

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [ 204 PA. CODE CH. 83 ]

#### Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Administrative Suspension, Attorneys Convicted of Crimes, Reinstatement and Reciprocal Discipline

##### Notice of Proposed Rulemaking

Notice is 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.

One change being proposed reflects the desire of the Disciplinary Board to create a new attorney registration status that distinguishes between attorneys who comply with the Pennsylvania Rules of Disciplinary Enforcement and Pennsylvania Rules for Continuing Legal Education, and those who do not. Other changes to the Enforcement Rules reflect the experience during the past several years of the Office of Disciplinary Counsel and the Disciplinary Board with conviction matters under existing Rule 214, reinstatement matters under existing Rule 218, and reciprocal discipline matters under existing Rule 216. The significant changes are summarized and explained as follows

##### *Administrative Suspension*

New Rule 219 creates the new attorney registration status of "administrative suspension," which is defined in an added definition to Rule 102(a) to include any attorney who fails to pay the annual attorney registration fee, meet Continuing Legal Education requirements, pay the expenses of a disciplinary proceeding, or meet the requirements of limited licensure. Thus, the new rule distinguishes between those attorneys who lose eligibility to practice as a result of administrative action and the entry of a Supreme Court order, and those attorneys who voluntarily register as inactive as permitted under the current Rule.

Attorneys who voluntarily assume inactive status intend to, and almost universally do, disengage from the practice of law, whereas the great majority of complaints of unauthorized practice involve attorneys who are disbarred, suspended or transferred to inactive status by court order. Assigning the new status of "administratively suspended" to attorneys currently transferred to inactive status by court order will provide greater and unequivocal notice to the public, the courts and the profession of an attorney's ineligibility to practice law.

New Rule 219 continues the option of voluntary inactive status. Under new subsection (j), an attorney who desires to maintain inactive status must file an attorney registration statement and pay a fee on an annual basis. The annual assessment is consistent with the procedure in 40 other states that recognize that costs are incurred in maintaining rosters of attorneys who are admitted to

practice, who decide not to renew their licenses, and who want to maintain the option of returning to practice. An attorney on voluntary inactive status who fails to comply with the new requirements will be transferred to administrative suspension.

New subsection (k) of Rule 219 implements a procedure that will allow those attorneys who are currently on inactive status by court order to avoid being transferred to administrative suspension. Under that subsection, an attorney will have one year, commencing on July 1 of the year in which the next annual registration statement is due, to petition for reinstatement under Rule 218 or otherwise meet the requirements for transfer to active status. Attorneys who do not achieve active status during the grace period will be transferred to administrative suspension. Attorneys who do achieve active status will have the option of transferring to voluntary inactive status.

Under new Rule 217, the requirements and practice restrictions that currently apply to inactive, suspended and disbarred attorneys are extended to administratively suspended attorneys. An amendment to Rule 102(a) adds "administratively suspended attorney" to the definition of "Formerly admitted attorney."

##### *Attorneys Convicted of Crimes*

Under current Rule 214, disciplinary counsel must report all criminal convictions to the Supreme Court. In many cases, disciplinary counsel requests that the Court enter a rule directing the respondent-attorney to show cause why he or she should not be placed on temporary suspension pending a determination of final discipline after the institution of formal proceedings under Rule 208(b). This procedure will remain the same with some exceptions designed to decrease the amount of time from conviction to discipline, and to streamline the current procedure.

New Rule 214(c)(1)(i) allows disciplinary counsel to proceed with the filing of a petition for discipline prior to the Supreme Court's ruling on a request by disciplinary counsel for an order of temporary suspension.

New Rule 214(c)(1)(ii) allows disciplinary counsel to file a petition for discipline without referring the matter to the Supreme Court. Experience has shown that a first offense for certain types of crimes does not result in temporary suspension and typically results in private discipline. Since each matter must be evaluated on a case-by-case basis, new Rule 214(c)(2) identifies criteria to be considered by disciplinary counsel in determining whether to seek the respondent-attorney's temporary suspension.

