

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendments to the Pennsylvania Rules of Professional Conduct Relating to Disclosure of Malpractice Insurance

Notice is hereby 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 Professional Conduct to add a new Rule 1.4(c), as set forth in Annex A, requiring disclosure to clients when a lawyer does not maintain malpractice insurance with a specified minimum level of coverage.

The existing Rules of Professional Conduct do not require any disclosure to clients regarding malpractice insurance carried by lawyers. The Board believes that it would be beneficial to clients for their lawyer to notify them if the lawyer does not carry malpractice insurance with a specified minimum level of coverage. Lawyers would also be required to notify their clients if their malpractice insurance drops below the stated minimums or is terminated. Alaska, New Hampshire, Ohio, and South Dakota have rules requiring disclosure of the type being proposed by the Board. The American Bar Association has also adopted a *Model Court Rule on Insurance Disclosure*.

Interested persons are invited to submit written comments regarding proposed Pa.R.P.C. 1.4(c) 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 September 30, 2005.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary of the Board

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.4. Communication.

* * * * *

(c) A lawyer shall inform a new client in writing if the lawyer does not have malpractice insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and shall inform existing clients in writing at any time the lawyer's malpractice insurance drops below either of those amounts or the lawyer's malpractice insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

Comment:

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Disclosures Regarding Insurance

(8) Paragraph (c) does not apply to lawyers in government practice or lawyers employed as in-house counsel.

(9) Lawyers may use the following language in making the disclosures required by this rule:

(i) No insurance or insurance below required amounts when retained: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's malpractice insurance drops below either of those amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm) does not have malpractice insurance coverage of at least \$100,000 per occurrence and \$300,000 in the aggregate per year."

(ii) Insurance drops below required amounts: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's malpractice insurance drops below either of those amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance dropped below at least \$100,000 per occurrence and \$300,000 in the aggregate per year as of (date)."

(iii) Insurance terminated: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have malpractice insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's malpractice insurance drops below either of those amounts or a lawyer's malpractice insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s malpractice insurance has been terminated as of (date)."

[Pa.B. Doc. No. 05-1474. Filed for public inspection August 5, 2005, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CHS. 85, 87, 91 AND 93]

Amendments to Rules of Organization and Procedure of The Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 62; Doc. Nos. R-139, R-140, R-143 and R-148

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated March 17, 2005, April 1, 2005, April 5, 2005, and May 24, 2005, the Supreme Court of Pennsylvania amended Pa.R.D.E. 102, 201, 203, 204, 209, 212, 215, 216, 217, 219, and 221. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*, except that the amendments to 204 Pa. Code §§ 85.7, 91.1, 91.51, and 93.141 shall take effect on September 1, 2005.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary of the Board

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in

this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * * * *

Attorney. Includes any person subject to these rules.

* * * * *

Foreign legal consultant. A person who holds a current license as a foreign legal consultant issued under Pennsylvania Bar Admission Rule 341 (relating to licensing of foreign legal consultants).

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Limited In-House Corporate Counsel License. A license issued under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

Military attorney. An attorney holding a limited admission to practice under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys).

* * * * *

Practice of law. Includes the provision of legal services as a foreign legal consultant or military attorney, or pursuant to a Limited In-House Corporate Counsel License.

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§ 85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement Rules extends to:

(1) Any attorney admitted to practice law in this Commonwealth.

Official Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney or a person holding a Limited In-House Corporate Counsel License. See the definitions of "attorney," "practice of law" and "respondent-attorney" in § 85.2 (relating to definitions).

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§ 85.7. Grounds for discipline.

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(b) Enforcement Rule 203(b) provides that the following shall also be grounds for discipline:

* * * * *

(5) **Ceasing to meet the requirements for licensure as a foreign legal consultant set forth in Pennsylvania Bar Admission Rule 341(a)(1) or (3) (relating to licensing of foreign legal consultants).**

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§ 85.8. Types of discipline.

