

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW [204 PA. CODE CH. 71]

Adoption of Rule 302 of the Pennsylvania Bar Admission Rules; No. 333 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of March, 2004, Rule 302 of the Pennsylvania Bar Admission Rules is adopted to read as follows.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and the amendment adopted hereby shall be effective in 180 days from the date of this order.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter C. RESTRICTED PRACTICE OF LAW IN GENERAL

Rule 302. Limited In-House Corporate Counsel Li- cense.

(a) *General Rule.* Every attorney not a member of the bar of this Commonwealth, who is employed by and performs legal services in this Commonwealth for a corporation, company, partnership, association or other non-governmental business entity, shall obtain a Limited In-House Corporate Counsel License in order to provide such services if such services are performed in this Commonwealth on more than a temporary basis by the attorney or if the attorney maintains an office or other systematic and continuous presence in this Commonwealth.

(b) *Scope of Legal Activities.* Attorneys issued a Limited In-House Corporate Counsel License may provide advice or legal services to the employer named in the application subject to the following qualifications:

(1) The legal services provided to the employer shall be limited to:

(a) giving legal advice to the directors, officers, employees, and agents of the business organization with respect to its business affairs;

(b) negotiating and documenting all matters for the business organization;

(c) representing the business organization in its dealings with any administrative agency or commission if authorized by the rules of the agency or commission.

(2) In providing legal services, attorneys practicing under a Limited In-House Corporate Counsel License shall not:

(a) represent their employer in any case or matter pending before the courts of this Commonwealth, unless they have been admitted *pro hac vice*;

(b) represent or give advice to any shareholder, owner, partner, officer, employee or other agent with respect to any personal matter or transaction;

(c) offer legal services or advice to any third party having dealings with the attorney's employer; or

(d) offer legal services or advice to the public or hold themselves out as authorized to offer legal services or advice to the public.

(3) Notwithstanding the fact that the practice of law by a lawyer licensed under this rule is limited to the practice of law for the employer furnishing the statement required by this rule, a lawyer licensed under this rule may participate in the provision of pro bono services offered under the auspices of organized legal aid societies or state/local bar association projects, or provided under the supervision of an attorney licensed to practice law in Pennsylvania who is also working on the pro bono representation.

(c) *Application.* An applicant for a Limited In-House Corporate Counsel License shall file with the board a written application, in the form of a verified statement on the form prescribed by the board, setting forth those matters which the board deems necessary, and pay an application fee fixed by the board. The application shall be processed in accordance with the provisions of Rules 212 through 231.

(d) *Requirements.* The general requirements for issuance of a Limited In-House Corporate Counsel License are:

(1) Completion of the study of law at and receipt without exception of an earned Bachelor of Laws or Juris Doctor degree from a law school;

(2) Admission to practice law in another state, territory of the United States or the District of Columbia on active status at the time of filing the application;

(3) Absence of prior conduct by the applicant which in the opinion of the board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth;

(4) Presentation of a certificate of good standing from the highest court or the agency having jurisdiction over admission to the bar and the practice of law in every jurisdiction in which the applicant has been admitted to practice law, stating that the applicant is in good professional standing at the bar of such court or such state. An applicant who is disbarred or suspended for disciplinary reasons from the practice of law in another jurisdiction at the time of filing an application shall not be eligible for a Limited In-House Corporate Counsel License;

(5) Presentation of a sworn statement by the applicant certifying that he/she will perform legal services in this Commonwealth solely for the employer identified in the application, and that such employer's lawful business consists of activities other than the practice of law or the provision of legal services;

(6) Presentation of a statement signed by an officer, director or general counsel of the applicant's employer stating that the applicant is an employee for such employer and performs legal services in this Commonwealth for such employer.

