THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Proposed Amendment to the Rule Relating to Permissible Law-Related Activities of Formerly Admitted Attorneys

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania (Board) is considering recommending to the Supreme Court of Pennsylvania that it amend the Pennsylvania Rules of Disciplinary Enforcement, to read as set forth in Annex A, to specify what law-related activities may be engaged in by formerly admitted attorneys.

The Board has encountered numerous situations in which a lawyer who has been disbarred or suspended has been employed as a paralegal or law clerk during the period of disbarment or suspension. The Board believes that it is beneficial for persons who may seek reinstatement to be able to maintain their contact with the law because one of the requirements for reinstatement is that a formerly admitted attorney demonstrate competency and learning in law. At the same time, however, the Board is concerned that formerly admitted attorneys not engage in acts constituting the practice of law. In addition, the Board is concerned that formerly admitted attorneys not encounter clients and other parties under circumstances that could lead to the mistaken impression that the formerly admitted attorney is still admitted to practice. Proposed new Pa.R.D.E. 217(j) attempts to balance those concerns against the benefits of formerly admitted attorneys staying involved with the law.

Interested persons are invited to submit written comments regarding the proposed amendment 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 June 11, 1999.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director & Secretary

Annex A

TITLE 204. JUDICIARY SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 217. Formerly admitted attorneys.

* * * * *

(j) A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements:

(1) All law-related activities of the formerly admitted attorney shall be conducted under the direct supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is employed by a law firm, an attorney of the firm shall be designated by the firm as the supervising attorney for purposes of this subdivision.

(2) For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following:

(i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and

(iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(3) A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(4) Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(i) performing any law-related activity for a law firm or lawyer if the formerly admitted attorney was associated with that law firm or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;

(ii) performing any law-related services from an office that is not staffed, on a full time basis, by a supervising attorney;

(iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

(iv) representing himself or herself as a lawyer or person of similar status;

(v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);

(vi) rendering legal consultation or advice to a client;

(vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

(viii) appearing as a representative of the client at a deposition or other discovery matter;

(ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(x) receiving, disbursing or otherwise handling client funds.

(5) The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of employment, identifying the supervising attorney, certifying that the formerly admitted attorney has been employed and that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the employment of the formerly admitted attorney.

(6) The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

Note: Subdivision (j) is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. Subdivision (j) is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, subdivision (j) is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

[Pa.B. Doc. No. 99-815. Filed for public inspection May 21, 1999, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 20]

Location of Proceedings Before Issuing Authority

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 22 (Location of Proceedings Before Issuing Authority). This amendment would reorganize Rule 22 to clarify the locations from which an issuing authority may conduct business and hold hearings, and make other correlative changes and editorial corrections. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. 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.*

The text of the proposed Rule 22 amendment precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Wednesday, June 23, 1999.

By The Criminal Procedural Rules Committee:

FRANCIS BARRY MACARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 20. ISSUING AUTHORITIES: VENUE, LOCATIONS, AND RECORDING OF PROCEEDINGS

Rule 22. Location of Proceedings Before Issuing Authority.

[a)] (A) An issuing authority within the magisterial district for which **[he] the issuing authority** is elected or appointed shall have jurisdiction and authority at **[any time other than during his established office hours] all times** to receive complaints, issue warrants, hold preliminary arraignments, fix and take bail **[and],** issue commitments to jail **[at his residence within the magisterial district, but all hearings and trials before such issuing authority shall be held publicly at his established office, or at another location, within or without the magisterial district, designated by the President Judge, unless an emergency exists or the number of persons lawfully assembled and entitled to be present is too great to be accommodated in such place, in which event the hearing or trial may be adjourned as quickly as may be, to a suitable place, within the magisterial district], and hold hearings and trials.**

(1) Except as provided in paragraph (A)(2), all preliminary arraignments shall be held in the issuing authority's established office, a night court, or some other facility designated by the president judge, or the president judge's designee.

