

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 85, 87, 89, 91 AND 93]

#### Amendments to Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court of Pennsylvania; Order No. 61; Doc. Nos. R-142 and R-144

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated September 9, 2004 and November 22, 2004, the Supreme Court of Pennsylvania amended Pa.R.D.E. 102, 205(c), 206, 213(d) and 218(c), and 213(d) and (g), respectively. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

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

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

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

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

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

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

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

(4) This Order shall take effect immediately.

*By The Disciplinary Board of the Supreme Court of Pennsylvania*

ELAINE M. BIXLER,  
*Secretary of the Board*

### Annex A

## TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT

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

#### CHAPTER 85. GENERAL PROVISIONS

#### § 85.2. Definitions.

(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 this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \* \* \*

***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 previously served either:

(i) as a member of the Board, or

(ii) as a member of a panel of hearing committee members for at least one year and on a hearing committee that has conducted at least one hearing into formal charges of misconduct by a respondent-attorney.

\* \* \* \* \*

***Reviewing [ member of a ] hearing committee member***—[ The member of a ] A senior or experienced hearing committee member designated under these rules to review the disposition of a complaint recommended by the Office of Disciplinary Counsel.

\* \* \* \* \*

***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 previously served either:

(i) as a member of the Board, or

(ii) a full three-year term on a panel of hearing committee members and on hearing committees that have conducted at least three hearings into formal charges of misconduct by respondent-attorneys for which formal transcripts have been prepared.

\* \* \* \* \*

#### § 85.11. Recusal.

(a) *General rule.* Enforcement Rule 220(a) provides that a member of the Board or [ of ] 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:

\* \* \* \* \*

(b) *Procedure for recusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the

Board or [ of ] 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:

\* \* \* \* \*

(2) In the case of a motion to disqualify a [ member of 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.

\* \* \* \* \*

(4) An interlocutory appeal from the decision on the motion, which appeal shall be ruled upon the Board [ Chairman ] Chair, may be filed within five days after the decision on the motion.

**CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS**

**Subchapter A. PRELIMINARY PROVISIONS  
COMPLAINTS**

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

\* \* \* \* \*

(c) *Selection of form.* Action under subsection (b)(1) or (2) may be taken by the Assistant Disciplinary Counsel-in-charge with the written concurrence of any other Assistant Disciplinary Counsel. 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) or (2) may be appropriate, the Assistant Disciplinary Counsel-in-charge shall prepare a Form DB-5 (Recommendation on Final Disposition of Complaint) and forward such form and the related file to Chief Disciplinary Counsel for review and action. In all other cases Assistant Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing [ Member of ] Hearing Committee Member).

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

§ 87.31. Transmission to reviewing [ member of a ] hearing committee member.

[ (a) *Designation of reviewing member of a hearing committee.* Upon receipt of Form DB-32 (Request for Designation of Reviewing Member) the Office of the Secretary shall indicate thereon the name and address of the reviewing member of a hearing committee to which the file has been assigned, and shall return the completed Form DB-32 to the Office of Disciplinary Counsel.

(b) *Transmission of file to reviewing member.* ] Upon receipt of [ the completed Form DB-32 the Office of Disciplinary Counsel shall ] 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 Office of the Secretary shall assign a reviewing hearing committee member and forward the file with [ its ] the recommendation of the Office of Disciplinary

ary Counsel to the [ appropriate ] assigned reviewing [ member of a ] hearing committee member for action.

§ 87.32. Action by reviewing [ member of a ] hearing committee member.

(a) *General rule.* Enforcement [ Rules 206(b)(3) and ] Rule 208(a)(3) [ provide ] provides that, except where the complaint is dismissed because the complaint is frivolous or falls outside the jurisdiction of the Board, the reviewing [ member of a ] 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 [ member of a ] hearing committee member to modify a recommendation within ten days after transmission by the Office of Disciplinary Counsel shall constitute approval of such recommendation.

\* \* \* \* \*

(c) *Modification.* If the reviewing [ member of a ] 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 [ Member of ] Hearing Committee Member) together with a brief statement of the reasons therefor. Such determination shall be one of the following:

\* \* \* \* \*

(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 [ member of a ] hearing committee member shall return the file to the originating district office of the Office of Disciplinary Counsel.

**§ 87.33. Appeal by Office of Disciplinary Counsel for 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), and 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 Office of the Secretary 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.

