

DISCIPLINARY BOARD RULES AND PROCEDURES

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RULES OF THE DISCIPLINARY BOARD

Title 204 -- JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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CHAPTER 85
GENERAL PROVISIONS

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§85.1. Title and Citation of Subpart.

¹ The amendments to Board Rules 91.93 and 91.95 shall apply to persons who are formerly admitted attorneys on or after March 2, 2015 and to persons becoming formerly admitted attorneys on or after that date.

This Subpart shall be known, and may be cited as the "Disciplinary Board Rules."

§85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in the subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

Absent attorney -- An attorney or formerly admitted attorney for whom a conservator has been sought or appointed under the Enforcement Rules.

Administrative Office -- The Administrative Office of Pennsylvania Courts.

Administrative suspension. Status of an attorney, after Court order, who: failed to pay the annual fee and/or file the form required by subdivisions (a) and (d) of Enforcement Rule 219; was reported to the Court by the Pennsylvania Continuing Legal Education Board under Rule 111(b), Pa.R.C.L.E., for having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education; failed to pay any expenses taxed pursuant to Enforcement Rule 208(g); or failed to meet the requirements for maintaining a limited law license as a Limited In-House Corporate Counsel, a foreign legal consultant, an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or a military attorney.

Attorney -- Includes any person subject to these rules.

Attorney Registration Office. The administrative division of the Disciplinary Board which governs the annual registration of every attorney admitted to, or engaging in, the practice of law in this Commonwealth, with the exception of attorneys admitted to practice pro hac vice under Pa.B.A.R. 301.

Board -- The Disciplinary Board of the Supreme Court of Pennsylvania.

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

Board Rule -- Any provision of this Subpart.

Censure -- Public censure by the Supreme Court.

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

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

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

Court -- The Supreme Court of Pennsylvania.

Disciplinary Counsel -- The Chief Disciplinary Counsel and assistant disciplinary counsel.

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

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

Enforcement Rule -- Any provision of Chapter 83 (relating to Rules of Disciplinary Enforcement).

Experienced hearing committee member -- An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has served 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.

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

Formal Proceedings -- A proceeding subject to Chapter 89 (relating to formal proceedings).

Formerly admitted attorney -- A disbarred, suspended, administratively suspended, retired or inactive attorney.

Grievance -- Alleged misconduct.

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

Informal Admonition -- Private informal admonition by Disciplinary Counsel.

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

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

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

IOLTA Account -- An IOLTA Account as defined in Rule 1.15(d)(3) of the Pennsylvania Rules of Professional Conduct.

Limited In-House Corporate Counsel License -- A license issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

Military attorney -- An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys).

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

Office of Disciplinary Counsel -- The Office of Disciplinary Counsel established in §93.61 (relating to Office of Disciplinary Counsel).

Office of the Secretary -- The Office of the Secretary established by §93.51 (relating to Office of the Secretary).

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

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

Petitioner-attorney. Includes any person subject to these rules who has filed a petition for reinstatement to the practice of law.

Practice of law -- Includes the provision of legal services as a foreign legal consultant or military attorney, or pursuant to a Limited In-House Corporate Counsel License.

Private reprimand -- Private reprimand by the Board.

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

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

Public Reprimand – Public reprimand by the Board.

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

Reviewing hearing committee member -- 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.

Rules -- The provisions of this subpart.

Secretary -- The Secretary of the Board.

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 two hearings into formal charges of misconduct by respondent-attorneys.

Special Master -- A special master assigned under § 93.91 (relating to special masters).

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

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

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

§85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement Rules extends to:

(1) Any attorney admitted to practice law in this Commonwealth.

Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney or a person holding a Limited In-House Corporate Counsel License. See the definitions of “attorney,” “practice of law” and “respondent-attorney” in § 85.2 (relating to definitions).

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

(3) Any formerly admitted attorney, with respect to acts prior to suspension, disbarment, administrative suspension, or transfer to retired or inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute the violation of the Disciplinary Rules, the Enforcement Rules or these rules.

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

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

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

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

§85.4. Information and special instructions.

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

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

(2) The Office of the Secretary, with respect to matters which have become the subject of formal proceedings.

§85.5. Location of Office of Disciplinary Counsel.

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

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

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

(1) District I Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337
(215-560-6296)
(fax: 215-560-4528)

(2) District II Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
Suite 170
820 Adams Avenue
Trooper, PA 19403-2328
(610-650-8210)
(fax: 610-650-8213)

(3) District III Office
Office of Disciplinary Counsel

The Disciplinary Board of the
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
PO Box 62675
Harrisburg, PA 17106-2675
(717-772-8572)
(fax: 717-772-7463)

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

§85.6. Location of Office of the Secretary.

The location of the Office of the Secretary is:

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

§85.7. Grounds for discipline.

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

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

- (1) Conviction of a crime.
- (2) Willful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand, or informal admonition.
- (3) Willful violation of any other provision of the Enforcement Rules.
- (4) Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master.
- (5) Ceasing to meet the requirements for licensure as a foreign legal consultant set forth in Pennsylvania Bar Admission Rule 341(a)(1) or (3) (relating to licensing of foreign legal consultants).
- (6) Making a material misrepresentation of fact or deliberately failing to disclose a material fact in connection with an application submitted under the Pennsylvania Bar Admission Rules.

(7) Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request (Form DB-7) or supplemental request (Form DB-7A) under §87.7(b) of these rules for a statement of the respondent-attorney's position.

(c) Enforcement Rule 203(c) provides that the Board, its hearing committees, special masters and (when administering informal admonitions) Disciplinary Counsel are "tribunals" within the meaning of the Disciplinary Rules.

§85.8. Types of discipline.

(a) *General rule.* Enforcement Rule 204(a) provides that misconduct shall be grounds for any of the following:

- (1) Disbarment by the Supreme Court.
- (2) Suspension by the Supreme Court for a period not exceeding five years.
- (3) Public censure by the Supreme Court with or without probation.
- (4) Probation by the Supreme Court under supervision provided by the Board.
- (5) Public reprimand by the Board with or without probation.
- (6) Private reprimand by the Board with or without probation.
- (7) Private informal admonition by Disciplinary Counsel.
- (8) Revocation of an attorney's admission or license to practice law in the circumstances provided in § 85.7(b)(6) (relating to grounds for discipline).

(b) *Conditions attached to discipline.* Enforcement Rule 204(b) provides that conditions may be attached to an informal admonition, private reprimand, or public reprimand and that failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

(c) *Limited In-House Corporate Counsel License.* Enforcement Rule 204(c) provides that a reference in the Enforcement Rules and these rules to disbarment, suspension, temporary suspension, administrative suspension, or transfer to or assumption of retired or inactive status shall be deemed to mean, in the case of a respondent-attorney who holds a Limited In-House Corporate Counsel License, expiration of that license; and that a respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

(1) shall be deemed to be a formerly admitted attorney for purposes of Subchapter 91E (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Subchapter 89F (relating to reinstatement and resumption of practice) or §§ 93.145 (relating to reinstatement) or 93.112(c) (relating to reinstatement upon payment of taxed costs) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

§85.9. Immunity.

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

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

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

§85.10. Stale matters.

(a) *General rule.* The Office of Disciplinary Counsel or the Board shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint, except as provided in subsection (b).

(b) *Exceptions.* The four year limitation in subsection (a) shall:

(1) Not apply in cases involving theft or misappropriation, conviction of a crime or a knowing act of concealment.

(2) Be tolled during any period when there has been litigation pending that has resulted in a finding that the subject acts or omissions involved civil fraud, ineffective assistance of counsel or prosecutorial misconduct by the respondent-attorney.

§85.11. Recusal.

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

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

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

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

(b) *Procedure for recusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or a hearing committee member or a special master shall be made in accordance with these rules, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion. The procedures applicable to a motion for recusal shall be as follows:

(1) The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).

(2) In the case of a motion to disqualify a hearing committee member or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master.

(3) The Motion shall be ruled upon by the challenged member or special master.

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

§85.12. Filings with the Supreme Court.

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

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

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

§85.13. Verification by respondent-attorneys.

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

CHAPTER 87.
INVESTIGATIONS AND INFORMAL PROCEEDINGS

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Subchapter A.
PRELIMINARY PROVISIONS

COMPLAINTS

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INQUIRIES

87.21. Inquiries.

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.

§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.

§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.

§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 Office of the Secretary for disposition pursuant to §93.52(d)(2) (relating to disposition of complaints). 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.

§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).

§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 Board Secretary 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).

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(d) (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.

§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 condition 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 Assistant 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 Assistant Disciplinary Counsel and taken with the written concurrence of the Assistant Disciplinary Counsel-in-Charge, any other Assistant Disciplinary Counsel designated to serve in his or her absence or unavailability, the Chief Disciplinary Counsel, or an Assistant 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 Assistant 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, Assistant Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member).

§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 shall 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 Office of the Secretary 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 Assistant 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 Assistant Disciplinary Counsel-in-Charge or designated Assistant 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 Assistant 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.

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 for 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 Office of the Secretary 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.

§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.

§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 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.

(b) *Appeal administrative.* The appeal under subsection (a) of this section 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 Office of the Secretary 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 Office of the Secretary 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.

§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 Office of the Secretary 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 Office of the Secretary 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.

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.

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 87B (relating to review of recommended disposition of complaint), the Office of the Secretary or the Office of Disciplinary Counsel, as appropriate, shall:

(1) Notify the complainant of the disposition of the complaint.

(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)(1) (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)(2) (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.

§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 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 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 § 93.102(b)(2) (relating to exceptions).

(b) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear for the purpose 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.

§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.

§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 in the Office of the Secretary 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.

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 in the Office of the Secretary 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.

§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 Secretary of the Board 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 Secretary of the Board.

(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 Secretary of the Board 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 Secretary of the Board 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 Secretary of the Board; 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)(1) (relating to emergency temporary suspension orders and related relief) or pursuant to Enforcement Rule 214 (relating to attorneys convicted of crimes).

§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.

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).

CHAPTER 89
FORMAL PROCEEDINGS

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Subchapter A.
PRELIMINARY PROVISIONS

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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.

(b) *Relationship to informal proceedings.* The filing of a petition for discipline under this chapter shall be conclusive evidence that all conditions precedent thereto under Chapter 87 (relating to investigations and informal proceedings) have been satisfied. Failure to comply with any requirement of Chapter 87 shall not affect the validity of

proceedings under this chapter and no proceeding or other matter under Chapter 87 shall be an issue in formal proceedings under this chapter.

§89.2. Equity procedure to apply.

Except where inconsistent with these rules, formal proceedings before hearing committees, special masters and the Board shall conform generally to the practice in action in equity under the Pennsylvania Rules of Civil Procedure.

§89.3. Filings generally.

(a) *General rule.* The filing of pleadings, briefs and other documents in connection with a formal proceeding under these rules shall be as follows:

(1) Except as otherwise requested by the Office of the Secretary, at the time any pleading or other document is filed in a formal proceeding that is not at the time in the hands of a hearing committee or special master, there shall be furnished to the Office of the Secretary an original and three conformed copies thereof, including all exhibits, if any.

(2) Except as otherwise provided by these rules in the case of briefs, at the time any document is filed in a formal proceeding that is at the time in the hands of a hearing committee, there shall be furnished to the hearing committee an original and three conformed copies thereof, including all exhibits, if any, and one conformed copy with exhibits, if any, shall be filed with the Office of the Secretary.

(3) Except as otherwise provided by these rules in the case of briefs, at the time any document is filed in a formal proceeding that is at the time in the hands of a special master, there shall be furnished to the special master an original and one conformed copy thereof, including all exhibits, if any, and one conformed copy with exhibits, if any, shall be filed with the Office of the Secretary.

(4) Notwithstanding paragraphs (2) and (3), it shall not be necessary to file with the Office of the Secretary a copy of any prepared testimony or documentary exhibits submitted in connection with a hearing.

(5) Briefs shall be filed in accordance with § 89.164 (relating to filing and service of briefs).

(b) *Timely filing required.* Pleadings, briefs or other documents in formal proceedings required or permitted to be filed under these rules must be received for filing at the Office of the Secretary within the time limits, if any, for such filing. The date of receipt by the Office of the Secretary and not the date of deposit in the mails is determinative.

(c) *Copies furnished to hearing committee members.* Where copies of pleadings, briefs or other documents are furnished to members of a hearing committee, each member shall retain possession of one complete set of papers and, following conclusion of the work of the committee with respect to a particular proceeding, each such member shall independently transmit his or her set of papers to the Office of the Secretary.

(d) *Papers of special masters.* Following conclusion of his or her work with respect to a particular proceeding, a special master shall transmit his or her papers regarding the proceeding to the Office of the Secretary.

§89.4. Representation of respondent-attorney.

(a) *Appearance in propria personia.* When a respondent-attorney appears pro se in a formal proceeding such attorney shall file with the Office of the Secretary, with proof of service of a copy upon the Office of Disciplinary Counsel, an address at which any notice or other written communication required to be served upon such attorney may be sent.

(b) *Representation of respondent-attorney by counsel.* When a respondent-attorney is represented by counsel in a formal proceeding counsel shall file with the Office of Secretary, with proof of service of a copy upon the Office of Disciplinary Counsel, a written notice of such appearance, which shall state the name, address and telephone number of such counsel, the name and address of the respondent-attorney on whose behalf such counsel appears, and the caption and docket number of the subject proceeding. Any additional notice or other written communication

required to be served on or furnished to a respondent-attorney may be sent to the counsel of record for such respondent-attorney at the stated address of the counsel in lieu of transmission to the respondent-attorney. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the respondent-attorney shall also be served upon or furnished to such counsel (or one of such counsel if the respondent-attorney is represented by more than one counsel) in the same manner as prescribed for the respondent-attorney, notwithstanding the fact that such communication may be furnished directly to the respondent-attorney.

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

§89.5. Format of pleadings and documents.

(a) *In general.* Pleadings and documents other than exhibits filed in formal proceedings shall be in a typeface not less than 10-points, on unglazed paper 8 ½ inches wide by 11 inches long and with margins of at least 1 inch. The text shall be double-spaced except for indented quotations. Pleadings and documents other than correspondence shall be bound in a manner that may be taken apart easily.

(b) *Incorporation by reference.* Any document on file with the Board in a formal proceeding may, subject to the restrictions of Chapter 93 Subchapter F (relating to confidentiality), be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another document which incorporates it by reference.

(c) *Identification.* Pleadings or other documents filed in a formal proceeding shall set forth:

- (1) The caption and docket number of the proceeding.
- (2) A brief description title of the pleading or document.
- (3) The name of the agency or person in whose behalf the filing is made.

§89.6. Execution.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original copy of each pleading or other document shall be signed in ink by the party in interest, or by counsel for such party, and shall show the office, post office address and telephone number of such party or counsel. All other copies filed shall be fully conformed thereto.

(b) *Effect.* The signature of the person subscribing any documents filed in a formal proceeding constitutes a certificate by such individual that the subscriber has read the documents being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, the subscriber believes them to be true.

(c) *Penalty.* All statements of fact in pleadings or other documents filed in a formal proceeding are subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities), and it shall not be necessary to verify under oath any such document.

(d) *Cross reference.* See § 85.13 (relating to verification by respondent-attorneys).

§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 Chair may extend the time for hearing or grant any other extension of time in a formal proceeding.

(b) *Notice to other tribunals.* Upon receipt of notice fixing a date in connection with a formal proceeding (including a hearing date before a hearing committee or special master or oral argument before the Board) or the date of a meeting of the Board, any involved person within 48 hours thereafter shall deliver written notice (which shall not identify the respondent-attorney) of the fixing of such date to the clerk, prothonotary, court administrator, chairperson or other appropriate administrative officer of any court, administrative agency or other body with which a conflict might reasonably arise, and shall file a copy of such notice with the Office of the Secretary.

(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 chair of the hearing committee or the special master conducting the hearing, who may deny it or recommend its approval to the Board Chair. A denial by the chair of a hearing committee or special master may be reviewed by the Board 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 Chair.

(d) *Grounds for continuances.* Enforcement Rule 208(i) provides that all formal proceedings under this chapter shall be conducted as expeditiously as possible; that ordinarily the engagement of an involved person will be recognized as a basis for continuance of a formal proceeding or meeting of the Board only where the involved person is actually engaged before an appellate court of this Commonwealth or a court of the United States; and that engagement of an involved person before any other court, administrative agency or other body shall not be recognized as a basis for continuance except upon a showing of unforeseen and compelling circumstances prohibiting appearance.

(e) *Definition.* As used in this section, the term "involved person" includes a member of the Board, 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.

SERVICE OF DOCUMENTS

§89.21. Service by the Board.

Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be served by the Office of the Secretary by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at the address of record of such person. When service is not accomplished by mail, personal service may be effected by any one duly authorized by the Office of the Secretary in the manner provided in Pa. R. Civ. P. No. 1504 (relating to service of process in actions in equity).

§89.22. Service by a participant.

All pleadings, briefs and other documents, filed in formal proceedings, when filed or tendered to the Board for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy to each participant.

§89.23. Effect of service upon counsel.

When any participant has appeared by counsel, service upon such counsel shall be deemed service upon the participant as provided in §89.4(b) (relating to representation by counsel) and separate service on the party may be omitted as provided in such subsection.

§89.24. Date of service.

The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

§89.25. Proof of service.

There shall accompany and be attached to the original of each pleading or other document filed with the Board, when service is required to be made by the parties, a certificate of service in the form prescribed by §89.26 (relating to form of certificate of service). All other copies filed shall be fully conformed thereto.

§89.26. Form of certificate of service.

I hereby certify that I have this day served by _____(indicate method of service)_____ the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

Dated this _____ day of _____, 19 _____.

(signature)

counsel for

§89.27. Service upon Disciplinary Counsel.

Whenever any provision of these rules refers to service of any pleading, petition or other document upon Disciplinary Counsel, such service shall be made by, and these rules shall be deemed to require, service of the pleading, petition or other document in accordance with this subchapter separately upon both the Office of the Secretary and Disciplinary Counsel.

AMENDMENT OR WITHDRAWAL OF PLEADINGS

§89.31. Amendments of pleadings.

No amendment of any petition for discipline or other pleading may be made except on leave granted by the Board Chair or the hearing committee or special master before which the matter is then pending.

§89.32. Withdrawal of petition for discipline.

(a) *General rule.* Chief Disciplinary Counsel may at any stage of the proceeding apply for leave to withdraw a petition for discipline when it shall appear that it was improvidently filed. The application shall be set forth on Form DB-44 (Application for Leave to Withdraw Petition for Discipline), shall set forth briefly the grounds relied upon by the Office of Disciplinary Counsel for recommending withdrawal, and shall be filed with the Office of the Secretary.

(b) *Action by Board.* The Office of the Secretary shall transmit the Form DB-44, any answer thereto, and related file to a member of the Board designated by the Chair, who shall consider and act upon the application on behalf of the Board. The Office of the Secretary shall notify the parties of the action taken by the Board.

Subchapter B.
INSTITUTION OF PROCEEDINGS

Sec.

- 89.51. Grounds for institution of formal proceedings.
- 89.52. Petition for discipline.
- 89.53. Service of petition on respondent-attorney.
- 89.54. Answer.
- 89.55. No other pleadings.
- 89.56. Assignment for hearing.
- 89.57. Scheduling of hearing and prehearing conference.
- 89.58. Notice of hearing and prehearing conference.

§89.51. Grounds for institution of formal proceedings.

(a) Except where the Office of Disciplinary Counsel and the respondent-attorney file a joint petition in support of *public* discipline on consent pursuant to §87.74 (relating to discipline on consent) or the respondent-attorney submits a resignation statement under §87.73 (relating to voluntary resignation by attorneys under disciplinary investigation and disbarment on consent), the Office of Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under §89.52 (relating to petition for discipline) in the following cases:

(1) Where a certificate of conviction is filed with the Supreme Court under §91.33 (relating to notification by Office of Disciplinary Counsel of conviction of attorneys) and the Supreme Court directs that formal proceedings be instituted;

(2) After the Supreme Court has entered an order temporarily suspending the respondent-attorney under §91.34(c) (relating to temporary suspension following the conviction of the respondent-attorney for a crime) or §91.34(f) (relating to joint petition for temporary suspension); or

(3) Pursuant to a determination to institute formal proceedings made under Chapter 87 (relating to investigations and informal proceedings).

(b) Except where the Office of Disciplinary Counsel shall institute formal disciplinary proceedings pursuant to the provisions of subsection (a), the Office of Disciplinary Counsel may, upon the filing of a certificate of conviction with the Supreme Court under §91.33 (relating to notification by Office of Disciplinary Counsel of conviction of attorneys), institute formal disciplinary proceedings by filing with the Board a petition under §89.52 (relating to petition for discipline). See §91.35(a) (relating to authority of Office of Disciplinary Counsel to commence a formal proceeding following the conviction of a respondent-attorney for a crime).

§89.52. Petition for discipline.

(a) *Caption.* A petition for discipline shall be captioned as follows:

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF
PENNSYLVANIA

Office of Disciplinary Counsel,	:	
Petitioner	:	Docket
	:	
vs.	:	
	:	No.
James Roe,	:	
Respondent	:	

(b) *Contents.* Enforcement Rule 208(b)(1) provides that a petition for discipline shall set forth with specificity the charges of misconduct against the respondent-attorney. The petition shall set forth the Disciplinary Rules or Enforcement Rules alleged to have been violated.

(c) *Prayer for relief.* A petition for discipline may contain a specific prayer for relief or may contain a general prayer for such disciplinary action as may be just and proper in the circumstances.

§89.53. Service of petition on respondent-attorney.

Enforcement Rule 208(b)(2) provides that a copy of the petition for discipline shall be personally served upon the respondent-attorney. Service shall be effected by the Office of Disciplinary Counsel. The service copy of the petition shall be endorsed with a notice to plead within 20 days after service of the petition.

§89.54. Answer.

(a) *General rule.* Enforcement Rule 208(b)(3) provides that within 20 days after service of the petition, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. (See also subsection (d) of this section.) Such answer shall be filed in the Office of the Secretary. The respondent-attorney and Disciplinary Counsel may stipulate to only one extension, not to exceed 20 days, of the 20 day period in which to file the answer, which stipulation shall be filed in the Office of the Secretary.

(b) *Contents of answer.* All answers shall be in writing, and so drawn as fully and completely to advise the participants and the Board as to the nature of the defense. They shall admit or deny specifically and in detail each material allegation of the petition and state clearly and concisely the facts and matters of law relied upon.

(c) *Request to be heard in mitigation.* The respondent-attorney may include in the answer a request that a hearing be held on the issue of mitigation.

(d) *Effect of failure to answer.* Enforcement Rule 208(b)(3) provides any factual allegation that is not timely answered shall be deemed admitted.

§89.55. No other pleadings.

Pleadings shall be limited to a petition for discipline (or for reinstatement) and an answer thereto.

§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 or a special master. 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 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 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 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 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 or special master under § 89.56 (relating to assignment for hearing), unless an extension has been granted by the Board 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.

§89.58. Notice of hearing and prehearing conference.

The Office of the Secretary shall serve or cause to be served notice of the hearing and prehearing conference required by § 89.57 (relating to scheduling of hearing and prehearing conference) by means of Form DB-34 (Notice of Hearing and Prehearing Conference) upon the respondent-attorney, at least seven days in advance of the date fixed for the prehearing conference. The notice shall indicate the dates, times and places of the prehearing conference and the hearing and shall state that the respondent-attorney is entitled to be represented by counsel, to cross-examine

witnesses and to present evidence in the respondent-attorney's own behalf. A copy of the notice shall at the same time be transmitted to staff counsel. See § 89.7(b) (relating to notice to other tribunals).

Subchapter C. HEARING PROCEDURES

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CONFIDENTIALITY

§89.65. Proceedings confidential.

Proceedings before a hearing committee or special master shall be governed by Chapter 93 Subchapter F (relating to confidentiality).

PREHEARING CONFERENCES

§89.71. Conferences to expedite proceedings.

In order to provide opportunity for the submission and consideration of facts, arguments, offers for settlement of any of the issues in a proceeding, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

§89.72. Subjects which may be considered at conferences to expedite hearings.

