

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2009

PHILADELPHIA, FRIDAY, AUGUST 7, 2009

VOL 240 • NO. 28 An incisivemedia publication

PROFESSIONAL CONDUCT

New Rules for Lawyers Returning From Inactive Status

BY ELLEN C. BROTMAN
AND MICHAEL B. HAYES

Special to the Legal

By an order dated April 16, the Pennsylvania Supreme Court enacted amendments to the Rules of Disciplinary Enforcement affecting the commonwealth's roughly 27,000 inactive attorneys. The court's April 16 order includes three major changes, all of which became effective May 1: First, the court created a new category of "administrative suspension" for attorneys who fail to pay their annual fees or submit their annual registration forms or meet their CLE requirements; second, the court formalized and streamlined the reinstatement process for attorneys who wish to return to practice after less than three years of being on inactive status; and, third, the court instituted a new, \$70 annual fee for attorneys who wish to assume or remain on voluntary inactive status.

Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement states that every active attorney admitted to practice law in the commonwealth must submit an annual registration form and pay an annual fee of \$140 to the Attorney Registration Office. Before the rule change, there was no distinction between being voluntarily inactive



BROTMAN

ELLEN C. BROTMAN is a partner with Montgomery McCracken Walker & Rhoads and a member of its white-collar crime and government investigations group and chairwoman of its professional responsibility group, after several years of being a principal in the firm of Carroll & Brotman. Brotman is also a former assistant federal defender with the Philadelphia Community Defenders Organization.



HAYES

MICHAEL B. HAYES is a partner with the firm and is a member of the firm's professional responsibility practice group. Prior to joining the firm, Hayes served as a law clerk to Justice Russell Nigro of the Pennsylvania Supreme Court.

and being forced into inactivity by court order for failure to comply with the rule. Under the new version of the rule, an attorney licensed to practice in the commonwealth who wishes to be placed on voluntary inactive status must file a notice of intent to assume inactive status with the Administrative Office of Pennsylvania Courts. However, an attorney who fails to submit the registration form or pay the annual fee, will be deemed to have requested to be placed on administrative suspension. In the event of continued nonpayment, "the

name of the attorney will be certified to the Supreme Court, which will enter an order administratively suspending the attorney," as noted in Pa. R.D.E. 219(f)(1).

Once an attorney is placed on either administrative suspension or inactive status, he or she must comply with Pa. R.D.E. 217, which requires, among other things, that the attorney immediately notify his or her clients and professional contacts of the transfer to administrative suspension; wind up/cease the practice of law; file a verification of compliance with the disciplinary board; and maintain all records confirming compliance with the rule.

If the administratively suspended attorney seeks reinstatement at any point during the next three years, he or she must submit the annual registration form required by Pa. R.D.E. 219(d)(1) along with payment of the current annual fee, the annual fee that was due in the year in which the attorney was administratively suspended, a late payment penalty established by the disciplinary board, and a reinstatement fee of \$300. For attorneys who are suspended or inactive for less than three years, there is no formal reinstatement process — as long as the proper fees are paid, these lawyers can simply return to active status. This includes

paying the active fee for the assessment year or the difference between the active fee and the inactive fee that has been paid for that year, and any arrears accumulated prior to the assumption of inactive status. If, however, a lawyer wishes to resume the active practice after more than three years of inactivity or administrative suspension, then he or she must go through the formal petition for reinstatement process under Pa. R.D.E. 218 and ultimately obtain Supreme Court approval.

Prior to the April 16 amendments to the Pa. R.D.E., a petition for reinstatement by a formerly admitted attorney who had not been suspended or disbarred was considered by a single senior or experienced hearing committee member who conducted a hearing on behalf of the board. Under the new rules, if disciplinary counsel does not oppose the petition there is now no need for a reinstatement hearing. Assuming that disciplinary counsel does not oppose the reinstatement petition, a designated member of the disciplinary board will review the record and issue a report either recommending Supreme Court approval of the petition or directing the board secretary to schedule the matter for hearing before a single senior or experienced hearing committee member in the disciplinary district where the formerly admitted attorney previously maintained his or her offices. See Pa. R.D.E. 218(d)(6). Following the conclusion of the hearing, the designated hearing committee member will file a report and recommendation with the disciplinary board, which in turn will review the record

and file a report and recommendation with the Supreme Court.

Another change in the rule is also worth noting. Previously, attorneys who voluntarily ceased to practice in Pennsylvania were not required to pay dues or fees to the Attorney Registration Office. Under the new rules, attorneys are required to pay an inactive annual fee in the amount of \$70 first to assume, and then to continue to retain inactive status. (See Pa. R.D.E. 219(j)(1).) Retired attor-

*If a lawyer wishes to
resume the active
practice after more than
three years of inactivity
or administrative
suspension, then he or she
must go through the
formal petition for
reinstatement process
under Pa. R.D.E. 218
and ultimately obtain
Supreme Court approval.*

neys and military attorneys holding a limited certificate of admission issued under Pa. B.A.R. 303 are exempt from the inactive annual fee. For all other inactive attorneys, failure to remit the inactive annual fee will result in the attorney being placed on administrative

suspension. If an attorney requests inactive status and later chooses to return to practice within the same year, then the attorney will need to pay the difference between the \$140 annual active fee and the \$70 inactive annual fee.

In our view, the elimination of the need for a reinstatement hearing when the petition for reinstatement is unopposed is the most significant and welcome amendment to the rule. This change reflects the court's recognition that many capable lawyers take time out to raise their families or to temporarily try their hands at new careers. Removing the need for a hearing in these cases provides flexibility that benefits the board, the court, the returning lawyers and the profession.

To review the April 16 amendments to Pa. R.D.E. 217, 218 and 219, see: www.pacode.com/secure/data/204/chapter83/chap83toc.html#219.

Jane Li contributed to the drafting of this article. •