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(c) **Limited In-House Corporate Counsel License.** Enforcement Rule 204(c) provides that a reference in the Enforcement Rules and these rules to disbarment, suspension, temporary 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; and that a respondent-attorney whose Limited In-House Corporate Counsel License expires for any reason:

(1) shall be deemed to be a formerly admitted attorney for purposes of Subchapter 91E (relating to formerly admitted attorneys); and

(2) shall not be entitled to seek reinstatement under Subchapter 89F (relating to reinstatement and resumption of practice) or §§ 93.145 (relating to reinstatement) or 93.112(c) (relating to reinstatement upon payment of taxed costs) and instead must reapply for a Limited In-House Corporate Counsel License under Pennsylvania Bar Admission Rule 302 (relating to limited in-house corporate counsel license).

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter D. ABATEMENT OF INVESTIGATION

§ 87.73. Resignations by attorneys under disciplinary investigation.

(a) [*General rule*] *Voluntary resignation.* Enforcement Rule 215(a) provides [as follows:

(1) An] that an attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to the Board a verified statement stating that the attorney desires to resign and that:

[(i)] (1) * * *

[(ii)] (2) * * *

[(iii)] (3) * * *

[(iv)] (4) * * *

(b) *Representation by counsel.* The verified statement under subsection (a) shall indicate whether or not the attorney has consulted or followed the advice of counsel (naming such counsel, if any) in connection with the decision to resign.

[(2) Upon] (c) *Order of disbarment.* Enforcement Rule 215(b) provides that upon receipt of the required statement, the Secretary of the Board shall file it with the Supreme Court and the Court shall enter an order disbarring the attorney on consent.

[(3) The] (d) *Confidentiality of resignation statement.* Enforcement Rule 215(c) provides that the order disbarring the attorney on consent shall be a matter of public record, but for the purposes of § 93.102(a)(1) (relating to proceedings confidential) the order shall not be an order for the imposition of public discipline. The statement required under the provisions of paragraph (1) shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

[(i)] (1) * * *

[(ii)] (2) * * *

[(iii)] (3) * * *

[(iv)] (4) * * *

(b) *Representation by counsel.* The verified statement under subsection (a) shall indicate whether or not the attorney has consulted or fol-

lowed the advice of counsel (naming such counsel, if any) in connection with the decision to resign.]

§ 87.74. Discipline on consent.

(a) *General rule.* Enforcement Rule 215(d) provides that at any stage of a disciplinary investigation or proceeding, a respondent-attorney and Disciplinary Counsel may file a joint Petition in Support of Discipline on Consent; and that the Petition shall be accompanied by an affidavit stating that the attorney consents to the recommended discipline and that:

(1) the consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the consent; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to consent to discipline;

(2) the attorney is aware that there is presently pending an investigation into, or proceeding involving, allegations that the respondent-attorney has been guilty of misconduct as set forth in the Petition;

(3) the attorney acknowledges that the material facts set forth in the Petition are true; and

(4) the attorney consents because the attorney knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, the attorney could not successfully defend against them.

(b) *Contents of Petition.* Enforcement Rule 215(d) provides that a Petition shall include the specific factual allegations that the respondent-attorney admits he or she committed, the specific Disciplinary Rules and Enforcement Rules allegedly violated and a specific recommendation for discipline. The Petition must also set forth:

(1) any past discipline imposed on the attorney in any jurisdiction;

(2) a discussion of applicable precedent and how the recommended discipline compares with that imposed in reported cases;

(3) any aggravating or mitigating factors; and

(4) if the recommended discipline includes probation, a statement that the attorney understands that violation of the probation may result in the commencement of a proceeding under § 89.292 (relating to violation of probation).

(c) *Handling of Petition.* Enforcement Rule 215(e) provides that the Petition shall be filed with the Board; that the filing of the Petition shall stay any pending proceeding before a hearing committee, special master or the Board; and that the Petition shall be reviewed by a panel composed of three members of the Board who may approve or deny.