Under certain circumstances, a minor offense or one that does not relate to the practice of law may not be an appropriate basis for professional discipline. Subsection (c)(1)(iii) of new Rule 214 allows disciplinary counsel to recommend to the Board Chairperson Vice-Chairperson that no formal action be taken, with respect to conditions for minor offenses.

New Rule 214 mandates that in all conviction matters except those minor matters in which the Board Chairperson or Vice-Chairperson approves a recommendation that no formal action be taken, disciplinary counsel will file a petition for discipline and proceed with formal proceedings unless the respondent-attorney resigns from the bar under current Rule 215(a) or agrees to consent discipline

under current Rule 215(d). The new rule ensures that all conviction matters will be subject to review at either the Disciplinary Board or Supreme Court level.

*Reinstatement*

Under current Rule 218(a), no attorney transferred to inactive status for more than 3 years may resume practice until reinstated by Supreme Court Order after petition pursuant to Rule 218. New Rule 218(a)(2) extends that requirement to an attorney on administrative suspension for more than 3 years.

Other proposed changes to Rule 218 will expedite the processing of petitions for reinstatement from inactive status and administrative suspension, and eliminate the expense and inconvenience to out-of-state petitioner-attorneys who return to Pennsylvania for a hearing that routinely proceeds under the abbreviated procedure of D.Bd. Rules § 89.181. If disciplinary counsel has completed the background investigation and is satisfied that the petitioner-attorney has the requisite moral qualifications, competency, and learning in law, then the matter will be forwarded directly to a Board Member designated by the Board Chair for review without the need for a hearing before a hearing committee member. The Board Member's approval then goes to the Prothonotary of the Supreme Court for the entry of an order of reinstatement.

In contrast, if there is concern at the investigatory stage or upon subsequent review by a designated Board Member about an inactive or administratively-suspended petitioner-attorney's ability to sustain his or her burden of demonstrating fitness for reinstatement, new Rule 218 requires a hearing before a hearing committee member followed by review before the full Board and the Supreme Court.

*Reciprocal Discipline*

Current Rule 216 provides that a reciprocal discipline proceeding may be initiated upon receipt of an "order" of "suspension or disbarment" entered in another jurisdiction. The proposed Rule expands the language of the current Rule to account for the Supreme Court's practice of exercising its reciprocal disciplinary jurisdiction when a respondent-attorney has been the subject of disciplinary action in another jurisdiction but the other jurisdiction's procedure or type of discipline does not fit squarely within the language of Rule 216.

Proposed Rule 216 recognizes the differences in procedure that exist in other jurisdictions. Most states, including Pennsylvania, impose discipline through the entry of an order. Some states, however, enter a judgment, while an administrative tribunal may enter some form of disciplinary directive.

Proposed Rule 216 recognizes the different types of discipline imposed in other jurisdictions, including revocation of license and resignation while under disciplinary investigation. A Pennsylvania attorney who engages in practice in a jurisdiction in which the attorney is not licensed generally may receive discipline in the form of revocation of pro hac vice admission or being barred from applying for pro hac vice admission.

The proposed revisions to Rule 216 articulate the various jurisdictional predicates for the authority of the Court to issue a rule to show cause under the Rule. Under current subsection (c), the Court retains the discretion not to impose reciprocal discipline when the respondent-attorney demonstrates the existence of one of the criteria set forth in that subsection.

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, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before January 16, 2009.

ELAINE M. BIXLER,  
*Secretary of the Board  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT**

**CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

**Subchapter A. PRELIMINARY PROVISIONS**

**Rule 102. Definitions.**

(a) *General Rule.* Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

\* \* \* \* \*

***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 foreign legal consultant, an attorney participant in defender and legal services programs pursuant to Pa.B.A.R. 311, or military attorney.***

\* \* \* \* \*

***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.***

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**Subchapter B. MISCONDUCT**

**Rule 201. Jurisdiction.**

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

\* \* \* \* \*

(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**, these rules or rules of the Board adopted pursuant hereto.

\* \* \* \* \*

**Rule 203. Grounds for discipline.**

\* \* \* \* \*

(b) The following shall also be grounds for discipline:

(1) Conviction of a crime [ **which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension** ].