At the prehearing conference required by § 89.57 (relating to scheduling of hearing and prehearing conference and any other conferences which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement permitted under §89.71 (relating to conferences to expedite proceedings) and any applications for protective orders under § 93.104 (relating to protective orders), the possibility of the following:

- (1) The simplification of the issues.
- (2) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (3) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (4) The limitation of the number of witnesses and the identification of expert witnesses. The member of a hearing committee presiding at a conference may order the parties to exchange the names and addresses of all expert witnesses and to provide the opposing party with copies of all expert reports. The order may provide that failure to comply with it shall have the consequences described in §89.93(c) (relating to exclusion of evidence).
- (5) The discovery or production of data.
- (6) Such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

§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 chair of the hearing committee or by a single senior or experienced hearing committee member designated in writing by the chair.

(b) *Preparation for and action at conference.* All participants shall attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable.

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

(a) *General rule.* The 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 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.

(b) *Special masters.* A special master may exercise at a conference all of the powers granted to a presiding hearing committee member by subsection (a).

HEARING

§89.91. Appearances.

The hearing committee or special master shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

§89.92. Order of procedure.

(a) *Disciplinary proceedings.* In proceedings upon a petition for discipline the Office of Disciplinary Counsel shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence.

(b) *Reinstatement proceedings.* In proceedings upon a petition for reinstatement the respondent-attorney shall have the burden of proof, shall initiate the presentation of evidence, and may present rebuttal evidence.

§89.93. Presentation by the parties.

(a) *General rule.* The respondent-attorney and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) *Objections.* When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly, if so requested by the hearing committee or special master, and may be stated briefly if no such request is made. Formal exceptions are unnecessary and shall not be taken to procedural rulings.

(c) *Exclusion of expert evidence.* The hearing committee or special master may exclude the introduction of expert testimony or reports as to which a party has failed to comply with an order under §§89.72(4) (relating to subjects which may be considered at conferences to expedite hearings) or 89.74(a) (relating to authority of hearing committee member or special master at conferences).

(d) *Exclusion of factual evidence.* Enforcement Rule 208(b)(4) provides that no evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown. See § 89.54(d) (relating to effect of failure to answer).

§89.94. Limiting number of witnesses.

The hearing committee or special master may limit appropriately the number of witnesses who may be heard upon any issue to eliminate unduly repetitious or cumulative evidence.

§89.95. Additional evidence.

At the hearing, the hearing committee or special master may, if deemed advisable, authorize any participant to file specific documentary evidence as a part of the record within a fixed time, expiring not less than ten days before the date fixed for filing and serving briefs. Any post-hearing document permitted or required by these rules to be filed of record shall become a part of the record.

TRANSCRIPT

§89.101. Recording of proceedings.

Hearings shall be reported by an official reporter designated by the Office of the Secretary and except as provided in §89.181 (relating to abbreviated procedure), a transcript of such report shall be a part of the record and the sole official transcript of the proceeding. Such transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed on the record by the hearing committee or special master. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in §89.95 (relating to additional evidence) or changes in the transcript as provided in §89.102 (relating to transcript corrections). Oral argument, if any, made pursuant to §89.161 (relating to oral argument) shall not be included in the transcript of the hearing or become a part of the record unless so requested by a party after completion of the oral argument.

§89.102. Transcript corrections.

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the hearing committee or special master, at any time during the hearing or after the close of the hearing, as may be permitted by the hearing committee or special master, but not less than ten days in advance of the time fixed for filing briefs. The hearing committee or special master may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

§89.103. Copies of transcripts.

The Board will cause to be made a stenographic record of all hearings and such copies of the transcript thereof as it requires for its own purposes. A respondent-attorney desiring copies of such transcript may purchase such copies from the official reporter. Any witness may purchase from the official reporter a copy of the transcript, or any part thereof, relating to the testimony of such witness.

EVIDENCE AND WITNESSES

§89.121. Oral Examination.

Witnesses shall be examined orally unless the testimony is taken by deposition as provided in §§91.11 - 91.18 (relating to depositions) or the facts are stipulated in the manner provided in §89.72 (relating to conferences to expedite hearings) or in §89.131 (relating to presentation and effect of stipulations). Pursuant to Enforcement Rule 213(e), witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

§89.122. Fees of witnesses.

Witnesses subpoenaed by the Office of Disciplinary Counsel shall be paid the same fees and mileage as are paid for like services in the courts of common pleas. Witnesses subpoenaed at the instance of a respondent-attorney shall be paid the same fees by the respondent-attorney at whose instance the witness is subpoenaed.

§89.123. Evidence by persons associated with Board.

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

STIPULATIONS

§89.131. Presentation and effect of stipulations.

Independently of the orders or rulings issued as provided by §89.72 (relating to conferences to expedite hearings) the participants may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the participants with respect to the matters therein stipulated.

EVIDENCE GENERALLY

§89.141. Admissibility of evidence.

(a) *General rule.* In any proceeding admissibility of evidence shall be governed by the rules of evidence observed by the courts of common pleas in this Commonwealth in nonjury civil matters at the time of the hearing.

(b) *Pleadings.* The petition for discipline and answer thereto, and similar formal documents upon which a hearing is fixed shall, without further action, be considered as parts of the record, but in no event shall pleadings, or any part thereof, be considered as evidence of any fact other than that of the filing thereof unless offered and received in evidence in accordance with these rules.

§89.142. Reception and ruling on evidence.

The hearing committee or special master shall rule on the admissibility of all evidence. The number of witnesses to be heard on any issue may be limited appropriately as provided in §89.94 (relating to limiting number of witnesses).

§89.143. Form and size of documentary evidence.

Wherever practicable, all exhibits of a documentary character received in evidence shall be on paper of good quality and so prepared as to be plainly legible and durable, and shall conform to the requirements of §89.5(a) (relating to format of pleadings and documents) whenever practicable.

§89.144. Copies to participants.

Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the participants present at the hearing. In the case of a hearing before a hearing committee, three copies of each exhibit of documentary character shall be furnished for the use of the hearing committee. In the case of a hearing before a special master, one copy of each exhibit of documentary character shall be furnished for the use of the special master.

EVIDENCE ON TYPE
OF DISCIPLINE

§89.151. Separate consideration of evidence relevant to type of discipline.

(a) *General rule.* The receipt of evidence which is relevant solely on the issue of the type of discipline to be imposed shall be deferred until after the hearing committee or special master has found that the evidence establishes a prima facie violation of at least one of the disciplinary rules or enforcement rules alleged in the petition for discipline to have been violated. However, the hearing committee or special master need not specify the rule or rules found to have been violated before proceeding with the receipt of evidence under this rule.

(b) *Type of evidence desired.* While the participants may offer any evidence which is relevant and material on the issue of the type of discipline to be imposed, experience has shown that information concerning the respondent-attorney on the following subjects will be particularly helpful to the Board:

(1) Address, age and residence.

(2) Name, address, age and residence and relationship of dependents.

(3) Schools attended and degrees obtained.

(4) Date of admission in each jurisdiction to which admitted, and general history of the occupation of the respondent-attorney, with the names of all partners, associates in business and employers, if any, the dates and duration of all such relationships and employments during at least the preceding ten years.

(5) If during the period covered by the response to paragraph (4) of this subsection the respondent-attorney was, while admitted to the practice of law, also engaged in any other occupation, the approximate number of hours per week devoted to each type of occupation and the approximate proportion of income derived therefrom, stated separately for each period during which the information materially differs from such information applicable to other periods.

(6) In cases involving charges of mishandling or misuse of funds of clients or others, a financial net worth statement of respondent-attorney summarizing assets and liabilities.

(7) A statement showing the dates, general nature and final disposition of every civil action during at least the preceding ten years in which the respondent-attorney was or is a party defendant and which placed in issue his or her conduct or competency or charged a violation of any disciplinary rules.

(8) A statement showing the dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of the respondent-attorney during the preceding ten years.

(9) A statement of every disciplinary proceeding or procedure of inquiry concerning the standing of the respondent-attorney as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license or discipline of the respondent-attorney; and as to each, the dates, facts and disposition thereof, except that no evidence shall be received of proceedings and dispositions under these rules where the official records thereof are under § 93.104(d) (relating to restrictions on available information) not available for use against the respondent-attorney.

(10) Any history of substance abuse by the respondent-attorney, and any rehabilitation programs currently or previously participated in by the respondent-attorney.

Note: Where a respondent-attorney seeks to be placed on probation under §89.291 (relating to probation), evidence under paragraph (b)(10) will be particularly important. The respondent-attorney should be prepared to offer evidence to assist the Board in fixing the conditions of probation, including the selection of a recognized or accredited residential treatment or rehabilitation program in which the respondent-attorney may be required to participate.

(c) *Responsibility of hearing committee or special master.* Where the hearing committee or special master concludes that the presentation of the participants does not appear to have developed an adequate background picture of the respondent-attorney the hearing committee or special master should consider the desirability of augmenting the record through appropriate questioning. The hearing committee or special master shall, in appropriate cases, make a finding on whether restitution has been made.

(d) *Procedure.* The hearing committee or special master may make appropriate provision for the timing of the receipt of evidence under this rule, e.g. by:

(1) immediately proceeding to the reception of evidence after announcement of a general adverse finding on the issue of misconduct in the manner provided by subsection (a) of this section),

(2) receiving written submissions by the participants within a fixed time (not to exceed ten days) after service of findings and conclusions on the issue of misconduct, or

(3) reconvening the hearing where necessary to resolve a factual issue relevant to the type of discipline to be imposed. The 60-day period of §89.171 (relating to filing of report) runs from the conclusion of the hearing or briefing, as the case may be, on the issue of alleged misconduct and is not extended by the time required for any proceedings under this section.

ORAL ARGUMENT AND BRIEFS

§89.161. Oral argument.

At the close of the taking of testimony in each proceeding the hearing committee or special master may hear oral argument on the issues in the proceeding. No other oral argument shall be heard by a hearing committee or special master. See §89.101 (relating to recording of proceedings).

§89.162. Time for filing of briefs.

(a) *General rule.* Unless waived by the participants at the close of the taking of testimony or pursuant to §89.181 (relating to abbreviated procedure), briefs may be filed with the hearing committee or special master (and served pursuant to §89.22 (relating to service by a participant)) as follows:

(1) By staff counsel within 20 days after the filing of the transcript of the hearing.

(2) By the respondent-attorney within 20 days after the filing of the brief of staff counsel.

(b) *Reinstatement proceedings.* In reinstatement proceedings the order of the filing of briefs shall be the reverse of the order set forth in subsection (a) of this section.

§89.163. Content and form of briefs.

(a) *General rule.* Briefs shall contain:

(1) A concise statement of the case.

(2) An abstract of the evidence relied upon by the participants filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.

(3) Proposed findings and conclusions together with the reasons and authorities therefor, separately stated.

(b) *Exhibits.* Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analysis of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain.

(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 Chair of the hearing committee or the special master at least ten days before the time fixed for the filing of the brief.

§89.164. Filing and service of briefs.

Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing, except by special permission of the hearing committee or special master. In the case of a formal proceeding that is in the hands of a hearing committee, one copy of each brief shall be served on each member of the committee and one copy shall be filed with the Office of the Secretary. In the case of a formal proceeding that is in the hands of a special master, two copies of each brief shall be served on the special master and one copy shall be filed with the Office of the Secretary. A hearing committee or special master may permit or direct the service of a different number of copies of a brief on the members of the hearing committee or special master.

REPORT

§89.171. Filing of report.

Enforcement Rule 208(c) provides that unless waived in the manner provided in §89.181 (relating to abbreviated procedure) at the conclusion of the hearing, the hearing committee or special master shall submit a report to the Board containing the findings and recommendations of the committee or special master. Such report shall be filed with the Office of the Secretary no later than 60 days after the conclusion of the hearing and submission of briefs, if any. Failure to file a report within the time prescribed by this section shall not affect the validity of the report when filed or of the proceedings generally.

§89.172. Contents of report.

(a) *General rule.* The report of the hearing committee or special master shall be accompanied by Form DB-10 (Transmittal of Report of Hearing) and shall set forth:

(1) A brief summary, not to exceed one page, of the nature of the case, the ultimate issue or issues involved, and the conclusions and recommendations as to disposition of the hearing committee or special master.

(2) A concise statement of the case, including a citation of each Disciplinary Rule alleged or found to have been violated by the respondent-attorney.

(3) The rulings on admission of evidence and other procedural matters, which may be set forth by reference to the pages of the transcript wherein such rulings are recorded.

(4) Findings of fact.

(5) Discussion.

(6) Conclusions of law.

(7) Recommended disposition of the petition.

(b) *Copy of the record.* The report shall have annexed to it one complete copy of the record before the hearing committee or special master.

§89.173. Report a part of the record.

The report of the hearing committee or special master and the record before the hearing committee or special master shall become a part of the record of the proceeding on file with the Office of the Secretary.

§89.174. Service of report.

The Office of the Secretary shall serve copies of the report of the hearing committee or special master upon the respondent-attorney and staff counsel.

ABBREVIATED PROCEDURE

§89.181. Abbreviated procedure.

(a) *Scope.* At the conclusion of the hearing, it may be obvious to all participants that no showing of misconduct has been made or that there has been adequate proof of a violation of §85.7 (relating to grounds for discipline) and that some form of private discipline or a public reprimand would be appropriate. In such circumstances the cost and delay of the preparation of a formal transcript is unnecessary and the preparation of a detailed report as provided by §89.172 (relating to contents of report) is an unnecessary and time-consuming burden on the hearing committee and others. Where the participants can stipulate to an acceptable determination the procedures of this section minimize cost, effort and time for all participants. This section may be applicable to combined reinstatement and disciplinary hearings conducted before a hearing committee pursuant to §89.273(b)(4) (relating to combined hearings in reinstatement matters where formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney).

(b) *General rule.* The respondent-attorney and staff counsel in the manner provided by subsection (c), may agree to waive the preparation of a transcript and the filing of formal findings and recommendations. In such situations, unless the Board directs otherwise, the committee may submit to the Board a summary determination of the committee and stipulation of discipline.

(c) *Procedures.*

(1) Immediately after the conclusion of the hearing the members of the hearing committee shall, if practicable and if neither the respondent-attorney nor staff counsel object to proceed under this section, temporarily recess the proceedings and meet in private to determine whether a finding of misconduct should be made.

(2) The Committee shall immediately reconvene the proceedings and announce their conclusion on the issue of misconduct.

(3) If a violation of § 85.7 has been found, the hearing committee shall immediately:

(i) receive evidence pursuant to § 89.151 (relating to separate consideration of evidence relevant to type of discipline);

(ii) temporarily recess the proceedings;

(iii) meet in private to determine the type of discipline which the committee will recommend to the Board; and

(iv) reconvene the proceedings and announce the discipline which the committee will recommend to the Board.

(4) Immediately after announcing that a violation of § 85.7 has not been found or the discipline that the committee will recommend to the Board, as the case may be, the committee shall deliver to the participants Form DB-43 (Hearing Committee Determination Under Abbreviated Procedure) setting forth the summary determination

of the committee. The official reporter shall be directed by the hearing committee not to prepare a transcript until receipt from the committee of specific instructions to do so.

(5) The participants shall be conclusively deemed to have accepted the summary determination of, and (if a violation of § 85.7 has been found) to have stipulated that the Board shall impose the type of discipline recommended by, the committee unless either the respondent-attorney or staff counsel shall, within five days after receipt of the Form DB-43 as provided in paragraph (4), file a copy of such Form DB-43 with objections to the summary determination of the hearing committee indicated thereon.

(6) If a timely objection is made as provided in paragraph (5) the participants may file briefs, the official reporter shall be directed to prepare a transcript and the hearing committee shall submit to the Board formal findings and recommendations in the manner and within the time otherwise provided by these rules.

(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 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 chair of the hearing committee.

(8) Thereafter the Board shall either:

- (i) affirm the finding that no violation of § 85.7 has been shown and dismiss the proceeding;
- (ii) impose or cause to be imposed the type of private discipline, stipulated by the participants;
- (iii) impose the public reprimand, stipulated by the participants; or
- (iv) remand the record to the hearing committee with instructions to fix a briefing schedule and to proceed as provided in paragraph (6), if for any reason the type of discipline stipulated by the parties is not accepted by the Board.

(9) Where the proceeding is disposed of as provided by Paragraph (8)(i), (ii), or (iii), the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

Subchapter D. ACTION BY BOARD AND SUPREME COURT

Sec.

- 89.201. Review by Board.
- 89.202. Content and form of briefs on exceptions.
- 89.203. Action by Board.
- 89.204. Dismissal of proceedings.
- 89.205. Informal admonition, private reprimand, or public reprimand following formal hearing.
- 89.206. Transmission of record to Supreme Court.
- 89.207. Review and Action in the Supreme Court.
- 89.208. Participation by the Board before the Supreme Court.
- 89.209. Expenses of formal proceedings.

§89.201. Review by Board.

(a) *General rule.* Upon receipt of a report and recommendation from a hearing committee or special master, the Board shall, except as otherwise provided in this rule, set the dates for submission of briefs and for oral argument before the Board or a panel of at least three of its members designated by the Chair.

(b) *Oral argument and briefs.* Enforcement Rule 208(d)(l) provides that the respondent-attorney shall have the right to submit briefs and to present oral argument to a panel of at least three members of the Board, unless such right has been waived in the manner provided by these rules.

(c) *Waiver.* If neither the respondent-attorney nor the Office of Disciplinary Counsel objects to the findings and recommendations of the hearing committee or special master, oral argument and submission of briefs may be waived by stipulation, subject to approval by the Board. A participant will be conclusively deemed to have waived all objections to the findings and recommendations of the hearing committee or special master and to have stipulated to the waiver of oral argument and submission of briefs unless such participant files exceptions as provided in subsection (d).

(d) *Procedure to except to report of hearing committee or special master.* Any participant desiring to object to the findings and recommendations of a hearing committee or special master shall, within 20 days after the service of a copy of a report or such other time as may be fixed by the Board Chair, file exceptions to the report or part thereof in a brief (designated "brief on exceptions"). "Briefs opposing exceptions" may be filed in response to briefs on exceptions within 20 days after the filing of briefs on exceptions or such other time as may be fixed by the Board Chair. No further response will be entertained unless the Board, with or without motion, so orders.

(e) *Oral argument.* Unless otherwise ordered by the Board, oral argument shall be deemed waived unless expressly requested in a brief on exceptions or brief opposing exceptions.

(f) *Participation by reviewing members.* Enforcement Rule 208(d)(1) provides that members of the Board who have participated on a review panel under § 87.33 (relating to appeal by Office of Disciplinary Counsel for modification of recommendation) or § 87.34 (relating to review of recommendation of private reprimand) shall not participate in further consideration of the same matter or decision thereof on the merits under this section. A Board member who pursuant to § 89.32(b) (relating to action by Board) denied an application for leave to withdraw a petition for discipline shall not participate in the consideration of or decision on the merits of that matter.

§89.202. Content and form of briefs on exceptions.

(a) *Briefs on exceptions.*

(1) Briefs on exceptions shall contain:

(i) A short statement of the case.

(ii) A summary of the basic position of the party filing.

(iii) The grounds upon which the exceptions rest.

(iv) The argument in support of the exceptions with appropriate references to the record and legal authorities.

(2) There may also be included specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions.

(3) Exceptions to the form of recommended order shall specify the portions thereof to which exception is taken, and may set forth a form of order suggested in lieu of that recommended by the hearing committee or special master.

(b) *Briefs opposing exceptions.* Briefs opposing exceptions shall generally follow the same style prescribed for briefs on exceptions, but may omit a statement of the case if it was correctly stated in a brief on exceptions.

(c) *Length.* Briefs on exceptions and briefs opposing exceptions shall be self-contained and limited to 30 pages in length, except that for good cause the limitation on length may be altered or waived for either class of briefs upon application to and order of the Board Chair at least ten days before the time fixed for filing of the respective briefs.

(d) *Copies.* Three copies of each brief shall be filed with the Office of the Secretary in addition to the copies served on the participants in the proceedings.

§89.203. Action by Board.

Enforcement Rule 208(d)(2) provides that the Board shall either affirm or change in writing the recommendation of the hearing committee or special master within 60 days after the adjudication of the matter at a meeting of the Board.

§89.204. Dismissal of proceeding.

Enforcement Rule 208(d)(2)(i) provides that in the event that the Board determines that a proceeding should be dismissed, it shall so notify the respondent-attorney. In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-11 (Notice of Dismissal of Formal Proceedings).

§89.205. Informal admonition, private reprimand or public reprimand following formal hearing.

(a) *General rule.* Enforcement Rule 208(d)(2)(ii) provides that in the event that the Board determines that the proceeding should be concluded by informal admonition, private reprimand, or public reprimand, the Board shall arrange to have the respondent-attorney appear in person before Disciplinary Counsel for the purpose of receiving informal admonition or before a designated panel of three members selected by the Board Chair pursuant to Pa.R.D.E. 205(c)(11) for the purpose of receiving private reprimand or public reprimand, in which case the designated member shall deliver the private reprimand or public reprimand.

(b) *Taxation of expenses.* Enforcement Rule 208(g)(2) provides that in the event a proceeding is concluded by informal admonition, private reprimand, or public reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney, and that all expenses so taxed shall be paid by the respondent-attorney within 30 days after the date of the entry of the order taxing the expenses against the respondent-attorney. The expenses taxable under this subsection shall be those prescribed by §93.111 (relating to determination of reimbursable expenses).

(c) *Notice to appear.*

(1) In the event that the Board determines that the proceeding should be concluded by public reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12-2. (FP) (Notice to Appear for Public Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for public reprimand shall be an independent ground for discipline and that the Board is a "tribunal" within the meaning of the Disciplinary Rules (see, e.g., Rules 3.3, 3.4(c) and 3.5).

(2) In the event that the Board determines that the proceeding should be concluded by private reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12(FP) (Notice to Appear for Private Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for private reprimand shall be an independent ground for discipline and that the Board is a "tribunal" within the meaning of the Disciplinary Rules (see, e.g. Rules 3.3, 3.4(c) and 3.5).

(3) In the event that the Board determines that the proceeding should be concluded by informal admonition, the Office of Disciplinary Counsel shall notify the respondent-attorney and staff counsel by means of Form DB-12.1(FP) (Notice to Appear for Informal Admonition Following Formal Proceedings), which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before Disciplinary Counsel for informal admonition shall be an independent ground for discipline and that Disciplinary Counsel, when administering informal admonitions, constitutes a "tribunal" within the meaning of the Disciplinary Rules (see, e.g. Rules 3.3, 3.4(c) and 3.5).

(4) The Finance Office shall notify the respondent-attorney of the expenses of the proceeding which have been taxed pursuant to subsection (b) by means of a Notice of Taxation of Expenses, which shall state that if the respondent-attorney fails to pay the taxed expenses within 30 days after the date of the entry of the order taxing

such expenses, action will be taken by the Board pursuant to §93.112 (relating to failure to pay taxed expenses) which will result in the entry of an order placing the respondent-attorney on administrative suspension.

(d) *Appearance.* An attorney who is given notice to appear for informal admonition or private reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such informal admonition or private reprimand. A permanent record shall be made of the fact of and basis for such action as is taken. The fact of receipt of such informal admonition or private reprimand shall not affect the good standing of the respondent-attorney as an attorney and shall be kept confidential, but shall be subject to limited availability under §93.102(b) (relating to exceptions.) An attorney who is given notice to appear for public reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such public reprimand. The proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality), and a record shall be made of the fact of and basis for the public reprimand, which record shall be public.

(e) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear before Disciplinary Counsel for the purposes of informal admonition without good cause shall automatically convert the decision of the Board on informal admonition into one for private reprimand. The neglect or refusal of the respondent-attorney to appear before the Board for the purposes of private or public reprimand without good cause shall automatically convert the decision of the Board on private or public reprimand into a recommendation to the Supreme Court for censure, and the Office of the Secretary shall notify the respondent-attorney, and the Office of Disciplinary Counsel accordingly.

