

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA
[204 PA. CODE]

Amendments to the Pennsylvania Rules
of Disciplinary Enforcement Relating to
Attorneys Convicted of Crimes

Notice of Proposed Rulemaking

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A.

Rule 214 establishes the disciplinary procedure when an attorney has been convicted of a crime. Under Pennsylvania law, a “conviction” does not occur until sentencing. ***Commonwealth ex rel. McClenachan v. Reading***, 336 Pa. 165, 168-169, 6 A.2d 776, 778 (1939). The addition of subsection (j) to Rule 214 redefines the term “conviction” to mean any guilty verdict after trial by judge or jury, or any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

The effect of proposed subsection (j) is to accelerate the point in time at which the Office of Disciplinary Counsel may initiate disciplinary proceedings under Rule 214 in those instances where there has been a determination of criminal liability but the criminal court has not yet imposed the sentence. This procedural effect applies with equal force to a “serious crime,” as defined by subsection (i), and to a crime other than a serious crime, which is controlled by subsection (g).

The Board has determined that there is no legal reason to wait until the criminal court imposes sentence before initiating an attorney disciplinary proceeding. In the case of a guilty plea, the plea is an acknowledgement by the defendant-attorney that he participated in the commission of certain acts with a criminal intent, ***Commonwealth v. Anthony***, 504 Pa. 551, 558, 475 A.2d 1303, 1307 (1984), and entry of the plea constitutes a waiver of all defects and defenses except lack of jurisdiction, invalidity of the plea, and illegality of the sentence. ***Commonwealth v. Tareila***, 895 A.2d 1266, 1267 (Pa. Super. 2006). A plea of *nolo contendere* is treated the same as a guilty plea, ***Commonwealth v. Hayes***, 245 Pa. Super. 521, 523, 369 A.2d 750, 751 (1976), and their effect is equivalent, ***Commonwealth v. Warner***, 228 Pa. Super. 31, 32, 324 A.2d 362, 363 (1974), in that the defendant-attorney does not expressly admit his guilt but authorizes the court for purposes of the case to treat him as if he were guilty. ***North Carolina v. Alford***, 400 U.S. 25, 36 (1970). At the point at which a defendant-attorney is found guilty after trial by judge or jury, the criminal court has already afforded the defendant-attorney his due process right to a hearing in the form of a trial at which the government’s burden of proof is beyond a reasonable doubt. The defendant-attorney has also had an opportunity to present a defense to the criminal charges.

Proposed subsection (j) does not affect the procedural due process protections that are currently contained in Rule 214. Upon receipt of notice that an attorney has been convicted of a crime, Disciplinary Counsel continues to be charged with the duty under subsection (c) of securing and filing a certificate of the conviction with the Supreme Court. If the conviction is for a “serious crime” as defined in subsection (i), the Supreme Court continues to have the discretion under subsection (d)(1) to enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension. If the Supreme Court enters an order placing the respondent-attorney on temporary suspension prior to the criminal sentencing, and thereafter the criminal trial court, either prior to or at sentencing, grants some form of relief that provides a basis for reconsideration of the Supreme Court’s order to temporarily suspend, the respondent-attorney continues to have the right under subsection (d)(4) to petition the Supreme Court for dissolution or amendment of the order of temporary suspension. If the criminal trial court enters an order reversing the conviction, subsection (h) gives the Supreme Court the discretion to immediately reinstate the respondent-attorney.

Unless a respondent-attorney who has been temporarily suspended pursuant to the rule requests an accelerated disposition of the charges under subsection (f)(2), the amendment to subsection (f)(1) clarifies that Disciplinary Counsel will not file a petition for discipline or proceed to a hearing before a hearing committee *prior* to sentencing. If the respondent-attorney files a post-sentence appeal, Disciplinary Counsel will not proceed to a hearing until all direct appeals from the conviction are concluded, as required by subsection (f)(1) and consistent with current practice.

As a corollary to the acceleration effect of proposed subsection (j), the Pennsylvania Supreme Court will not have to wait until sentencing to temporarily suspend an attorney who has engaged in egregious criminal conduct. Thus, the new rule recognizes that some crimes are so offensive to the public and contrary to the ethical principles of the profession that swift action to suspend the attorney’s law license is necessary if for no reason other than to preserve the integrity and standing of the Court and the profession. In some instances, the nature of the crime will be such that prompt action to temporarily suspend the attorney is necessary to protect the public, including the attorney’s clients. In other instances, the attorney may already be incarcerated at the time of the guilty plea or guilty verdict, or have his or her bail revoked pending sentencing. An attorney who remains free on bail at the time of the guilty plea or guilty verdict may have already begun to wind up his or her law practice in anticipation of a term of incarceration or temporary suspension following sentencing. For reasons beyond the disciplinary system’s control, a sentencing proceeding may be postponed or delayed for months or longer after the attorney has admitted to or been found guilty of a serious crime.

Finally, the proposed amendment to subsection (a) changes the point in time at which an attorney must make a report to the Secretary of the Board. Under the new rule, an attorney will be required to report within twenty days of the attorney’s guilty or no contest plea, or verdict of guilt by judge or jury.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625 on or before April 1, 2010.

By The Disciplinary Board of the
Supreme Court of Pennsylvania

Elaine M. Bixler
Secretary of the Board

Note: Material to be added is bolded and underlined.
Material to be deleted is bolded and bracketed.

Rule 214. **Attorneys convicted of crimes.**

(a) An attorney convicted of a serious crime shall report the fact of such conviction **within 20 days** to the Secretary of the Board [**within 20 days after the date of sentencing**]. 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 subdivision (b).

(b) 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.

(c) Upon being advised that an attorney has been convicted of a crime within this Commonwealth, Disciplinary Counsel shall secure and file a certificate in accordance with the provisions of subdivision (b). If the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such conviction.

(d) (1) Upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a serious 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.

(2) If a rule to show cause has been issued under paragraph (1), 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.

(3) Any order of temporary suspension issued under this rule 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 or existing matters during the 30 days following entry of the order of temporary suspension.

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board. 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. 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. 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.

Note: The subject of the summary proceedings authorized by subdivision (d) is limited to whether the conditions triggering the application of subdivision (d) exist, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged and that the offense is a serious crime, and will not include such subjects as mitigating or aggravating circumstances. The provision of subdivision (d)(3) 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.

(5) 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.

(e) 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.

(f) (1) Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of subdivision (d), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until **sentencing and** all appeals from the conviction are concluded.

(2) Notwithstanding the provision of paragraph (1) that a hearing shall not be held until all appeals from a conviction have been concluded, a respondent-attorney who has been temporarily suspended pursuant to this rule 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. 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. The assignment to a hearing committee shall take place within seven (7) days after the filing of such

a notice or the filing of a petition for discipline, whichever occurs later. Thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay. If a petition for discipline is not timely filed or assigned to a hearing committee for accelerated disposition under this paragraph, the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this rule.

Note: The "without appreciable delay" standard of subdivision (f)(2) of the rule is derived from *Barry v. Barchi*, 443 U.S. 55, 66 (1979). Appropriate steps should 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.

(g) Upon receipt of a certificate of conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted. The Court may in its discretion take no action with respect to convictions for minor offenses.

Note: The actions the Court may take under subdivision (g) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.

(h) An attorney suspended under the provisions of subdivision (d) may be reinstated immediately upon the filing by the Board with the Court of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney.

(i) As used in this rule, the term "serious crime" means a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction.

(j) For the purposes of this rule and Rule 203(b)(1), "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.