\* \* \* \* \*

**Rule 204. Types of discipline.**

\* \* \* \* \*

(c) A reference in these rules to disbarment, suspension, temporary suspension, **administrative suspension**, or transfer to or assumption of 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. A respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

\* \* \* \* \*

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

\* \* \* \* \*

(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** ] may file such certificate with the Supreme Court.

(c)(1) 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)** ] establishing the conviction. [ **If the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such conviction.** ] Disciplinary Counsel may:

(i) seek temporary suspension of the respondent-attorney, in which case Disciplinary Counsel shall file the certificate with the Supreme Court under paragraph (d)(1), and institute a formal proceeding with the Board under paragraph (f)(1);

(ii) institute a formal proceeding with the Board under paragraph (f)(1) without seeking the temporary suspension of the respondent-attorney; or

(iii) take no formal action with respect to the conviction. The decision to proceed under this paragraph shall be reviewed by the Board Chair or Vice-Chair. The decision of the Board Chair or Vice-Chair shall be final and not subject to further review. If the Board Chair or Vice-Chair rejects the recommendation of Disciplinary Counsel that no formal action be taken, the Board Chair or Vice-Chair shall abstain from future participation in the matter.

(2) In determining how to proceed under paragraph (c)(1), Disciplinary Counsel shall consider:

(i) the extent and seriousness of the criminal conduct and the sentence imposed;

(ii) whether the conviction involves moral turpitude;

(iii) whether the respondent-attorney has a record of discipline;

(iv) whether the conviction is likely to result in a final discipline of suspension or disbarment under applicable precedent;

(v) the impact of the conviction upon the courts and legal profession in the Commonwealth or any other jurisdiction;

(vi) whether the continued practice of law by the respondent-attorney would be detrimental to the integrity and standing of the bar or the administration of justice or be subversive of the public interest; and

(vii) the need to deter other attorneys from similar misconduct.

(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.

\* \* \* \* \*

**Official Note:** This provision 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.

(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.

[ **Official 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 [ serious ] crime [ filed under subdivision (b) or (c) ] 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 ] Disciplinary Counsel shall institute a formal proceeding before the Board based upon the conviction unless the Board Chair or Vice-Chair approves a recommendation under paragraph (c)(1)(iii) that no formal action be taken. The Board Secretary shall schedule a hearing before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the discipline or final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until all appeals from the conviction are concluded.

\* \* \* \* \*

[ (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.

*Official 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) [ (g) 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) (h) 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.

**Rule 216. Reciprocal discipline.**

(a) Upon receipt of a certified copy of an order, judgment or disciplinary directive of another court, a government agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, [ or ] disbarment, or 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, the Supreme Court shall forthwith issue a notice directed to the respondent-attorney containing:

(1) a copy of said order, judgment or directive from the other [jurisdiction] court, government agency or military tribunal; and

\* \* \* \* \*

(b) In the event the discipline imposed in the other [jurisdiction] court, government agency or military tribunal has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

\* \* \* \* \*

(e) An attorney who has been disciplined in another court or by a government agency or a military tribunal, by suspension, [ or ] 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 suspension, [ or ] 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.

**Rule 217. Formerly admitted attorneys.**

(a) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, 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.

(b) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, 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. 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. 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. 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.

(c) A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

(1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, **administrative suspension** or transfer to inactive status, and

\* \* \* \* \*

The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, **administratively suspended** or on inactive status.

(d) Orders imposing suspension, disbarment, **administrative suspension** or transfer to inactive status shall be effective 30 days after entry. 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. However, during the period from the entry date of the order and 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.

(e) 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 Board a verified statement showing:

\* \* \* \* \*

(f) 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.

(g) 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. 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.

(h) 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 [ **Court Administrator of Pennsylvania** ] **Attorney Registration Office** under Rule 219(e) (relating to periodic assessment of attorneys; voluntary inactive status) 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 Rule 219(e), 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.

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

\* \* \* \* \*

**Rule 218. Reinstatement.**

(a) [ **No attorney suspended for a period exceeding one year, transferred to inactive status for 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.** ] An attorney may not resume practice until reinstated by order of the Supreme Court after petition pursuant to this rule if the attorney was:

- (1) suspended for a period exceeding one year;
- (2) retired, on inactive status or administrative suspension for more than 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.