(f) *Demand for Supreme Court review.*

(1) A respondent-attorney who is unwilling to have the matter concluded by informal admonition, private reprimand, or public reprimand may demand Supreme Court consideration of the matter. Enforcement Rule 208(d)(2)(iii) provides that within 30 days after notice of the determination of the Board, the respondent-attorney must file a notice of appeal with the Supreme Court.

(2) A respondent-attorney who objects to an order taxing expenses in connection with a matter concluded by informal admonition or private reprimand may file a petition for review of such order in the Supreme Court under 42 Pa.C.S. §§ 725(5) and 5105(a)(2). See 210 Pa. Code Ch. 15 (relating to judicial review of governmental determinations) with respect to the time limits for seeking review and other applicable procedures.

§89.206. Transmission of record to Supreme Court.

(a) *General rule.* Enforcement Rule 208(d)(2)(iii) provides that in the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition, private reprimand, or public reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition, private reprimand, or public reprimand, the Board shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court.

(b) *Procedure.* The Board Chairman shall file the record, the briefs on exceptions and the briefs opposing exceptions, if any, and the finding and recommendations of the Board with the Supreme Court by means of Form DB-13 (Request for Supreme Court Action) and an appropriate letter of transmittal. Copies of such finding and recommendations and letter of transmittal shall be served by the Office of Secretary upon the participants.

§89.207. Review and Action in the Supreme Court.

(a) *General rule.* Enforcement Rule 208(e)(5) provides that the Supreme Court shall review the record, where appropriate consider oral argument, and enter an order. Enforcement Rule 208(d)(2)(iii) provides that review by the Supreme Court shall be de novo and the Court may impose a sanction greater or less than that recommended by the Board.

(b) *Board recommendation of disbarment.* Enforcement Rule 208(e)(2) provides that in the event the Board recommends that the matter should be concluded by disbarment, the respondent-attorney may, within 20 days after service of the findings and recommendations of the Board under subsection (e) of this section, submit to the Supreme Court a request to present oral argument.

(c) *Board recommendations other than disbarment.* Enforcement Rule 208(e)(3) provides that in the event the Board recommends a sanction less than disbarment, and the Court, after consideration of the recommendation, is of the view that a rule to show cause should be served upon respondent-attorney, why an order of

disbarment not be entered, such a rule shall be issued; that a copy of the rule shall be served on Disciplinary Counsel (see § 89.27 (relating to service upon Disciplinary Counsel)); that within 20 days after service of the rule either party may submit to the Supreme Court a response, thereto; that within 10 days after service of a response, the other party may submit to the Supreme Court a reply thereto; and that respondent-attorney in such case shall have the absolute right upon request for oral argument.

(d) *Oral argument.* Enforcement Rule 208(e)(4) provides that, except as provided in subsections (b) and (c) of this section, the respondent-attorney will not be afforded the right of oral argument.

(e) *Service of papers.* Enforcement Rule 208(e)(1) provides that service of the findings and recommendations of the Board upon the respondent-attorney shall be governed by Rules 121 and 122 of Title 210 (relating to Pennsylvania Rules of Appellate Procedure). See § 85.12 (relating to filings with the Supreme Court).

§89.208. Participation by the Board before the Supreme Court.

(a) *General rule.* In cases where Disciplinary Counsel elects to urge in the Supreme Court pursuant to §93.63(b)(2) (relating to party status of Disciplinary Counsel) a position inconsistent with any finding or recommendation of the Board, the Board may obtain counsel, independent of the Office of Disciplinary Counsel, who shall seek to support before the Court the findings and recommendations of the Board.

(b) *Procedure.* Within 20 days after transmittal of the findings and recommendations of the Board to the Chief Justice of Pennsylvania pursuant to §89.206(b) (relating to procedure) or §89.273(a)(5) (relating to procedures for reinstatement), Chief Disciplinary Counsel shall submit to the Board a memorandum describing any position contrary to the findings and recommendations of the Board which the Office of Disciplinary Counsel has elected to urge in the Supreme Court.

§89.209. Expenses of formal proceedings.

Enforcement Rule 208(g)(1) provides that the Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses so taxed pursuant to orders of suspension that are not stayed in their entirety or disbarment shall be paid by the respondent-attorney within 30 days after notice transmitted to the respondent-attorney of taxed expenses. In all other cases, expenses taxed under Rule 208(g)(1) shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney. Failure to pay such taxed expenses within 30 days after the date of the entry of the order will result in action taken by the Board pursuant to §93.112 (relating to failure to pay taxed expenses) which will result in the entry of an order placing the respondent-attorney on administrative suspension.

Subchapter E. REOPENING OF RECORD

Sec.

89.251. Reopening on application of party.

89.252. Reopening before filing of report.

89.253. Reopening by Board action.

§89.251. Reopening on application of party.

(a) *Petition to reopen.* At any time after the conclusion of a hearing in a proceeding or adjournment thereof **sine die**, any participant in the proceeding may file with the hearing committee or special master, if before issuance by the hearing committee or special master of the report to the Board required by § 89.171 (relating to filing of report), otherwise with the Office of the Secretary, a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Responses.* Within ten days following the service of such petition, any other participant may file with the hearing committee, special master or the Office of the Secretary, an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

(c) *Action on petition.* As soon as practicable after the filing of responses to such petitions or default thereof, as the case may be, the hearing committee, special master or the Board will grant or deny such petition.

§89.252. Reopening before filing of report.

At any time prior to the filing of the report to the Board required by § 89.171 (relating to filing of report) a hearing committee or special master, after notice to the participants, may reopen the proceeding for the reception of further evidence on its own motion, if the hearing committee or special master has reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

§89.253. Reopening by Board action.

At any time prior to the issuance by the Board of its decision in a proceeding the Board, after notice to the participants, may without motion reopen the proceeding and remand to a hearing committee or special master for the reception of further evidence, if the Board has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

Subchapter F.
REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

Sec.

- 89.271. Reinstatement only by Court order.
- 89.272. Waiting period.
- 89.273. Procedures for reinstatement.
- 89.274. Notice of reinstatement proceedings.
- 89.275. Completion of questionnaire by respondent-attorney.
- 89.276. Procedures before the Board.
- 89.277. Abbreviated reinstatement procedure.
- 89.278. Expenses of reinstatement proceedings.
- 89.279. Evidence of competency and learning in law.
- 89.280. Notice of Reinstatement.

RESUMPTION OF PRACTICE

- 89.285. Resumption of practice by justices and judges.

§89.271. Reinstatement only by Court order.

Enforcement Rule 218(a) provides that an attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to Rule 218 if the attorney was:

- (1) suspended for a period exceeding one year;
- (2) retired, on inactive status or on administrative suspension if the formerly admitted attorney has not been on active status at any time within the past three years;
- (3) transferred to inactive status as a result of the sale of his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct; or
- (4) disbarred.

Note: Probation under § 89.291 (relating to probation) may be imposed in conjunction with a suspension which may be stayed in whole or in part. If probation is imposed in any particular case in conjunction with a suspension for more than one year that is not stayed and the probation runs for the full period of suspension unless violated, the probation will continue until the termination of any required reinstatement proceedings.

§89.272. Waiting period.

(a) *General rule relating to disbarment.* Enforcement Rule 218(b) provides that a person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to §91.51 (relating to reciprocal discipline and disability) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline. Enforcement Rule 217(e)(3) and its Note, and Enforcement Rule 218(b) provide that after the entry of an order of disbarment, which order has been 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 files the verified statement required by § 91.96 (relating to proof of compliance); and that if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.

(b) *General rule relating to suspension for a period exceeding one year.* Enforcement Rule 217(e)(3) and its Note provide that after the entry of an order of suspension for a period exceeding one year, which order has been 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 files the verified statement required by § 91.96 (relating to proof of compliance); and that if the order of suspension contains a provision that makes the suspension retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.

(c) *Premature petitions.* Unless otherwise provided in an order of suspension or disbarment, the Board will not entertain a petition for reinstatement filed prior to the expiration of the period set forth in subsection (a), or more than nine months prior to the expiration of the term of suspension, as the case may be. The Board will also not entertain a petition for reinstatement filed before the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) or under § 89.278 (relating to expenses of reinstatement proceedings) with respect to any previous reinstatement proceeding and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

(d) *Second or subsequent petitions.* Where a petition for reinstatement has been finally denied, the Board, unless otherwise ordered by the Supreme Court in a specific case, will not entertain a second or subsequent petition for reinstatement until after the expiration of at least one year after the immediately preceding petition has been finally denied.

§89.273. Procedures for reinstatement.

(a) Enforcement Rule 218(c) provides that the procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:

- (1) Petitions for reinstatement shall be filed with the Board.

Note: The Board will not treat a petition for reinstatement as properly filed for purposes of commencing the procedures set forth in this section unless and until the petition is accompanied by a completed reinstatement questionnaire as required by § 89.275 (relating to completion of questionnaire by petitioner-attorney).

- (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 or suspension. 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.

Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney, the response to the petition for reinstatement should explain in reasonable detail the reasons for the objection.

(3) The hearing committee shall promptly schedule a hearing at which a disbarred or suspended attorney shall have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 579, 506 A.2d 872, 875 (1986) and its progeny applies.

Note: The requirement that a hearing be scheduled "promptly" means that a hearing should ordinarily be held within 60 days after the petition for reinstatement has been filed with the Board and the response from Disciplinary Counsel has been received, unless the chair of the hearing committee extends that time for good cause shown.

(4) At conclusion of the hearing, the hearing committee shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Board.

(5) The Board shall review the report of the hearing committee and the record and shall promptly file its own findings and recommendations, together with the briefs, if any, before the Board, the entire record, and a statement of the Secretary of any expenses taxable under §93.111 (relating to determination of reasonable expenses), with the Supreme Court. See §89.208 (relating to participation by the Board before The Supreme Court).

(6) In the event the Board recommends reinstatement and the Supreme Court, after consideration of that recommendation, is of the view that a rule to show cause should be served upon the petitioner-attorney why an order denying reinstatement should not be entered, the same shall be issued setting forth the areas of the Court's concern. A copy of the rule shall be served on Disciplinary Counsel (see § 89.27 (relating to service upon Disciplinary Counsel)). Within 20 days after service of the rule, petitioner-attorney, as well as Disciplinary Counsel, may submit to the Supreme Court a response thereto. Unless otherwise ordered, matters arising under Enforcement Rule 218 will be considered without oral argument.

(b) Enforcement Rule 218(d) provides that the procedure for petitioning for reinstatement from retired status for more than three years; inactive status for more than three years; administrative suspension for more than three years, retired status, inactive status or administrative suspension if the formerly admitted attorney has not been on active status at any time within the past three years; or after transfer to inactive status as a result of the sale of a law practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, is as follows:

(1) Petitions for reinstatement shall be filed with the Board.

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall either:

(i) file a response thereto with the Board and serve a copy on the formerly admitted attorney; or

(ii) file a certification with the Board Secretary stating that after a review of the petition for reinstatement and reasonably diligent inquiry, Disciplinary Counsel has determined that there is no impediment to reinstatement and that the petitioner-attorney will meet his or her burden of proof under subsection (3) if the petition were to proceed to hearing under (4).

Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney under (b)(2)(i), the response to the petition for reinstatement should explain in reasonable detail the reasons for the objection.

(3) A formerly admitted attorney who has been on retired status, inactive status or administrative suspension shall have the burden of demonstrating that such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth.

(4) Upon receipt of a response under (b)(2)(i), the Board shall refer the petition and response to a single senior or experienced hearing committee member in the disciplinary district in which the formerly admitted attorney maintained an office at the time of transfer to or assumption of retired or inactive status, or transfer to administrative suspension; the single senior or experienced hearing committee member shall promptly schedule a hearing during which the hearing committee member shall perform the functions of a hearing committee under this subsection (b). 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.

(5) At the conclusion of the hearing, the hearing committee member shall promptly file a report containing the member's findings and recommendations and transmit same, together with the record, to the Board. Thereafter, the matter will proceed in accordance with the provisions of paragraphs (a)(5) and (a)(6) of this section.

(6) Upon receipt of a certification filed by Disciplinary Counsel under paragraph (b)(2)(ii) of this section, the Board Chair shall designate a single member of the Board to review the record and certification and to issue a report and recommendation.

(i) If the Board Member decides that reinstatement should be denied or that a hearing on the petition is warranted, the designated Board Member shall issue a report setting forth the areas of the designated Board Member's concern and direct the Board Secretary to schedule the matter for hearing pursuant to paragraph (b)(4) of this section.

(7) Upon receipt of a report and recommendation for an order of reinstatement, the Court may enter an order reinstating the formerly admitted attorney to active status; the Chief Justice may delegate the processing and entry of orders under this paragraph (b)(7) to the Prothonotary.

(c) Enforcement Rule 218(e) provides that in all proceedings upon a petition for reinstatement, cross-examination of the petitioner-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

(d) *Attorneys suspended for less than one year.* Enforcement Rule 218(g) provides that:

(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the formerly admitted attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Chapter 91 Subchapter E (relating to formerly admitted attorneys), the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

(2) Paragraph (1) of this subsection shall not be applicable and a formerly admitted attorney shall be subject instead to the other provisions of this rule requiring the filing of a petition for reinstatement, if:

(i) other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney;

(ii) the formerly admitted attorney has been on inactive status or administrative suspension for more than three years; or

(iii) the formerly admitted attorney has not been on active status for more than three years due to a combination of retired status, inactive status, administrative suspension and/or a term of suspension not exceeding one year and had not been on active status at any time within the three-year period preceding the entry of the order; or

(iv) the order of suspension has been in effect for more than three years.

(3) A verified statement may not be filed under paragraph (1) until the formerly admitted attorney has paid in full any costs taxed under §89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

(e) *Attorneys on inactive status, retired status or administrative suspension for three years or less.* Enforcement Rule 218(h) provides that attorneys who have been on inactive status, retired status or administrative suspension for three years or less may be reinstated to the roll of those classified as active pursuant to §93.145 (relating to reinstatement of administratively suspended attorneys), §93.146 (relating to resumption of active status by retired or inactive attorneys), and §93.112(c) (relating to reinstatement upon payment of taxed costs), as appropriate. This subsection (e) does not apply to:

(1) a formerly admitted attorney who, on the date of the filing of the request for reinstatement, had not been on active status at any time within the preceding three years; or

(2) an attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.

§89.274. Notice of reinstatement proceedings.

(a) *General rule.* The Office of the Secretary shall forward a copy of the petition for reinstatement and Form DB-30 (Reference for Reinstatement Hearing) to:

(1) The Office of Disciplinary Counsel.

(2) The president judge of the court of common pleas of the judicial district in which the formerly admitted attorney practiced.

(3) The chief judge of the United States district court for the district in which such attorney practiced.

(4) The executive director of the bar association of the county in which such attorney practiced.

(5) The Executive Director of the Pennsylvania Bar Association.

(6) The Executive Director of the Lawyers Fund for Client Security.

(b) *Publication of notice.* The Office of the Secretary shall cause a notice to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced and in each county in Pennsylvania in which the formerly admitted attorney has resided since being disbarred or suspended for disciplinary reasons. The notice shall state and be confined to:

(1) The name of such formerly admitted attorney.

(2) That on or after a specified date (to be set forth in the notice) a hearing committee of the Board will consider a petition for reinstatement filed by such person.

(3) The address of the district office of the Office of Disciplinary Counsel that is handling the reinstatement proceeding.

§89.275. Completion of questionnaire by petitioner-attorney.

(a) *General rule.* If the petition for reinstatement does not have attached thereto a fully completed Form DB-36 (Reinstatement Questionnaire), the Office of the Secretary shall forward to the formerly admitted attorney four copies of Form DB-36 which shall require such attorney to set forth fully and accurately the following information and such other information as the Office of Disciplinary Counsel may require:

(1) Name, address, age and residence of the petitioner-attorney.

(2) Name, address, age, residence, number and relationship of dependents of the petitioner-attorney.

(3) If the formerly admitted attorney was disbarred or suspended for disciplinary reasons, the offense or misconduct upon which the disbarment or suspension was based, together with the date of the disbarment or suspension order and the caption and docket number of the proceeding in which entered. A certified copy of the disbarment or suspension order shall be attached to the questionnaire.

(4) The names and addresses of all complaining witnesses in any proceedings which resulted in disbarment or suspension and the names of:

(i) the hearing committee of the Board which heard the evidence in the disciplinary proceedings; and

(ii) the trial judge and prosecuting attorney, if disbarment or suspension was based on conviction of a crime.

(5) The nature in detail of the occupation of the petitioner-attorney during the period of disbarment, suspension, administrative suspension, retired status or inactive status, with names of all partners, associates in business, and employers, if any, and dates and duration of all such business relationships and employments.

(6) A statement showing the approximate monthly earnings and other income of the petitioner-attorney, and the sources from which all such earnings and income were derived during such period, or during the ten years preceding the filing of the petition for reinstatement, whichever is less.

(7) A statement showing all residences maintained by the petitioner-attorney during the ten years preceding the filing of the petition for reinstatement, with the names and addresses of landlords, if any. The statement shall also indicate the county in which any such residence in Pennsylvania is located.

(8) A statement showing all financial obligations of the petitioner-attorney at the date of the filing of the petition, together with the dates when such obligations were incurred and the names and addresses of all creditors.

(9) A statement showing the dates, general nature and final disposition of every civil action during the period of disbarment, suspension, administrative suspension, retired status or inactive status wherein the petitioner-attorney was either a party plaintiff or defendant or in which such attorney had or claimed an interest, together with dates of filing of complaints, titles of courts and causes and the names and addresses of all parties plaintiff and defendant, names and addresses of attorneys for said parties and of the trial judge, or judges, and names and addresses of all witnesses who testified in such actions.

(10) A statement showing the dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of the petitioner-attorney during the period of disbarment, suspension, administrative suspension, retired status or inactive status for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges.

(11) A statement as to whether or not any applications were made during such period for a license requiring proof of good character for its procurement; and as to each such application, the dates, the names and address of the authority to whom it was addressed and the disposition thereof.

(12) A statement of any procedure of inquiry, during said period, concerning the standing of the petitioner-attorney as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of the petitioner-attorney; and as to each, the dates, facts, and the disposition thereof, and the names and address of the authority in possession of the record thereof.

(13) A statement as to whether or not any charges of fraud were made, or claimed, against the petitioner-attorney during the period of disbarment, suspension, administrative suspension, retired status or inactive status, whether formal or informal, together with the dates and names and addresses of persons making such charges.

(14) A statement of any financial or other action taken by the petitioner-attorney in the nature of restitution or other appropriate relief.

(15) If the petitioner-attorney has been disbarred or suspended for more than one year or has been on administrative suspension, retired status or inactive status for more than three years, a statement of the dates, locations and names of the courses or lectures taken in satisfaction of the requirements of §89.279 (relating to evidence of competency and learning in law).

(16) An itemization of any costs taxed under § 89.209 (relating to expenses of formal proceedings) and any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement), and a statement that all of those amounts have been paid in full.

(17) A concise statement of facts claimed to justify reinstatement to the bar of this Commonwealth.

(b) *Effect of questionnaire.* The questionnaire shall bear a notice under 18 Pa. C. S. §4904(b) (relating to statement "under penalty") to the effect that false statements made therein are punishable, and shall become a part of the record in the reinstatement proceeding.

§89.276. Procedures before the Board.

The provisions of these rules applicable to formal proceedings shall govern the procedure for hearings before one or more hearing committee members and subsequent review by the Board upon petitions for reinstatement.

§89.277. Abbreviated reinstatement procedure.

(a) *Scope.* This section is applicable to formal proceedings for reinstatement of formerly admitted attorneys who have been on administrative suspension, retired status or inactive status and who have never been suspended for disciplinary reasons or disbarred. See §89.273(b)(4) (relating to hearing before a single senior or experienced hearing committee member). This section shall not be available at any hearing conducted after review by a designated Board Member pursuant to §89.273(b)(6)(i) (relating to hearing scheduled at the direction of the designated Board Member).

(b) *General rule.* The formerly admitted attorney and staff counsel in the manner provided by subsection (c) of this section, may agree to waive the preparation of a transcript and the filing of formal findings and recommendations. In such situations, unless the Board directs otherwise, the hearing committee member may submit to the Board a summary determination of the hearing committee member.

(c) *Procedures.*

(1) Immediately after the conclusion of the hearing the hearing committee member shall, if practicable and if neither the formerly admitted attorney nor staff counsel object thereto, determine the findings and recommendations of the hearing committee member.

(2) The hearing committee member shall deliver to the participants Form DB-46 (Hearing Committee Determination Under Abbreviated Reinstatement Procedure) setting forth in summary the findings and recommendations of the hearing committee member. The official reporter shall be directed by the hearing committee member not to prepare a transcript until receipt from the hearing committee member of specific instructions to do so.

(3) The participants shall be conclusively deemed to have accepted and to have stipulated that the Board shall recommend to the Supreme Court the findings and recommendations of the hearing committee unless either the formerly admitted attorney or staff counsel shall, within five days after receipt of the Form DB-46 as provided in paragraph (2) of this subsection, file a copy of such Form DB-46 with objections to the findings and recommendations to the hearing committee member.

(4) If a timely objection is made as provided in paragraph (3) of this subsection the participants may file briefs, the official reporter shall be directed to prepare a transcript and the hearing committee member

shall submit to the Board formal findings and recommendations in the manner and within the time otherwise provided by these rules.

(5) If no timely objection is made no briefs shall be filed, no formal findings and recommendations shall be prepared by the hearing committee member and the official reporter shall not prepare a transcript. The hearing committee member 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 formerly admitted attorney and staff counsel copies of the brief summary of the case filed by the hearing committee member.

(6) Thereafter the Board shall either:

(i) recommend to the Supreme Court the disposition stipulated by the participants; or

(ii) remand the record to the hearing committee member with instructions to fix a briefing schedule and to proceed as provided in paragraph (4) of this subsection, if for any reason the disposition stipulated by the parties is not accepted by the Board.

(7) Where the proceeding is disposed of as provided by Paragraph (6)(i) of this subsection, the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

§89.278. Expenses of reinstatement proceedings.

Enforcement Rule 218(f) provides that the Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of the petition for reinstatement be paid by the petitioner-attorney; a reinstatement fee of \$300 shall be assessed against a petitioner-attorney who was administratively suspended at the time of the filing of the petition; and the annual fee required by Enforcement Rule 219(a) and the reinstatement fee, if applicable, shall be paid to the Attorney Registration Office after the Supreme Court order is entered.

§89.279. Evidence of competency and learning in law.

(a) *General rule.* Except as provided in subsection (b), in order to permit the Board to determine under Enforcement Rule 218 (relating to reinstatement) whether a formerly admitted attorney who has been disbarred or suspended for more than one year or who has been on administrative suspension, retired status or inactive status for more than three years possesses the competency and learning in the law required for reinstatement to practice in this Commonwealth, such a formerly admitted attorney shall within one year preceding the filing of the petition for reinstatement take courses meeting the requirements of the current schedule published by the Office of the Secretary under subsection (c).

(b) *Exceptions.*

(1) If a formerly admitted attorney has passed the Pennsylvania Bar Examination subsequent to entry of the order of suspension, disbarment or administrative suspension, or assumption of retired or inactive status and within one year preceding the filing of the petition for reinstatement, the formerly admitted attorney shall be conclusively deemed to have proven that he or she has the competency and learning in law required under Enforcement Rule 218.

(2) The Chair of the Board may waive the requirements of subsection (a) for good cause shown in the case of a formerly admitted attorney who has been on administrative suspension, retired status or inactive status for more than three years.

(c) *Publication of schedule.* The Office of the Secretary shall publish in the *Pennsylvania Bulletin* a schedule of the minimum amount, type and subjects of continuing legal education courses that will satisfy the requirements of subsection (a).

(d) *Effect of taking required courses.* Evidence that a formerly admitted attorney has registered for and attended required courses and lectures or has viewed videotapes of them shall be considered in determining whether the formerly admitted attorney possesses the required competency and learning in law, but shall not be conclusive on the issue.

§89.280. Notice of Reinstatement.

(a) *Publication of notice.* Enforcement Rule 218(i) provides that the Board may cause a notice of a reinstatement to be published in one or more appropriate legal journals and newspapers of general circulation.