\* \* \* \* \*

**CHAPTER 89. FORMAL PROCEEDINGS**

**Subchapter A. PRELIMINARY PROVISIONS**

**GENERAL MATTERS**

**§ 89.1. Construction of chapter.**

(a) *General rule.* This chapter is promulgated for the purpose of assisting the Office of Disciplinary Counsel, the respondent-attorney and the Board to develop the facts relating to, and to reach a just and proper determination of, grievances brought to the attention of the

Board. The Board recognizes the temptation in disciplinary matters to raise procedural defenses where substantive defenses would be unavailing and, therefore, the Board will not hold action of a hearing committee, **hearing committee member** or special master invalid by reason of any nonprejudicial irregularity, or for any error not resulting in a miscarriage of justice.

\* \* \* \* \*

**§ 89.4. Representation of respondent-attorney.**

\* \* \* \* \*

(c) *Restrictions on representation.* Members of the Board, partners or employes of any firm in which a member of the Board practices, **[ members of hearing committees ] hearing committee members** and special masters shall not appear as counsel for a respondent-attorney.

**§ 89.7. Continuances.**

(a) *Avoidance of delay.* All formal proceedings under these rules shall be as expeditious as possible, but the failure of the Office of the Secretary or the Board to comply with any of the procedural time periods in these rules shall not result in the dismissal of a petition for discipline or a lessening of the charges set forth therein. Only the Board **[ Chairman ] Chair** may extend the time for hearing or grant any other extension of time in a formal proceeding.

\* \* \* \* \*

(c) *Application for continuance.* An application for continuance of a hearing shall be made either in writing or on the record at the hearing and shall set forth the basis for the application and the facts supporting it. The application shall be addressed to the **[ chairman ] chair** of the hearing committee or the special master conducting the hearing, who may deny it or recommend its approval to the Board **[ Chairman ] Chair**. A denial by the **[ chairman ] chair** of a hearing committee or special master may be reviewed by the Board **[ Chairman ] Chair**. A continuance of a hearing other than adjournment to a day certain not more than 15 days hence shall not be granted by a hearing committee or special master without the concurrence of the Board **[ Chairman ] Chair**.

\* \* \* \* \*

(e) *Definition.* As used in this section, the term "involved person" includes a member of the Board **[ or the assigned ]**, a hearing committee **member assigned to act on any aspect of the matter**, a special master **assigned to the matter** and counsel for the respondent-attorney, as well as the respondent-attorney.

**Subchapter B. INSTITUTION OF PROCEEDINGS**

**§ 89.56. Assignment for hearing.**

(a) *General rule.* Enforcement Rule 208(b)(4) provides that following service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee. The Office of the Secretary shall transmit copies of the file of the Board by means of Form DB-9 (Reference for Disciplinary Hearing) to the members of **[ a ] the hearing committee appointed to hear the matter** or a special master in the appropriate disciplinary district not later

than five days after the date on which the answer of the respondent-attorney is due under § 89.54(a) (relating to answer).

(b) *Composition of committee.* The Secretary of the Board shall **[ designate ] appoint the members of the hearing committee** to which the matter is assigned **as provided by § 93.81(c) (relating to hearing committees)**. As provided by § 93.86 (relating to disqualification of reviewing member to sit on hearing in same matter), the hearing committee shall not **[ be one which includes the reviewing member ] include the hearing committee member who passed upon Disciplinary Counsel's recommended disposition of the matter. The Secretary shall also designate which member of the hearing committee will conduct the prehearing conference.**

**§ 89.57. Scheduling of hearing and prehearing conference.**

The date, time and place of hearing on a petition for discipline shall be scheduled by the Office of the Secretary **[ after consultation with and consideration of any recommendations by the members of the hearing committee or special master, the Office of Disciplinary Counsel, and, if available, the respondent-attorney ] at the time the members of the hearing committee are appointed.** The date fixed for the hearing shall not be later than 90 days after the file is transmitted to a hearing committee under § 89.56 (relating to assignment for hearing), unless an extension has been granted by the Board **[ Chairman ] Chair** at the request of any party. At the time that the hearing is scheduled, the Office of the Secretary shall also schedule a prehearing conference for a date not less than 30 days before the scheduled date of the hearing.

**Subchapter C. HEARING PROCEDURES  
PREHEARING CONFERENCES**

**§ 89.73. Initiation of conferences.**

(a) *General rule.* The hearing committee or special master, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the respondent-attorney and staff counsel to appear thereat to consider any or all of the matters enumerated in § 89.72 (relating to subjects which may be considered at conferences to expedite hearings). Due notice of the time and place of such conference shall be given to the respondent-attorney and staff counsel. Where a proceeding is in the hands of a hearing committee, the conference may be conducted by the **[ chairman ] chair** of the hearing committee or by **[ any regular member of the committee ] a single senior or experienced hearing committee member** designated in writing by the **[ chairman ] chair**.