Official Note: The fact that a Petition is being negotiated is not grounds for a continuance, and formal proceedings will continue unabated until the Petition is filed as provided in subsection (c).

(d) *Private discipline.* Enforcement Rule 215(f) provides that if a panel approves a Petition consenting to an informal admonition or private reprimand, with or without probation, the Board shall enter an appropriate order, and it shall arrange to

have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(e) **Public discipline.** Enforcement Rule 215(g) provides that, if a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court; that, if the Court grants the Petition, the Court shall enter an appropriate order disciplining the respondent-attorney on consent; and that the order and the Petition shall be a matter of public record in accordance with § 93.102 (relating to proceedings confidential).

(f) **Denial of Petition.** Enforcement Rule 215(h) provides that, if either the panel of the Board or the Supreme Court denies a Petition, the members of the Board who participated on the reviewing panel shall not participate in further consideration of the same matter; and that any stayed proceedings shall resume as if the Petition had not been filed and neither the Petition nor the affidavit may be used against the respondent-attorney in any disciplinary proceeding or any other judicial proceeding.

(g) **Costs.** Enforcement Rule 215(i) provides that the panel of the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the matter shall be paid by the respondent-attorney as a condition to the grant of the Petition; and that all expenses taxed under this subdivision shall be paid by the attorney before the imposition of discipline under subsection (d) or (e).

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter A. SERVICE, SUBPOENAS, DEPOSITIONS AND RELATED MATTERS IN GENERAL

§ 91.1. Substituted service.

Enforcement Rule 212 provides that in the event a respondent-attorney cannot be located and personally served with notices required under the Enforcement Rules and these rules, such notices may be served upon the respondent-attorney by addressing them to the address furnished in the last registration statement filed by the respondent-attorney in accordance with § 93.142(b) (relating to filing of annual statement by attorneys) or, in the case of foreign legal consultant, by serving them pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

Subchapter C. RECIPROCAL DISCIPLINE

§ 91.51. Reciprocal discipline.

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension or disbarment in another jurisdiction, the Supreme Court shall forthwith issue a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

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(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline in this Commonwealth would be unwarranted, and the reasons therefor.

The Office of the Secretary shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with § 93.142(b) (relating to filing of annual statement by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

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Subchapter E. FORMERLY ADMITTED ATTORNEYS

§ 91.99. Indicia of licensure.

Enforcement Rule 217(h) provides that 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 under § 93.143 (relating to issue of certificate as evidence of compliance) 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) [or], 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 § 93.143, 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.

Subchapter H. FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION

§ 91.171. Definitions.

The following terms when used in this subchapter shall have the meanings given to them in this section:

[“Fiduciary account.” Enforcement Rule 221(a) provides that a fiduciary account of an attorney is any account in which or with respect to which an attorney:

(1) holds funds of a client;

(2) holds funds in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(3) holds funds as an escrow agent or other fiduciary, having been so selected as a result of a client-attorney relationship.]

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“Trust Account.” Enforcement Rule 221(a) provides that a Trust Account of an attorney is an account in which an attorney, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship.

§ 91.172. Maintenance of fiduciary accounts.

Enforcement Rule 221(b) provides that a **[fiduciary account of an attorney] Trust Account** may be maintained only in a financial institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts.

§ 91.173. Approval and termination of financial institutions.

(a) *Approval.* Enforcement Rule 221(c) provides that a financial institution shall be approved as a depository for **[fiduciary accounts of attorneys] Trust Accounts** if it shall file with the Board an agreement (in a form provided by the Board) in which the financial institution agrees to make a prompt report to the Lawyers Fund for Client Security Board under the circumstances described in § 91.174 (relating to reports of overdrafts). Upon receiving a signed agreement from a financial institution as required by this subsection, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order approving the financial institution as a depository for **[fiduciary accounts] Trust Accounts**.