(b) *Transmission of notice to local president judge.* Enforcement Rule 218(j) provides that the Board when appropriate shall promptly transmit to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced a copy of:

(1) the certification filed with the Prothonotary of the Supreme Court under §93.145(a)(2) (relating to reinstatement of an attorney who has been administratively suspended for three years or less) or §93.112(c) (relating to reinstatement upon payment of taxed costs); or

(2) any other order of reinstatement entered under these rules.

RESUMPTION OF PRACTICE

§89.285. Resumption of Practice by Justices and Judges.

(a) *General rule.* Enforcement Rule 219(n) provides that a former or retired justice or judge who is not the subject of an outstanding order of discipline affecting his or her right to practice law and who wishes to resume the practice of law shall file with the Attorney Registration Office a notice in writing to that effect.

(b) *Notice.* Enforcement Rule 219(n) further provides that the notice shall:

(i) describe:

(A) any discipline imposed within six years before the date of the notice upon the justice or judge by the Court of Judicial Discipline;

(B) any proceeding before the Judicial Conduct Board or the Court of Judicial Discipline settled within six years before the date of the notice on the condition that the justice or judge resign from judicial office or enter a rehabilitation program;

(ii) include a waiver by the justice or judge, if the notice discloses a proceeding described in paragraph (i), of the confidentiality of the record in that proceeding for the limited purpose of making the record available to the Board in any subsequent proceeding under these rules;

(iii) be accompanied by payment of the full annual fee for the registration year in which the notice is filed.

Subchapter G.
PROBATION

§89.291. Probation.

(a) *Qualifications.* A respondent-attorney may be placed on probation if the respondent-attorney has demonstrated that he or she:

(1) can perform legal services and the continued practice of law by the respondent-attorney will not cause the courts or profession to fall into disrepute;

(2) is unlikely to harm the public during the period of probation and the necessary conditions of probation can be adequately supervised; and

(3) is not guilty of acts warranting disbarment.

(b) *Duration.* Probation shall be ordered for a specified period of time or until further order of the Board or the Supreme Court. If probation is imposed in conjunction with a suspension, the suspension may be stayed in whole or in part.

Note: A period of actual suspension may or may not be appropriate. Where the Board contemplates recommending an actual suspension period it will examine evidence concerning the impact of suspension on the respondent-attorney with particular attention to its effect on his or her continued rehabilitation. After consideration of these factors, the Board anticipates that there may be situations where a period of suspension is justified and will be recommended.

(c) *Conditions.* The order placing a respondent-attorney on probation shall state the conditions of probation. The conditions shall take into consideration the nature and circumstances of the misconduct and the history, character and condition of the respondent-attorney. The following conditions and such others as the Board or the Supreme Court deems appropriate, may be imposed:

(1) periodic reports to the Board and Disciplinary Counsel;

(2) psychological counseling and treatment;

(3) supervision over trust accounts, if directed by the Supreme Court;

(4) satisfactory completion of a course of study;

(5) restitution;

(6) compliance with income tax laws and verification thereof;

(7) limitations on practice; and

(8) the payment of expenses taxed under § 89.205(b) (relating to taxation of expenses) and § 89.209 (relating to expenses of formal proceedings).

§89.292. Violation of probation.

Enforcement Rule 208(h) provides that:

(1) Where it appears that a respondent-attorney who has been placed on probation has violated the terms of the probation, the Office of Disciplinary Counsel may file a petition with the Board detailing the violation and suggesting appropriate modification of the order imposing the probation, including without limitation immediate suspension of the respondent-attorney.

(2) A hearing on the petition shall be held within ten business days before a member of the Board designated by the Board Chair. If the designated Board member finds that the order imposing probation should be modified, the following procedures shall apply:

(i) If the order imposing probation was entered by the Supreme Court, the designated Board member shall submit a transcript of the hearing and a recommendation to the Supreme Court within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney. The Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the order imposing probation should not be modified as set forth in the petition, which rule shall be returnable within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order modifying as appropriate the order imposing probation.

(ii) If the order imposing probation was entered by the Board, the designated Board Member shall submit a transcript of the hearing and recommendation to the Board within five business days after the conclusion of the hearing. A copy of the transcript and recommendation shall be personally served upon the respondent-attorney along with a notice that the respondent-attorney may file a response to the recommendation with the Board within ten business days. If the period for response has passed without a response having been filed, or after consideration of any response, the Board may enter an order modifying as appropriate the probation previously ordered or directing the commencement of a formal proceeding under this chapter.

§89.293. Substance abuse probation.

(a) *General rule.* Probation in cases of alcohol or drug abuse shall be governed by § 89.291 (relating to probation) and this section.

(b) *Relevance of substance abuse.* Alcohol or drug abuse may be considered as a mitigating factor in determining appropriate discipline, but shall not be a defense to a Petition for Discipline. For alcohol or drug abuse to be considered as a mitigating factor, the respondent-attorney must prove, by clear and convincing evidence, that alcohol or drug abuse by the respondent-attorney was a factor in causing his or her misconduct. The respondent-attorney may present expert testimony to satisfy that burden of proof.

Note: The requirement that a respondent-attorney establish that alcohol or drug abuse was a factor in causing his or her misconduct is derived from Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

(c) *Sobriety monitor.* In addition to the conditions required by §89.291 (c) (relating to conditions), an order placing a respondent-attorney on probation in cases of alcohol or drug abuse shall appoint a sobriety monitor. The sobriety monitor shall be an attorney admitted to practice law in this Commonwealth, in good standing, and designated by the Drug and Alcohol Committee of the Pennsylvania Bar Association. The sobriety monitor shall:

- (1) monitor the compliance by the respondent-attorney with the terms and conditions of the order imposing probation;
- (2) assist the respondent-attorney in arranging any necessary professional or substance abuse treatment;
- (3) meet with the respondent-attorney at least twice a month, and maintain weekly telephone contact with the respondent-attorney;
- (4) maintain direct contact with the Alcoholics Anonymous or Narcotics Anonymous sponsor of the respondent-attorney if the respondent-attorney participates in either of those programs;
- (5) file with the Secretary of the Board quarterly written reports; and
- (6) immediately report to the Secretary of the Board any violations by the respondent-attorney of the terms and conditions of the probation.

(d) *Financial or practice monitor.* The sobriety monitor shall not have the duty to act as a financial monitor or as a practice monitor. In the event that the trust accounts or practice of the respondent-attorney require supervision, the Board shall designate another attorney admitted to practice law in this Commonwealth, in good standing, to act as a financial or practice monitor.

Note: Subsection (d) is intended to make clear that the purpose of the sobriety monitor is only to assist a respondent-attorney to recover from the disease of alcoholism or drug addiction, and not to act as a financial or practice monitor.

(e) *Additional conditions.* Where an order is entered placing a respondent-attorney on probation in cases of alcohol or drug abuse, the respondent-attorney shall:

- (1) abstain from using alcohol, drugs, or any other mood-altering or mind-altering chemicals;

- (2) regularly attend meetings of Alcoholics Anonymous or Narcotics Anonymous, or regularly participate in another acceptable type of treatment;
- (3) obtain a sponsor in Alcoholics Anonymous or Narcotics Anonymous if the respondent-attorney participates in either of those programs, and furnish the sobriety monitor with the sponsor's name, address and telephone number;
- (4) provide written verification to the sobriety monitor of regular attendance at Alcoholics Anonymous or Narcotics Anonymous meetings or regular participation in another acceptable type of treatment;
- (5) undergo any counseling, out-patient or in-patient treatment prescribed by a physician or drug and alcohol counselor;
- (6) meet with his or her sobriety monitor at least twice a month, unless the sobriety monitor requests more frequent meetings, and maintain weekly telephone contact with the sobriety monitor;
- (7) provide his or her sobriety monitor with properly executed written authorizations as may be necessary for the sobriety monitor to verify the compliance by the respondent-attorney with any required professional or substance abuse treatment; and
- (8) cooperate fully with the sobriety monitor.

(f) *Violation of probation.* The Secretary of the Board shall immediately forward any report by a sobriety monitor under subsection (c)(6) of a violation of the terms and conditions of probation by a respondent-attorney to the Office of Disciplinary Counsel who shall then proceed in accordance with § 89.292 (relating to violation of probation).

§89.294. Termination of probation.

Probation shall terminate upon the filing of the final quarterly report and upon the expiration of the fixed period of probation, unless:

- (a) the conditions of probation have been violated or have not been met;
- (b) all costs of the proceedings as previously ordered by the Supreme Court or the Board have not been paid; or
- (c) formal proceedings for discipline are pending against the respondent-attorney.

CHAPTER 91
MISCELLANEOUS MATTERS

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Subchapter A.
SERVICE, SUBPOENAS, DEPOSITIONS

AND RELATED MATTERS

IN GENERAL

Sec.

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IN GENERAL

§91.1. Substituted service.

Enforcement Rule 212 provides that in the event a respondent-attorney cannot be located and personally served with notices required under the Enforcement Rules and these rules, such notices may be served upon the respondent-attorney by addressing them to the address furnished in the last registration statement filed by the respondent-attorney in accordance with §93.142(b) (relating to filing of annual fee form by attorneys) or, in the case of foreign legal consultant, by serving them pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

§91.2. Subpoenas and investigations.

(a) *General rule.* Enforcement Rule 213(a) provides that:

(1) At any stage of an investigation, both Disciplinary Counsel and a respondent-attorney shall have the right to summon witnesses before a hearing committee or special master and require production of records before the same by issuance of subpoenas.

(2) Before assignment of a matter to a hearing committee or special master, Disciplinary Counsel shall have the right to require production of records by issuance of subpoenas which shall be returnable to the office of Disciplinary Counsel in which the investigation is being conducted; and that the respondent-attorney shall have the right, upon request and payment of appropriate duplicating costs, to receive copies of the records produced.

(b) *Procedure.* Enforcement Rule 213(b) provides that subpoenas shall be obtained by filing with the Prothonotary in the district of the Supreme Court where the subpoena is to be returnable a statement calling for the issuance of the subpoena (Form DB-14) (Request for Issuance of Subpoena); that on the same day that such statement is filed with the Prothonotary, the party seeking the subpoena shall send by certified mail a copy of such statement to either Disciplinary Counsel or the respondent-attorney, as the case may be; that upon the filing of Form DB-14, the Prothonotary shall forthwith issue a subpoena (Form DB-15) (Subpoena/Subpoena Duces Tecum) and it

shall be served in the regular way; and that a subpoena issued pursuant to subsection (a)(2) shall not be returnable until at least ten days after the date of its issuance.

(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 appoint an investigatory hearing committee for the purpose of conducting an investigatory hearing under subsection (a) of this section.

(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 appointed pursuant to subsection (b). 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 chair of the committee determines that the shorter period is reasonably necessary under the circumstances.

(e) *Cross reference.* See § 95.2 (relating to investigation of the conversion of funds).

§91.3. Determination of validity of subpoena.

(a) *In general.* Enforcement Rule 213(d) provides that any attack on the validity of a subpoena issued under these rules shall be handled as follows:

(1) A challenge to a subpoena authorized by § 91.2(a)(1) (relating to subpoenas and investigations) shall be heard and determined by the hearing committee or special master before whom the subpoena is returnable in accordance with the procedure established by the Board in subsection (b).

(2) 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 in accordance with the procedure established by the Board in subsection (b).

(3) A determination under paragraph (1) or (2) may be appealed to a lawyer-Member of the Board within ten days after service pursuant to §§ 89.21 and 89.24 of the determination on the party bringing the appeal by filing a petition with the Board setting forth in detail the grounds for challenging the determination. The appealing party shall serve a copy of the petition on the non-appealing party by mail on the date that the appealing party files the appeal, and the non-appealing party shall have five business days after delivery to file a response. No attack on the validity of a subpoena will be considered by the Designated lawyer-Member of the Board unless previously raised before the hearing committee. The Board Member shall decide the appeal within five business days of the filing of the non-appealing party's response, if any. There shall be no right of appeal to the Supreme Court. Any request for review shall not serve to stay any hearing or proceeding before the hearing committee or the Board unless the Court enters an order staying the proceedings.

(b) *Procedure.*

(1) A motion attacking a subpoena must be filed with the Office of the Secretary within ten days after service of the subpoena. A copy of the motion must be served on the other party to the investigation or proceeding. If a motion attacking a subpoena is filed by a third party to the investigation or proceeding who has been served with a subpoena, a copy of the motion must be served on Disciplinary Counsel and the respondent-attorney.

(2) Any answer to the motion must be filed with the Office of the Secretary within five business days after receipt of the motion served by the other party under paragraph (1).

(3) The Office of the Secretary must transmit the motion and any answer to the person designated in paragraphs (a)(1) or (2) to hear the motion, who must schedule a hearing on the motion within ten business days after the date by which an answer must be filed. A report with findings of fact and conclusions of law must be filed with the Office of the Secretary within ten business days after the conclusion of the hearing.

§91.4. Enforcement.

Enforcement Rule 213(g) provides that:

(1) Either Disciplinary Counsel or a respondent-attorney may petition the Supreme Court to enforce a subpoena that was not the subject of a challenge pursuant to paragraphs (a)(1) and (2) of § 91.3 (relating to validity of subpoena) or that was the subject of a challenge and has not been finally quashed by either the hearing committee or the Board Member designated to hear the appeal, provided that the party filing the petition to enforce attaches a certification in good faith that: a) the party exhausted reasonable efforts to secure the presence of the witness or the evidence within the witness's custody or control, b) the testimony, records or other physical evidence of the witness will not be cumulative of other evidence available to the party, and c) the absence of the witness will substantially handicap the party from prosecuting or defending the charges, or from establishing a weighty aggravating or mitigating factor. If the object of a petition to enforce is a subpoena directed to the respondent-attorney for, in whole or in part, production pursuant to Enforcement Rule 221(g)(2) of required records under RPC 1.15(c) and Enforcement Rule 221(e), no certification will be required for the subpoena or portion thereof that pertains to the required records. See also § 91.151(e) (relating to contempt of the Board).

Note: The reference to § 91.151(e) is intended to make clear that, where the person who is resisting complying with a subpoena is the respondent-attorney, the provisions of this rule are cumulative of those in § 91.151(e).

(2) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena is directed, returnable within ten days, why the person should not be held in contempt. If the subpoena is directed to a respondent-attorney for production of required records and the respondent-attorney has not produced the records, the Court shall issue upon the respondent-attorney a rule to show cause why the respondent-attorney should not be placed on temporary suspension for failing to produce the records. 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.

§91.5. Confidentiality.

(a) *General rule.* Enforcement Rule 213(c) provides that:

(1) A subpoena issued under these rules shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under the Enforcement Rules, and that it is regarded as contempt of the Supreme Court or grounds for discipline under the Enforcement Rules for a person subpoenaed to in any way breach the confidentiality of the investigation.

(2) It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(3) The subpoena and deposition procedures under these rules shall be subject to the confidentiality requirements of Chapter 93 Subchapter F (relating to confidentiality).

(b) *Exception.* Subsection (a)(1) shall not apply to a subpoena issued in connection with a proceeding that is open to the public under § 93.102(a) (relating to access to disciplinary information and confidentiality).

§91.6. Discovery procedures inapplicable.

Enforcement Rule 213(h) provides that any rule of the Supreme Court or any statute providing for discovery shall not be applicable in disciplinary proceedings, which proceedings shall be governed by the Enforcement Rules alone.

§91.7. Production of testimony and documents for use in disciplinary proceedings in other jurisdictions.

Enforcement Rule 213(i) provides that:

(1) The Supreme Court may order a person domiciled or found within this Commonwealth to give testimony or a statement or to produce documents or other things for use in a lawyer discipline or disability proceeding in another state, territory or province or in a court of the United States or any other jurisdiction.

(2) The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this Commonwealth, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of this subpart. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Court or before a commissioner appointed by a court or by an authorized disciplinary agency of another jurisdiction, any of whom shall have the power to administer any necessary oath.

(3) Any order to testify or to produce documents or other things issued as prescribed in this section may be enforced as any subpoena of the Supreme Court is enforced, upon petition of any party interested in the subject attorney discipline or disability proceeding.

DEPOSITIONS

§91.11. Depositions.

Enforcement Rule 213(f) provides that with the approval of the hearing committee or special master, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other compelling reason, and that a complete record of the testimony so taken shall be made and preserved.

§91.12. Notice and application.

Unless notice is waived, no deposition shall be taken except after at least ten days' notice to the participants if the deposition is to be taken within this Commonwealth, and 15 days' notice when a deposition is to be taken elsewhere. Such notice shall be given in writing (Form DB-16) (Notice of Deposition) by the participant proposing to take such deposition to the other participants and to the hearing committee or special master. In such notice and application to take evidence by deposition, the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason why such deposition should be taken. The other participants may, within the time stated in this section, make any appropriate response to such notice and application.

§91.13. Authorization of taking deposition.

If an application for the taking of a deposition so warrants, the hearing committee or special master will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the participants an authorization on Form DB-17 (Authorization to Take Deposition) naming the witness whose deposition is to be taken, and the time, place and notarial officer before whom the witness is to testify, but such time, place and notarial officer so specified may or may not be the same as those named in the Form DB-16 (Notice of Deposition).

§91.14. Officer before whom deposition is taken.

(a) *Within the United States.* Depositions may be taken before the hearing committee or special master, any notary public or any other person authorized to administer oaths not being counsel for any of the participants, or

interested in the proceeding or investigation, according to such designation as may be made in the Form DB-17 (Authorization to take Deposition).

(b) *In foreign countries.* Where such deposition is taken in a foreign country, it may be taken before a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or before such person or officer as may be designated in the Form DB-17 or agreed upon by the participants by stipulation in writing filed with and approved by the hearing committee or special master.

§91.15. Oath and reduction to writing.

(a) *General rule.* Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which such person shall testify, before any questions are put or testimony given. The testimony shall be reduced to writing by, or under the direction of, the notarial officer. When the testimony is fully transcribed the deposition shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all participants who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the notarial officer with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness, the notarial officer shall certify it in the usual form and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the hearing committee, special master or the Board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(b) *Transmission.* Unless otherwise directed in the Form DB-17 (Authorization to take Deposition), after the deposition has been certified, it shall, together with the number of copies specified in the authorization, the copies being made by, or under the direction of, such notarial officer, be forwarded by such notarial officer in a sealed envelope addressed to the Office of the Secretary at the address set forth in § 85.6 (relating to location of Office of Secretary), with sufficient stamps for postage affixed. Upon receipt thereof, the Office of the Secretary shall file the original in the proceeding and shall forward a copy to each participant and to each member of the hearing committee or the special master conducting the proceeding.

§91.16. Scope and conduct of examination.

Unless otherwise directed in the Form DB-17 (Authorization to take Deposition), the deponent may be examined regarding any matter not privileged which is relevant to the subject matter of the proceedings. Participants shall have the right of cross-examination, objection and exception. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition, but the notarial officer shall not have the power to decide on the competency of a witness or the relevancy or materiality of evidence. Objections to the competency of a witness or to the relevancy or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which was known to the objecting party and which might have been obviated or removed if made at that time.

§91.17. Status of deposition as part of record.

No part of a deposition shall constitute a part of the record in the proceeding, unless offered in evidence before the hearing committee or special master. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any participant who was present or represented at the taking of the deposition or who had notice thereof. If only part of a deposition is offered in evidence by a participant, a participant with an adverse interest may require the offering participant to introduce any other part which ought in fairness to be considered with the part introduced, and any participant may introduce any other parts. The introduction in evidence of the deposition or any part thereof for any purpose other than contradicting or impeaching the deponent, makes the deponent the witness of the party introducing the deposition.

§91.18. Fees of officers and deponents.

Deponents whose depositions are taken and the notarial officers taking such depositions shall be entitled to the same fees as are paid for like services in the courts of common pleas, which fees shall be paid by the participant at whose instance the depositions are taken.

Subchapter B.
ATTORNEYS CONVICTED OF CRIMES

Sec.

- 91.31. Notification by attorneys convicted of crimes.
- 91.32. Notification by clerks of conviction of attorneys.
- 91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.
- 91.34. Temporary suspension upon conviction of a crime.
- 91.35. Institution of formal proceedings upon conviction of a crime.
- 91.36. Effect of reversal of conviction.
- 91.37. Definition of "crime".
- 91.38. Definition of "conviction"

§91.31. Notification by attorneys convicted of crimes.

Enforcement Rule 214(a) provides that an attorney convicted of a crime shall report the fact of such conviction within 20 days to the Office of Disciplinary Counsel; and that the responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to §91.32 (relating to notification by clerks of conviction of attorneys).

§91.32. Notification by clerks of conviction of attorneys.

Enforcement Rule 214(b) provides that the clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

§91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.

Enforcement Rule 214(c) provides that upon being advised that an attorney has been convicted of a crime, Disciplinary Counsel shall secure and file a certificate of such conviction with the Supreme Court.

§91.34. Temporary suspension upon conviction of a crime.

(a) *Commencement of summary proceedings.* Enforcement Rule 214(d)(1) provides that upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(b) *Subject of summary proceeding.* The Note to Enforcement Rule 214(d) provides that the subject of the summary proceedings authorized by this section will ordinarily be limited to whether the condition triggering the application of this section exists, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged although the Court has the discretion to consider such subjects as mitigating or aggravating circumstances.

(c) *Disposition.* Enforcement Rule 214(d)(2) provides that if a rule to show cause has been issued under subsection (a), and the period for response has passed without a response having been filed, or after consideration of

any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under these rules.

(d) *Effect of temporary suspension.* Enforcement Rule 214(d)(3) provides that any order of temporary suspension issued under subsection (c) shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension. The Note to Enforcement Rule 214(d) provides that permitting the respondent-attorney to continue representing existing clients for 30 days is intended to avoid undue hardship to clients and to permit a winding down of matters being handled by the respondent-attorney, and the permissible activities of the respondent-attorney are intended to be limited to only those necessary to accomplish those purposes.

(e) *Dissolution or modification of temporary suspension.* Enforcement Rule 214(d)(4) provides that:

(1) the respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension;

(2) a copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing; and

(5) upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(f) *Joint petition for temporary suspension.* Enforcement Rule 214(d)(5) provides that at any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the respondent-attorney on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

§91.35. Institution of formal proceedings upon conviction of a crime.

(a) *General rule.* Enforcement Rule 214(f)(1) provides that upon the filing of a certificate of conviction of an attorney for a crime, Disciplinary Counsel may commence either an informal proceeding under Chapter 87 (relating to investigations and informal proceedings) or a formal proceeding under Subchapter 89B (relating to institution of formal proceedings), except that Disciplinary Counsel may institute a formal proceeding before a hearing committee or special master by filing a petition for discipline under § 89.52 (relating to petition for discipline) without seeking approval for the prosecution of formal charges under Subchapter 87B (relating to review of recommended disposition by reviewing hearing committee member). If a petition for discipline is filed, a hearing on the petition shall be deferred until sentencing and all direct appeals from the conviction have been concluded. The sole issue at the hearing shall be the extent of the discipline or, where the Court has temporarily suspended the attorney under § 91.34(c), the final discipline to be imposed.

(b) *Accelerated disposition.* Enforcement Rule 214(f)(2) provides that:

(1) notwithstanding the provision of subsection (a) that a hearing shall not be held until sentencing and all appeals from a conviction have been concluded, a respondent-attorney who has been temporarily suspended pursuant to § 91.34 shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition;

(2) within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline, if such a petition has not already been filed, and the matter shall be assigned to a hearing committee for accelerated disposition;

(3) the assignment to a hearing committee shall take place within seven days after the filing of such a notice or the filing of a petition for discipline, whichever occurs later;

(4) thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay; and

(5) if a petition for discipline is not timely filed or assigned to a hearing committee for accelerated disposition under this subsection (b), the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this Subchapter 91B.

Note: The Note to Enforcement Rule 214(f) provides that the "without appreciable delay" standard of subsection (b)(4) is derived from *Barry v. Barchi*, 443 U.S. 55, 99 (1979), and that appropriate steps should be taken to satisfy that requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

(c) *Evidence of conviction.* Enforcement Rule 214(e) provides that a certificate of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

§91.36. Effect of reversal of conviction.