(e) *Duration.* The Limited In-House Corporate Counsel License shall expire if:

(1) such attorney is admitted to the bar of this Commonwealth under any other rule,

(2) fails to fulfill the obligations required of active members of the bar of this Commonwealth,

(3) is suspended or disbarred from the practice of law in another jurisdiction,

(4) fails to maintain active status for admission to the practice of law in at least one state, territory of the United States or the District of Columbia; or

(5) such attorney ceases to be employed by the employer listed on such attorney's application; provided, however, that if such attorney, within 30 days of ceasing to be an employee for the employer listed on such attorney's application, becomes employed by another employer within this Commonwealth for which such attorney shall perform legal services, such attorney may apply for a new certificate recommending the issuance of a Limited In-House Corporate Counsel License under this Rule by filing with the board, within 30 days of commencing the new employment, a statement identifying his or her new employer, and the date on which his prior employment ceased and his new employment commenced, and submitting the documents required by sections (d)(5) and (6) of this rule with respect to the new employer.

(f) *Issuance of License.* At any time within six months of the receipt of a certificate from the board recommending the issuance of a Limited In-House Corporate Counsel License, an applicant may file a motion with the Prothonotary, on a form prescribed by the board for issuance of a Limited In-House Corporate Counsel License. The motion shall be accompanied by the certificate from the board recommending issuance of the license and the fee required by the Prothonotary. Upon receipt of the appropriate documents and fee, the Prothonotary shall enter the name of the applicant upon the docket of persons issued a Limited In-House Corporate Counsel License, notify the Administrative Office of the issuance of a limited license to such attorney and issue an engrossed Limited In-House Corporate Counsel License under seal.

(g) *Status.* When a license is required under this rule for the performance of legal services in this Commonwealth solely for an attorney's employer, the performance of such services by the attorney shall be considered to be the active engagement in the practice of law for all purposes and shall subject the attorney to all duties and obligations of active members of the Pennsylvania bar including, but not limited to the Rules of Professional Conduct, the Rules of Disciplinary Enforcement and the Rules of Continuing Legal Education. Prior to the effective date of this rule, when an attorney performed legal services in this Commonwealth solely as an employee of a business organization, whose business consisted of activities other than the practice of law or the provision of legal services, the rendering of such legal services shall be deemed for all purposes to have been the authorized active engagement in the practice of law in this Commonwealth, if such attorney, at the time of the performance of

such legal services met the requirements set forth in sections (d) (1), (2), (3) and (4) of this rule.

[Pa.B. Doc. No. 04-645. Filed for public inspection April 16, 2004, 9:00 a.m.]

PART IV. ADMISSION TO PRACTICE LAW

[204 PA. CODE CH. 71]

Amendment of Rule 204 of the Pennsylvania Bar Admission Rules; No. 334 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of March, 2004, Rule 204 of the Pennsylvania Bar Admission Rules is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa. B.A.R. 204 is hereby found to be required in the interest of justice and efficient administration. This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and the amendment adopted hereby shall be effective in 180 days from the date of this order.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter B. ADMISSION TO THE BAR GENERALLY

IN GENERAL

Rule 204. Admission of domestic attorneys.

As an alternative to satisfying the requirements of Rule 203 [**(relating to admission of graduates of accredited and unaccredited institutions)**], an attorney [**of**], licensed to practice law in another state may be admitted to the bar of this Commonwealth if the applicant [**has**] meets the following requirements:

(1) **Has** completed the study of law at and received without exception an earned Bachelor of Laws or Juris Doctor degree from an accredited law school [**, is**].

(2) **Is** a member of the bar of a reciprocal state **on active status** at the time of filing of the application for admission to the bar of this Commonwealth [**and meets the following qualifications:**].

[(1)] (3) * * *

[(2)] (4) Presentation of proof satisfactory to the Board that the applicant has for a period of five years of the last seven years immediately preceding the date of filing of the application for admission to the bar of this Commonwealth [**:**] devoted a major portion of time and energy to the practice of law in one or more states.