\* \* \* \* \*

(c) [ (1) ] **The procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:**

- (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[ , ] or 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.

**Official 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** ] 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.

**Official Note:** 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.

[ (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. ]

\* \* \* \* \*

(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** ] **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. Within 20 days after service of the rule, [ **respondent-attorney** ] **petitioner-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.

[ (7) A petition for reinstatement to active status from inactive status by a formerly admitted attorney who has not been suspended or disbarred shall be considered by a single senior or experienced hearing committee member who shall perform the functions of a hearing committee under this subdivision (c), and the rules of the Board may provide for abbreviated procedures to be followed by that hearing committee member. ]

(d) The procedure for petitioning for reinstatement from retired status, inactive status or administrative suspension for more than 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 paragraph (d)(3) if the petition were to proceed to hearing under (d)(4).

**Official Note:** If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney under (d)(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 (d)(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 subdivision (d). The rules of the Board may provide for abbreviated procedures to be followed by the hearing committee member, except that the abbreviated procedure shall not be available at any hearing conducted after review by a designated board member pursuant to paragraph (d)(6) of this rule. 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 (c)(5) and (c)(6) of this rule.

(6) Upon receipt of a certification filed by Disciplinary Counsel under (d)(2)(ii), 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 subdivision (d)(4) of this rule.

(ii) Upon receipt of a report and recommendation for an order of reinstatement, the Court shall enter an order reinstating the formerly admitted attorney to active status and direct that the necessary expenses incurred in the investigation and processing of the petition be paid by the petitioner-attorney. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(iii) The annual fee required by Rule 219(a), and the reinstatement fee prescribed by subdivision (f) of this Rule (relating to any petitioner-attorney on administrative suspension) if applicable, shall be paid to the Attorney Registration Office.

[ (d) ] (e) In all proceedings upon a petition for reinstatement, cross-examination of the [ **respondent-**

**attorney's ] petitioner-attorney's** witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

**[(e) ] (f)** 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 ] 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.**

**[(f) ] (g)** (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 **or administrative suspension** for more than three years; or

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

**[(g) ] (h)** Attorneys who have been on inactive status, **retired status or administrative suspension** for three years or less may be reinstated pursuant to Enforcement Rule 219(h), (i) or (j) (relating to periodic assessment of attorneys) as appropriate. This subdivision **[(g) ] (h)** 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) ] (i)** 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) ] (j)** 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:

\* \* \* \* \*

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

\* \* \* \* \*

**Rule 219. Periodic assessment of attorneys; voluntary inactive status.**

(a) Every attorney admitted to practice law in this Commonwealth, **other than a military attorney holding a limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys)**, shall pay an annual fee of \$140.00 under this rule. The annual fee shall be collected under the supervision of the

**[ Administrative ] Attorney Registration** Office, which shall send and receive, or cause to be sent and received, the notices and **[ statements ] forms** provided for in this rule. The said fee shall be used to defray the costs of disciplinary administration and enforcement under these rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

(b) **The following shall be exempt from paying the annual fee required by subdivision (a):**

(1) Justices **[ and ] or [ Judges ] 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).**

**Official Note:** The exemption created by subdivision (b)(1) does not include Traffic Court judges, Pittsburgh Magistrates, magisterial district judges or administrative law judges.

(c) On or before May 15 of each year the **[ Administrative ] Attorney Registration** Office shall transmit by ordinary mail to all persons required by this rule to pay an annual fee a form **[ for completing the statement ]** required by subdivision (d) of this rule.

(d) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the **[ Administrative ] Attorney Registration** Office a signed **[ statement on the ]** form prescribed by the **[ Administrative ] Attorney Registration** Office in accordance with the following procedures:

(1) The **[ statement ] form** shall set forth:

(i) The date on which the attorney was **[ first ]** admitted to practice, licensed as a 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 residence and office addresses of the attorney, each of which shall be an actual street address or rural route box number, and the **[ Administrative ] Attorney Registration** Office shall refuse to accept a **[ statement ] 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 **[ statement ] form** and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, will be accessible through the web site of the Board (<http://www.padisiplinaryboard.org/>) and by written or oral request to the Board.