\* \* \* \* \*

**§ 89.74. Authority of hearing committee member or special master at conferences.**

(a) *General rule.* The **[ member of a hearing committee ] senior or experienced hearing committee member** presiding at any conference may dispose of by ruling, irrespective of the consent of the participants, any procedural matters which the **[ chairman ] chair** of the committee is authorized to rule upon during the course of the proceeding, and which it appears may appropriately

and usefully be disposed of at that stage. Where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, such advance distribution by a prescribed date may be directed at the discretion of the presiding hearing committee member. The presiding hearing committee member may also order the exchange of the names and addresses of expert witnesses and copies of all expert reports. An order for the distribution of exhibits and written testimony or the identification of expert witnesses and exchange of expert reports shall be made with due regard for the convenience and necessity of the respondent-attorney and staff counsel, and may provide that failure to comply with it shall have the consequences described in § 89.93(c) (relating to exclusion of evidence). The rulings of the presiding hearing committee member made at a conference shall control the subsequent course of the hearing, unless modified for good cause shown.

\* \* \* \* \*

**EVIDENCE AND WITNESSES**

**§ 89.123. Evidence by persons associated with Board.**

Members and employees of the Board, [ **members of hearing committees** ] **hearing committee members** and special masters shall not testify as a character witness in any proceeding under these rules.

**ORAL ARGUMENT AND BRIEFS**

**§ 89.163. Content and form of briefs.**

\* \* \* \* \*

(c) *Length.* Briefs (exclusive of any cover, table of contents, table of citations or appendix) shall be limited to 30 pages in length, except that for good cause shown the limitation on length may be altered or waived with respect to a particular brief upon application to and order of the [ **Chairman** ] **chair** of the hearing committee or the special master at least ten days before the time fixed for the filing of the brief.

**ABBREVIATED PROCEDURE**

**§ 89.181. Abbreviated procedure.**

\* \* \* \* \*

(c) *Procedures.*

\* \* \* \* \*

(7) If no timely objection is made no briefs shall be filed, no formal findings and recommendations shall be prepared by the hearing committee and the official reporter shall not prepare a transcript. The [ **chairman** ] **chair** of the hearing committee shall, however, prepare and file a brief summary of the case, in the form of a letter to the Board, which summary ordinarily should not exceed two pages in length, and the record of the proceedings shall forthwith be transmitted to the Office of the Secretary which shall serve upon the respondent-attorney and staff counsel copies of the brief summary of the case filed by the [ **chairman** ] **chair** of the hearing committee.

\* \* \* \* \*

**Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE**

**REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS**

**§ 89.273. Procedures for reinstatement.**

(a) *General rule.* Enforcement Rule 218(c) and (d) provide that:

\* \* \* \* \*

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall file a response thereto with the Board and serve a copy on the formerly admitted attorney. Upon receipt of the response, the Board shall refer the petition and response to a hearing committee **appointed by the Office of the Secretary pursuant to § 93.81(c) (relating to hearing committees)** in the disciplinary district in which the formerly admitted attorney maintained an office at the time of the disbarment, suspension or transfer to inactive status. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

\* \* \* \* \*

(7) **A petition for reinstatement to active status from inactive status by a formerly admitted attorney who has not been suspended or disbarred shall be considered by a single senior or experienced hearing committee member who shall perform the functions of a hearing committee under this subsection (a).**

(8) In all proceedings upon a petition for reinstatement, cross-examination of the respondent-attorney and witnesses of respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

\* \* \* \* \*

**CHAPTER 91. MISCELLANEOUS MATTERS**

**Subchapter A. SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS**

**IN GENERAL**

**§ 91.2. Subpoenas and investigations.**

\* \* \* \* \*

(c) *Investigatory hearing committee.* On application by the Office of Disciplinary Counsel or of a respondent-attorney, where no petition for discipline has yet been filed under these rules, the Office of the Secretary shall [ **designate** ] **appoint** an investigatory hearing committee for the purpose of conducting an investigatory hearing under subsection (a)(1).

(d) *Notice and scheduling of investigatory hearings.* An investigatory hearing committee shall schedule an initial hearing on the matter to be held not later than 20 days after the committee is [ **designated** ] **appointed** pursuant to subsection (c). The committee shall give all persons affected at least four days written notice of each hearing held by the committee. Such a hearing may be held on less than four days notice if the [ **chairman** ] **chair** of

the committee determines that the shorter period is reasonably necessary under the circumstances.