(a) *General rule.* Enforcement Rule 214(g) provides that an attorney suspended under the provisions of §91.34 (relating to temporary suspension upon conviction of a crime) may be reinstated immediately upon the filing by the Board with the Supreme Court of a certificate demonstrating that the underlying conviction has been reversed, but that the reinstatement shall not terminate any formal proceeding then pending against the attorney.

(b) *Service on Board of the Pennsylvania Lawyers Fund for Client Security.* A copy of the certificate filed by the Board with the Supreme Court under subdivision (a) shall be served on the Board of the Pennsylvania Lawyers Fund for Client Security.

Note: The purpose of service on the Board of the Pennsylvania Lawyers Fund for Client Security is to permit it to notify the Supreme Court if disbursements have been made from the Fund with respect to dishonest conduct by the attorney whose conviction has been reversed so that the Court may determine if restitution should be made a condition of reinstatement.

§91.37. Definition of "crime".

As Enforcement Rule 214(h) provides and as used in this Subchapter 91B, the term "crime" means an offense that is punishable by imprisonment in the jurisdiction of conviction, whether or not a sentence of imprisonment is actually imposed; and, notwithstanding any other provision of subdivision (h) of Enforcement Rule 214 or this rule, the term "crime" shall include criminal contempt, whether direct or indirect, and without regard to the sentence that may be imposed or that is actually imposed. It does not include parking violations or summary offenses, both traffic and non-traffic, unless a term of imprisonment is actually imposed.

§91.38. Definition of "conviction".

As Enforcement Rule 214(i) provides and as used in this Subchapter 91B, the term "conviction" means any guilty verdict, whether after trial by judge or jury, or finding of guilt, and any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

Subchapter C. RECIPROCAL DISCIPLINE AND DISABILITY

Sec.

91.51. Reciprocal discipline and disability.

§91.51. Reciprocal discipline.

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of a final adjudication of any court or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, disbarment, revocation of license or pro hac vice admission, or has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction or has been transferred to disability inactive status, the Supreme Court shall forthwith issue a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

(i) A copy of the final adjudication described in subdivision (1).

(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline or disability inactive status in the Commonwealth would be unwarranted, and the reasons therefor. The Office of the Secretary shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with §93.142(b) (relating to filing of annual fee form by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

(2) In the event the discipline imposed in the original jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(3) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (1), the Supreme Court may impose the identical or comparable discipline or transfer to disability inactive status unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the fact of the record upon which the discipline is predicated it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject;

(iii) that the imposition of the same or comparable discipline would result in grave injustice, or be offensive to the public policy of this Commonwealth.

Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(4) In all other respects, a final adjudication in another jurisdiction that an attorney, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the misconduct for the purposes of a disciplinary proceeding in the Commonwealth.

(5) An attorney who has been transferred to disability inactive status or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, shall report the fact of such transfer, suspension, disbarment, revocation or resignation to the Secretary of the Board within 20 days after the date of the order, judgment or directive imposing or confirming the discipline or transfer to disability inactive status.

Subchapter D.
DISABILITY

Sec.

- 91.70. Preliminary provisions.
- 91.71. Notification by clerks of declaration of incompetence.
- 91.72. Notification by Office of Disciplinary Counsel of declaration of incompetence.
- 91.73. Attorney subject to judicial determination of incompetency.
- 91.74. Petition by Board for determination of professional competency.
- 91.75. Effect of raising defense of disability in formal proceedings.
- 91.76. Publication of notice of transfer to inactive status.
- 91.77. Action to protect clients of disabled attorney.
- 91.78. Procedure for reinstatement.
- 91.79. Burden of proof.
- 91.80. Waiver of privilege.

§91.70. Preliminary provisions.

(a) *Definition.* Enforcement Rule 301(k) provides that, as used in this subchapter, the term “disabled attorney” means an attorney transferred to inactive status under this subchapter.

(b) *Cross reference.* See Enforcement Rule 601(a) which suspends the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act, to the extent it is inconsistent with the Enforcement Rules.

§91.71. Notification by clerks of declaration of incapacity.

(a) *Duty to report.* Enforcement Rule 301(a) provides that the clerk of any court within this Commonwealth that declares that an attorney is incapacitated or that orders involuntary treatment of an attorney on the grounds that the attorney is severely mentally disabled or that denies a petition for review of a certification by a mental health review officer subjecting an attorney to involuntary treatment shall within 24 hours of such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court by means of Form DB-20 (Certificate of Judicial Determination of Incompetency of Attorney).

(b) *Local procedures.* The Official Note to Enforcement Rule 301(a) provides that it is the responsibility of each local court to adopt any necessary procedures so that mental health officers and individual judges notify the clerk of the court that the respondent in a matter is an attorney and that a certificate must accordingly be sent to Disciplinary Counsel under this section.

§91.72. Notification by Office of Disciplinary Counsel of declaration of incapacity.

Enforcement Rule 301(b) provides that upon being advised that an attorney has been declared incapacitated or involuntarily committed to an institution on the grounds of incapacity or severe mental disability, Disciplinary Counsel shall secure and file a Form DB-20 (Certificate of Judicial Determination of Incompetency of Attorney) in accordance with the provisions of §91.71 (relating to notification by clerks of incapacity); and that if the declaration of incapacity or commitment occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such declaration or commitment.

§91.73. Attorney subject to judicial determination of incapacity.

(a) *Transfer to inactive status.* Enforcement Rule 301(c) provides that where an attorney has been judicially declared incapacitated or involuntarily committed on the grounds of incapacity or severe mental disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of the Court; and that a copy of such order shall be

served upon such formerly admitted attorney, the guardian of such person, and/or the director of the institution to which such person has been committed in such manner as the Court may direct.

(b) *Summary reinstatement.* Where an attorney has been transferred to inactive status by an order in accordance with the provisions of subdivision (a) and, thereafter, in proceedings duly taken, the person is judicially declared to be competent, the Supreme Court upon application may dispense with further evidence that the disability has been removed and may direct reinstatement to active status upon such terms as are deemed proper and advisable.

§91.74. Petition by Board for determination of professional competency.

Enforcement Rule 301(d) provides that whenever the Board shall petition the Supreme Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate; that if, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to inactive status on the ground of such disability for an indefinite period and until the further order of the Court; that if examination of a respondent-attorney by a qualified medical expert reveals that the respondent lacks the capacity to aid effectively in the preparation of a defense, the Court may order that any pending disciplinary proceeding against the respondent shall be held in abeyance except for the perpetuation of testimony and the preservation of documentary evidence; that the order of abatement may provide for reexaminations of the respondent-attorney at specified intervals or upon motion by Disciplinary Counsel; and that the Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the respondent if the respondent is without adequate representation.

§91.75. Effect of raising defense of disability in formal proceedings.

(a) *General rule.* Enforcement Rule 301(e) provides that if, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which make it impossible for the respondent to prepare an adequate defense, the respondent shall complete and file with the Court a certificate of admission of disability. The certificate shall:

- (1) identify the precise nature of the disability and the specific or approximate date of the onset or initial diagnosis of the disabling condition;
- (2) contain an explanation of the manner in which the disabling condition makes it impossible for the respondent to prepare an adequate defense;
- (3) have appended thereto the opinion of at least one medical expert that the respondent is unable to prepare an adequate defense and a statement containing the basis for the medical expert's opinion; and
- (4) contain a statement, signed by the respondent, that all averments of material fact contained in the certificate and attachments are true upon the respondent's knowledge or information and belief and made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

The respondent may attach to the certificate affidavits, medical records, additional medical expert reports, official records, or other documents in support of the existence of the disabling condition or the respondent's contention of lack of physical or mental capacity to prepare an adequate defense.

Upon receipt of the certificate, the Supreme Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the capacity of the respondent to aid effectively in the preparation of a defense or to continue to practice law in a proceeding instituted in accordance with the provisions of §91.74 (relating to petition by Board for determination of professional competency), unless the Court finds that the certificate does not comply with the requirements of Enforcement Rule 301(e), in which case the Court may deny the request for transfer to disability inactive status or enter any other appropriate

order. Before or after the entry of the order transferring the respondent to inactive status under Enforcement Rule 301(e), the Court may, upon application by disciplinary counsel and for good cause shown, take or direct such action as the Court deems necessary or proper to a determination of whether it is impossible for the respondent to prepare an adequate defense, including a direction for an examination of the respondent by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the respondent.

The order transferring the attorney to disability inactive status under Enforcement Rule 301(e) shall be a matter of public record. The certificate of admission of disability and attachments to the certificate shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement or disciplinary proceeding except:

- (i) upon order of the Supreme Court;
- (ii) pursuant to an express written waiver by the attorney; or
- (iii) upon a request by the Pennsylvania Lawyers Fund for Client Security Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board).

If the Court shall determine at any time that the respondent is able to aid effectively in the preparation of a defense or is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(b) *Procedure.* Whenever a respondent makes a contention within the scope of subsection (a) of this section, the respondent shall complete and file a certificate thereof with the Prothonotary of the Supreme Court by means of Form DB-21 (Certificate of Admission of Disability by Attorney). The certificate shall be available to the bar through the Office of the Secretary to the Board. The respondent shall serve a copy of the certificate on the Board and disciplinary counsel.

§91.76. Publication of notice of transfer to inactive status.

Enforcement Rule 301(f) provides that the Board shall cause a notice of transfer to inactive status (Form DB-22) (Notice of Transfer to Inactive Status upon Disability) to be published in the legal journal and a newspaper of general circulation in the county in which the disabled attorney practiced. If there is no such legal journal, the notice shall be published in the legal journal of an adjoining county. Such notice shall be published by the Office of the Secretary within 20 days after the transfer to inactive status becomes effective and shall be furnished to such courts as may be appropriate.

§91.77. Action to protect clients of disabled attorney.

Enforcement Rule 301(g) provides that the Board shall promptly transmit a certified copy of the order of transfer to inactive status to the president judge of the court of common pleas of the judicial district in which the disabled attorney practiced and shall request such action under the provisions of Subchapter F of this Chapter (relating to protection of the interests of clients) as may be indicated in order to protect the interests of the disabled attorney and the clients of the disabled attorney.

§91.78. Procedure for reinstatement.

Enforcement Rule 301(h) provides as follows:

(1) Except as provided in §91.73(b) (relating to summary reinstatement), a disabled attorney may not resume active status until reinstated by order of the Supreme Court upon petition for reinstatement pursuant to Subchapter 89F (relating to reinstatement).

(2) A disabled attorney shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to inactive status or any modification thereof.

(3) Such application shall be granted by the Court upon a showing by clear and convincing evidence that the disability of the formerly admitted attorney has been removed and such person is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the formerly admitted attorney's disability has been removed including a direction for an examination of the formerly admitted attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the formerly admitted attorney.

§91.79. Burden of proof.

Enforcement Rule 301(i) provides that in a proceeding seeking a transfer to inactive status under this subchapter, the burden of proof shall rest with the Board; and that in a proceeding seeking an order of reinstatement to active status under this subchapter, the burden of proof shall rest with the respondent-attorney.

§91.80. Waiver of privilege.

Enforcement Rule 301(j) provides that the filing of an application for reinstatement to active status by a formerly admitted attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the formerly admitted attorney during the period of disability; that the formerly admitted attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the formerly admitted attorney has been examined or treated since transfer to inactive status; and that the formerly admitted attorney shall furnish to the Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

Subchapter E.
FORMERLY ADMITTED ATTORNEYS

Sec.

- 91.91. Notification of clients in nonlitigation matters.
- 91.92. Notification of clients in litigation matters.
- 91.93. Notification of other persons.
- 91.94. Effective date of suspension, disbarment, administrative suspension or transfer to inactive status.
- 91.95. Additional steps to be taken to disengage from the practice of law.
- 91.96. Proof of compliance.
- 91.97. Publication of notice of suspension, disbarment, administrative suspension or transfer to inactive status.
- 91.98. Action to protect clients of formerly admitted attorney.
- 91.99. Maintenance of records.
- 91.100. Indicia of licensure.
- 91.101. Law-related activities of formerly admitted attorneys.

§91.91. Notification of clients in nonlitigation matters.

(a) *General rule.* Enforcement Rule 217(a) provides that a formerly admitted attorney shall promptly notify, or cause to be promptly notified, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere. Such notices shall be in substantially the language of Form DB-23 (Nonlitigation Notice of Disbarment, Suspension, Administrative Suspension or Transfer to Inactive Status). The notice required by this subsection (a) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt.

Note: Notice may be accomplished, for example, by delivery in person with the lawyer securing a signed receipt, electronic mailing with some form of acknowledgement from the client other than a “read receipt,” and mailing by registered or certified mail return receipt requested.

(b) *Copies of notices and proofs of receipt.* At the time of the filing of the verified statement of compliance required by §91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.

§91.92. Notification of clients in litigation matters.

(a) *General rule.* Enforcement Rule 217(b) provides that a formerly admitted attorney shall promptly notify, or cause to be promptly notified, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status. Such rule further provides that the notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney; that in the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw; and that the notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney. Such notices shall be in substantially the language of Form DB-24 (Litigation Notice of Disbarment, Suspension, Administrative Suspension or Transfer to Inactive Status). The notice required by this subsection (b) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. See Note after subsection (a) of § 91.91 (relating to notification of clients in nonlitigation matters).

(b) *Copies of notices and proofs of receipt.* At the time of the filing of the verified statement of compliance required by §91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.

§91.93. Notification of other persons.

(a) *General rule.* Enforcement Rule 217(c) provides that a formerly admitted attorney shall promptly notify, or cause to be promptly notified, of the disbarment, suspension, administrative suspension or transfer to inactive status:

(1) all persons or their agents or guardians, including but not limited to wards, heirs and beneficiaries, to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, administrative suspension or transfer to inactive status;

(2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing; and

(3) any other tribunal, court, agency or jurisdiction in which the attorney is admitted to practice.

(b) *Method of delivery.* Enforcement Rule 217(c) further provides that the notices required by subsection (a) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. See Note after § 91.91(a) of this Subchapter E.

(c) *Copies of notices and proofs of receipt.* Enforcement Rule 217(c) further provides that at the time of the filing of the verified statement of compliance required by § 91.96 of this Subchapter E, the formerly admitted attorney shall file copies of the notices required by this section and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel.

(d) *Responsibility to provide notice.* Enforcement Rule 217(c) further provides that the responsibility of the formerly admitted attorney to provide the notice required by this section shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status.

§91.94. Effective date of suspension, disbarment, administrative suspension or transfer to inactive status.

(a) *Effective date.* Enforcement Rule 217(d)(1) provides that orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry; that the formerly admitted attorney, after entry of the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature; but that, during the period from the entry date of the order to its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(b) *Effect of verified statement on waiting period for reinstatement.* Enforcement Rule 217(e)(3) provides that after the entry of an order of disbarment or suspension for a period exceeding one year, the waiting period for eligibility to apply for reinstatement to the practice of law shall not begin until the formerly admitted attorney files the verified statement required by subsection (a) of this section; and that if the order of disbarment or suspension contains a provision that makes the discipline retroactive to an earlier date, the waiting period will be deemed to have begun on that earlier date.

Note: Subsection (b) of this section and the corresponding provisions in § 89.272(a) and (b) (relating to waiting period) apply only to orders entered on or after February 28, 2015.

§91.95. Additional steps to be taken to disengage from the practice of law.

(a) *Cease and desist from using all forms of communication that convey eligibility to practice.* Enforcement Rule 217(d)(2) provides that in addition to the steps that a formerly admitted attorney must promptly take under other provisions of this section to disengage from the practice of law, a formerly admitted attorney shall promptly cease and desist from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania, including but not limited to professional titles, letterhead, business cards, signage, websites, and references to admission to the Pennsylvania Bar.

(b) *Additional steps for certain types of discipline or disability.* Enforcement Rule 217(d)(3) provides that in cases of disbarment, suspension for a period exceeding one year, temporary suspension under Enforcement Rule 208(f) or 213(g), or disability inactive status under Enforcement Rule 216 or 301, a formerly admitted attorney shall also promptly:

- (1) resign all appointments as personal representative, executor, administrator, guardian, conservator, receiver, trustee, agent under a power of attorney, or other fiduciary position;
- (2) close every IOLTA, Trust, client and fiduciary account;
- (3) properly disburse or otherwise transfer all client and fiduciary funds in his or her possession, custody or control; and
- (4) take all necessary steps to cancel or discontinue the next regular publication of all advertisements and telecommunication listings that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania.

Note: Paragraph (b) of this section does not preclude a respondent-attorney who voluntarily assumes inactive or retired status, is placed on administrative suspension, is temporarily suspended under Enforcement Rule 214, or is suspended for one year or less, from completing existing appointments and accepting new appointments of the nature identified in paragraph (b)(1). Nonetheless, in order to comply with §§ 91.91 (relating to notification of clients in nonlitigation matters), 91.92 (relating to notification of clients in litigation matters), and 91.93 (relating to notification of other persons) of this Subchapter E, the formerly admitted attorney who desires to complete existing appointments or accept future appointments must give written notice of the formerly

admitted attorney's registration status or change in that status to appointing and supervising judges and courts, wards, heirs, beneficiaries, interested third parties, and other recipients of the formerly admitted attorney's fiduciary services, as notice of the formerly admitted attorney's other-than-active status gives all interested parties an opportunity to consider replacing the formerly admitted attorney or enlisting a person other than the formerly admitted attorney to serve as the fiduciary in the first instance. Although the formerly admitted attorney would not be precluded by paragraph (b)(2) of this section from continuing to use a fiduciary account registered with the bank as an IOLTA or Trust Account, subsection (a) of this section and § 91.101(e)(4) (relating to prohibited activities of a formerly admitted attorney) prohibit the formerly admitted attorney from using or continuing to use account checks and deposit slips that contain the word "IOLTA," "attorney," "lawyer," "esquire," or similar appellation that could convey eligibility to practice in the state courts of Pennsylvania. Notwithstanding the specific prohibitions of § 91.101 (relating to law-related activities of formerly admitted attorneys), the formerly admitted attorney is authorized to perform those services necessary to carry out the appointment with the exception of any service that would constitute the unauthorized practice of law if engaged in by a nonlawyer. In relation to formerly admitted attorneys who are disbarred, suspended for a period exceeding one year, temporarily suspended under Enforcement Rule 208(f) or 213(g), or transferred to disability inactive status, the requirements of paragraph (b)(1) of this section continue throughout the term of the disbarment, suspension, temporary suspension, or disability inactive status, thereby precluding any new appointment or engagement.

(c) *Compliance records and submission thereof.* Enforcement Rule 217(d)(3) further provides that the formerly admitted attorney shall maintain records to demonstrate compliance with the provisions of subsections (a) and (b) of this section and shall provide proof of compliance at the time the formerly admitted attorney files the verified statement required by § 91.96 of this Subchapter E.

§91.96. Proof of compliance.

(a) *General rule.* Enforcement Rule 217(e)(1) provides that within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Secretary of the Board a verified statement (Form DB-25) (Statement of Compliance) and serve a copy on Disciplinary Counsel. In the verified statement, the formerly admitted attorney shall:

(1) aver that the provisions of the order and the Enforcement Rules have been fully complied with;

(2) list all other state, federal and administrative jurisdictions to which the formerly admitted attorney is admitted to practice;

(3) aver that he or she has attached copies of the notices required by subdivisions (a), (b), and (c)(1) and (c)(2) of Enforcement Rule 217 and proofs of receipt, or, in the alternative, aver that he or she has no clients, third persons to whom a fiduciary duty is owed, or persons with whom the formerly admitted attorney has professional contacts, to so notify;

(4) in cases of disbarment or suspension for a period exceeding one year, aver that he or she has attached his or her attorney registration certificate for the current year, certificate of admission, any certificate of good standing issued by the Prothonotary, and any other certificate required by subdivision (h) of Enforcement Rule 217 to be surrendered; or, in the alternative, aver that he or she has attached all such documents within his or her possession, or that he or she is not in possession of any of the certificates required to be surrendered;

(5) aver that he or she has complied with the requirements of paragraph (2) of subdivision (d) of Enforcement Rule 217, and aver that he or she has, to the extent practicable, attached proof of compliance, including evidence of the destruction, removal, or abandonment of indicia of Pennsylvania practice; or, in the alternative, aver that he or she neither had nor employed any indicia of Pennsylvania practice;

(6) in cases of disbarment, suspension for a period exceeding one year, temporary suspension under Enforcement Rule 208(f) or 213(g), or disability inactive status under Enforcement Rule 216 or 301,

aver that he or she has complied with the requirements of paragraph (3) of subdivision (d) of Enforcement Rule 217, and aver that he or she has attached proof of compliance, including resignation notices, evidence of the closing of accounts, copies of cancelled checks and other instruments demonstrating the proper distribution of client and fiduciary funds, and requests to cancel advertisements and telecommunication listings; or, in the alternative, aver that he or she has no applicable appointments, accounts, funds, advertisements, or telecommunication listings;

(7) aver that he or she has served a copy of the verified statement and its attachments on the Office of Disciplinary Counsel;

(8) set forth the residence or other address where communications to such person may thereafter be directed; and

(9) sign the statement.

Note: A respondent-attorney who is placed on temporary suspension is required to comply with subsection (a) and file a verified statement. Upon the entry of a final order of suspension or disbarment, the respondent-attorney must file a supplemental verified statement containing the information and documentation not applicable at the time of the filing of the initial statement, or all of the information and documentation required by subsection (a) if the respondent-attorney has failed to file the initial statement. Although the grant of retroactivity is always discretionary, a respondent-attorney who fails to file a verified statement at the time of temporary suspension should not expect a final order to include a reference to retroactivity.

(b) *Required certification.* Enforcement Rule 217(e)(1) also provides that the statement shall contain an averment that all statements contained therein are true and correct to the best of the formerly admitted attorney's knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

(c) *Cooperation required.* Enforcement Rule 217(e)(2) provides that a formerly admitted attorney shall cooperate with Disciplinary Counsel and respond completely to questions by Disciplinary Counsel regarding compliance with the provisions of this section.

(d) *Cross reference.* See § 95.3 (relating to monitoring of notices to be sent by formerly admitted attorneys).

§91.97. Publication of notice of suspension, disbarment, administrative suspension or transfer to inactive status.

Enforcement Rule 217(f) provides that the Board shall cause a notice of the suspension, disbarment, administrative suspension or transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced. If there is no such legal journal, the notice shall be published in the legal journal of an adjoining county. Upon entry of an order imposing suspension, disbarment, administrative suspension or transfer to inactive status, such notice shall be published forthwith and shall be transmitted to such courts as may be appropriate. The cost of publication shall be assessed against the formerly admitted attorney.

§91.98. Action to protect clients of formerly admitted attorney.

Enforcement Rule 217(g) provides that the Board shall promptly transmit a certified copy of the order of suspension, disbarment, administrative suspension or transfer to inactive status to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced; and that the president judge shall make such further order as may be necessary to fully protect the rights of the clients of the formerly admitted attorney.

§91.99. Maintenance of records.

(a) *General rule.* Enforcement Rule 217(i) provides that a formerly admitted attorney shall keep and maintain records of the various steps taken by such person under the Enforcement Rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with the Enforcement Rules and with the disbarment, suspension, administrative suspension or transfer to inactive status order will be available; and that proof of compliance with the Enforcement Rules shall be a condition precedent to any petition for reinstatement.

(b) *Cross reference.* See § 95.3 (relating to monitoring of notices to be sent by formerly admitted attorneys).

§91.100. Indicia of licensure.

Enforcement Rule 217(h) provides that within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Attorney Registration Office under § 93.143 (relating to issue of certificate as evidence of compliance) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing), certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary), certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure), Limited In-House Corporate Counsel License issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license) or limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys). . The Board may destroy the annual certificate issued under § 93.143, but shall retain any other documents surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

§91.101. Law-related activities of formerly admitted attorneys.

(a) *General rule.* A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the requirements of this section.

(b) *Supervision.* Enforcement Rule 217(j)(1) provides that all law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this section. If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subsection.