(2) Preliminary arraignments may be conducted using advanced communication technology pursuant to Rule 140. The preliminary arraignment in these cases may be conducted from any site designated by the president judge, or the president judge's designee.

(3) All hearings and trials before the issuing authority shall be held publicly at the issuing authority's established office, unless, for reasons of emergency, security, size, or some other justification, the

president judge, or the president judge's designee, directs that the hearing or trial be held in another more suitable location within the judicial district.

(4) The issuing authority may receive complaints, issue warrants, fix and take bail, and issue commitments to jail from any location within the judicial district.

[(b) The President Judge] (B) When local conditions require, the president judge shall **[, where local conditions require,]** establish procedures **[whereby, in all or certain classes of cases,] for** preliminary hearings **in all cases, or in certain classes of cases, [may] to** be held at a central place or places within the **[Judicial] judicial [District] district** at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require. **[When the defendant or his counsel and the attorney for the Commonwealth agree, the preliminary hearing shall be held at the established office of the issuing authority who received the complaint.]**

Official Note: Formerly Rule 156, paragraph **[(a)] (A)** adopted January 16, 1970, effective immediately; **[Paragraph] paragraph [(a)] (A)** amended and paragraph **[(b)] (B)** adopted November 22, 1971, effective immediately; renumbered as **Rule 22** September 18, 1973, effective January 1, 1974**; amended _____, 1999, effective _____, 1999.**

Comment: **The 1999 amendments to paragraph (A) divided the paragraph into subparagraphs to more clearly distinguish between the locations for the different types of proceedings and business that an issuing authority conducts.**

See Rule 140 and Comment for the procedures governing the use of advanced communication technology in preliminary arraignments.

Paragraph **[(b)] (B)** of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 US 1, 90 S.Ct. 1999 (1970).

This rule allows the **[President] president [Judge] judge** of a **[Judicial] judicial [District]district** the discretion to determine what classes of cases require centralized preliminary hearings**,** and requires **[him] the president judge, or the president judge's designee,** to establish a schedule of central places to conduct such hearings and the hours **[thereof] for the hearings at the central locations.**

Ideally, this rule should minimize the inconvenience to defense counsel and the attorney for the Commonwealth by eliminating the necessity of travel at various unpredictable times to many different locations throughout the **[Judicial] judicial [District] district** for the purpose of attending preliminary hearings. **[However, where it is convenient to hold the preliminary hearing in the magisterial district where the case arose, the rule allows the party to so stipulate.]** Finally, this rule allows preliminary hearings for jailed defendants to be held at a location close to the place of detention.

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Committee Explanatory Reports

Report explaining the proposed amendments published at 29 Pa.B. 2665 (May 22, 1999).

REPORT

Proposed Amendment of Pa.R.Crim.P. 22

Location of Proceedings Before Issuing Authority

The Committee is proposing a number of changes to Rule 22 (Location of Proceedings Before Issuing Authority) that update and reorganize the rule, and clarify the locations from which an issuing authority may conduct business and hold hearings and trials.

The Committee undertook a review of the Rule 22 provisions after receiving several inquiries concerning the location of preliminary arraignments in general, and when the preliminary arraignments are conducted using advanced communication technology in particular. Some of the inquiries were triggered by a few newspaper articles reporting on the recent installation of new audio/video equipment in Cumberland County district justices' offices, and in some of their homes, for the purpose of conducting preliminary arraignments.

Looking at Rule 22(A), which provides that issuing authorities have "jurisdiction and authority at any time other than during his established office hours to receive complaints, issue warrants, *hold preliminary arraignments*, fix and take bail and issue commitments to jail *at his residence within the magisterial district . . .*"[1] (emphasis added), the members discussed the propriety of performing administrative functions or conducting other business in the issuing authorities' homes. Although the members recognized that there may be unusual or emergency circumstances when it might be necessary to conduct business from home, such as for the purpose of issuing a warrant, the consensus was that in most circumstances the issuing authorities should perform administrative functions and conduct business from their official business offices. In view of these considerations, the Committee reasoned that it did not want to prohibit the practice altogether, but that Rule 22 should not encourage it. We concluded, therefore, that Rule 22 should be amended to address these considerations. We also agreed that Rule 22(A) in its present form is confusing and should be revamped to present the various procedures covered by the rule in a more orderly fashion.