**Official Note:** Public web docket sheets will show the attorney's address as entered on the court docket.

(iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The **[ statement ] form** shall include the name and account number for each account in which the lawyer holds such funds, and each IOLTA Account shall be identified as such. The **[ statement ] 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.

\* \* \* \* \*

(vi) Such other information as the **[ Administrative ] Attorney Registration Office** may from time to time direct.

(2) Payment of the annual fee shall accompany the **[ statement ] form**. Where 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 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.

(3) Every person who has filed such a **[ statement ] form** shall notify the **[ Administrative ] Attorney Registration Office** in writing of any change in the information previously submitted within 30 days after such change.

(4) Upon original admission to the bar of this Commonwealth, licensure as a **[ foreign legal consultant, or ] 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 **[ statement ] form** under this subdivision for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

(e) **[ Within 20 days of the ] Upon** receipt of a **[ statement ] form**, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of subdivision (d) of this rule, and of payment of **[ any ] the** required annual fee to practice law in this Commonwealth, receipt thereof shall be acknowledged **[ , ]** on a certificate **[ issued by the Court Administrator of Pennsylvania, evidencing compliance with such subdivision ] or license**.

(f) The **[ Administrative ] Attorney Registration Office** shall transmit by **[ certified ] ordinary mail [ , return receipt requested, ]** to every attorney who fails to timely file the **[ statement ] form** and pay the annual fee required by this rule, addressed to the last known mailing address of the attorney, a notice stating:

(1) That unless the attorney shall comply with the requirements of subdivision (d) of this rule within 30 days after the date of the notice, such failure to comply will be deemed a request **[ for transfer to inactive status ] 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 **[ immediately ]** enter an

order **[ transferring the attorney to inactive status ] administratively suspending the attorney**.

(2) That upon the entry of an order **[ transferring the attorney to inactive status ] of administrative suspension**, the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be enclosed with the notice.

(g) The **[ Administrative ] Attorney Registration Office [ or the Board ]** shall certify to the Supreme Court the names of every attorney who has failed to respond to a notice issued pursuant to subdivisions (f) and **[ (k) ] (l)** within the 30-day period provided therein and the Court shall **[ immediately ]** enter an order **[ transferring the attorney to inactive status ] administratively suspending the attorney**. A copy of any such certification from the **[ Administrative ] Attorney Registration Office** to the Supreme Court shall be given to the Board Secretary. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(h) **The procedure for reinstatement of an attorney who has been administratively suspended for three years or less pursuant to subdivision (g) is as follows:**

(1) **[ Upon compliance by the formerly admitted attorney with the provisions of subdivision (d) of this rule, including payment of all arrears due from the date to which such person was last paid ] The formerly admitted attorney shall submit to the Attorney Registration Office the form required by subdivision (d)(1) along with payment of:**

(i) the annual fees that would have been due if the person had not been administratively suspended;

(ii) the late payment penalty required by paragraph (3);

(iii) 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 (1), the [ Administrative ] Attorney Registration Office shall so certify to the Board Secretary and to the Supreme Court. Unless [ such person ] 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 [ Administrative ] Attorney Registration Office with the Prothonotary of the Supreme Court shall operate as an order reinstating the person to active status.**

**[ (2) ] (3) [ For the purposes of this rule arrearages shall include a late payment penalty payable by every attorney to whom a notice has been transmitted under subdivision (f) of this rule plus the actual cost of any publication effected pursuant to Enforcement Rule 217(f). ] A formerly admitted attorney who is administratively suspended pursuant to subdivision (g) must pay a late payment penalty with respect to that year. The amount of the late payment penalty 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 statement required by subdivision (d) of this rule.

