

**ENFORCEMENT RULES & DISCIPLINARY BOARD RULES
RELATING TO REINSTATEMENT**

PENNSYLVANIA RULE OF DISCIPLINARY ENFORCEMENT
(Contains Amendments which became Effective October 4, 2003)

Rule 218. Reinstatement.

(a) No attorney suspended for a period exceeding one year, transferred to inactive status more than three years prior to resumption of practice or 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 disbarred, may resume practice until reinstated by order of the Supreme Court after petition therefor pursuant to these rules.

(b) 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 Rule 216 (relating to reciprocal discipline) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

(c)(1) Petitions for reinstatement by formerly admitted attorneys shall be filed with the Board.

(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 in the disciplinary district in which the formerly admitted attorney maintained an office at the time of the disbarment, suspension or transfer to inactive status. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

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:

(i) 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.

(ii) A formerly admitted attorney who has been on inactive status 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) At the 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 and the entire record, with 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 respondent-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. Within 20 days after service of the rule, respondent-attorney, as well as Disciplinary Counsel, may submit to the Supreme Court a response thereto. Unless otherwise ordered, matters arising under this rule will be considered without oral argument.

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

(e) 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 respondent-attorney.

(f)(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 Enforcement Rule 217 (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 subdivision 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 for more than three years;
or

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

(g) Attorneys who have been on inactive status for three years or less may be reinstated pursuant to Enforcement Rule 219(h) or (j) (relating to periodic assessment of attorneys) as appropriate. This subdivision (g) does not apply to an attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.

(h) The Board may cause a notice of the reinstatement to be published in one or more appropriate legal journals and newspapers of general circulation.

(i) 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 under Enforcement Rule 219(h) or (1); or
- (2) any other order of reinstatement entered under these rules.

(j) If Disciplinary Counsel shall have probable cause to believe that any formerly admitted attorney:

(1) has failed to comply with this rule or Rule 217 (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.

DISCIPLINARY BOARD RULES AND PROCEDURES
(Contains Amendments which became Effective February 22, 2003)

Subchapter F.
REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

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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 no attorney suspended for a period exceeding one year, transferred to inactive status more than three years prior to resumption of practice or 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 disbarred may resume practice until reinstated by order of the Supreme Court after petition therefor pursuant to the Enforcement Rules.

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. 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) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

(b) 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).

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

(1) Petitions for reinstatement by formerly admitted attorneys 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 respondent-attorney).

(2) Upon receipt of the petition the Board shall refer the petition to a hearing committee in the disciplinary district in which the respondent-attorney maintained an office at the time of the disbarment, suspension or transfer to inactive status. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the petition for reinstatement.

(3) The hearing committee shall promptly schedule a hearing at which:

(i) 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.

(ii) A formerly admitted attorney who has been on inactive status 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.

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, unless the chairman 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 respondent-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, respondent-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.

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

(b) Attorneys suspended for less than one year. Enforcement Rule 218(f) 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 of 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 for more than three years; or

(iii) 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).

(c) Attorneys on inactive status for less than three years. Enforcement Rule 218(g) provides that attorneys who have been on inactive status for three years or less may be reinstated pursuant to §93.145 (relating to reinstatement) or §93.146(b) (relating to reactivation) as appropriate. This subsection (c) does not apply to any 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 president 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, suspended or transferred to inactive status. 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 respondent-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 respondent-attorney.
- (2) Name, address, age, residence, number and relationship of dependents of the respondent-attorney.
- (3) If the formerly admitted attorney was disbarred or suspended, 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, suspension or transfer to inactive status 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, or the local grievance committee, committee of censors or other similar body existing prior to the establishment 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 respondent-attorney during the period of disbarment, suspension or inactive status, with names of all partners, associates in business, and employers, if any, and dates and duration of all such relationship and employments.
- (6) A statement showing the approximate monthly earnings and other income of the respondent-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 respondent- 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 respondent- 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 or inactive status wherein the respondent-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 respondent-attorney during the period of disbarment, suspension 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 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 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 respondent-attorney during the period of disbarment, suspension 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 respondent-attorney in the nature of restitution or other appropriate relief.

(15)If the respondent-attorney has been disbarred or suspended for more than one year or has been on 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).

Note: For purposes of allowing the Office of Disciplinary Counsel to begin its investigation of the petition for reinstatement, the Office of the Secretary will accept a preliminary questionnaire that lists courses or lectures that the respondent-attorney is registered to take in the future if proof of that registration, such as receipted bills or canceled checks, is attached to the questionnaire. The questionnaire, however, will not be considered completed and properly filed for purposes of commencing the running of the time periods in § 89.273 (relating to procedures for reinstatement) until the respondent-attorney has actually attended those courses or lectures.

(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 before hearing committees and 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 inactive status and who have never been suspended or disbarred.

(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 committee may submit to the Board a summary determination of the committee.

(c) Procedures.

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

(2) The hearing committee shall immediately reconvene the proceedings and deliver to the participants Form DB-46 (Hearing Committee Determination Under Abbreviated Reinstatement Procedure) setting forth in summary the findings and recommendations 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.

(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 indicated thereon.

(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 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 and the official reporter shall not prepare a transcript. 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 formerly admitted attorney and staff counsel copies of the brief summary of the case filed by the hearing committee.

(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 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(e) 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 respondent-attorney.

§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 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 (and prior to hearing on the petition, complete) 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 or disbarment or assumption of inactive status and within one year preceding the filing of the petition for reinstatement (and prior to hearing on the petition), 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 Chairman 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 inactive status for more than three years.

(c) Publication of schedule. At least annually 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(h) 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(i) 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 (relating to reinstatement) or §93.112(c) (relating to reinstatement upon payment of taxed costs); or

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