorney who is given notice of public reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the public reprimand, which proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality). A record shall be made of the fact of and basis for the public reprimand, which record shall be public.

(c) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear for the purposes of private or public reprimand without good cause shall (as provided by Enforcement Rule 203(b)(2)) constitute an independent act of professional misconduct and shall automatically result in the institution of formal

proceedings relating to such act of misconduct and to the grievance upon which such private or public reprimand was to relate.

**Source**

The provisions of this § 87.53 amended August 30, 1985, effective August 31, 1985, 15 Pa.B. 3080; amended March 10, 1989, effective March 11, 19 Pa.B. 952; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4449; amended February 24, 2006, effective immediately, 36 Pa.B. 929; amended August 11, 2012, effective immediately, 42 Pa.B. 5156. Immediately preceding text appears at serial pages (317713) to (317714).

**§ 87.54. Demand by respondent-attorney for formal proceedings.**

(a) *General rule.* Enforcement Rule 208(a)(6) provides that in cases where no formal proceeding has been conducted, a respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand, a public reprimand, or any conditions attached thereto, but may demand as of right that a formal proceeding be instituted against such attorney in the appropriate disciplinary district; and that in the event of such demand, the respondent-attorney need not appear for the administration of the informal admonition, private reprimand, or public reprimand, and the matter shall be disposed of in the same manner as any other formal proceeding, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by § 89.205(b) (relating to taxation of expenses).

(b) *Procedure.* A demand under subsection (a) of this section shall be in writing, shall be filed with the Board Prothonotary within 20 days after the date of the notice of the disposition of the complaint required by § 87.51 (relating to notification of disposition of complaint), which time limit is jurisdictional, and shall be accompanied by proof of service of a copy thereof upon the Office of Disciplinary Counsel.

**Source**

The provisions of this § 87.54 adopted July 8, 1983, effective July 9, 1983, 13 Pa.B. 2138; amended October 12, 1984, effective October 13, 1984, 14 Pa.B. 3749; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended October 13, 1989, effective October 14, 1989, 19 Pa.B. 4449; amended November 14 and 17, 1989 and December 6 and 20, 1989, effective April 14, 1990, 20 Pa.B. 2009; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (363139) to (363140).

**Subchapter D. ABATEMENT OF INVESTIGATION**

- Sec.  
 87.71. Refusal of complainant to proceed, compromise, etc.  
 87.72. Matters involving related pending civil or criminal litigation.  
 87.73. Resignation by attorneys under disciplinary investigation.  
 87.74. Discipline on consent.

**§ 87.71. Refusal of complainant to proceed, compromise, etc.**

Enforcement Rule 210 provides that neither unwillingness or neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall, in itself, justify abatement of an investigation into the conduct of an attorney.

**§ 87.72. Matters involving related pending civil or criminal litigation.**

(a) *General rule.* Enforcement Rule 211(a) provides that the processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation shall not be deferred unless the Board in its discretion, for good cause shown, authorizes such deferment; that in the event a deferment of disciplinary investigation or proceeding is authorized by the Board as the result of pending related litigation, the respondent-attorney shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation; and that in the event the respondent-attorney fails to take reasonable steps to assure prompt disposition of the litigation, the investigation and subsequent disciplinary proceedings indicated shall be conducted promptly.

(b) *Procedure.* An original and three conformed copies of an application for deferment of action under subsection (a) of this section shall be filed with the Board Prothonotary with proof of service on the Office of Disciplinary Counsel. The Office of Disciplinary Counsel may file and serve a written response thereto within 20 days thereafter.

(c) *Effect of acquittal.* Enforcement Rule 211(b) provides that the acquittal of the respondent-attorney on criminal charges or a verdict or judgment in favor of the respondent-attorney in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations.

**Source**

The provisions of this § 87.72 amended January 6, 2010, effective February 5, 2010, 40 Pa.B. 700; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552. Immediately preceding text appears at serial pages (363140) and (376251).

**§ 87.73. Resignation by attorneys under disciplinary investigation.**

(a) *Voluntary resignation.* Enforcement Rule 215(a) provides that an attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to Disciplinary Counsel or the Board Prothonotary a verified statement stating that the attorney desires to resign and that:

(1) The resignation is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the resignation; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to resign.

(2) The attorney is aware that there is a presently pending investigation into allegations that the attorney has been guilty of misconduct the nature of which the verified statement shall specifically set forth.

(3) The attorney acknowledges that the material facts upon which the complaint is predicated are true.

(4) The resignation is being submitted because the attorney knows that if charges were predicated upon the misconduct under investigation the attorney could not successfully defend against them.

(5) The attorney is fully aware that the submission of the resignation statement is irrevocable and that the attorney can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

(6) The attorney is aware that pursuant to subsection (c) of Enforcement Rule 215, the fact that the attorney has tendered his or her resignation shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or the Board Prothonotary.

(7) Upon entry of the order disbaring the attorney on consent, the attorney will promptly comply with the notice, withdrawal, resignation, trust accounting, and cease-and-desist provisions of subdivisions (a), (b), (c) and (d) of Enforcement Rule 217.

(8) After the entry of the order disbaring the attorney on consent, the attorney will file a verified statement of compliance as required by subdivision (e)(1) of Enforcement Rule 217; and

(9) The attorney is aware that the waiting period for eligibility to apply for reinstatement to the practice of law under Enforcement Rule 218(b) shall not begin until the attorney files the verified statement of compliance required by Enforcement Rule 217(e)(1), and if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, then the waiting period will be deemed to have begun on that earlier date.

