THE COURTS

Title 207—JUDICIAL CONDUCT

PART III. JUDICIAL CONDUCT BOARD

[207 PA. CODE CH. 121]

Special Procedures for Cases Involving Substance Abuse

The Judicial Conduct Board recognizes that the judiciary, like the general population, includes individuals impaired by substance abuse.[1]

Because judges exercise a unique public trust, the Judicial Conduct Board, in devising its rehabilitative diversion procedure, desires to encourage affected members of the judiciary to seek help at the earliest possible moment so as to ensure maximum protection to the public against misconduct resulting from their impairment. The Board seeks to achieve this objective through a realistic plan to mitigate the harmful consequences of substance abuse to the judiciary and the public. The primary function of this Policy is the rehabilitation of the judge; a secondary modality is the prompt disposition of substance abuse related complaints, obviating costly and time consuming investigations, hearings and related proceedings.

Judicial Conduct Board Policy

The Judicial Conduct Board regards substance abuse as an illness and will regard misconduct caused by such an illness as mitigated by that fact, provided that the impaired judge obtains appropriate treatment for his/her problem. The Board encourages President Judges and administrative agencies to accommodate rehabilitation by any impaired judicial officer, provided that the President Judge and appropriate administrative agency have been made aware of the judge's condition and the accommodations sought by the judge do not impose an undue hardship on the court or agency.

This Policy is not intended to provide that substance abuse problems are an excuse for deficiencies in performance or behavior. Judges with substance abuse problems will be held to the same standards as other similarly situated individuals.

The Judicial Conduct Board is committed to preserving the independence and integrity of the judiciary and assisting the recovery of judges suffering from substance abuse. It is the purpose of this Policy to encourage those judges who desire to seek help to do so at an early stage before their functioning or the judiciary itself is compromised.

The impairment of any judge's performance due to substance abuse may have an adverse impact on the court's functioning. For this reason, it is important for a judge with a substance abuse problem to seek help as early as possible.

In the Workplace

Possession or consumption of alcohol or other mood-changing chemicals while on court property or while performing judicial services constitutes misconduct on the part of a judge. Reporting to or remaining at the workplace under the influence of alcohol or other mood-altering drugs, is likewise regarded as misconduct. This prohibition does not apply to limited alcohol consumption at meals off of the court premises.

Violations of Criminal Statutes

The sale, manufacture, delivery, distribution, possession, processing, packaging, or otherwise trafficking, of controlled substances is a crime under the Drug, Device and Cosmetic Act of April 14, 1972, P. L. 233 No. 64 (35 Pa.C.S.A. § 780-101 et seq.) and any judicial officer found guilty of such conduct shall be ineligible for the diversionary treatment described in this policy. Any judicial officer convicted of Driving Under the Influence of alcohol or any controlled substance as defined in the Vehicle Code Act of 1976, June 17, P. L. 162 No. 81 § 1, as amended (75 Pa.C.S.A. § 3731) or granted Accelerated Rehabilitation Disposition ("ARD") on a charge, will be subject to discipline for such misconduct but such Judicial Officer may seek mitigation of any otherwise applicable sanctions so long as he/she cooperates in an approved treatment program described in this policy.

Qualified Treatment Program

For the purpose of the Board's diversion program, a Qualified Treatment Program shall be one which is approved by both the Administrative Office of Pennsylvania Courts (AOPC) and this Board.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART III. JUDICIAL CONDUCT BOARD

CHAPTER 121. SPECIAL PROCEDURES FOR CASES INVOLVING SUBSTANCE ABUSE

Rule 36. Petition for Rehabilitative Diversion.

(A) When the Board finds probable cause to investigate a Complaint alleging misconduct involving substance abuse, the Board may notify the Judicial Officer of its investigation and provide the Judicial Officer with an opportunity to petition the Board for permission to enter a rehabilitative diversion program acceptable to the Board prior to the filing of formal charges with the Court of Judicial Discipline.

(B) Such petition shall be filed with the Board promptly. Absent Board approval, a petition shall not be considered if filed after the Judicial Officer's response to the Board's Notice of Full Investigation (see Rules of Procedure of the Judicial Conduct Board outlined in Rule 30B).

(C) The petition for rehabilitative diversion shall contain

(1) the Judicial Officer's verified statement that he/she desires to participate in a qualified treatment program;

[1] The following terms referenced shall be defined as follows:

• *substance abuse*—repeated excessive use of alcohol or other drugs which continues to cause serious adverse consequences in one's life;

• *alcoholism and other chemical dependency*—a pattern of chronic, harmful and compulsive substance abuse characterized by denial and impaired control over the use of the substance.

As used in the Policy and Chapter 11 of the Rules of Procedure of the Judicial Conduct Board, the term substance abuse shall include alcoholism and other chemical dependency as well as substance abuse.

