

## PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

### Rule 213. Subpoena power, depositions and related matters.

#### (a) General rule.

(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. The respondent-attorney shall have the right, upon request and payment of appropriate duplicating costs, to receive copies of the records produced.

(b) Procedure. Subpoenas authorized by subdivision (a) shall be obtained by filing with the Court Prothonotary in the district of the Supreme Court where the subpoena is to be returnable a statement calling for the issuance of the subpoena **and presenting a completed subpoena**. On the same day that the statement is filed with the Court Prothonotary, the party seeking the subpoena shall send by certified mail a copy of the statement to either Disciplinary Counsel or the respondent-attorney as the case may be. Upon the filing of the statement **and the presentation of the completed subpoena**, the Court Prothonotary shall forthwith **sign and** issue the subpoena and it shall be served in the regular way. A subpoena issued pursuant to subdivision (a)(2) shall not be returnable until at least ten days after the date of its issuance.

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### Rule 301. Proceedings where an attorney is declared to be incapacitated or severely mentally disabled.

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(e) 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 makes it impossible for the respondent to prepare an adequate defense, the respondent shall complete and file with the **[Court] Board Prothonotary** a certificate of admission of disability. The respondent shall serve a copy of the certificate on **[the Board and]** Disciplinary Counsel. 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.

**The Board shall promptly file the certificate with the Court. [Upon receipt of the certificate, t]** The Court thereupon shall enter an order immediately transferring the respondent to disability inactive status until a determination is made of the respondent's capacity 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 subdivision (d) of this rule unless the Court finds that the certificate does not comply with the requirements of this subdivision, 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 disability inactive status under this subdivision, 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 this subdivision 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.

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