\* \* \* \* \*

§ 91.3. Determination of validity of subpoena.

Enforcement Rule 213(d) provides that any attack on the validity of a subpoena issued under these rules shall be [ heard and determined by ] handled as follows:

(1) [ the hearing committee or special master before which it is returnable in the case of ] A challenge to a subpoena authorized by § 91.2(a)(1) (relating to subpoenas and investigations) [ ; or ] shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable.

(2) [ a member of a hearing committee in the disciplinary district in which the subpoena is returnable in the case of ] A challenge to a subpoena authorized by § 91.2(a)(2) shall be heard and determined by a member of a hearing committee in the disciplinary district in which the subpoena is returnable.

(3) A determination under paragraph (1) or (2) may not be appealed to the Board, but may be appealed to the Supreme Court under § 91.4 (relating to appeal of challenges to subpoenas) within ten days after service of the determination on the party bringing the appeal.

§ 91.4. [ Enforcement ] Appeal of challenges to subpoenas.

Enforcement Rule 213(g) provides that:

(1) Either Disciplinary Counsel or a respondent-attorney may petition the Supreme Court [ for the enforcement of any subpoena issued by the Prothonotary under these rules ] to enforce a subpoena or to review a determination under § 91.3 (relating to determination of validity of subpoena) on the validity of a subpoena, and no attack on the validity of [ such ] a subpoena will be considered by the Court unless previously raised as provided in § 91.3 [ (relating to determination of validity of subpoena) ]. See also § 91.151(e) (relating to contempt of the Board).

\* \* \* \* \*

(3) A petition for review of a determination made under § 91.3 must set forth in detail the grounds for challenging the determination. Upon timely receipt of a petition for review, the Court shall issue a rule to show cause upon the party to the proceeding who is not challenging the determination, returnable within ten days, why the determination should not be reversed. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.23. Powers and duties.

(a) General rule. Enforcement Rule 205(c) provides that the Board shall have the power and duty:

\* \* \* \* \*

(3) To appoint [ three or more hearing committees ] not less than 18 hearing committee members within each disciplinary district. [ The Board may also appoint up to six persons in each disciplinary district to serve as alternate members of hearing committees within that district. ]

\* \* \* \* \*

(7) To assign periodically, through its Secretary, [ the ] senior or experienced hearing committee members [ of hearing committees ] within each disciplinary district to:

\* \* \* \* \*

(ii) hear and determine attacks on the validity of subpoenas issued pursuant to § 91.2 (relating to subpoenas and investigations)[ . ], as provided in § 91.3(2) (relating to determination of validity of subpoena); or

(iii) consider a petition for reinstatement to active status from inactive status under § 89.273(a)(7) (relating to procedures for reinstatement).

\* \* \* \* \*

§ 93.26. Meetings of the Board.

(a) Call and notice. Meetings shall be held upon the call in writing of the [ Chairman ] Chair or of any two members of the Board at any place [ in the City of Harrisburg ] designated in the call or at any other place designated for such purpose by resolution of the Board or in the absence of such resolution as designated by the [ Chairman ] Chair. Notice of special meetings shall be given in person or by telephone or telegraph to each member of the Board (at the address furnished to the Office of the Secretary for that purpose) at least 24 hours prior to the time fixed for the special meeting. Notice of a special meeting may be waived in writing and shall be waived by attendance at the meeting.

(b) Organization. The [ Chairman ] Chair shall preside at meetings of the Board. In the absence of the [ Chairman ] Chair one of the following persons in the order stated shall preside:

- (1) The Vice [ Chairman ] Chair;
- (2) An acting [ chairman ] chair selected by the Board for such purpose.

§ 93.28. Agenda.

An agenda for each meeting of the Board shall be prepared by the Office of the Secretary with the approval of the [ Chairman ] Chair.

§ 93.29. Panels.

(a) General rule. The Board [ Chairman ] Chair may designate panels of at least three Board members for the purpose of hearing oral argument in formal proceedings.

(b) Organization. The first-named member of each panel shall be the [ chairman ] chair thereof. Except as otherwise provided by these rules, meetings and proceedings of a panel of the Board shall be governed insofar as applicable by the provisions of these rules governing meetings and proceedings of the Board.