(2) a release giving Board Counsel access of all information and records bearing on the rehabilitative program, including information concerning the applicant's past substance abuse and treatment, as well as the proposed rehabilitative program;

(3) a stipulation as to facts which are agreed to by the Judicial Officer and Board Counsel relevant to the formal charges; and agreement of the admissibility of such stipulation in any future proceeding before the Court of Judicial Discipline;

(4) a waiver by the Judicial Officer of the right to file pre-trial motions based on grounds then known to the applicant unless specifically modified as exceptions to the waiver; and

(5) the Judicial Officer's consent to submit to testing for drug or alcohol consumption during any probationary period later imposed.

Rule 37. Evaluations

(A) When any Judicial Officer under investigation applies for diversion under Rule 36 on the ground of his or her substance abuse, the Board may require the applicant to submit to such medical evaluations as it deems necessary. The Board shall appoint one or more healthcare professionals to examine the applicant and report their findings to the Board. A copy of any such report will be shared with the applicant. Failure to submit to examination will be considered by the Board in its disposition of any pending complaint.

(B) All expenses incurred for such evaluations and reports shall be assessed against the Judicial Officer and shall be his or her sole responsibility.

Rule 38. Diversion Procedure.

(A) When a Judicial Officer enters a rehabilitation diversion program pursuant to this Chapter, the Board may defer filing formal charges with the Court of Judicial Discipline for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer consents in writing to the release of treatment information and records relating to his or her participation in the program.

(B) When a Judicial Officer satisfactorily completes an approved inpatient rehabilitation program, the Board shall continue the matter for a twelve (12) month probationary period, which may be conditioned on the Officer's continued participation in a recommended recovery program.

(C) If the rehabilitative intervention and the probationary period are deemed by the Board to have been satisfactorily completed, the Board will refrain from filing charges in the Court of Judicial Discipline and will dismiss the Complaint through the letter of counsel procedure outlined in J.C.B.R.P. 31(A)(2).

(D) If the Board determines that the applicant Judicial Officer has abandoned the recovery program, or has violated the terms in any substantial way, the Board may direct the filing of charges before the Court of Judicial Discipline, or take such other action as may be appropriate in the circumstances.

[Pa.B. Doc. No. 03-500. Filed for public inspection March 21, 2003, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1000, 2120, 2150 AND 2170]

Amendment of Rules of Civil Procedure Governing Venue; No. 381; Civil Procedure Rules; Doc. No. 5

Amendatory Order

Per Curiam:

And Now, this 5th day of March, 2003, Pennsylvania Rules of Civil Procedure 1006, 2130, 2156 and 2179, amended by the Order of January 27, 2003, No. 381, Civil Procedural Rules Docket No. 5, shall apply to medical professional liability actions filed on or after January 1, 2002 and not to such actions filed prior to that date. The provisions of Rule of Civil Procedure 1032 governing waiver of defenses and objections shall not apply to a challenge to venue made within ninety days of the date of this Amendatory Order.

This Amendatory Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Justices Castille and Saylor would apply the amendments to the Pennsylvania Rules of Civil Procedure, as stated, prospectively for all actions filed on or after the effective date of Act No. 127 of 2002.

(*Editor's Note*: See adopting order at 33 Pa.B. 751 (February 8, 2003).)

[Pa.B. Doc. No. 03-501. Filed for public inspection March 21, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Commencement of Action, Complaint and Order

Order

And Now, this 6th day of March, 2003, Dauphin County Local Rule of Civil Procedure 1915.3 is amended as follows:

Rule 1915.3. Commencement of Action. Complaint. Order

(1) * * *

(2) (a) In addition to the filing fees assessed for the filing of Complaints, an additional administrative fee in the amount of **[$100.00] $110.00** shall be paid to the Prothonotary simultaneously with the filing of the Complaint.

(b) An administrative fee of **[$100.00] $110.00** shall be paid to the Prothonotary simultaneously with the filing of any subsequent petition for relief (such as, but not limited to, a petition for modification or contempt).

(3) * * *

This amendment shall be effective May 1, 2003.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 03-502. Filed for public inspection March 21, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Patrick H. McCarthy, III, having been disbarred from the practice of law in the Commonwealth of Massachusetts by Order dated August 30, 2002, the Supreme Court of Pennsylvania issued an Order on February 11, 2003, disbarring Patrick H. McCarthy, III, from the Bar of this Commonwealth, effective March 13, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin.*

ELAINE M. BIXLER,
Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 03-503. Filed for public inspection March 21, 2003, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that John Martin DeLaurentis, having been suspended from the practice of law in the State of New Jersey for a period of one year, the Supreme Court of Pennsylvania issued an Order dated March 7, 2003 suspending John Martin DeLaurentis, from the practice of law in this Commonwealth for a period of one year, effective April 6, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin.*

ELAINE M. BIXLER,
Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 03-504. Filed for public inspection March 21, 2003, 9:00 a.m.]