

## PART III. APPEALS FROM THE COURT OF JUDICIAL DISCIPLINE

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### CHAPTER 101. APPEALS FROM THE COURT OF JUDICIAL DISCIPLINE

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#### Source

The provisions of this Chapter 101 adopted May 24, 1994, effective immediately, 24 Pa.B. 2881, unless otherwise noted.

#### APPEALS GENERALLY

##### § 101.1. Scope.

- (a) These rules shall govern all appeals from the Court of Judicial Discipline pursuant to PA. CONST. Art. V, § 18(c).
- (b) Under these rules,
  - (1) “Special Tribunal” means a special tribunal convened pursuant to PA. CONST. Art. V, § 18(c) and formed pursuant to Rule 8.
  - (2) “Reviewing Court” means either the Supreme Court of Pennsylvania or a Special Tribunal.
- (c) Recusal

A member of the Court shall recuse himself or herself in any matter in which recusal would be required of a Judicial Officer under the Code of Judicial Conduct.

**§ 101.2. Jurisdiction.**

- (a) Any appeal by a judge or a magisterial district judge from a final adverse Order of discipline shall be to the Supreme Court.
- (b) An appeal by a Justice, or Senior Justice, of the Supreme Court from a final adverse Order of discipline shall be to the Special Tribunal.
- (c) An appeal by the Judicial Conduct Board from an Order dismissing a Board Complaint shall be:
  - (1) to the Supreme Court when the subject of the Board Complaint is a judge or magisterial district judge; and
  - (2) to a Special Tribunal when the subject of the Board Complaint is a Justice of the Supreme Court.

**§ 101.3. Notice of Appeal.**

- (a) A notice of appeal from a final adverse Order of discipline or from an Order dismissing a Board Complaint shall be filed with the Clerk of the Court of Judicial Discipline within thirty (30) days of the entry of the Order, and a copy of the notice shall be served concurrently on the opposing party.
- (b) Upon receipt of a notice of appeal, the Clerk of the Court of Judicial Discipline shall promptly forward a copy of the notice to:
  - (1) the Prothonotary of the Supreme Court, when the matter complained of on appeal concerns a judge or magisterial district judge; or
  - (2) the Court Administrator of Pennsylvania when the matter complained of on appeal concerns a Justice, or Senior Justice, of the Supreme Court.

**§ 101.4. Transmission of Record to Reviewing Court.**

- (a) Within thirty (30) days of receipt of a notice of appeal, the Clerk of the Court of Judicial Discipline shall file with the appropriate Reviewing Court the entire record upon which the Court's Order is based. The record shall include:
  - (1) the original papers and exhibits filed in the Court of Judicial Discipline;
  - (2) the transcript, if any, of the proceedings;
  - (3) the final Order of the Court of Judicial Discipline; and
  - (4) a statement by the Court of Judicial Discipline containing the findings of fact and conclusions of law upon which the final Order is based.
- (b) The Clerk of the Court of Judicial Discipline shall concurrently notify the parties that the record has been filed.

**§ 101.5. Briefing.**

(a) Within thirty (30) days of the filing of the record as required in Section 101.4(a), the appellant shall file ten (10) copies of the appellant's brief with the Reviewing Court, shall serve one (1) copy on the Court of Judicial Discipline and shall serve two (2) copies on the appellee.

(b) Within thirty (30) days of the filing of appellant's brief, the appellee shall file ten (10) copies of the appellee's reply brief with the Reviewing Court, shall serve one (1) copy on the Court of Judicial Discipline and shall serve two (2) copies on the appellant.

**Source**

The provisions of this § 101.5 amended September 30, 2010, effective in 30 days, 40 Pa.B. 5900. Immediately preceding text appears at serial page (264051).

**§ 101.6. Argument.**

The Reviewing Court may hear oral argument.

**SPECIAL TRIBUNALS****§ 101.7. Suspension of Act of Assembly.**

Act No. 1993-56, § 1, 42 Pa.C.S. § 727, which, inter alia, authorizes the Secretary of the Commonwealth to schedule the selection of Special Tribunals and to conduct the selection by lot, is hereby suspended insofar as it is inconsistent with these rules.

**§ 101.8. Special Tribunals: Membership.**

(a) A Special Tribunal shall consist of seven (7) members selected from the combined membership of those Superior and Commonwealth Court judges who are on regular and active duty. The Presiding Judge of the Special Tribunal shall be the judge longest in continuous service.

(b) Exceptions

(1) Any member of the Superior or Commonwealth Court who is a member of the Judicial Conduct Board or the Court of Judicial Discipline shall not serve on a Special Tribunal.

(2) Any member of the Superior or Commonwealth Court who is a complainant, a party, or a witness in the underlying case on appeal shall not serve on the Special Tribunal selected to dispose of that appeal.

**§ 101.9. Formation of Special Tribunal.**

(a) Upon the filing of a notice of appeal requiring the formation of a Special Tribunal pursuant to PA. CONST. Art. V, § 18(c)(1) or (3), the Clerk of the Court of Judicial Discipline shall promptly notify the Court Administrator of Pennsylvania.

(b) Notice to the Court Administrator of Pennsylvania shall include the name of any judge of the Superior or Commonwealth Court who is:

(1) a member of the Judicial Conduct Board or the Court of Judicial Discipline; and/or

(2) a complainant, a party, or a witness in the underlying case on appeal.

(c) Upon receipt of notice from the Clerk of the Court of Judicial Discipline, the Court Administrator of Pennsylvania shall immediately set a date, time and location for the selection of the Special Tribunal, which selection shall take place no later than twenty (20) days after notice from the Court of Judicial Discipline. The selection proceeding shall be open to the public.

(d) The seven (7) members of the Special Tribunal shall be chosen by lot from a list of the judges of the Superior and Commonwealth Courts who are on regular and active duty. The list shall not include those judges specified in paragraphs b(1) and (2).

**Source**

The provisions of this § 101.9 amended June 17, 1994, effective immediately, 24 Pa.B. 3358.

**§ 101.10. Vacancy on Special Tribunal.**

(a) Whenever a vacancy on a Special Tribunal occurs, all proceedings in and any consideration of the matter on appeal shall be stayed until the vacancy is filled.

(b) **Procedure**

(1) Whenever a vacancy occurs on a Special Tribunal while the appeal before that Tribunal is pending, the Special Tribunal shall immediately notify the Court Administrator of Pennsylvania.

(2) Upon receiving notice of a vacancy, the Court Administrator of Pennsylvania shall immediately set a date, time and location for the selection of a judge to fill the vacancy, which selection shall take place no later than twenty (20) days after notice from the Special Tribunal. The selection proceeding shall be open to the public.

(3) The judge shall be chosen by lot from a list of the judges of the Superior and Commonwealth Courts who are on regular and active duty. The list shall not include the seven (7) judges originally selected or those judges specified in Section 101.8(b)(1) and (2).

(4) If, for whatever reason, less than seven (7) judges of the Superior and Commonwealth Courts are available to serve on a Special Tribunal, then those judges available to serve shall serve on the Special Tribunal. Decisions shall be by majority vote of those serving. An evenly divided Special Tribunal shall result in an affirmation of the decision and Order of the court below.

**§ 101.11. Appeal Procedure.**

A Special Tribunal shall hear and decide an appeal in the same manner in which the Supreme Court would hear and decide an appeal from an order of the court.