[(i) engaged in the practice of law in a state or states outside this Commonwealth; or

(ii) provided legal services as an attorney for the federal government regardless of the location of the services; or

(iii) served full time as a law clerk to a judge of any court of the United States or of any state or territory of the United States regardless of the location of the service;

provided the applicant had at some time been engaged in the practice of law or otherwise performed the legal functions set forth in subparagraphs (ii) and (iii) in reciprocal jurisdictions for at least five years or had been engaged in the practice of law or otherwise performed the legal functions set forth in subparagraphs (ii) and (iii) in reciprocal jurisdictions for a substantial portion of the five out of the seven year period immediately preceding the application or for such portion of time for which credit is being sought in combination with subparagraphs (iv) and (v). For purposes of this paragraph, the phrase "engaged in the practice of law" is defined as "devoting a major portion of one's time and energy to the rendering of legal services";

(iv) engaged full-time in the teaching of law at one or more accredited law schools, colleges or universities in the United States provided a substantial portion of such time was spent teaching at an accredited law school; or

(v) served on active duty in the United States military service, as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C. Sec. 801, as amended, regardless of the location of the service.

Service under subparagraphs (i), (ii), (iii), (iv) and (v) may be combined to satisfy the five year service requirement of this subparagraph.]

(5) Presentation of proof satisfactory to the board that the applicant has either taken and passed the bar examination in a reciprocal state or has devoted a major portion of time and energy to the practice of law in a reciprocal state for five years of the last seven years immediately preceding the date on which an application was filed under this rule.

[(3)] (6) * * *

[(4)] (7) * * *

[(5)] (8) * * *

For purposes of this rule, the phrase "practice of law" is defined as engaging in any of the following legal activities, provided such activities were performed in a state in which the applicant was admitted to practice law or in a state that affirmatively permitted such activity by a lawyer not admitted to practice law in the jurisdiction:

(i) Representation of one or more clients in the private practice of law.

(ii) Providing legal services as an attorney with a local, state or federal agency.

(iii) Teaching law full time at an accredited law school, college or university in the United States, provided a substantial portion of such time was spent teaching at an accredited law school.

(iv) Service as a judge in a federal, state or local court of record.

(v) Service full time as a judicial law clerk to any judge of any court of the United States or of any state or territory of the United States.

(vi) Service as corporate counsel.

(vii) Service on active duty in the United States military service, as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C. Sec. 801, as amended.

The term "practice of law" shall not include providing legal services in any of the above referenced areas, when such services as undertaken constituted the unauthorized practice of law in the state in which the legal services were performed or in the state in which the clients receiving the unauthorized services were located.

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[Pa.B. Doc. No. 04-646. Filed for public inspection April 16, 2004, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 19]

Order Amending Pa.R.A.P. No. 1931 and Note; No. 151 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 1st day of April, 2004, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 33 Pa.B. 4552 (September 13, 2003).

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 1931, and Note thereto, are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1931. Transmission of the Record.

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(c) *Duty of clerk to transmit the record.* When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall

transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which [it] the record is transmitted to the appellate court.

(d) *Service of the List of Record Documents.* The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.* Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

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Explanatory Comment—2004

It is hoped that the 2004 amendment to Rule 1931 will alleviate the potential waiver problem which results when counsel is unable to ascertain whether the entire record in a particular case has been transmitted to the appellate court for review. The rule change is intended to assist counsel in his or her responsibility under the Rules of Appellate Procedure to provide a full and complete record for effective appellate review. See *Commonwealth v. Williams*, 552 Pa. 451, 715 A.2d 1101 (1998) (“The fundamental tool for appellate review is the official record of what happened at trial, and appellate courts are limited to considering only those facts that have been duly certified in the record on appeal.”); *Commonwealth v. Wint*, 1999 Pa. Super. 81, 730 A.2d 965 (1999) (“Appellant has the responsibility to make sure that the record forwarded to an appellate court contains those documents necessary to allow a complete and judicious assessment of the issues raised on appeal.”). In order to facilitate counsel’s ability to monitor the contents of the original record which is transmitted from the trial court to the appellate court, new subdivision (d) requires that a copy of the list of record documents be mailed to all counsel of record, or to the parties themselves if unrepresented, and that the giving of such notice be noted on the record. Thereafter, in the event that counsel discovers that anything material to either party has been omitted from the certified record, such omission can be corrected pursuant to Pa.R.A.P. 1926.