(b) *Representation by counsel.* The verified statement under subsection (a) shall indicate whether or not the attorney has consulted or followed the advice of counsel (naming such counsel, if any) in connection with the decision to resign.

(c) *Order of disbarment.* Enforcement Rule 215(b) provides that upon receipt of the required statement, the Board Prothonotary shall file it with the Supreme Court and the Court shall enter an order disbaring the attorney on consent.

(d) *Confidentiality of resignation statement.* Enforcement Rule 215(c) provides that the fact that the attorney has submitted a resignation statement to Disciplinary Counsel or the Board Prothonotary for filing with the Supreme Court shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or the Board Prothonotary; the order disbaring the attorney on consent shall be a matter of public record; and that, if the statement required by subsection (a) is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

- (1) upon order of the Supreme Court;
- (2) pursuant to an express written waiver by the attorney;
- (3) upon a request of another jurisdiction for purposes of a reciprocal disciplinary proceeding;

(4) upon a request by the Pennsylvania Client Security Fund Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board); or

(5) when the resignation is based on an order of temporary suspension from the practice of law entered by the Court either pursuant to Enforcement Rule 208(f) (relating to emergency temporary suspension orders and related relief) or pursuant to Enforcement Rule 214 (relating to a criminal proceeding).

**Source**

The provisions of this § 87.73 amended March 6, 1981, effective March 7, 1981, 11 Pa.B. 782; amended March 10, 1989, effective March 11, 1989, 19 Pa.B. 952; amended April 21, 1989, effective April 22, 1989, 19 Pa.B. 1719; amended August 5, 2005, effective immediately, 35 Pa.B. 4301; amended February 24, 2006, effective immediately, 36 Pa.B. 929; amended May 29, 2009, effective May 30, 2009, 39 Pa.B. 2687; amended January 30, 2015, effective March 2, 2015, 45 Pa.B. 544; amended April 18, 2019, effective in 30 days from date of publication, 49 Pa.B. 5552; amended April 29, 2022, effective in 30 days from date of publication, 52 Pa.B. 2581. Immediately preceding text appears at serial pages (397812) to (397814).

**§ 87.74. Discipline on consent.**

(a) *General rule.* Enforcement Rule 215(d) provides that at any stage of a disciplinary investigation or proceeding, a respondent-attorney and Disciplinary Counsel may file a joint Petition in Support of Discipline on Consent; and that the Petition shall be accompanied by an affidavit stating that the attorney consents to the recommended discipline and that:

(1) the consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the consent; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to consent to discipline;

(2) the attorney is aware that there is presently pending an investigation into, or proceeding involving, allegations that the respondent-attorney has been guilty of misconduct as set forth in the Petition;

(3) the attorney acknowledges that the material facts set forth in the Petition are true; and

(4) the attorney consents because the attorney knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, the attorney could not successfully defend against them.

(b) *Contents of Petition.* Enforcement Rule 215(d) provides that a Petition shall include the specific factual allegations that the respondent-attorney admits he or she committed, the specific Disciplinary Rules and Enforcement Rules allegedly violated and a specific recommendation for discipline. The Petition must also set forth:

(1) any past discipline imposed on the attorney in any jurisdiction;

(2) a discussion of applicable precedent and how the recommended discipline compares with that imposed in reported cases;

(3) any aggravating or mitigating factors; and



(4) if the recommended discipline includes probation, a statement that the attorney understands that violation of the probation may result in the commencement of a proceeding under § 89.292 (relating to violation of probation).

(c) *Handling of Petition.* Enforcement Rule 215(e) provides that the Petition shall be filed with the Board; that the filing of the Petition shall stay any pending proceeding before a hearing committee, special master or the Board; and that the Petition shall be reviewed by a panel composed of three members of the Board who may approve or deny.

**Official Note:** The fact that a Petition is being negotiated is not grounds for a continuance, and formal proceedings will continue unabated until the Petition is filed as provided in subsection (c).

(d) *Private discipline.* Enforcement Rule 215(f) provides that if a panel approves a Petition consenting to an informal admonition or private reprimand, with or without probation, the Board shall enter an appropriate order, and the Board shall arrange to have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(e) *Public discipline.* Enforcement Rule 215(g) provides that: (1) if a panel approves a Petition consenting to a public reprimand, the Board shall enter an appropriate order, and the Board shall arrange to have the attorney appear before the Board or a designated panel of three members selected by the Board Chair for the purpose of receiving a public reprimand; and (2) if a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court; if the Court grants the Petition, the Court shall enter an appropriate order disciplining the respondent-attorney on consent.

(f) *Denial of Petition.* Enforcement Rule 215(h) provides that, if either the panel of the Board or the Supreme Court denies a Petition, the members of the Board who participated on the reviewing panel shall not participate in further consideration of the same matter; and that any stayed proceedings shall resume as if the Petition had not been filed and neither the Petition nor the affidavit may be used against the respondent-attorney in any disciplinary proceeding or any other judicial proceeding.

(g) *Costs.* Enforcement Rule 215(i) provides that all expenses taxed under this subdivision shall be paid by the attorney in accordance with Rule 208(g).

#### Source

The provisions of this § 87.74 adopted August 5, 2005, effective immediately, 35 Pa.B. 4301; amended February 24, 2006, effective immediately, 36 Pa.B. 929; amended August 11, 2012, effective immediately, 42 Pa.B. 5156; amended June 2, 2017, effective June 3, 2017, 47 Pa.B. 3075. Immediately preceding text appears at serial pages (376252) to (376253) and (363143) to (363144).

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