(c) *Permissible activities.* Enforcement Rule 217(j)(2) provides that, for purposes of this section, the only law-related activities that may be conducted by a formerly admitted attorney are the following:

(1) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties to the extent permitted by subsection (d);
and

(3) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(d) *Communications with clients.* Enforcement Rule 217(j)(3) provides that a formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(e) *Prohibited activities.* Enforcement Rule 217(j)(4) provides that, without limiting the other restrictions in this section, a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(1) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;

(2) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;

(3) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

(4) representing himself or herself as a lawyer or person of similar status;

(5) having any contact with clients either in person, by telephone, or in writing, except as provided in subsection (d);

(6) rendering legal consultation or advice to a client;

(7) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

(8) appearing as a representative of the client at a deposition or other discovery matter;

(9) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(10) receiving, disbursing or otherwise handling client funds.

(f) *Notice to Board.* Enforcement Rule 217(j)(5) provides that the supervising attorney and the formerly admitted attorney shall file with the Board a notice of engagement, identifying the supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with this section. The supervising attorney and the formerly admitted attorney shall file a notice with the Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

(g) *Jurisdiction over supervising attorney.* Enforcement Rule 217(j)(6) provides that the supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this section.

Note: This section limits and regulates the law-related activities performed by formerly admitted attorneys regardless of whether those formerly admitted attorneys are engaged as employees, independent contractors or in any other capacity. This section requires that a notice be filed with the Board when any law-related activities are performed by a formerly admitted attorney and when the engagement is terminated. This section is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. This section is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, this section is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

Subchapter F.
PROTECTION OF THE INTERESTS OF CLIENTS

Sec.

- 91.121. Appointment of conservator to protect interests of clients of absent attorney.
- 91.122. Duties of conservator.
- 91.123. Cooperation with conservator.
- 91.124. Bank and other accounts.
- 91.125. Duration of conservatorship.
- 91.126. Discharge of conservator.
- 91.127. Liability of conservator.
- 91.128. Compensation and expenses of conservator.
- 91.129. Review by Supreme Court.

§91.121. Appointment of conservator to protect interests of clients of absent attorney.

(a) *General rule.* Enforcement Rule 321(a) provides that upon application of Disciplinary Counsel or any other interested person with the written concurrence of Disciplinary Counsel, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

- (1) the attorney maintains or has maintained an office for the practice of law within the judicial district; and
- (2) any of the following applies:
 - (i) the attorney is made the subject of an order under § 91.151 (relating to emergency interim suspension orders and related relief); or
 - (ii) the president judge of the court of common pleas pursuant to § 91.98 (relating to action to protect clients of formerly admitted attorneys) by order directs Disciplinary Counsel to file an application under Enforcement Rule 321; or
 - (iii) the attorney abandons his or her practice, disappears, dies or is transferred to inactive status because of incapacity or disability; and
- (3) no partner or other responsible successor to the practice of the attorney is known to exist.

(b) *Service of application.* Enforcement Rule 321(b) provides that a copy of the application for appointment of conservator under that rule shall be personally served upon the absent attorney or the personal representative or guardian of the estate of the deceased or incompetent absent attorney; and that if personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by § 91.1 (relating to substitute service).

(c) *Hearing.* Enforcement Rule 321(c) and (d) provide that the president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application; that at the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist for appointment of a conservator; that within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application; that the order shall contain findings of fact and a statement of the grounds upon which the order is based; and that if no appearance has been entered on behalf of the absent attorney, a copy of the order shall be served upon the absent attorney in the manner prescribed by subsection (b) of this section.

(d) *Qualifications of conservator.* Enforcement Rule 321(e) provides that the conservator or conservators shall be appointed by the president judge, from among members of the bar of this Commonwealth, subject to the following:

- (1) non-disciplinary counsel conservators:
 - (i) shall not represent any party who is adverse to any known client of the absent attorney; and
 - (ii) shall have no adverse interest or relationship with the absent attorney or his or her estate.

(e) *Tolling of limitation times.* Enforcement Rule 321(f) provides that the filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under the Enforcement Rules shall be deemed for the purposes of any statute of limitations or limitation on time for appeal as the filing in the court of common pleas or other proper court or magisterial district court of this Commonwealth on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

- (1) the application for appointment of a conservator is granted, and
- (2) substitute counsel actually files an appropriate document in a court or magisterial district court within 30 days after executing a receipt for the file relating to the matter.

(f) Enforcement Rule 321(g) provides that the filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:

- (1) the application for appointment of a conservator is denied;
- (2) the conservator is discharged;
- (3) the court, tribunal, magisterial district court or other government unit in which a matter is pending orders that the stay be lifted; or
- (4) 30 days after the court, tribunal, magisterial district court or other government unit in which a matter is pending is notified that substitute counsel has been retained.

(g) Enforcement Rule 321(h) provides that as used in this section, the term “government unit” has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).

§91.122. Duties of conservator.

(a) *General rule.* Enforcement Rule 322(a)-(c) provides that:

(1) The conservator shall take immediate possession of all files of the absent attorney; that if such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files; and that probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for them or their removal or other facts showing that the files cannot be obtained without the use of the process of the court.

(2) The conservator shall make a written inventory of all files taken into his or her possession.

(3) The conservator shall make a reasonable effort to identify all clients of the absent attorney whose files were opened within five (5) years of the appointment of the conservator, regardless of whether the case is active or not, and a reasonable effort to identify all clients whose cases are active, regardless of the age of the file. The conservator shall send all such clients, and former clients, written notice of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active.

(4) All clients whose files are identified by the conservator as both inactive and older than five (5) years shall be given notice by publication of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The specific method of publication shall be

approved by the appointing court, as to both the method, and duration, of publication. The conservator shall deliver proofs of publication to the appointing court at the time of filing the application for discharge.

(5) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files.

(b) *Prohibited conduct.* Enforcement Rule 322(d) provides that neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

(1) Make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship.

(2) Represent such a client in connection with:

(i) any matter identified during the conservatorship; or

(ii) any other matter during or for a period of three years after the conclusion of the conservatorship.

(c) *Written report.* Enforcement Rule 322(e) provides that the conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in subsection (a) of this section; that if those duties have not been accomplished, then the conservator shall state what progress has been made in that regard; and that thereafter, the conservator shall file a similar written report every 60 days until discharge.

(d) Enforcement Rule 322(f) provides that in the case of a deceased attorney, the conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with § 91.128(3) (relating to compensation and expenses of conservator.)

§91.123. Cooperation with conservator.

Enforcement Rule 323 provides that any absent attorney who is capable of cooperating with the conservator and any partner, associate, personal representative or guardian of an absent attorney shall cooperate to the best of his or her ability with the conservator in identifying the clients and client files (including records with respect to funds of clients) of the absent attorney and any unexpended funds of such clients; and that wilful failure to so cooperate shall constitute a separate violation of the Enforcement Rules for the purposes of Enforcement Rule 203(b)(3) (relating to grounds for discipline).

§91.124. Bank and other accounts.

Enforcement Rule 324 provides that:

(1) A conservator shall notify all banks and financial institutions in which the absent attorney maintained either professional or trustee accounts of the appointment of a conservator under these rules; that service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement or deposit among such bank or financial institution, the absent attorney and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the absent attorney with such bank or financial institution; and that the appointing court on application may by order direct that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

(2) The conservator shall cause all funds of clients in the custody of the absent attorney to be returned to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the absent attorney.

(3) The conservator may engage the services of a certified public accountant when considered necessary to assist in the bookkeeping and auditing of the financial accounts and records of the absent attorney.

(i) If the state of the financial accounts and records of the absent attorney, or other relevant circumstances, render a determination as to ownership of purported client funds unreasonable and impractical, the conservator shall petition the appointing court for permission to pay all funds held by the absent attorney in any trust, escrow, or IOLTA account, to the Pennsylvania Lawyers Fund For Client Security. Any petition filed under this subsection shall be served by publication, the specific method and duration of which shall be approved by the appointing court.

(4) Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the absent attorney, and otherwise to complete the conservatorship and pay its expenses authorized under §91.128 (relating to compensation and expenses of conservator), the conservator shall permit the absent attorney or his or her estate to take full possession of any remaining funds.

§91.125. Duration of conservatorship.

Enforcement Rule 325 provides that appointment of a conservator pursuant to the Enforcement Rules shall be for a period of no longer than six months; that the appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months; that any order granting such an extension shall include findings of fact in support of the extension; and that no additional extensions shall be granted absent a showing of extraordinary circumstances.

§91.126. Discharge of conservator.

Enforcement Rule 326 provides that:

(1) The conservator shall apply to the appointing court for discharge when in the opinion of the conservator, nothing more remains to be done to protect the funds and other interests of the clients of the absent attorney.

(2) An application for discharge shall set forth a full accounting of all funds disbursed to clients of the absent attorney, expended in the conservatorship or released to the full control of the absent attorney, and a summary of all other actions taken by the conservator.

§91.127. Liability of conservator.

Enforcement Rule 327 provides that a conservator appointed under the Enforcement Rules shall:

(1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that the conservator shall be bound by the obligation of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as conservator.

(2) Have no liability to the clients of the absent attorney except for injury to such clients caused by intentional, wilful, or grossly negligent breach of duties as a conservator.

(3) Be immune to separate suit brought by or on behalf of the absent attorney; and that any objections by or on behalf of the absent attorney or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

§91.128. Compensation and expenses of conservator.

Enforcement Rule 328 provides that:

(1) A conservator not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. When the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations in which extraordinary circumstances are shown to justify enhanced compensation.

(2) The necessary expenses (including, but not limited to, the fees and expenses of a certified public accountant engaged pursuant to §91.124(3) (relating to bank and other accounts)) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate; and any expenses and any compensation of the conservator that are not reimbursed to the Board shall be paid as a cost of disciplinary administration and enforcement. Payment of any costs incurred by the Board pursuant to Enforcement Rule 328 that have not been reimbursed to the Board may be made a condition of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

§91.129. Review by Supreme Court.

Enforcement Rule 329 and 42 Pa. C.S. §722 (l) (relating to direct appeals from courts of common pleas) provide that:

(1) Any order entered by a court of common pleas upon an application for the appointment of a conservator, or arising out of the supervision, administration, operation or discharge of any conservatorship under these rules, shall be reviewable by the Supreme Court within the time and in the manner prescribed by Title 210 (relating to Pennsylvania Rules of Appellate Procedure) for review of orders relating to the supervision of investigating grand juries (see 210 Pa. Code Rule 3331 (relating to review of special prosecutions or investigations)).

(2) Review in the Supreme Court under this section shall not stay proceedings below unless the court of common pleas or the Supreme Court or a justice thereof shall so order.

Subchapter G.
EMERGENCY PROCEEDINGS

Sec.

91.151. Emergency temporary suspension orders and related relief.

91.152. Injunctive or other relief.

§91.151. Emergency temporary suspension orders and related relief.

(a) *General rule.* Enforcement Rule 208(f) provides that:

(1) Disciplinary Counsel, with the concurrence of a reviewing member of the Board, whenever it appears by an affidavit demonstrating facts that the continued practice of law by a person subject to the Enforcement Rules is causing immediate and substantial public or private harm because of the misappropriation of funds by such person to his or her own use, or because of other egregious conduct, in manifest violation of the Disciplinary Rules or the Enforcement Rules, may petition the Supreme Court for injunctive or other appropriate relief;

(2) a copy of the petition shall be personally served upon the respondent-attorney by Disciplinary Counsel. If Disciplinary Counsel cannot make personal service after reasonable efforts to locate and serve the respondent-attorney, Disciplinary Counsel may serve the petition by delivering a copy to a clerk or other responsible person at the office of the respondent-attorney, and if that method of service is unavailable, then by mailing a copy of the petition by regular and certified mail addressed to the addresses furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(d). Service is complete upon delivery or mailing, as the case may be;

(3) the Court, or any justice thereof, may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days; and

(4) the Court, or any justice thereof, may, before or after issuance of the rule, issue such orders to the respondent-attorney, and to such financial institutions or other persons, as may be necessary to preserve funds, securities or other valuable property of clients or others which appear to have been misappropriated or mishandled in manifest violation of the Disciplinary Rules;

(5) an order directing the president judge of the court of common pleas in the judicial district where the respondent-attorney maintains his or her principal office for the practice of law or conducts his or her primary practice, to take such further action and to issue such further orders as may appear necessary to fully protect the rights and interests of the clients of the respondent-attorney when:

(i) the respondent-attorney does not respond to a rule to show cause issued after service of the petition pursuant to Enforcement Rule 208(f)(1); or

(ii) Disciplinary Counsel's petition demonstrates cause to believe that the respondent-attorney is unavailable to protect the interests of his or her clients for any reason, including the respondent-attorney's disappearance, abandonment of practice, incarceration, or incapacitation from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants.

(b) *Order of temporary suspension.* Enforcement Rule 208(f)(2) provides that if a rule to show cause has been issued under subsection (a) of this section, and the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under the Enforcement Rules.

(1) Where the Court enters an order under Enforcement Rule 208(f)(1)(ii), the Board shall promptly transmit a certified copy of the order to the president judge, whose jurisdiction and authority under this rule shall extend to all client matters of the respondent-attorney.

(2) Where the Court enters an order under Enforcement Rule 208(f)(1)(i) or (ii) before the issuance of a rule or before the entry of an order of temporary suspension under paragraph (f)(2), the Prothonotary shall serve a certified copy of the Court's order on the respondent-attorney by regular mail addressed to the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney and to an address where the respondent-attorney is located if that address is known.

(c) *Effect of temporary suspension.* Enforcement Rule 208(f)(3) provides that:

(1) any order of temporary suspension which restricts the respondent-attorney from maintaining an attorney or other trust account shall, when served on any bank or other financial institution maintaining an account against which the respondent-attorney may make withdrawals, serve as an injunction to prevent the financial institution from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court;

(2) any order of temporary suspension issued under Enforcement Rule 208(f) shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients on existing matters during the 30 days following entry of the order of temporary suspension; and

(3) such order may also provide that any fees or portion thereof tendered to the respondent-attorney during such 30-day period shall be deposited into a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court.

(d) *Dissolution or amendment.* Enforcement Rule 208(f)(4) provides that:

(1) the respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension;

(2) a copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing; and

(5) upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(e) *Contempt of the Board.* Enforcement Rule 208(f)(5) provides that:

(1) the Board on its own motion, or upon the petition of Disciplinary Counsel, may issue a rule to show cause why the respondent-attorney should not be placed on temporary suspension whenever it appears that the respondent-attorney has disregarded an applicable provision of the Enforcement Rules, failed to maintain or produce the records required to be maintained and produced under Pa.R.P.C. 1.15(c) and subdivisions (e) and (g) of Enforcement Rule 221 in response to a request or demand authorized by Enforcement Rule 221(g) or any provision of these Rules, failed to comply with a valid subpoena or engaged in other conduct that in any such instance materially delays or obstructs the conduct of a proceeding under this Subpart;

(2) the rule to show cause shall be returnable within ten days;

(3) if the response to the rule to show cause raises issues of fact, the Board Chair may direct that a hearing be held before a member of the Board who shall submit a report to the Board upon the conclusion of the hearing;

(4) if the period for response to the rule to show cause has passed without a response having been filed, or after consideration of any response and any report of a Board member following a hearing under paragraph (3), the Board may recommend to the Supreme Court that the respondent-attorney be placed on temporary suspension; and

(5) the recommendation of the Board shall be reviewed by the Supreme Court as provided in § 89.207 (relating to review and action in the Supreme Court), although the time for either party to file with the Court a petition for review of the recommendation or determination of the Board shall be fourteen days after the entry of the Board's recommendation or determination, and any answer or responsive pleading shall be filed within ten days after service of the petition for review.

(f) *Request for accelerated disposition.* Enforcement Rule 208(f)(6) provides that:

(1) a respondent-attorney who has been temporarily suspended pursuant to this section for conduct described in subsection (a), or pursuant to the procedures of subsection (e) where a formal proceeding has not yet been commenced, shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition;

(2) within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline under § 89.52 (relating to petition for discipline) and the matter shall be assigned to a hearing committee for accelerated disposition;

(3) thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay; and

(4) if a petition for discipline is not timely filed under paragraph (2), the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under Enforcement Rule 208.

(g) *Conclusion of formal proceedings.* Enforcement Rule 208(f)(7) provides that a proceeding involving a respondent-attorney who has been temporarily suspended pursuant to this section at a time when a formal proceeding has already been commenced shall proceed and be concluded without appreciable delay.

(h) *Procedural requirements.* The Note to Enforcement Rule 208(f) provides that the "without appreciable delay" standard of subsections (f)(3) and (g) is derived from *Barry v. Barchi*, 443 U.S. 55, 99, (1979). Appropriate steps will be taken to satisfy this requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

§91.152. Injunctive or other relief.

(a) *General rule.* Enforcement Rule 218(j) provides that if Disciplinary Counsel shall have probable cause to believe that any formerly admitted attorney:

(1) has failed to comply with such rule or Subchapter 91E (relating to formerly admitted attorneys), or,

(2) is otherwise continuing to practice law;

Disciplinary Counsel may bring an action in any court of competent jurisdiction for such injunctive and other relief as may be appropriate.

(b) *Appeals.* Appeals from orders entered in proceedings under subsection (a) of this section are governed by 42 Pa. C.S. §722(8) (relating to direct appeals from courts of common pleas).

Subchapter H.

FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION

Sec.

91.171. Definitions

91.172. Maintenance of fiduciary accounts.

91.173. Approval and termination of Eligible Institutions.

91.174. Reports of overdrafts.

91.175. Fiduciary accounts.

91.176. Rules for determining reporting obligation.

91.177. Required records.

91.178. Availability of required records and requirement to produce.

91.179. Effect of failure to produce required records.

§91.171. Definitions.

The following terms when used in this subchapter shall have the meanings given to them in this section:

Eligible Institution. An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.

Financial Institution. A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of

which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

Fiduciary Funds. Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

Rule 1.15 Funds. Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.

Trust Account. A Trust Account is an account in an Eligible Institution in which an attorney holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

§91.172. Maintenance of fiduciary accounts.

Enforcement Rule 221(b) provides that a Trust Account may be maintained only in an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts.

§91.173. Approval and termination of Eligible Institutions.

(a) *Approval.* Enforcement Rule 221(h) provides that an Eligible Institution shall be approved as a depository for Trust Accounts if it shall file with the Board an agreement in a form approved by the Board) in which the Eligible Institution agrees to comply with IOLTA Regulations governing approved Eligible Institutions and to make a prompt report to the Lawyers Fund for Client Security Board under the circumstances described in §91.174 (relating to reports of overdrafts). Upon receiving a signed agreement from an Eligible Institution as required by this subsection, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order approving the Eligible Institution as a depository for Trust Accounts.

(b) *Termination of approval.* Enforcement Rule 221(k) provides that a failure on the part of an Eligible Institution to make a report to the Lawyers Fund for Client Security Board called for by this subchapter or to comply with IOLTA Regulations governing approved Eligible Institutions may be cause for termination of its approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action by any person who is proximately caused harm thereby. Upon learning that a financial institution has failed to make a report called for by this subchapter, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order terminating the approval of the financial institution as a depository for Trust Accounts.

(c) *List of approved Eligible Institutions.* The Board will periodically publish in the *Pennsylvania Bulletin* a list of Eligible Institutions that are approved at the time as depositories for Trust Accounts under this subchapter. The current list shall also be published in the *Pennsylvania Code* as an appendix to this section.

§91.174. Reports of overdrafts.

(a) *General rule.* Enforcement Rule 221(h) provides that an Eligible Institution shall report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of:

- (1) whether the instrument is honored; or
- (2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(b) *Timing of report.* Enforcement Rule 221() provides that the report required to be made under this subchapter shall be made by the Eligible Institution to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

(c) *Handling of report.* Enforcement Rule 221(o) provides that a designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry regarding the report and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.

(d) *Effect of report or referral.* Enforcement Rule 221(o) also provides that neither a report filed with the Lawyers Fund for Client Security Board pursuant to this subchapter nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(e) *Immunity.* Enforcement Rule 221(l) provides that Eligible Institutions shall be immune from suit for the filing of any reports required by this subchapter or believed in good faith to be required by this subchapter. See §91.173(b) (relating to termination of approval).

§91.175. Fiduciary accounts.

(a) *Identification.* Enforcement Rule 221(d) provides that the responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

(b) *Service charge.* Enforcement Rule 221(m) provides that an Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this subchapter.

§91.176. Rules for determining reporting obligation.

For purposes of this subchapter:

(1) Enforcement Rule 221(i)(1) provides that a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Enforcement Rule 221(i)(2) provides that funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the Eligible Institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. §4108(b) (relating to items or deposits received after cutoff hour).

(3) Enforcement Rule 221(i)(3) provides that a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(4) Enforcement Rule 221(j) provides that no report need be made when the Eligible Institution determines that an instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

§ 91.177. Required records.

(a) *In general.* Enforcement Rule 221(e) provides that an attorney shall maintain and preserve for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later, the following records:

(1) the writing required by Pa.R.P.C. 1.5 (relating to the requirement of a writing communicating the basis or rate of the fee);

(2) the records identified in Pa.R.P.C. 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter); and

(3) the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held:

(i) all transaction records provided to the attorney by the Financial Institution, such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and

(ii) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements..

(b) Regular trial balance and monthly reconciliations. Enforcement Rule 221(e) also provides that: a regular trial balance of the individual client trust ledgers shall be maintained; the total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; on a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account; and the reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing.

(c) Preservation of records and computations. Enforcement Rule 221(e) provides that a lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with the requirement of subsection (b).

(d) *Form.* Enforcement Rule 221(f) provides that the records required by this section may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this section and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up, on a separate electronic storage device, at least at the end of any day on which entries have been entered into the records.

§91.178. Availability of required records and requirement to produce.

(a) In general. Enforcement Rule 221(g) provides that the records required to be maintained by Pa.R.P.C. 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel in a timely manner upon request or demand by either agency made pursuant to the Enforcement Rules, these Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

(b) Request for production by letter. Enforcement Rule 221(g)(1) provides that upon a request by Disciplinary Counsel under subdivision (g) of that Enforcement Rule, which request may take the form of a letter to the respondent-attorney briefly stating the basis for the request and identifying the type and scope of the records sought to be produced, a respondent-attorney must produce the records within ten business days after personal service of the letter on the respondent-attorney or after the delivery of a copy of the letter 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(d) (relating to annual registration of attorneys), but if the latter method of service is unavailable, within ten business days after the date of mailing a copy of the letter to the last registered address or addresses set forth on the statement.

(c) Request for production pursuant to Board Rule. Enforcement Rule 221(g)(2) provides in part that when Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made under an applicable provision of these Rules, the respondent-attorney must produce the records and must do so within the time frame established by these Rules. See § 87.7(e) (relating to production of Pa.R.P.C. 1.15 records upon Disciplinary Counsel's request in a Form DB-7 (Request for Statement of Respondent's Position) or Form DB-7A (Supplemental Request for Statement of Respondent's Position)).

(d) Request for production by subpoena. Enforcement Rule 221(g)(2) provides in part that when Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made by subpoena under Enforcement Rule 213(a), the respondent-attorney must produce the records and must do so within the time frame established by Enforcement Rule 213 and these Rules. See Enforcement Rule 213(b) and § 91.2(b) (both of which relate to procedure for issuance of subpoenas).

§91.179. Effect of failure to produce required records.

Enforcement Rule 221(g)(3) provides 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 records after receipt of a request or demand authorized by subdivision (g) of Enforcement Rule 221 or any provision of these Rules; and that if at any time a hearing is held before the Board pursuant to Enforcement Rule 208(f) (or § 91.151 relating to emergency temporary suspension orders and related relief) as a result of a respondent-attorney's alleged failure to maintain or produce Pa.R.P.C. 1.15 records, a lawyer-Member of the Board shall be designated to preside over the hearing.

Note: If Disciplinary Counsel files a petition for temporary suspension, the respondent-attorney will have an opportunity to raise at that time any claim of impropriety pertaining to the request or demand for records.

CHAPTER 93.
ORGANIZATION AND ADMINISTRATION

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Subchapter A.
PRELIMINARY PROVISIONS

Sec.	
93.1.	Disciplinary districts.
93.2.	Venue.
93.3.	Statements "under penalty."