Discussion of Amendments

(1) Paragraph (A)

Present paragraph (A) would be amended to make it clear that an issuing authority has jurisdiction and authority at all times to perform the administrative functions listed and to hold hearings and trials. The remainder of the paragraph would be deleted, and the content of the deleted portion would be reorganized into subparagraphs.

Paragraph (A)(1) makes it clear that, unless the issuing authority is using advanced communication technology as provided in (A)(2), the issuing authority is to conduct preliminary arraignments at the issuing authority's established office, or an established night court, or some other judicial facility that may be designated by the president judge, or the president judge's designee.

[1] Rule 22 was adopted in 1974 at a time when there were still justices of the peace, and many of them had their offices in or attached to their homes. With the advent of the district justice system, fewer homes were utilized as offices. Today, all issuing authorities have official business offices.

Paragraph (A)(2) is new, and acknowledges that advanced communication technology may be used to conduct preliminary arraignments pursuant to Rule 140 (Preliminary Arraignment)[2]. In these cases, the Committee agreed that, because of the expense of and other considerations related to the installation of the equipment that is needed to use advanced communication technology, the location of the preliminary arraignments conducted using advanced communication technology must be determined by the president judge, or the president judge's designee.

Paragraph (A)(3) establishes the locations for all other hearings and trials, and is taken from the second half of present paragraph (A). Ordinarily, all hearings and trials are to be conducted in the issuing authority's established office. The provision recognizes that there may be reasons to move the hearing or trial to a different location, such as when more security is needed, and in these cases, the president judge, or the president judge's designee, must direct that the hearing or trial be relocated to a more suitable location.

The Committee, in discussing the president judge's responsibility to designate locations for the various hearings, agreed that the president judge could designate another judge or other court official to make these determinations in his or her place. We, therefore, have added "the president judge's designee" in paragraphs (A)(1), (2), and (3). We are not making the same recommendation in paragraph (B) because we believe the establishment of central courts should remain with the president judge only.

Paragraph (A)(4) incorporates what was formerly the focus of the first part of paragraph (A), and permits the issuing authority to receive complaints, issue warrants, fix and take bail, and issue commitments to jail from any location within the judicial district. The Committee agreed that the issuing authority could determine the location of these purely administrative functions without the intervention of the president judge.

(2) Paragraph (B)

The wording of paragraph (B) would be tightened up. The only substantive change is the removal of the provision for the defendant and the Commonwealth to agree to have the preliminary hearing in the issuing authority's office. The Committee agreed that if the president judge has decided that it is important to set up a central location(s) as provided in paragraph (B), then the parties should not be able to circumvent that decision.

(3) Correlative and Editorial Changes

As we were working on Rule 22, the Committee agreed that the following correlative and editorial changes should be made.

(a) The Committee agreed that the reference to "magisterial district" in the last line of present paragraph (A) concerning the available sites for the relocation of hearings or trials should be changed to "judicial district" when the provision is moved to paragraph (A)(3) to provide the president judge, or the president judge's designee, wider latitude in selecting an appropriate relocation site.

(b) The rule has been made gender neutral in conformity with the other Criminal Rules.

(c) The capitalization within the rule has been corrected to align the rule with the other Criminal Rules.

[Pa.B. Doc. No. 99-816. Filed for public inspection May 21, 1999, 9:00 a.m.]

[2] The Committee has recommended to the Supreme Court that Rule 140 be amended to sepcifically provide for the use of advanced communication technology to conduct preliminary araignments. The Committee's proposal was published at 28 Pa.B. 3931 (August 15, 1998).