(b) *Termination of approval.* Enforcement Rule 221[(j)](m) provides that a failure on the part of a financial institution to make a report called for by this subchapter may be cause for termination of its approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action by any person who is proximately caused harm thereby. Upon learning that a financial institution has failed to make a report called for by this subchapter, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order terminating the approval of the financial institution as a depository for **[fiduciary accounts] Trust Accounts**.

(c) *List of approved financial institutions.* The Board will periodically publish in the *Pennsylvania Bulletin* a list of financial institutions that are approved at the time as depositories for **[fiduciary accounts] Trust Accounts** under this subchapter. The current list shall also be published in the *Pennsylvania Code* as an appendix to this section.

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§ 91.174. Reports of overdrafts.

(a) *General rule.* Enforcement Rule 221(c) provides that a financial institution shall report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a **[fiduciary account] Trust Account** when such account contains insufficient funds to pay the instrument, regardless of:

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(b) *Timing of report.* Enforcement Rule 221[(o)](r) provides that the report required to be made under this subchapter shall be made by the financial institution to

the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

(c) *Handling of report.* Enforcement Rule 221[(n)](q) provides that a designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry regarding the report and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.

(d) *Effect of report or referral.* Enforcement Rule 221[(n)](q) also provides that neither a report filed with the Lawyers Fund for Client Security Board pursuant to this subchapter nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(e) *Immunity.* Enforcement Rule 221[(k)](n) provides that financial institutions shall be immune from suit for the filing of any reports required by this subchapter or believed in good faith to be required by this subchapter. See § 91.173(b) (relating to termination of approval).

§ 91.175. Fiduciary accounts.

(a) *Identification.* Enforcement Rule 221(f) provides that the responsibility for identifying an account as a **[fiduciary account] Trust Account** shall be that of the attorney in whose name the account is held.

(b) *Service charge.* Enforcement Rule 221[(l)](o) provides that a financial institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this subchapter.

§ 91.176. Rules for determining reporting obligation.

For purposes of this subchapter:

(1) Enforcement Rule 221(d) provides that **[an account] a Trust Account** shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement **[of the propriety]** of the practice of drawing checks against uncollected funds.

(2) Enforcement Rule 221[(g)](j) provides that funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the financial institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § **[4107(b)] 4108(b)** (relating to items **[of] or** deposits received after cutoff hour).

(3) Enforcement Rule 221[(h)](k) provides that a check or draft against a **[fiduciary account] Trust Account** shall be deemed to be presented at the close of business on the date of presentation.

(4) Enforcement Rule 221[(i)](l) provides that **no report need be made** when a financial institution determines that an instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored, **no report need be made**. This provision shall not be deemed an

endorsement [of the propriety] of the practice of drawing checks against uncollected funds.

§ 91.177. Required records.

(a) *In general.* Enforcement Rule 221(g) provides that the following books and records shall be maintained for each Trust Account:

(1) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(2) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(b) *Form.* Enforcement Rule 221(h) provides that the records required by this rule may be maintained in electronic or other form if they can be retrieved in printed hard copy; and that electronic records must be regularly backed up by an appropriate storage device.

(c) *Availability.* Enforcement Rule 221(i) provides that the records required by this rule may be subject to subpoena in connection with an investigation or hearing pursuant to these rules; and that failure to produce such records may result in the initiation of proceedings pursuant to § 91.151 (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter C. OFFICE OF THE SECRETARY

§ 93.52. Communications and filings generally.

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(d) *Disposition of complaints.*

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(2) Complaints received by the Office of the Secretary against Disciplinary Counsel involving alleged violations of the Disciplinary Rules or the Enforcement Rules shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition as provided by Enforcement Rule 209(b).