§93.1. Disciplinary districts.

Enforcement Rule 202(a) provides that disciplinary jurisdiction in this Commonwealth shall be divided into the following districts:

(1) District I. The County of Philadelphia.

(2) District II. The Counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton and Schuylkill.

(3) District III. The Counties of Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

(4) District IV. The Counties of Allegheny, Armstrong, Beaver, Bedford, Butler, Blair, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington and Westmoreland.

§93.2. Venue.

Enforcement Rule 202(b) provides that the disciplinary district which shall have jurisdiction over a person subject to the Enforcement Rules shall be any district in which the person maintains an office or the district in which the conduct under investigation occurred.

§93.3. Statements "under penalty."

Any form prepared by the Administrative Office, the Office of the Secretary or the Office of Disciplinary Counsel for use under these rules, and which is intended to elicit facts upon the basis of which a public officer or employee performs in an official capacity, may pursuant to 18 Pa. C.S. §4904(b) (relating to statements "under penalty") contain a statement to the effect that false statements made therein are punishable.

Subchapter B. THE DISCIPLINARY BOARD

Sec.

- 93.21. The Disciplinary Board.
- 93.22. Quorum and manner of acting.
- 93.23. Powers and duties.
- 93.24. Officers.
- 93.25. Official seal.
- 93.26. Meetings of the Board.
- 93.27. Conference telephone meetings.
- 93.28. Agenda.
- 93.29. Panels.

§93.21. The Disciplinary Board.

Enforcement Rule 205(a) and (b) provide that the Supreme Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Pennsylvania" which shall be composed of 11 members of the bar of this Commonwealth and two non-lawyer electors; that the regular terms of members of the Board shall be for three years; that no member shall serve for more than two consecutive three-year terms.

§93.22. Quorum and manner of acting.

(a) *General rule.* Enforcement Rule 205(b) provides that seven members of the Board shall constitute a quorum and that, except when acting under § 93.23(a)(5), (7) and (8) (relating to powers and duties), the Board shall act only with the concurrence of not less than the lesser of:

(1) seven members, or

(2) a majority of the members in office who are not disqualified from participating in the matter or proceeding.

(b) *Determination of quorum.* Enforcement Rule 205(b) further provides that the presence of members who are disqualified from participating in one or more matters to be considered at a meeting shall nonetheless be counted for purposes of determining the existence of a quorum for the consideration of all matters on the agenda.

§93.23. Powers and duties.

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

(1) To consider the conduct of any person subject to the Enforcement Rules after investigation by Disciplinary Counsel pursuant to Enforcement Rule 207(b)(1). Complaints filed directly with the Board shall be forwarded to the Office of Chief Disciplinary Counsel for assignment to a district office.

Note: In order to avoid the commingling of prosecutorial and adjudicative functions, which would be a violation of due process, *see Lyness v. Com. of Pa., State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992), the Office of Disciplinary Counsel is charged with the duty of investigating and prosecuting all disciplinary matters subject to adjudication by the Board. See Enforcement Rule 208(a)(1), (a)(2)(iv). Under Enforcement Rule 208(d)(1), Board Members appointed in a matter to review Disciplinary Counsel's charging decisions or recommended disposition are precluded from further participation in that matter.

(2) To appoint a Secretary, a Chief Disciplinary Counsel, and such assistant disciplinary counsel and staff as may from time to time be required to properly perform the functions prescribed in the Enforcement Rules.

(3) To appoint not less than 18 hearing committee members within each disciplinary district.

(4) To assign as special masters three or more former members of the Board or former or retired justices or judges who are not in senior judge status.

(5) To assign formal charges or the conduct of an investigatory hearing to a hearing committee or special master, and to assign a reinstatement petition to a hearing committee. The assignment to a hearing committee of formal charges or the conduct of an investigatory hearing or a reinstatement petition may be delegated by the Board to its Secretary.

(6) To review the conclusions of hearing committees and special masters with respect to formal charges or petitions for reinstatement, and to prepare and forward its own findings and recommendations, together with the record of the proceeding before the hearing committee or special master, to the Supreme Court.

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

(i) review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands, public reprimands and institution of formal charges;

(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(a)(2) (relating to determination of validity of subpoenas); or

(iii) consider a petition for reinstatement to active status from retired or inactive status, or administrative suspension, under §89.273(b) (relating to procedures for reinstatement).

(8) To review, through a designated panel of three members, and approve or modify a determination by a reviewing hearing committee member that a matter should be concluded by dismissal, private informal admonition, private reprimand, public reprimand or the institution of formal charges before a hearing committee.

(9) To review, through a designated panel of three members, and approve or reject a joint petition in support of discipline on consent filed with the Board pursuant to Enforcement Rule 215(d).

(10) To review, through a single member designated by the Board Chair, and approve or reject a certification filed by Disciplinary Counsel under Enforcement Rule 218(d)(2)(ii) indicating that Disciplinary Counsel has determined that there is no impediment to reinstatement of the petitioner, and to issue the report and recommendation required by subdivision (d) of Enforcement Rule 218.

(11) To administer, by the Board or through a designated panel of three members selected by the Board Chair, private reprimands or public reprimands to attorneys for misconduct.

(12) To adopt rules of procedure not inconsistent with the Enforcement Rules. Such rules may provide for the delegation to the Board Chair or the Vice Chair of the power to act for the Board on administrative and procedural matters.

(13) To cause testimony relating to the conduct of formerly admitted attorneys to be perpetuated.

(14) To petition the Court under § 91.74 (relating to petition by Board for determination of professional competency) to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and to retain counsel other than Disciplinary Counsel to represent the Board in such proceedings when the Board considers such separate representation to be appropriate.

(15) To recommend the temporary suspension of a respondent-attorney pursuant to Enforcement Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

(16) To exercise the powers and perform the duties vested in and imposed upon the Board by law.

(b) *Consultations with local bar associations.* Enforcement Rule 205(d) provides that the Board shall, to the extent it deems feasible, consult with officers of local bar associations in the counties affected concerning any appointment which it is authorized to make under the Enforcement Rules.

§93.24. Officers.

(a) *Chair and Vice Chair.* Enforcement Rule 205(a) provides that the Supreme Court shall designate the Board Chair and the Board Vice Chair. In case of the vacancy in office, absence, disability or other unavailability of the Board Chair, the Board Vice Chair shall exercise the powers and perform the duties of the Board Chair.

(b) *Secretary.* The Secretary need not be a member of the Board and shall hold office at the pleasure of the Board.

§93.25. Official Seal.

The official seal of the Board shall be in the form and style as follows:



§93.26. Meetings of the Board.

(a) *Call and notice.* Meetings shall be held upon the call in writing of the Chair or of any two members of the Board at any place 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 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 Chair shall preside at meetings of the Board. In the absence of the Chair one of the following persons in the order stated shall preside:

- (1) The Vice Chair.
- (2) An acting chair selected by the Board for such purpose.

§93.27. Conference telephone meetings.

One or more members of the Board may participate in a meeting of the Board (other than a meeting for the purpose of hearing oral argument) by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

§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 Chair.

§93.29. Panels.

(a) *General rule.* The Board 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 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.

(c) *Quorum.* A majority of the members of a panel of the Board shall constitute a quorum of the panel.

Subchapter C.
OFFICE OF THE SECRETARY

- Sec.
93.51. Office of the Secretary.
93.52. Communications and filings generally.
93.53. Dockets.
93.54. Powers and duties of Office of the Secretary.

§93.51. Office of the Secretary.

There shall be an Office of the Secretary, which shall be the office of the Secretary of the Board and all other staff of the Board who are not assigned to the Office of Disciplinary Counsel, and shall be maintained at the location specified in §85.6 (relating to location of Office of the Secretary). It shall be supervised by the Secretary of the Board who shall, either personally, by deputy, or by other duly authorized staff of the Board, or by duly authorized agent, exercise the powers and perform the duties vested in and imposed upon the Office of the Secretary by these rules.

§93.52. Communications and filings generally.

(a) *General rule.* Except as otherwise provided in this section all communications, submittals, and pleadings should be addressed to the Board at the Office of the Secretary unless otherwise specially directed. All communication and filings should clearly designate the docket number, or similar identifying symbols, if any, employed by the Board, and should set forth a short title. All communications shall include the address of the person communicating, the party such person represents, and how response should be sent to such person if not by first class mail.

(b) *Pleadings.* All pleadings and other documents filed pursuant to any provision of Chapter 89 (relating to formal proceedings) shall comply with the applicable provisions of such Chapter.

(c) *Incomplete documents.* In any proceeding when upon inspection the Office of the Secretary is of the opinion that a submittal or pleading tendered for filing does not comply with this Subpart such Office may decline to accept the document for filing and may return it unfiled, or such Office may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) *Disposition of complaints.*

(1) Except as otherwise provided in this subsection all complaints received by the Office of the Secretary against attorneys shall be transmitted forthwith to the Office of Disciplinary Counsel. Thereafter correspondence concerning the complaint, the investigation thereof, and informal proceedings relating thereto should be addressed to the Office of Disciplinary Counsel.

(2) Complaints received by the Office of the Secretary against Disciplinary Counsel involving alleged violations of the Disciplinary Rules or the Enforcement Rules shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition, as provided by Enforcement Rule 209(b).

(3) Complaints received by the Office of the Secretary or the Office of Disciplinary Counsel against members of the Board involving alleged violations of Chapter 81 (relating to rules of professional conduct) or the Enforcement Rules shall, as provided by Enforcement Rule 209(b), be handled in the same manner as other complaints, except that if action is required by the Board the Secretary shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

§93.53. Dockets.

(a) *General rule.* The Office of the Secretary shall maintain such dockets of matters considered by the Board as may be directed by the Board.

(b) *Numbering.* Except as otherwise ordered by the Board, matters submitted to the Board for action shall be assigned a docket number consisting of the letters "DB" and the calendar year in which the matter is docketed, which shall be preceded by the serial number of the matter in such calendar year, e.g.: 1 DB 2001.

(c) *Petitions for reinstatement.* Petitions for reinstatement shall be docketed to the same number as assigned to the original disciplinary proceedings. If there is no such original docket number, a new number shall be assigned to the petition for reinstatement.

§93.54. Powers and duties of Office of the Secretary.

The Office of the Secretary shall have the power and duty:

(1) To maintain permanent records of all matters processed by the Board and the disposition thereof. This paragraph shall not be construed to require the permanent retention of correspondence, transcripts, briefs and other similar documents which underlie the final disposition of a matter by the Board, but shall include the findings of any hearing committee or special master and the action and any related opinion or opinions of the Board with respect thereto, and any other information which these rules expressly require to be made a matter of record. Correspondence, transcripts, briefs and other similar documents which underlie the final disposition of a matter by the Board shall be retained for ten years following such disposition.

(2) To assemble signed vouchers for the expenses specified in §93.111 (relating to determination of reimbursable expenses) incurred in:

(i) the investigation and prosecution of disciplinary proceedings for purposes of the taxation of expenses pursuant to 89.205(b) (relating to taxation of expenses) and §89.209 (relating to expenses of formal proceedings); and

(ii) the investigation and processing of petitions for reinstatement for purposes of the imposition of expenses on respondent-attorneys pursuant to §89.278 (relating to expenses of reinstatement proceedings).

(3) To exercise the powers and perform the duties expressly vested in the Secretary or the Office of the Secretary by these rules.

Subchapter D. OFFICE OF DISCIPLINARY COUNSEL

Sec.

93.61. Office of Disciplinary Counsel.

93.62. Practice of law by Disciplinary Counsel prohibited.

93.63. Powers and duties of 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.

(1) Assistant disciplinary counsel.

(2) Investigators.

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

(b) *Powers and duties.* The Office of Disciplinary Counsel shall be supervised by the Chief Disciplinary Counsel who shall, either personally, by assistant disciplinary counsel, or by other duly authorized staff of the Board, or by duly authorized agent, exercise the powers and perform the duties vested in and imposed upon the Office of Disciplinary Counsel by these rules.

(c) *Location.* The principal office and district offices of the Office of Disciplinary Counsel shall be maintained at the locations specified in §85.5 (relating to location of Office of Disciplinary Counsel).

§93.62. Practice of law by Disciplinary Counsel prohibited.

Enforcement Rule 207(a) provides that Disciplinary Counsel shall not be permitted to engage in private practice, except that the Board may agree to a reasonable period of transition after appointment.

§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)):

(1) To investigate all matters involving alleged misconduct called to its attention whether by complaint or otherwise except, unless as otherwise directed by the Supreme Court or the Board, complaints against Disciplinary Counsel and members of the Board.

(2) To dispose of any matter that is governed by Enforcement Rules 214 (Attorneys convicted of crimes), 215 (Discipline on Consent), and 216 (Reciprocal discipline) in accordance with the substantive and procedural provisions of those rules, and to dispose of all other matters involving alleged misconduct by dismissal or (subject to review by a senior or experienced hearing committee member) by recommendation for informal admonition, private or public reprimand, or the prosecution of formal charges before a hearing committee or special master.

(3) To request the appointment of a special master, where appropriate, and to prosecute all disciplinary proceedings before hearing committees, special masters, the Board and the Supreme Court.

(4) To appear at hearings conducted with respect to petitions for reinstatement by formerly admitted attorneys, to cross-examine witnesses testifying in support of the petition and to marshal available evidence, if any, in opposition thereto.

(5) To maintain, through the Office of the Secretary, permanent records of all matters processed by the Office of Disciplinary Counsel and the disposition thereof. This paragraph shall not be construed to require the permanent retention of correspondence, memoranda, transcripts and other similar documents which underlie the final disposition of a matter by the Office of Disciplinary Counsel and such materials may be retained or disposed of by the Office of Disciplinary Counsel in its discretion.

(6) To exercise the powers and perform the duties expressly vested in and imposed upon staff counsel or the Office of Disciplinary Counsel by these rules or by law.

(b) *Party status of Disciplinary Counsel.* Enforcement Rule 207(c) provides that Disciplinary Counsel:

(1) Shall be a party to all proceedings and other matters before the Board or the Supreme Court under the Enforcement Rules.

(2) May urge in the Supreme Court a position inconsistent with any recommendation of the Board where in the judgment of Disciplinary Counsel a different disposition of the matter is warranted by the law or the facts.

(3) May within the time and in the manner prescribed by Title 210 (relating to the Pennsylvania Rules of Appellate Procedure) obtain in the Supreme Court judicial review of any final determination of the Board, except a determination to conclude a matter by dismissal, informal admonition, private reprimand, or public reprimand.

(4) May within the time and in the manner prescribed by Title 210 petition the Supreme Court for allowance of an appeal from any final determination of the Board to conclude a matter by dismissal, informal admonition, private reprimand, or public reprimand.

Subchapter E.
HEARING COMMITTEES AND SPECIAL MASTERS

HEARING COMMITTEES

Sec.

- 93.81. Hearing committees.
- 93.82. Quorum and manner of acting.
- 93.83. Powers and duties.
- 93.84. Officers.
- 93.85. Meetings of hearing committees.
- 93.86. Disqualification of reviewing member to sit on hearing in same matter.
- 93.87. Replacement of unavailable members.

SPECIAL MASTERS

- 93.91. Special masters.

HEARING COMMITTEES

§93.81. Hearing committees.

(a) *General rule.* Enforcement Rule 205(c)(3) provides that the Board shall appoint not less than 18 hearing committee members within each disciplinary district, and that each 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.

(b) (Rescinded.)

(c) *Terms.* Enforcement Rule 206(a) provides that when a hearing committee is 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; the terms of hearing committee members shall be three years; that no member shall serve for more than two consecutive three-year terms; that a 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 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.

§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 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), or when conducting a prehearing conference.

§93.83. Powers and duties.

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

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the Board or the Secretary of the Board.

(2) To submit their conclusions set forth as prescribed by these rules, together with the record of the hearing, to the Board.

(b) *Other duties.* A hearing committee shall also conduct reinstatement hearings and perform such other duties as may be imposed by or pursuant to these rules.

§93.84. Officers.

Enforcement Rule 206(a) provides that the Board shall designate the chair of each hearing committee, who shall be a senior hearing committee member. In the case of the absence or disability of the chair of a hearing committee, the committee shall select an acting chair. The 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.

§93.85. Meetings of hearing committees.

Except as otherwise provided by these rules, meetings and proceedings of a hearing committee shall be governed insofar as applicable by the provisions of these rules governing meetings and proceedings of the Board.

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

Enforcement Rule 205(c)(5) provides that a hearing committee member who has passed upon Disciplinary Counsel's recommended disposition of a matter shall be ineligible to serve on a hearing committee that considers the matter.

§93.87. Replacement of unavailable members.

Enforcement Rule 206(c) provides that if a member of a hearing committee becomes disqualified or otherwise unavailable to serve with respect to any particular matter, the Secretary shall designate a replacement.

SPECIAL MASTERS

§93.91. Special masters.

(a) *Assignment.* Enforcement Rule 206(d) provides that a special master instead of a hearing committee may be assigned by the Board to conduct an investigatory hearing or formal proceeding where it appears that the hearing or proceeding may be protracted and should be conducted continuously from day to day until conclusion.

(b) *Powers and duties.* Enforcement Rule 206(e) provides that a special master shall have the power and duty:

(1) To conduct investigatory hearings and hearings into formal charges of misconduct upon assignment by the Board.

(2) To submit his or her conclusions set forth as prescribed by these rules, together with the record of the hearing into formal charges, to the Board.

Subchapter F.
CONFIDENTIALITY

Sec.

- 93.101. Complaints confidential.
- 93.102. Access to disciplinary information and confidentiality.
- 93.103. Identity of reviewing hearing committee member.
- 93.104. Access by judicial system agencies to confidential information.
- 93.105. Protected information.
- 93.106. Protective orders.
- 93.107. Broadcasting and other recording of proceedings.
- 93.108. Restoration of confidentiality.

§93.101. Complaints confidential.

Enforcement Rule 209(a) provides that complaints submitted to the Office of the Secretary or to the Office of Disciplinary Counsel shall be confidential unless the matter results in the filing of formal charges.

§93.102. Access to disciplinary information and confidentiality.

(a) *General rule.* Enforcement Rule 402(a) provides that, except as provided in subsections (b) and (d) and §§ 93.104 (relating to access by judicial system agencies to confidential information) and 93.108 (relating to restoration of confidentiality), all proceedings under these rules shall be open to the public after:

- (1) the filing of an answer to a petition for discipline;
- (2) the time to file an answer to a petition for discipline has expired without an answer being filed;
- (3) the filing and service of a petition for reinstatement;
- (4) the Board has entered an Order determining a public reprimand; or
- (5) after the expiration of any order restricting access to disciplinary information.

(b) *Certain informal proceedings.* Enforcement Rule 402(b) provides that, notwithstanding subsection (a), an informal proceeding under these rules in which it is determined that private discipline should be imposed but that subsequently results in the filing of formal charges shall not be open to the public until or unless the Supreme Court enters its order for the imposition of public discipline.

(c) *Exceptions to initial confidentiality.* Enforcement Rule 402(c) provides that, until the proceedings are open under subsection (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

- (1) the respondent-attorney requests that the matter be public, or waives confidentiality for a particular purpose specified in writing,
- (2) the investigation is predicated upon a conviction of the respondent-attorney for a crime or reciprocal discipline,

(3) the proceeding is based on an order of temporary suspension from the practice of law entered by the Court pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief).

(4) in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Chapter 91 Subchapter D (relating to disability), or

(5) there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.

(d) *Permitted uses of otherwise confidential information.* Enforcement Rule 402(d)(2) and (3) provides that the provisions of subsections (a) and (b) of this section shall not be construed to:

(1) Require Disciplinary Counsel to refrain from reporting to law enforcement authorities the commission or suspected commission of any criminal offense or information relating to a criminal offense.

Note: The Note to Enforcement Rule 402 provides that subsection (d)(1) is based on 18 Pa.C.S. § 5108 (relating to compounding) and that otherwise Disciplinary Counsel may be in the anomalous position of violating Rule 8.4 of the Pennsylvania Rules of Professional Conduct.

(2) Prevent the Pennsylvania Lawyers' Fund for Client Security from utilizing information obtained during an investigation to pursue subrogated claims.

(e) *Waiver.* Any respondent-attorney may in writing waive the benefits, in whole or in part, of this Subchapter.

(f) *National Lawyer Regulatory Data Bank.* Enforcement Rule 402(i) provides that the Board shall transmit notice of all public discipline imposed by the Supreme Court, transfers to or from inactive status for disability, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(g) *Requests for documents.* Requests for copies of documents relating to disciplinary proceedings that are available to the public under this subchapter must be in writing and directed to the Office of the Secretary. A copying fee, which shall be the same as the copying fee charged to respondent-attorneys, must be prepaid at the time a request is made.

(h) *Transcripts and exhibits.* The Board will not make available to the public copies of transcripts or exhibits introduced as evidence in a proceeding.

Note: Nothing in this Rule shall preclude any individual from obtaining copies of transcripts or exhibits through the official reporter designated by the Office of the Secretary.

§93.103. Identity of reviewing hearing committee member.

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

§93.104. Access by judicial system agencies to confidential information.

(a) *General rule.* Enforcement Rule 402(d)(1) provides that the provisions of § 93.102(a) and (b) (relating to access to disciplinary information and confidentiality) shall not be construed to deny access to relevant information at any point during a proceeding under these rules to:

(1) authorized agencies investigating the qualifications of judicial candidates;

(2) the Judicial Conduct Board with respect to an investigation it is conducting;

- (3) other jurisdictions investigating qualifications for admission to practice;
- (4) law enforcement agencies investigating qualifications for government employment;
- (5) lawyer disciplinary enforcement agencies in other jurisdictions investigating misconduct by the respondent-attorney; or
- (6) the Pennsylvania Lawyers' Fund for Client Security Board investigating a claim for reimbursement arising from conduct by the respondent-attorney.

(b) *Notice to respondent-attorney.* Enforcement Rule 402(g) provides that, except as provided in subsection (c), if nonpublic information is requested pursuant to subsection (a) and the respondent-attorney has not signed an applicable waiver of confidentiality, the respondent-attorney shall be notified in writing at the last known address of the respondent-attorney of what information has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency or board. The notice shall advise the respondent-attorney that the information will be released 20 days after mailing of the notice unless the respondent-attorney objects to the disclosure. If the respondent-attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency or board obtains an order of the Supreme Court requiring its release or the respondent-attorney withdraws the objection.

(c) *Exception to required notice to respondent-attorney.* Enforcement Rule 402(h) provides that, if an agency or board requesting the release of information under subsection (a) other than the Judicial Conduct Board and the Pennsylvania Lawyers Fund for Client Security Board has not obtained an applicable waiver of confidentiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

- (1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent-attorney;
- (2) the information is essential to that investigation; and
- (3) disclosure of the existence of the investigation to the respondent-attorney would seriously prejudice the investigation.

(d) *Restrictions on available information.* The fact that:

- (1) a complaint has been filed shall not be deemed relevant for the purposes of this section if the complaint was dismissed;
- (2) a complaint is pending but undisposed of shall not be deemed relevant for the purposes of this section unless otherwise determined in a specific case by the Office of Disciplinary Counsel with the concurrence of the Chair or Vice Chair of the Board;
- (3) an informal admonition has been administered to a respondent-attorney under any circumstances other than following a formal proceeding shall not be disclosed at any time to an agency specified in subsection (a)(3) or (4); and
- (4) an informal admonition was administered more than four years or private reprimand was administered more than six years before the request for access is made shall not be deemed relevant if no other grievances or complaints resulting in the imposition of discipline were filed against the respondent-attorney during such four or six year period, respectively.

§93.105. Protected information.

Enforcement Rule 402(e) provides that this subchapter shall not be construed to provide public access to:

- (1) the work product of the Board, Disciplinary Counsel, hearing committee members, or special masters;

- (2) deliberations of a hearing committee, special master, the Board or the Supreme Court; or
- (3) information subject to a protective order issued under § 93.106 (relating to protective orders).

§93.106. Protective orders.