\* \* \* \* \*

**Subchapter D. OFFICE OF DISCIPLINARY COUNSEL**

**§ 93.61. Office of Disciplinary Counsel.**

(a) *General rule.* There shall be an Office of Disciplinary Counsel, which shall be the office of the Chief Disciplinary Counsel and the following staff of the Board:

\* \* \* \* \*

(3) Such other staff of the Board as may be designated by the Board [ **Chairman** ] **Chair**.

\* \* \* \* \*

**§ 93.63. Powers and duties of Office of Disciplinary Counsel.**

(a) *General rule.* The Office of Disciplinary Counsel shall have the power and duty (pursuant to Enforcement Rule 207(b)):

\* \* \* \* \*

(2) To dispose of all matters (subject to review by a [ **member of a** ] **senior or experienced** hearing committee member when required by these rules) involving alleged misconduct by dismissal, informal admonition, recommendation for private reprimand or the prosecution of formal charges before a hearing committee or special master.

\* \* \* \* \*

**Subchapter E. HEARING COMMITTEES AND SPECIAL MASTERS**

**HEARING COMMITTEES**

**§ 93.81. Hearing committees.**

(a) *General rule.* Enforcement Rule 205(c)(3) provides that the Board shall appoint [ **three or more hearing committees** ] **not less than 18 hearing committee members** within each disciplinary district, and that each [ **member of a hearing committee or alternate appointed** ] person appointed as a hearing committee member for a district shall be a member of the bar of this Commonwealth who maintains an office for the practice of law within the district. [ **Enforcement Rule 206(a) provides that when a hearing committee is first selected, one of its members shall be appointed for a term of one year, another member for a term of two years and the third member for a term of three years; that thereafter all regular terms shall be three years; that no member shall serve for more than two consecutive three-year terms; that a member who has served two consecutive three-year terms may be reappointed after the expiration of one year; and that the terms of members shall commence on July 1. A member of a hearing committee whose term has expired may continue to serve until the conclusion of any matter commenced before the member prior to the expiration of such term, if so requested in writing by the Office of the Secretary.** ]

(b) [ *Alternates.* Enforcement Rule 205(c)(3) further provides that only persons who have previously served as a member of a hearing committee or of the Board shall be eligible for appointment as an alternate. An alternate shall have the status of a member of a hearing committee, but shall not be eligible to serve under § 93.23(a)(7) (relating to powers and duties) or in the capacities reserved to

regular members of a hearing committee by § 93.82 (relating to quorum and manner of acting). ] (Rescinded.)

[ *Official Note:* The last sentence of subsection (b) is intended to make clear that an alternate hearing committee member will be subject, among other things, to the provisions of § 85.9 (relating to immunity) and § 85.11 (relating to recusal). ]

(c) *Terms.* Enforcement Rule 206(a) provides that when a hearing committee is [ **first selected, one of its members shall be appointed for a term of one year, another member for a term of two years and the third member for a term of three years** ] required to handle a matter, the Board shall appoint a hearing committee consisting of three hearing committee members from the appropriate disciplinary district; that at least one of the members of the hearing committee shall be a senior hearing committee member, and another member shall be either a senior hearing committee member or an experienced hearing committee member; that [ **thereafter all regular terms** ] the terms of hearing committee members shall be three years; that no member shall serve for more than two consecutive three-year terms; [ **that an alternate hearing committee member shall serve for a term of three years, and may serve for a second consecutive three-year term;** ] that a [ **regular or alternate** ] hearing committee member who has served two consecutive three-year terms may be reappointed after the expiration of one year; and that the terms of members shall commence on July 1. A [ **regular or alternate member of a** ] hearing committee member whose term has expired may continue to serve until the conclusion of any matter commenced before the member prior to the expiration of such term, if so requested in writing by the Office of the Secretary.

[ (d) *Designation.* Each hearing committee shall be identified by a two part numerical designation consisting of the number of the disciplinary district for which the committee is established and the number of the committee within the district, e.g. the second hearing committee in Disciplinary District I shall be known as "Hearing Committee 1.02." ]

**§ 93.82. Quorum and manner of acting.**

Enforcement Rule 206(a) provides that a hearing committee shall act only with the concurrence of a majority of its members and that two members shall constitute a quorum, except that a single [ **regular, but not an alternate** ] senior or experienced hearing committee member may act for the committee when the committee is sitting as an investigatory hearing committee under § 91.2(a)(1) (relating to subpoenas and investigations), [ **when hearing and determining a challenge to a subpoena under § 91.3(2) (relating to determination of validity of subpoena),** ] or when conducting a prehearing conference [ **or when considering a petition for reinstatement to active status from inactive status under § 89.273(a)(3)(ii) (relating to procedures for reinstatement) of a formerly admitted attorney who has not been suspended or disbarred** ].

