

PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Rule 102. Definitions.

“Formal proceedings.” Proceedings that commence with the filing of a petition for discipline. A formal proceeding does not include any of the submissions or documents generated during an informal proceeding unless they are made part of the record at the formal proceeding by motion, by stipulation, or by admission as an exhibit during a hearing. Pursuant to Enforcement Rule 402(a), formal proceedings are open to the public, except as provided in Enforcement Rules 402(b) and 402(k).

“Informal proceedings.” Proceedings that commence with the submission of a complaint to the Office of Disciplinary Counsel or an investigation initiated by the Office of Disciplinary Counsel. An informal proceeding includes all proceedings up to the filing of a petition for discipline. Informal proceedings are not open to the public.

Rule 209. Complaints and Immunity.

(a) Complaints submitted to the Board or Disciplinary Counsel shall be confidential [unless the matter results in the filing of formal charges]. See [Rule 402(a)] **Rule 402(e)** (relating to access to disciplinary information and confidentiality). **Unless and until formal charges are filed and the complainant is designated as a witness at the prehearing conference, or Disciplinary Counsel determines that the complaint contains exculpatory material, the complaint shall not be provided to the respondent-attorney. At or after the prehearing conference, the senior or experienced hearing committee member or the special master may enter a protective order on cause shown to prohibit disclosure of the complaint or parts of it to the public.**

(b) 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. 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. For purposes of this subdivision **[(a)] (b)**, the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules or the rules of the Board.

[(b)] (c) Complaints against members of the Board involving alleged violations of the Disciplinary Rules or these rules shall be handled in the same manner as other complaints, except that if action is required by the Board, the Board 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.

[(c)] (d) Complaints against Disciplinary Counsel involving alleged violations of the Disciplinary Rules or these rules shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition.

Note: The provisions of **[subdivision (a) of the] 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 of Pennsylvania. The immunity from civil suit recognized to exist in **[subsection (a)] subdivision (b)** 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.

Rule 215. **Discipline on Consent.**

(c) Confidentiality of resignation statement. – The fact that the attorney has submitted a resignation statement to Disciplinary Counsel or 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 Board. The order disbaring the attorney on consent shall be a matter of public record. If the statement required under the provisions of subdivision (a) of this rule 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:

(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] a criminal proceeding**).

Rule 402. **Access to Disciplinary Information and Confidentiality.**

(c) Until the proceedings are open under subdivision (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

(3) **[the proceeding is based on] an order of temporary suspension from the practice of law is entered by the Court pursuant to Enforcement Rule [208(f)(1)] 208(f) (relating to emergency temporary suspension orders and related relief) or Enforcement Rule 214(d) (relating to temporary suspension based on a criminal proceeding), in which case the proceedings and filings related to the petition, the order, and any petition to dissolve, amend or modify shall be public;**

(d) This rule shall not be construed to:

(4) Prevent Disciplinary Counsel or the Board from notifying the complainant of the disposition of a complaint, including the type of discipline imposed and any condition attached to the discipline.

(5) Prevent the Board from exercising its discretion to provide public access to a complaint or portions thereof, as the interests of justice may require. The affected parties shall be notified in advance of the intent to disclose otherwise confidential material.

(6) Prevent Disciplinary Counsel from making an informal referral of an attorney to Lawyers Concerned for Lawyers of Pennsylvania, Inc. (LCL-PA), if Disciplinary Counsel believes that the attorney may benefit from the services of LCL-PA. Disciplinary Counsel may share with LCL-PA information deemed confidential under these Enforcement Rules as part of the referral. LCL-PA shall not report information about the subject attorney to Disciplinary Counsel or to any staff of the Office of Disciplinary Counsel. The fact that a referral was made and its outcome shall not be relevant for any purpose and may not be considered or disclosed by Disciplinary Counsel in any proceeding under these Rules.

Note: Subdivision (d)(6) is intended to facilitate mental health and substance use referrals to Pennsylvania's approved lawyers' assistance program while preserving the confidentiality that is

essential to that program's success. See Pennsylvania Rules of Professional Conduct, Rule 8.3(c) and Comment [7].

- (e) Subdivision (a) 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 Court; **[or]**
 - (3) information subject to a protective order issued by the Board under subdivision (f); **or**
 - (4) a complaint submitted to the Board or Disciplinary Counsel.**

Note: Under subdivision (a), a petition for discipline is part of a formal proceeding; therefore, the petition is open to the public and part of the public record. See Enforcement Rule 102(a) (definition of "Formal Proceedings"); Enforcement Rule 208(b)(1) (formal proceedings instituted by filing a petition for discipline). However, the proceeding and the petition do not become open to the public until an answer is filed or the time to file an answer expires without an answer being filed.

[Paragraph] Subdivision (d)(2) is based on 18 Pa. C.S. 5108 (relating to compounding). Otherwise Disciplinary Counsel may be in the anomalous position of violating Rule 8.4 of the Pennsylvania Rules of Professional Conduct.

Although subdivision (k) provides that a formal proceeding that becomes open to the public under subdivision (a) 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, subdivision (k) 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.