(3) Complaints received by the Office of the Secretary or the Office of Disciplinary Counsel against members of the Board involving alleged violations of Chapter 81 (relating to rules of professional conduct) or the Enforcement Rules shall [be submitted directly to the Supreme Court], as provided by Enforcement Rule 209(b), be handled in the same manner as other complaints, except that if action is required by the Board the Secretary shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

Subchapter G. FINANCIAL MATTERS

ANNUAL ASSESSMENT OF ATTORNEYS

§ 93.141. Annual assessment.

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice law in [any court of] 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 under such rule of \$130.00; that the annual fee shall be collected under the supervision of the Administrative Office, which shall send and receive, or cause to be sent and received, the notices and statements provided for in this subchapter, and that the fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

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§ 93.142. Filing of annual statement by attorneys.

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(b) *Filing of annual statement.* Enforcement Rule 219(d) provides that:

(1) On or before July 1 of each year all persons required by the rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office setting forth:

(i) The date on which the attorney was first admitted to practice [in this Commonwealth], licensed as foreign legal consultant, 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.

* * * * *

(iii) The name of each financial institution in which funds of a client are or were held by the attorney on May 1 of the current year or at any time during the preceding 12 months held funds[:

(A)] of a client[;

(B) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(C) as an escrow agent or other fiduciary, having been designated as such by a client or having been so selected as a result of a client-attorney relationship] or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The statement 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 provided to a person holding a Limited In-House Corporate Counsel License need not request the information required by this subparagraph.

(iv) A certification reading as follows: "I certify that all **[fiduciary accounts] Trust Accounts** that I maintain are in financial institutions approved by the Supreme Court of Pennsylvania for the maintenance of such accounts pursuant to Pennsylvania Rule of Disciplinary Enforcement 221 (relating to mandatory overdraft notification) and that each **[fiduciary account] Trust Account** has been identified as such to the financial institution in which it is maintained."

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(4) Upon original admission to the bar of this Commonwealth, **licensure as a foreign legal consultant, or issuance of a Limited In-House Corporate Counsel License**, a person shall concurrently file a statement under this subsection for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

[Pa.B. Doc. No. 05-1475. Filed for public inspection August 5, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 100]

Proposed Amendment to Rule 112 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 112 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to further provide for availability and temporary assignments of magisterial district judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Michael F. Krimmel, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175
or e-mail to: minorrules@pacourts.us

no later than Friday, September 2, 2005.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF MAGISTERIAL DISTRICT JUDGES

Rule 112. **Availability and Temporary Assignments of Magisterial District Judges.**

A. **[The president judge of the court of common pleas of a judicial district, or in his or her absence the available judge of that court longest in continuous service, may assign temporarily the magisterial district judge of any magisterial district to any other magisterial district or the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia whenever such an assignment is required for the efficient administration of justice.]** The president judge of each judicial district shall be responsible for ensuring the availability during regular business hours within the judicial district of at least one magisterial district judge to handle the following matters in civil and possessory actions:

(1) **The issuance of orders of execution pursuant to Pa.R.C.P.M.D.J. No. 403.**

(2) **The issuance of stays of execution pursuant to Pa.R.C.P.M.D.J. Nos. 410 and 413.**

(3) **The issuance of orders for possession pursuant to Pa.R.C.P.M.D.J. No. 516.**

(4) **Such other business as may require the immediate attention of a magisterial district judge.**

B. (1) **The president judge or his or her designee may assign temporarily the magisterial district judge of any magisterial district to serve another magisterial district whenever such assignment is needed:**

(a) **To satisfy the requirements of subdivision A.**

(b) **To ensure fair and impartial proceedings.**

(c) **To otherwise provide for the efficient administration of justice.**

(2) **Whenever a temporary assignment is made pursuant to this rule, notice of such assignment shall be conspicuously posted in the offices of all magisterial district judges affected by the temporary assignment.**

(3) **A party may file a motion requesting a temporary assignment pursuant to subparagraph B(1) on the ground that the assignment is needed to ensure fair and impartial proceedings. The motion shall set forth the factual basis for the request. Reasonable notice and opportunity to respond shall be provided to the parties.**

C. A magisterial district judge temporarily assigned **[under subdivision A of]** pursuant to this rule shall have the jurisdiction and authority of the office the duties of which **he or she** is temporarily performing and may continue to exercise jurisdiction and authority **[to]** in his or her own magisterial district.