**§ 93.83. Powers and duties.**

(a) *General rule.* Enforcement Rule 206(b) provides that each hearing committee shall have the power and duty:

\* \* \* \* \*

**[ (3) To review, by the member assigned, and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands and institution of formal charges.**

**(4) To hear and determine, by the member assigned, attacks on the validity of subpoenas issued pursuant to § 91.2(a)(2) (relating to subpoenas and investigations). ]**

\* \* \* \* \*

**§ 93.84. Officers.**

Enforcement Rule 206(a) provides that the Board shall designate the **[ chairman ] chair** of each hearing committee, **who shall be a senior hearing committee member.** In the case of the absence or disability of the **[ chairman ] chair** of a hearing committee, the committee shall select an acting **[ chairman ] chair.** The **[ chairman ] chair** of a hearing committee shall be the presiding officer at all hearings held by the committee and, unless otherwise directed by the committee with respect to particular questions or issues, shall make all rulings on admissibility of evidence and other procedural matters arising in connection with formal proceedings.

**§ 93.86. Disqualification of reviewing member to sit on hearing in same matter.**

Enforcement Rule 205(c)(5) provides that a **[ reviewing ] hearing committee** member who has passed upon Disciplinary Counsel's recommended disposition of a matter shall be ineligible to serve on a hearing **[ panel to which the matter is thereafter assigned for hearing ] committee that considers the matter.**

**§ 93.87. [Special procedures] Replacement of unavailable members.**

**[ (a) Use of alternates. ]** Enforcement Rule 206(c) provides that[ :

**(1) Where a regular hearing committee member is disqualified or otherwise unavailable to serve with respect to any particular formal proceeding, the Secretary shall assign an alternate hearing committee member to serve in place of the unavailable member with respect to that proceeding.**

**(2) Particular formal charges may not be referred to a hearing committee unless at least one regular member of the committee serves on the committee during its handling of those charges.**

**(3) If the chairman ] if a member of a hearing committee [ is ] becomes disqualified or otherwise unavailable to serve with respect to any particular [ formal proceeding ] matter, the Secretary shall designate [ the chairman of the hearing committee for that proceeding who shall be a regular member of the committee ] a replacement.**

**[ (b) Special hearing committees. Enforcement Rule 206(c) further provides that where it is impracticable to refer particular formal charges to any established hearing committee within a disciplinary district, the Office of the Secretary shall select by lot a special hearing committee from all available regular hearing committee members within an adjacent district. ]**

**Subchapter F. CONFIDENTIALITY**

**§ 93.103. Identity of reviewing hearing committee member.**

The identity of the **hearing committee** member acting under § 87.32 (relating to action by reviewing **[ member of a ] hearing committee member**) shall not be a part of the record in formal proceeding under these rules and shall not be available to the respondent-attorney.

[Pa.B. Doc. No. 05-441. Filed for public inspection March 11, 2005, 9:00 a.m.]

## SUPREME COURT

### Reestablishment of the Magisterial District Within the 5th Judicial District of the Commonwealth; No. 215 Magisterial Doc. No. 1

#### Order

*Per Curiam*

*And Now*, this 25th day of February, 2005, upon further consideration of the Petition for Realignment filed by the former President Judge of the Fifth Judicial District dated November 15, 2002, relating to the proposed Central Court and the evaluation of the current Pittsburgh Magistrates Court to gauge the feasibility of transitioning the Pittsburgh Magistrates Court into the statewide district justice system, it is hereby *Ordered*:

Pursuant to the authority set forth in Article V, Section 10(c) of the Constitution of Pennsylvania and the general supervisory and administrative authority of the Supreme Court of Pennsylvania as set forth in 42 Pa.C.S. Section 1701, et seq., (Judicial Code), all matters within the jurisdiction of Pittsburgh Housing Court are assigned to the administrative judicial unit referred to as the Pittsburgh Municipal Court which was established by Order of this Court dated November 29, 2004. All fines, fees, costs, restitution, and other reparations collected by the Pittsburgh Municipal Court shall be distributed in accordance with 42 Pa.C.S. Sections 3571, 3572, 3573, and all other relevant legal authority.

The provisions of this Order shall be effective March 7, 2005.

[Pa.B. Doc. No. 05-442. Filed for public inspection March 11, 2005, 9:00 a.m.]