(i) **Retired Status:** An attorney who has retired[, is not engaged in practice or who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct] shall file with the [Administrative] Attorney Registration Office [a notice in writing that the attorney desires voluntarily to assume inactive status and discontinue the practice of law] an application for retirement. Upon the transmission of such [notice] application from the [Administrative] Attorney Registration Office to the Supreme Court, the Court shall enter an order transferring the attorney to [inactive] retired status, and the attorney shall no longer be eligible to practice law [but shall continue to file the statement required by this rule for six years thereafter in order that the formerly admitted attorney can be located in the event complaints are made about the conduct of such person while such person was engaged in practice]. The [formerly admitted] retired attorney[, however,] will be relieved from the payment of the fee imposed by this rule upon active practitioners and Enforcement Rule 217 (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Court in connection with the entry of an order of suspension or disbarment under another provision of these rules. An attorney on retired status for three years or less may be reinstated in the same manner as an inactive attorney, 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. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Prothonotary.

(j) **Inactive Status:** [Upon the filing of a notice voluntarily to assume inactive status, an] 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 be removed from the roll of those classified as active until and unless such person requests and is granted reinstatement to the active rolls.

(1) An inactive attorney under this subdivision (j) shall continue to file the annual form required by subdivision (d) and shall pay an annual fee of \$99. Noncompliance with this provision will result in the inactive attorney being placed on administrative suspension after the Attorney Registration Office provides notice in accordance with the provisions of paragraph (f). An attorney who voluntarily assumed inactive status under former subdivision (j) of this rule shall continue to file the annual form required by subdivision (d) and pay an annual fee of \$99 commencing with the next regular assessment year. Noncompliance with this provision will result in the inactive attorney being placed on administrative suspension after notice in accordance with the provisions of paragraph (f).

(2) Reinstatement shall be granted unless the [formerly admitted] inactive attorney is subject to an outstanding order of suspension or disbarment or unless the [order] inactive status has been in effect for more than three years, upon the payment of [any assessment in effect] the active fee for the assessment year in which the [request] 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 any arrears accumulated prior to [transfer to] the assumption of inactive status.

(3) [Disciplinary proceedings may be initiated and maintained against a formerly admitted attorney who has voluntarily assumed inactive status. See Rule 201(a)(3).] In transmitting the annual fee form under subdivision (c) of this rule, the Attorney Registration Office shall include a notice of this subdivision (j).

*Official Note:* Under prior practice, an attorney who was neither retiring nor selling his or her law practice was given the option of assuming or continuing inactive status and ceasing the practice of law in Pennsylvania, and no annual fee was required. Under new subdivision (j), payment of an annual fee is required to assume and continue inactive status, and failure to pay the annual fee required by subdivision (j) and file the form required by subdivision (d) will result in an order administratively suspending the attorney.

(k) On the effective date of this subdivision (k), any attorney who is on inactive status:

(1) by order after having failed to pay the annual fee or file the form required by subdivisions (a) and (d) of this rule,

(2) by order pursuant to Rule 111(b), Pa.R.C.L.E., after having failed to satisfy the requirements of the Pennsylvania Rules for Continuing Legal Education,

(3) by order after having failed to pay any expenses taxed pursuant to Enforcement Rule 208(g), or

(4) by order after having failed to meet the requirements for maintaining a limited law license as foreign legal consultant, an attorney participant in defender legal services programs pursuant to Pa.B.A.R. 311, or military attorney, shall have a grace period of one year, commencing on July 1 of the year in which the next annual form under paragraph (d) is due, in which to request reinstatement to active status under an applicable provision of this rule, or to be reinstated to active status under Rule 218(a), as the case may be. Failure to achieve active status before the expiration of the grace period shall be deemed a request to be administratively suspended. An attorney who is on inactive status by court order will not be eligible to transfer to voluntary inactive status under subdivision (j) of this rule until the attorney first achieves active status. During the grace period, the inactive attorney shall remain ineligible to practice law. In transmitting the annual form under subdivision (c) of this rule, the Attorney Registration Office shall include a notice of this subdivision (k).