Official Note: This rule was amended in 2005 to further provide for availability and temporary assignment of magisterial district judges in civil and possessory actions similar to that provided for in

criminal matters. See Pa.Rs.Crim.P. 132¹ and 133. Nothing in this rule is intended to affect or conflict with the temporary assignment or coverage requirements for criminal matters as specified in the Rules of Criminal Procedure. Unlike the criminal coverage rules, subdivision A of this rule is intended to provide for availability only during regular business hours. None of the matters contemplated under subdivision A as needing immediate attention would require after-hours coverage. In addition, this rule is not intended to affect the availability requirements for emergency relief under the Protection From Abuse Act. See Pa.R.C.P.M.D.J. Nos. 1201—1211.

Examples of the matters referred to in subdivision A include the issuance of orders of execution pursuant to Pa.R.C.P.M.D.J. No. 403, stays of execution pursuant to Pa. R.C.P.M.D.J. Nos. 410 and 413, and orders for possession pursuant to Pa.R.C.P.M.D.J. No. 516, so that such matters are handled in a timely manner even in the absence of the magisterial district judge to whom the case would ordinarily be assigned. It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of magisterial district judges consistent with subdivision A.

Under subdivision B, one or more magisterial district judges may be temporarily assigned to serve one or more magisterial districts.

Subparagraphs B(1)(b) and (3) make explicit the authority of the president judge to assign magisterial district judges when necessary to ensure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as “change of venue” at the magisterial district court level.

The motion procedure in subparagraph B(3) is intended to apply when a party requests temporary assignment to ensure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. This provision is not intended, however, to require a formal hearing. Nothing in this rule is intended to preclude the magisterial district judge from disqualifying himself or herself from a matter at the request of a party or sua sponte. See Rule 8 of the Rules Governing Standards of Conduct of Magisterial District Judges, Pa. Code tit. 207, ch. 51. The motion procedure is not intended to apply in any of the many other situations in which the president judges make temporary assignments of magisterial district judges. In all these other situations the president judge may make temporary assignments sua sponte.

See Pa. Const. art. V, § 10(a). This rule does not provide for temporary assignments of senior magisterial district judges by president judges. See also [Pa.Rs.Crim.P. 132 and 133] Rule 17 of the Standards of Conduct of Magisterial District Judges, Pa Code tit. 207, ch. 51. Nothing in this rule is intended to conflict with Rule 17.

¹ The after-hours coverage provisions of Pa.R.Crim.P. 132 will be removed and such matters will be governed by new Pa.R.Crim.P. 117 effective August 1, 2006. See 35 Pa.B. 3901 (July 16, 2005).

REPORT

Proposed Amendment to Rule 112 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Availability and Temporary Assignment of Magisterial District Judges in Civil and Possessory Actions

I. Background

The Minor Court Rules Committee (the Committee) undertook a review of Rule 112 (Temporary Assignments of Magisterial District Judges) at the direction of the Supreme Court of Pennsylvania and in response to a recommendation of the Special Courts Administration Subcommittee of the Supreme Court's Intergovernmental Task Force to Study the District Justice System (the Task Force Subcommittee).² In its report to the Supreme Court, the Task Force Subcommittee recommended that the rules of civil procedure for magisterial district courts provide for the “continuous availability, during regular business hours, of at least one [magisterial] district [judge] in the judicial district to handle routine civil matters, such as the issuance of orders of execution or orders for possession, so that such matters are handled in a timely manner even in the absence of the proper issuing authority.”³ In response to this recommendation, the Supreme Court referred the matter to the Committee for its consideration, and the Committee proposes that Rule 112 be amended as explained below.

