

## CHAPTER 95. STATEMENTS OF POLICY

Sec.

- 95.1. Effect of chapter.
- 95.2. Investigation of the mishandling and conversion of funds.
- 95.3. Monitoring of notices to be sent by formerly admitted attorneys.

## Source

The provisions of this Chapter 95 adopted November 4, 1988, effective November 5, 1988, 18 Pa.B. 4938, unless otherwise noted.

**§ 95.1. Effect of chapter.**

The provisions of this chapter are intended to constitute “statements of policy” within the meaning of that term as defined in 1 Pa. Code § 1.4 (relating to definitions).

**Official Note:** As to the effect of this chapter generally, see 16 Pa.B. 4648.

**§ 95.2. Investigation of the mishandling and conversion of funds.**

(a) Where the Office of Disciplinary Counsel has some factual basis to support a suspicion or concern that there has been improper commingling or mishandling of entrusted funds or a failure to promptly account for or distribute such funds by a respondent-attorney, it is the policy of the Board that Disciplinary Counsel shall make a request or demand to the respondent-attorney for all relevant records, including the 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), unless such a request or demand would jeopardize an ongoing investigation. Disciplinary Counsel shall utilize one or more of the procedures authorized by Enforcement Rule 221(g) and § 91.178 (relating to availability of required records and requirement to produce), and Enforcement Rule 213 and § 91.2 (relating to subpoenas).

**Official Note:** An administrative agency’s request or demand for production of required records has been upheld if the agency has some factual basis to support a suspicion or concern that the law has been violated even if the evidence does not establish a violation, or the circumstances justify the agency’s seeking assurances that the law has not been violated; 2) the records sought are reasonably relevant to the inquiry; and 3) the demand is not too indefinite or overbroad. *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643, 652 (1950), cited in *State Real Estate Com. v. Roberts*, 441 Pa. 159, 164-165, 271 A.2d 246, 248 (1970), *cert. denied*, 402 U.S. 905 (1971); *Unnamed Attorney v. Attorney Grievance Comm’n*, 313 Md. 357, 364-365, 545 A.2d 685, 689 (1988).

(b) Where the Office of Disciplinary Counsel receives evidence of the misappropriation or conversion of entrusted funds by a respondent-attorney, it is the policy of the Board that Office of Disciplinary Counsel shall seek to obtain relevant records under the procedures in subsection (a), and, where deemed appropriate or necessary, seek the issuance of a subpoena duces tecum to the respondent-attorney and any relevant financial institution for some or all of the following records:

- (1) all accounts into which the respondent-attorney may have deposited or otherwise transferred entrusted funds during a period reasonably related to that during which the misappropriation or conversion occurred;
  - (2) those records which are required to be maintained under Pa.R.P.C. 1.15(c), Enforcement Rule 221(e), and § 91.177(a)—(c); and
  - (3) all other records that may be relevant or necessary to confirming, corroborating or determining the extent of the misappropriation or conversion.
- (c) *No limitation intended.* This section does not prohibit Disciplinary Counsel, at any stage of an investigation, from: 1) verbally requesting that a respondent-attorney voluntarily produce records; 2) seeking records from a financial institution or a person other than the respondent-attorney; or 3) seeking relevant records, by any authorized manner, of any type or nature and in relation to a suspected violation of a type other than one identified in this section.

**Source**

The provisions of this § 95.2 amended January 30, 2015, effective March 2, 2015, 45 Pa.B. 544. Immediately preceding text appears at serial page (272351).

**§ 95.3. Monitoring of notices to be sent by formerly admitted attorneys.**

It is the practice of the Executive Office to monitor the filing by formerly admitted attorneys of the verified statement of compliance required under § 91.96 (relating to proof of compliance) and, if the statement is not filed within the prescribed period, the Executive Office will mail to the formerly admitted attorney a reminder of the obligation under § 91.96 to file the statement. Failure by the Executive Office to mail the reminder, or failure by the formerly admitted attorney to receive the reminder, shall not relieve the formerly admitted attorney of the obligation to file the verified statement of compliance. As required by § 91.99 (relating to maintenance of records), the Executive Office will not accept for filing a petition for reinstatement until the formerly admitted attorney has filed the verified statement of compliance or obtained a waiver from the Board of the requirement to file the statement. As required by Enforcement Rule 217(e)(3) and subsections (a) and (b) of § 89.272 (relating to waiting period), if an order of disbarment or suspension for a period exceeding one year is entered on or after February 28, 2015, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney who is the subject of that order files the verified statement of compliance required by § 91.96.

**Source**

The provisions of this § 95.3 adopted September 1, 1989, effective September 2, 1989, 19 Pa.B. 3758; 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. Immediately preceding text appears at serial page (376304).

[Next page is 99-1.]