*Official Note:* Attorneys who voluntarily assumed inactive status under former paragraph (j) of En-

**forcement Rule 219 are governed by the provisions of paragraph (j). Attorneys who were transferred to inactive status by order after having failed to pay any expenses taxed pursuant to Enforcement Rule 208(g) are governed by the provisions of paragraph (m).**

**[(k)] (l)** The Board shall transmit by certified mail, return receipt requested, to every attorney who fails to pay any expenses taxed pursuant to Enforcement Rule 208(g) (relating to costs), addressed to the last known address of the attorney, a notice stating:

(1) 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 **[for transfer to inactive status] 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 **[immediately]** enter an order **[transferring the attorney to inactive status] administratively suspending the attorney**.

(2) That upon entry of the order **[transferring the attorney to inactive status] of administrative suspension**, the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be enclosed with the notice.

**[(l)] (m)** Upon payment of all expenses taxed pursuant to Enforcement Rule 208(g) by a formerly admitted attorney **[transferred to inactive status] on administrative suspension** solely for failure to comply with subdivision **[(k)] (l)** of this rule, the Board shall so certify to the Supreme Court. 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.

**[(m)] (n)** 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 **[Administrative] Attorney Registration** Office a notice in writing to that effect. The notice shall:

\* \* \* \* \*

[Pa.B. Doc. No. 08-2054. Filed for public inspection November 14, 2008. 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [ 237 PA. CODE CH. 1 ]

#### Amendments to Rule 140 and Adoption of New Rule 141

##### Introduction

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 140 and new Rule 141 be adopted and prescribed. The proposed modified Rule 140 adds a paragraph that the bench warrant shall be entered in all appropriate registries. The new Rule 141

provides for the procedures of bench warrants for absconders. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of the rules. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Friday, December 19, 2008.

By the Juvenile Court Procedural Rules Committee:

FRANCIS BARRY MCCARTHY,  
*Chair*

#### Annex A

#### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 1. GENERAL PROVISIONS

#### PART A. BUSINESS OF COURTS

#### Rule 140. Bench Warrants for Failure to Appear.

##### A. Issuance of warrant.

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

**B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter the bench warrant in all appropriate registries.**

##### C. Juvenile.

##### 1) Where to take the juvenile.

a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the juvenile is not brought before a judge, the juvenile shall be released unless:

i) the warrant specifically orders detention of the juvenile; or

ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

##### 2) Prompt hearing.

a) If a juvenile is detained pursuant to a specific order in the bench warrant, the juvenile shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.

b) If the juvenile is not brought before a judge within this time, the juvenile shall be released.

3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge of the county where the juvenile is found.

d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

**[ C ] D. Witnesses.**

1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.

2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.

ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

**[ D ] E. Return and execution of the warrant for juveniles and witnesses.**

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

**5) Once the warrant is vacated, the court shall order the probation officer or other court designee to remove the warrant from all appropriate registries.**

**Comment**

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to paragraph ([ B ]C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. See paragraph ([ B ]C) for alleged delinquents and paragraph ([ C ]D) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph ([ B ]C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph ([ B ]C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph ([ B ]C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph ([ B ]C)(2)(b).

Under paragraphs ([ B ]C)(2) and ([ B ]C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240 (C).

Pursuant to paragraph ([ B ]C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph ([ B ]C)(5), the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph ([ C ]D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph ([ C ]D)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph ([ C ]D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph ([ C ]D)(2) is to be held by the next business day or the witness is to be released. See paragraph ([ C ]D)(2)(b).

Pursuant to paragraph ([ C ]D)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. See paragraph ([ C ]D)(4)(f).

Pursuant to paragraph ([ D ]E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph ([ D ]E)(3).

Pursuant to paragraph ([ D ]E)(4), the bench warrant is to be vacated after the return of the warrant is executed [so the juvenile or witness is not taken into custody on the same warrant if the juvenile or witness is released]. “Vacated” is to mean that the bench warrant has been served, dissolved, executed,

dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

**Pursuant to paragraph (E)(5), once the warrant is vacated, the juvenile probation officer or other court designee is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.**

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

**Official Note:** Rule 140 adopted February 26, 2008, effective June 1, 2008.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 140 published with the Court’s Order at 38 Pa.B. [ 1145 ] 1142 (March 8, 2008).

#### **Rule 141. Bench Warrants for Absconders.**

**A. Issuance of warrant.** The juvenile probation officer shall immediately notify the court upon notification or recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.