(a) *General rule.* Enforcement Rule 402 (f) provides that the Board may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential, and the Board may direct that proceedings be conducted so as to implement the order, including requiring that a hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of a protective order.

(b) *Applications at conferences and hearings.* Upon application of any person during a conference or hearing under Chapter 89 Subchapter C (relating to hearing procedures) and for good cause shown, the senior or experienced hearing committee member conducting the conference or the hearing committee or special master conducting the hearing may issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential, and may direct that a hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the protective order. Upon the submission of an application for a protective order, the conference or hearing shall be recessed for the conduct of an in camera meeting of the parties with the hearing committee member, hearing committee or special master for consideration of the application. The ruling on the application for a protective order may be appealed to the Board. An appeal to the Board may stay the conduct of hearings in the matter at the discretion of the hearing committee.

Note: A party seeking a protective order is encouraged to apply for the order at the prehearing conference to allow time for a potential appeal to the Board.

§93.107. Broadcasting and other recording of proceedings.

Enforcement Rule 402(j) provides that this subchapter does not permit broadcasting, televising, recording or taking photographs during a proceeding under these rules, except that a hearing committee, a special master, the Board or the Supreme Court when conducting a proceeding may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration.

§93.108. Restoration of confidentiality.

Enforcement Rule 402(k) provides that if a formal proceeding results in the imposition of private discipline or dismissal of all the charges, the proceeding shall cease to be open to the public when the decision to impose private discipline or dismiss the charges becomes final, unless the respondent-attorney requests that the record of the proceeding remain open to the public.

Note: A Note to Enforcement Rule 402(k) explains that, although a formal proceeding that becomes open to the public under § 93.102 (access to disciplinary information and confidentiality) will subsequently be closed if it results in the imposition of private discipline or dismissal of all the charges, the closing of the proceeding cannot change the fact that the proceeding was open to the public for a period of time. Thus, this section makes clear that the respondent-attorney may request that the record of the proceeding remain open to demonstrate that the charges were dismissed or only private discipline was imposed.

Subchapter G.
FINANCIAL MATTERS

TAXATION OF COSTS

Sec.

93.111. Determination of reimbursable expenses.

93.112. Failure to pay taxed expenses.

EXPENSES GENERALLY

Sec.

- 93.121. Expenses.
- 93.122. Audit.
- 93.123. Fiscal year.

ANNUAL ASSESSMENT OF ATTORNEYS

- 93.141. Annual registration.
- 93.142. Filing of annual fee form by attorneys.
- 93.143. Issue of certificate as evidence of compliance.
- 93.144. Administrative suspension for failure to comply.
- 93.145. Reinstatement of administratively suspended attorneys.
- 93.146. Selection of retired or inactive status and resumption of active status.
- 93.147. Notification of suspension or inactivation.
- 93.148. Administrative Change in Status from Administrative Suspension to Inactive Status.
- 93.149 [Reserved]

TAXATION OF COSTS

§93.111. Determination of reimbursable expenses.

(a) *General rule.* Enforcement Rule 208(g)(2) provides that expenses taxable by the Board pursuant to §89.205(b) (relating to taxation of expenses) shall be prescribed by these rules. See also §89.209 (relating to expenses of formal proceedings) and §89.278 (relating to expenses of reinstatement proceedings).

(b) *Enumeration of expenses.* Taxable expenses under these rules shall include, but not be limited to, the following:

- (1) court reporter fees and transcript costs;
- (2) the fees and expenses of expert and other witnesses;
- (3) the cost of serving subpoenas, pleadings and briefs;
- (4) the charges by banks and other institutions for production of statements, checks and other records in response to subpoenas or otherwise;
- (5) the cost of reproducing documents introduced or offered as evidence at hearings; and
- (6) the cost of reproducing pleadings and briefs.
- (7) the cost of publishing notices in the legal journal and a newspaper of general circulation as required by Enforcement Rule 217(f) (relating to publication of a notice of suspension, disbarment, administrative suspension or transfer to inactive status) or § 89.274(b) (relating to publication of a notice of reinstatement hearing).

(c) *Administrative fee.* Enforcement Rule 208(g)(4) provides that the expenses taxable under § 89.205(b) (relating to informal admonition, private reprimand, or public reprimand following formal hearing) or § 89.209 (relating to expenses of formal proceedings) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an informal admonition; and that the administrative fee shall be \$250.

§93.112. Failure to pay taxed expenses.

(a) *Action by Board.* Enforcement Rule 219(g) and (l) provide that the Board shall:

(1) Transmit by certified mail, return receipt requested, to every attorney who fails to pay any taxed expenses under §89.205(b) (relating to taxation of expenses), or §89.209 (relating to expenses of formal proceedings), addressed to the last known address of the attorney, a notice stating:

(i) that unless the attorney shall pay all such expenses within 30 days after the date of the notice, such failure to pay will be deemed a request to be administratively suspended, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will enter an order administratively suspending the attorney; and

(ii) that upon entry of the order of administrative suspension, the attorney shall comply with Chapter 91 Subchapter E (relating to formerly admitted attorneys).

A copy of Enforcement Rule 217 (relating to formerly admitted attorneys) shall be enclosed with the notice.

(2) Certify to the Supreme Court the name of every attorney who has failed to respond to a notice issued pursuant to paragraph (a)(1) of this section within the 30 day period provided therein.

(b) *Action by Supreme Court.* Enforcement Rule 219(g) provides that upon certification to the Supreme Court of the name of any attorney pursuant to paragraph (a)(2) of this section, the Court shall enter an order administratively suspending the attorney; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

(c) *Reinstatement upon payment of taxed costs.* Enforcement Rule 219(m) provides that upon payment of all expenses taxed pursuant to §89.205(b) and §89.209 by a formerly admitted attorney on administrative suspension solely for failure to comply with paragraph (a)(1) of this section, the Board shall so certify to the Supreme Court; and that unless such person is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the Board with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.

EXPENSES GENERALLY

§93.121. Expenses.

(a) *General.* Enforcement Rule 401 provides that the salaries of the staff of the Office of the Secretary and of the Office of Disciplinary Counsel, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of §§ 93.141 - 93.148 (relating to annual registration of attorneys).

(b) *Special masters.* Enforcement Rule 205(c)(4) provides that the expenses and compensation of special masters shall be paid as a cost of disciplinary administration and enforcement. See § 93.141(a) (relating to annual registration).

§93.122. Audit.

Enforcement Rule 401 provides that the Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with the Supreme Court.

§93.123. Fiscal Year.

The fiscal year of the Board shall commence July 1 of each year.

ANNUAL REGISTRATION OF ATTORNEYS

§93.141. Annual registration.

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice law in this Commonwealth shall pay an annual fee of \$120.00 and electronically file the annual fee form provided for under such rule by July 1; that the fee shall be collected under the supervision of the Attorney Registration Office, which shall make, the annual fee form available for filing through a link on the Board's website (<http://www.padisciplinaryboard.org>) or directly at <https://ujportal.pacourts.us>. The fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine. Upon an attorney's written request submitted to the Attorney Registration Office and for good cause shown, the Attorney Registration Office shall grant an exemption from the electronic filing requirement and permit the attorney to file the annual fee form in paper form.

Note: Pa.R.P.C. 1.15(u) imposes an additional annual fee for use by the IOLTA Board, and Pa.R.D.E. 502(b) imposes an additional annual fee for use by the Pennsylvania Lawyers Fund for Client Security.

(b) *Inapplicable to justices and judges.* Enforcement Rule 219(b) provides that the following shall be exempt from the annual fee:

(1) Justices or judges serving in the following Pennsylvania courts of record shall be exempt for such time as they serve in office: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and justices or judges serving an appointment for life on any federal court;

(2) retired attorneys; and

(3) military attorneys holding a limited certificate of admission issued under Pa.B.A.R. 303 (relating to admission of military attorneys).

Note: The exemption created by subdivision (b)(1) does not include Philadelphia Traffic Court judges, Pittsburgh Municipal Court judges, magisterial district judges, arraignment court magistrates or administrative law judges.

§93.142. Filing of annual fee form by attorneys.

(a) *Transmission of form.* Enforcement Rule 219(c) provides that on or before May 15 of each year the Attorney Registration Office shall transmit to all attorneys required by the rule to pay an annual fee a notice by e-mail to register electronically by July 1. Failure to receive notice shall not excuse the filing of the annual fee form or payment of the annual fee.

(b) *Filing of annual fee form.* Enforcement Rule 219(d) provides that on or before July 1 of each year all attorneys required by the rule to pay an annual fee shall file electronically with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

(1) The form shall set forth:

(i) The date on which the attorney was admitted to practice, licensed as foreign legal consultant, granted limited admission as an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or issued a Limited In-House Corporate Counsel License, and a list of all courts (except courts of this Commonwealth) and jurisdictions in which the person has ever been licensed to practice law, with the current status thereof.

(ii) The current email, residence and office addresses of the attorney, the latter two of which shall be an actual street address or rural route box number. The Attorney Registration Office shall refuse to accept a form that sets forth only a post office box number for either required address. A preferred mailing address different from those addresses may also be provided on the form and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, as well as telephone and fax number will be accessible through the website of the Board (<http://www.padisciplinaryboard.org/>) and by written or oral request to the Board. Upon

an attorney's written request submitted to the Attorney Registration Office and for good cause shown, the contact information provided by the attorney will be nonpublic information and will not be published on the Board's website or otherwise disclosed.

Note: The Note to Enforcement Rule 219(d)(1)(ii) explains that public web docket sheets will show the attorney's address as entered on the court docket.

(iii) The name of each Financial Institution as defined in § 91.171 (Definitions), within or outside this Commonwealth in which the attorney, from May 1 of the previous year to the date of the filing of the annual fee form, held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the attorney held such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

For purposes of this subparagraph, the phrase "funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct" means funds that belong to a client or third person and that an attorney receives:

- (A) in connection with a client-lawyer relationship;
- (B) as an escrow agent, settlement agent, representative payee, personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar fiduciary position;
- (C) as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such;
- (D) in connection with nonlegal services that are not distinct from legal services;
- (E) in connection with nonlegal services that are distinct from legal services, and the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship; or
- (F) as an owner, controlling party, employee, agent, or as one who is otherwise affiliated with an entity providing nonlegal services and the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship.

Note: For purposes of subparagraph (iii), "funds of a third person" shall not include funds held in: 1) an attorney's personal account held jointly; or 2) a custodial account for a minor or dependent relative unless the source of any account funds is other than the attorney and his or her spouse.

If an attorney employed by a law firm receives fiduciary funds from or on behalf of a client and deposits or causes the funds to be deposited into a law firm account, the attorney must report the account of deposit under this subparagraph.

(iv) Every account not reported under subparagraph (iii), that held funds of a client or a third person, and over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account, during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution (whether or not the entity qualifies as a "Financial Institution" under RPC 1.15(a)(4)), location, and account number.

Note: Regarding "funds of a third person," see Note to §93.142(b)(1)(iii).

(v) Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

(vi) A certification reading as follows: "I certify that all Trust Accounts that I maintain are in financial institutions approved by the Supreme Court of Pennsylvania for the maintenance of such accounts pursuant to Pennsylvania Rule of Disciplinary Enforcement 221 (relating to mandatory overdraft notification) and that each Trust Account has been identified as such to the financial institution in which it is maintained."

(vii) A statement that any action brought against the attorney by the Pennsylvania Lawyers Fund for Client Security for the recovery of monies paid by the Fund as a result of claims against the attorney may be brought in the Court of Common Pleas of Allegheny, Dauphin or Philadelphia County.

(viii) Whether the attorney is covered by professional liability insurance on the date of registration in the minimum amounts required by Rule of Professional Conduct 1.4(c). Rule 1.4(c) does not apply to attorneys who do not have any private clients, such as attorneys in full-time government practice or employed as in-house corporate counsel.

Note: The Disciplinary Board will make the information regarding insurance available to the public upon written or oral request and on its website. The requirement of Rule 219(d)(3) that every attorney who has filed an annual fee form must give written notice to the Attorney Registration Office of any change in the information previously submitted within 30 days after such change will apply to the information regarding insurance.

(ix) Such other information as the Attorney Registration Office may from time to time direct.

(2) Payment of the annual fee shall be made in one of two ways: a) electronically by credit or debit card at the time of electronic transmission of the form through the online system of the Attorney Registration Office, which payment shall include a nominal fee to process the electronic payment; or b) by check or money order drawn on a U.S. bank, in U.S. dollars using a printable, mail-in voucher. IOLTA, trust, escrow and other fiduciary account checks tendered in payment of the annual fee will not be accepted. If the annual fee form, voucher or payment is incomplete or if a check in payment of the annual fee has been returned to the Board unpaid, the annual fee shall not be deemed to have been paid until a collection fee shall also have been paid. The amount of the collection fee, and one or both of the late payment penalties prescribed in § 93.144(a)(1) and (2) of these rules if assessed, shall be established by the Board annually after giving due regard to the direct and indirect costs incurred by the Board during the preceding year for checks returned to the Board unpaid. On or before July 1 of each year the Office of the Secretary shall publish in the *Pennsylvania Bulletin* a notice of the collection fee established by the Board for the coming registration year.

(3) Every attorney who has filed the form shall notify the Attorney Registration Office in writing of any change in the information previously submitted, including e-mail address, within 30 days after such change, which notice shall be sent by mail or facsimile transmission, provided, however, that any change in the information required by Enforcement Rule 219(d)(1)(iii), (iv) and (v) (collectively relating to financial account information) that occurs after the filing of the form required by Enforcement Rule 219(a) and (d)(1) need only be reported on the next regular annual fee form due July 1. Failure to timely register and file the next annual fee form shall not excuse the requirement of reporting changes in financial account information on an annual basis on or before July 1, and failure to make such a report shall constitute a violation of Enforcement Rule 219.

(4) Upon original admission to the bar of this Commonwealth, licensure as a Foreign Legal Consultant, issuance of a Limited In-House Corporate Counsel License, or limited admission as an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, a person shall concurrently file a form under this section for the current registration year, but no annual fee shall be payable for the registration year in which originally admitted or licensed.

(5) Submission of the annual fee form through electronic means signifies the attorney's intent to sign the form. By submitting the form electronically, the attorney certifies that the electronic filing is true and correct.

§93.143. Issue of certificate as evidence of compliance.

Enforcement Rule 219(e) provides that upon receipt of a form, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of §93.142 (relating to filing of annual form by attorneys), and of payment of any required annual fee to practice law in this Commonwealth, receipt thereof shall be acknowledged on a certificate or license.

§93.144. Administrative suspension for failure to comply.

(a) *Action by Attorney Registration Office.* Enforcement Rule 219(f) provides that when any attorney fails to complete the registration required by §§ 93.141 and 93.142 by July 31, the Attorney Registration Office shall:

- (1) automatically assess against the attorney a non-waivable late payment penalty established by the Board;
- (2) automatically add to the delinquent account of any attorney who has failed to complete registration by August 31, a second, non-waivable late payment penalty established by the Board;
- (3) after August 31, certify to the Supreme Court the name of every attorney who has failed to comply with the registration and payment requirements of §§ 93.141 and 93.142 of these rules; and
- (4) upon the Supreme Court's entry of an order of administrative suspension as provided in subsection (b) of this rule, transmit by certified mail, addressed to the last known mailing address of the attorney, or by electronic means, the order of administrative suspension and a notice that the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be included with the notice.

For purposes of assessing the late payment penalties prescribed by this section, registration shall not be deemed to be complete until the Attorney Registration Office receives a completed annual fee form and satisfactory payment of the annual fee and of all outstanding collection fees and late payment penalties. If a check in payment of the delinquency has been returned to the Board unpaid, a collection fee, as established by the Board under § 93.142(b)(2) of these rules, shall be added to the attorney's delinquent account and registration shall not be deemed to be complete until the delinquent account has been paid in full.

The amount of the late payment penalties shall be established by the Board annually pursuant to the provisions of §93.145(b) of these rules.

(b) *Action by the Supreme Court.* Enforcement Rule 219(g) provides that upon receipt of certification of the name of any attorney pursuant to paragraph (a)(3) of this section, the Supreme Court shall enter an order administratively suspending the attorney; and that the Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

§93.145. Reinstatement of administratively suspended attorneys.

(a) *General rule.* An attorney who has been administratively suspended pursuant to §93.144(b) of these rules for three years or less is not eligible to file the annual fee form electronically. Enforcement Rule 219(h) provides that the procedure for reinstatement is as follows:

- (1) The formerly admitted attorney shall submit to the Attorney Registration Office the form required by §93.142(b) along with payment of:
 - (i) the current annual fee;
 - (ii) the annual fee that was due in the year in which the attorney was administratively suspended;
 - (iii) the late payment penalties required by subsection (b) of this section;
 - (iv) any unpaid collection fee; and

(v) a reinstatement fee of \$300.00.

(2) Upon receipt of the annual fee form, a verified statement showing compliance with Enforcement Rule 217 (relating to formerly admitted attorneys), and the payments required by paragraph (a)(1) of this section, the Attorney Registration Office shall so certify to the Office of the Secretary and to the Supreme Court; and that unless the formerly admitted attorney is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the Attorney Registration Office with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.

(3) Where a check in payment of the fees and late payment penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2) of these rules, shall also have been paid.

(b) *Late payment penalties.* Enforcement Rule 219(h)(3) provides that a formerly admitted attorney who is administratively suspended must pay the late payment penalties incurred in the year in which the formerly admitted attorney is transferred to administrative suspension. The amount of the late payment penalties shall be established by the Board annually after giving due regard to such factors as it considers relevant, including the direct and indirect costs incurred by the Board during the preceding year in processing the records of attorneys who fail to timely file the form required by § 93.142(b). On or before July 1 of each year the Office of the Secretary shall publish in the *Pennsylvania Bulletin* a notice of the late payment penalty established by the Board for the coming registration year.

§93.146. Selection of retired or inactive status and resumption of active status.

(a) *Retired Status.* Enforcement Rule 219(i) provides that:

(1) an attorney who has retired must file by mail or deliver in person to the Attorney Registration Office Form DB-27 (Application for Retirement) and payment of any applicable late fees or penalties pursuant to Enforcement Rule 219(f).

(2) Upon the transmission of the application from the Attorney Registration Office to the Supreme Court, the Court shall enter an order transferring the attorney to retired status, and the attorney shall no longer be eligible to practice law.

(3) The retired attorney will be relieved from payment of the annual fee specified in §93.141 (relating to annual registration).

(4) Chapter 91 Subchapter E (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Supreme Court in connection with the entry of an order of suspension or disbarment under another provision of the Enforcement Rules.

(5) An attorney on retired status for three years or less may be reinstated in the same manner as an inactive attorney, by filing a Form DB-29 (Application for Resumption of Active Status), except that the retired attorney shall pay the annual active fee for the three most recent years or such shorter period in which the attorney was on retired status instead of the amounts required to be paid by an inactive attorney seeking reinstatement.

(6) The Chief Justice may delegate the processing and entry of orders under this subsection to the Prothonotary.

(b) *Inactive Status.* Enforcement Rule 219(j) provides that:

(1) An attorney who is not engaged in practice in Pennsylvania, has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or is not required by virtue of his or her practice elsewhere to maintain active licensure in the Commonwealth may request voluntary inactive status or continue that status once assumed. The attorney shall file either the annual form required by § 93.142(b) and request inactive status or file Form DB-28 (Notice of Voluntary Assumption of Inactive Status). The attorney shall be removed from the roll of those classified as active until and unless such inactive attorney makes a request under paragraph (3) of this section for an administrative return to active status and satisfies

all conditions precedent to the grant of such request; or files a petition for reinstatement under § 89.273(b) (relating to procedure for reinstatement of an attorney who has been on inactive status for more than three years, or who is on inactive status and had not been on active status at any time within the prior three years) and is granted reinstatement pursuant to the provisions of § 89.273(b) of these rules.

(2) An inactive attorney under this subsection (b) shall continue to file the annual form required by § 93.142(b), and shall file the form through the online system identified in §93.141(a) and shall pay an annual fee of \$100.00 in the manner provided in §93.142(b)(2). Noncompliance with this provision will result in the inactive attorney incurring late payment penalties, incurring a collection fee for any check in payment that has been returned to the Board unpaid, and being placed on administrative suspension in accordance with the provisions of § 93.144.

(3) Administrative Change in Status from Inactive Status to Active Status: An attorney on inactive status may request a resumption of active status by filing Form DB-29 (Application for Resumption of Active Status) with the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office. Resumption of active status shall be granted unless the inactive attorney is subject to an outstanding order of suspension or disbarment, unless the inactive attorney has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct (see § 89.273(b)), unless the inactive status has been in effect for more than three years, or unless the inactive attorney had not been on active status at any time within the preceding three years (see § 89.273(b)), upon the payment of:

- (i) the active fee for the registration year in which the application for resumption of active status is made or the difference between the active fee and the inactive fee that has been paid for that year; and
- (ii) any collection fee or late payment penalty that may have been assessed pursuant to § 93.144 of these rules, prior to the inactive attorney's request for resumption of active status.

Where a check in payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to inactive status, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2), shall also have been paid.

Note: The Note to Enforcement Rule 219(j) explains that § 93.145 (relating to reinstatement of administratively suspended attorneys) and § 93.146 (relating to resumption of active status by retired or inactive attorneys) do not apply if, on the date of the filing of the request for reinstatement, the formerly admitted attorney has not been on active status at any time within the preceding three years. See § 89.273(e)(1).

§93.147. Notification of suspension or inactivation.

Where administrative suspension is ordered under this Subchapter, the attorney shall comply with the requirements of Chapter 91 Subchapter E (relating to formerly admitted attorneys). Public notice of such administrative suspension shall clearly state that suspension was ordered for failure to file the required annual form and pay the required annual assessment, or for failure to comply with § 93.112 (relating to failure to pay taxed expenses)..

§93.148. Administrative Change in Status from Administrative Suspension to Inactive Status.

(a) Enforcement Rule 219(k) provides that an inactive attorney who has been administratively suspended for failure to file the annual form and pay the annual fee required by § 93.146(b)(2) of these rules, may request an administrative change in status form from the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office and said Office shall change the status of an attorney eligible for inactive status under this subsection (a) upon receipt of:

- (1) the annual form required by § 93.142 of these rules;
- (2) payment of the annual fee required by § 93.141 of these rules;

(3) payment of all collection fees and late payment penalties assessed under §93.142(b)(2) and § 93.144 of these rules; and

(4) payment of an administrative processing fee of \$100.00.

Where a check in payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2), shall also have been paid.

(b) Enforcement Rule 219(k) provides that an active attorney who has been administratively suspended for failure to file the annual form required by §93.142 and pay the annual fee required by §93.141 must comply with § 93.145 (relating to reinstatement of administratively suspended attorneys) before becoming eligible to register as inactive or retired.

§93.149. Former or retired justice or judge and resumption of active status.

(a) Rule 219(n) provides that a former or retired justice or judge who is not the subject of an outstanding order of discipline affecting his or her right to practice law and who wishes to resume the practice of law shall file with the Attorney Registration Office a notice in writing. The notice shall:

(1) describe:

(i) any discipline imposed within six years before the date of the notice upon the justice or judge by the Court of Judicial Discipline;

(ii) any proceeding before the Judicial Conduct Board or the Court of Judicial Discipline settled within six years before the date of the notice on the condition that the justice or judge resign from judicial office or enter a rehabilitation program; and

(2) include a waiver available through the Attorney Registration Office and signed by the justice or judge, if the notice discloses a proceeding described in subsection (1), of the confidentiality of the record in that proceeding for the limited purpose of making the record available to the Board in any subsequent proceeding under these rules.

An annual fee form will be provided by the Attorney Registration Office. The form must be filed by mail or delivered in person to said Office and be accompanied by payment of the full annual fee for the assessment year in which the notice is filed.

CHAPTER 95 STATEMENTS OF POLICY

Sec.

95.1 Effect of chapter.

95.2 Investigation of the conversion of funds.

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

§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).

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).

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.

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

It is the practice of the Office of the Secretary 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 Office of the Secretary will mail to the formerly admitted attorney a reminder of the obligation under § 91.96 to file the statement. Failure by the Office of the Secretary 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 Office of the Secretary 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.