[Pa.B. Doc. No. 04-647. Filed for public inspection April 16, 2004, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. VII]

Order Adopting Revision of Comment to Rule 702; No. 335 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 1st day of April, 2004, upon the recommendation of the Committee on Rules of Evidence, this proposal along with a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the comment to Rule of Evidence 702 is hereby revised in the following form.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective May 10, 2004.

Annex A

TITLE 225. RULES OF EVIDENCE ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 702. Testimony By Experts.

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Comment

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Adoption of Pa.R.E. 702 does not alter Pennsylvania’s adoption of the standard in *Frye v. United States*, 293 F. 1013 (D. C. Cir. 1923), which requires scientific evidence to have “general acceptance” in the relevant scientific community. See *Commonwealth v. Dunkle*, *supra*; *Commonwealth v. Nazarovitch*, 496 Pa. 97, 436 A.2d 170 (1981); *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 (1977). In 1993, the United States Supreme Court held that *Frye* was superseded in the federal courts by the adoption of F.R.E. 702. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993). [**Pennsylvania courts have not yet decided whether the rationale in *Daubert* supersedes or modifies the *Frye* test in Pennsylvania. *Commonwealth v. Crews*, 536 Pa. 508, n.2, 640 A.2d 395 (1994).] In *Grady v. Frito-Lay, Inc.*, ___ Pa. ___, 839 A.2d 1038 (2003), a majority of the Pennsylvania Supreme Court rejected the *Daubert* standard and affirmed the applicability of the *Frye* standard in the Pennsylvania state courts.**

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FINAL REPORT

Comment Revision of Pa.R.E. 702

On April 1, 2004, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted the changes to Pa.R.E. 702 comment effective May 10, 2004. This change is made to alert the legal profession that the Supreme Court has affirmed the *Frye* standard for the admissibility of expert testimony. In so doing, the Supreme Court rejected the *Daubert* standard. Heretofore, Pennsylvania courts had not decided whether the rationale in *Daubert* superseded or modified the *Frye*

test. That question has now been answered in *Grady v. Frito-Lay, Inc.*, ___ Pa. ___, 839 A.2d 1038 (2003).

[Pa.B. Doc. No. 04-648. Filed for public inspection April 16, 2004, 9:00 a.m.]

SUPREME COURT

Investment Advisory Board; Request for Proposals

The Supreme Court of Pennsylvania, through its Investment Advisory Board (IAB), plans to issue a request for proposal (RFP) for investment advisory services. The RFP will cover the investment operations of three court-appointed boards operating independently of each other, within the purview of the Supreme Court. The Supreme Court has decided to consolidate the investment activity of the boards to maximize overall investment returns, reduce investment costs, and increase operating efficiencies. The IAB is responsible for this consolidation and future investment oversight. The purpose of this notice is to determine your firm's interest in responding to the soon-to-be-released RFP.

The services being sought will be to review the investment activity of each of the three boards with the intent to:

1. recommend a consolidated investment policy, strategy and asset allocation;

2. recommend an operating structure to accommodate the consolidation of board deposited funds for investment and the withdrawal of invested funds for individual board operating use, with separate accounting to assure the fair allocation of investment income at the board level;

3. assist in the selection of money managers once an investment policy, strategy and asset allocation plan are developed;

4. provide monthly, quarterly and annual reports to the IAB on investment performance, and quarterly reports to the IAB on money manager performance, advising the IAB accordingly; and

5. make annual recommendations to the IAB, to include but not limited to, modifications to the current investment policy, strategy and asset allocations.

The expected size of the consolidated portfolio is in the \$20 million range. Source of funds are attorney assessments and fees for service. Offices of the three boards are located in the Harrisburg, Pennsylvania area.

If you are interested in receiving a copy of the RFP, please contact by letter the Administrative Office of Pennsylvania Courts, P. O. Box 719, Mechanicsburg, PA 17055, Attention IAB-RFP, or email to IAB-RFP@pacourts.us, by May 17, 2004.

MANUEL STAMATAKIS,
Chairperson

[Pa.B. Doc. No. 04-649. Filed for public inspection April 16, 2004, 9:00 a.m.]