**B. Entry of warrant information.** Upon being notified by the court, the juvenile probation officer or other court designee shall enter the bench warrant in all appropriate registries.

**C. Where to take the juvenile.** The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).

**D. Prompt hearing.** The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.

**E. Time requirements.** The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

**F. Notification of guardian.** When the juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile’s guardian of the juvenile’s whereabouts and the reasons for the issuance of the bench warrant.

**G. Return & execution of the warrant.**

**1) The bench warrant shall be executed without unnecessary delay.**

**2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.**

**3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.**

**4) Upon the return of the warrant, the judge shall vacate the bench warrant.**

**5) Once the warrant is vacated, the court shall order the probation officer or other court designee to remove the warrant from all appropriate registries.**

**Comment**

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify juvenile probation or other court designee to enter the bench warrant in all appropriate registries, such as, JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant.

Pursuant to paragraph (D) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. See, e.g., Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

Pursuant to paragraph (G)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the Presiding Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (G)(3).

Pursuant to paragraph (G)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to mean that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (G)(5), once the warrant is vacated, the juvenile probation officer or other court designee is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

**EXPLANATORY REPORT***Rule 140—Bench Warrants for Failure to Appear*

A new paragraph (B) has been added. A bench warrant shall be entered in all appropriate registries, such as, JNET, CLEAN, PCIC, and NCIC, by the juvenile probation officer or other court designee once a warrant has been issued by the judge. This ensures that law enforcement is aware of the bench warrant so it may be executed.

*Rule 141—Bench Warrants for Absconders*

This new rule provides for the procedures when a juvenile absconds from the supervision of the court. This covers all incidences when the court no longer has contact with the juvenile. This would include, but is not limited to, a juvenile who: 1) has escaped from a placement facility, detention facility, shelter care facility, foster care, or other court-ordered programs or placements; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court.

Paragraph (B) ensures that the bench warrant is entered in all appropriate registries by the juvenile probation officer or other court designee once a warrant has been issued by the judge. This ensures that law enforcement is aware of the bench warrant so it may be executed.

Paragraph (C) requires that the juvenile is to be detained in a detention facility or any other facility deemed appropriate by the court until a prompt hearing pursuant to paragraph (D).

The guardian of the juvenile is to be notified immediately when a juvenile is taken into custody pursuant to a bench warrant. The arresting officer is to explain the reasons the warrant was issued and where the juvenile is being detained. See paragraph (F).

Paragraph (G) provides for the procedures on returning and executing the warrant.

[Pa.B. Doc. No. 08-2055. Filed for public inspection November 14, 2008, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

**CHESTER COUNTY****Juvenile Pre-Adjudication Conditions; Administrative Order No. 2-2008****Order**

*And Now*, this 12th day of March, 2008, in furtherance of the juvenile court goal to achieve balanced and restorative justice it is hereby *Ordered* and *Decreed* as follows: The Chester County juvenile probation office ("probation office") is hereby authorized to impose reasonable pre-adjudication conditions on all juveniles against whom Petitions have been filed or are pending under the Juvenile Act, including a requirement that the juvenile submit to a urinalysis to determine controlled substance use. Such conditions shall be from among those previously approved by the court to protect the public, maintain the competencies of the juvenile and/or assist the probation office in recommending an appropriate disposition in the event of an adjudication of delinquency. Any juvenile, or attorney representing a juvenile, may seek emergency relief from the juvenile court supervising judge if any pre-adjudication condition imposed by the juvenile probation office is deemed to be unreasonable. Any juvenile who refuses, explicitly or implicitly, to comply with any pre-adjudication condition, including the refusal to submit to a urinalysis, without providing an adequate medical or other extraordinary reason to justify that refusal, shall be presumed by the court to have failed to successfully comply with that condition. In no event shall the court consider a juvenile's compliance or failure to comply with a pre-adjudication condition when it determines whether the juvenile committed any charged crime.

*By the Court*

PAULA FRANCISCO OTT,  
*President Judge*

[Pa.B. Doc. No. 08-2056. Filed for public inspection November 14, 2008, 9:00 a.m.]