II. Discussion and Proposed Rule Changes

In its report to the Supreme Court, the Task Force Subcommittee noted that “while the continuous availability of at least one [magisterial] district [judge] in each judicial district is required by Pa.R.Crim.P. 132,⁴ no similar rule exist requiring availability of a [magisterial] district [judge] to handle routine civil matters in the absence of the [judge] who would normally be required to handle the matters. The [Task Force] Subcommittee was informed that parties in civil and landlord/tenant actions, particularly judgment holders, are often frustrated by delays in the issuance of judgments, orders of execution, or orders for possession when the proper issuing authority is unavailable because of vacation, illness, attendance at mandatory continuing education classes, etc.”⁵ The Committee generally agreed with the recommendation of the Task Force Subcommittee, noting that the rights of parties can be adversely affected when a magisterial district judge is not available to sign and issue time sensitive documents in civil and possessory matters.⁶

A. Availability

A new subdivision A would address the availability issue raised in the Task Force Report. Subdivision A would require that the president judge of each judicial district ensure the availability during regular business hours of at least one magisterial district judge to handle routine matters in civil and possessory matters that may

² The Intergovernmental Task Force to Study the District Justice System was convened on May 30, 2001 “to examine the current state of the district justice court system” and to “propose clear standards for the decennial magisterial district reestablishment, identify immediate and long-term system problems and needs, and formulate solutions to ensure the prudent and effective administration of the district justice courts.” Report of the Intergovernmental Task Force to Study the District Justice System vii (October 2001) (available online at <http://www.courts.state.pa.us/>) (hereinafter Task Force Report).

³ Id. at 49.

⁴ See supra, note 1.

⁵ Task Force Report at 49-50.

⁶ The Committee notes that there are many legitimate reasons why a magisterial district judge may be unavailable to sign and issue time sensitive documents. The Task Force Report lists three reasons—“vacation, illness, attendance at mandatory continuing education classes.” Others may include official court-related meetings and absences due to after-hours coverage duty.

require the immediate attention of a judge. The subdivision would list three specific matters that may require immediate attention: the issuance of orders of execution pursuant to Pa.R.C.P.M.D.J. No. 403, stays of execution pursuant to Pa.R.C.P.M.D.J. Nos. 410 and 413, and orders for possession pursuant to Pa. R.C.P.M.D.J. No. 516. A fourth “catch all” category—such other business as may require the immediate attention of a magisterial district judge—would also be included.

The proposed expanded Official Note to the rule would provide extensive explanation of new Subdivision A. The Note would compare these availability provisions with the coverage provisions in the Rules of Criminal Procedure, stressing that the civil availability provisions in Rule 112 are intended to apply only during regular business hours. The Note would also make clear that the civil availability provisions are not intended to affect the criminal coverage requirements or the coverage requirements for the issuance of emergency relief under the Protection From Abuse Act.⁷ In addition, recognizing that many judicial districts may already have in place sufficient systems to provide the coverage required by this subdivision, the Note would provide that the president judge may continue the established procedures in the judicial district or establish new procedures as needed.

B. *Temporary Assignment*

A new subdivision B would provide for and expand upon the provisions of existing subdivision A. Proposed new subdivision B(1) would provide that the president judge or his or her designee may temporarily assign a magisterial district judge to satisfy the requirements of new subdivision A, to ensure fair and impartial proceedings, or to otherwise provide for the efficient administration of justice. The references in the existing rule to temporary assignments to the Pittsburgh Magistrates Court and the Traffic Court of Philadelphia would be deleted.⁸ New subdivision B(2) would require that notice

of temporary assignments of magisterial district judges be posted in the offices of all judges affected by the temporary assignment.

Proposed new subdivision B(3) would establish a more formal procedure for a party to request the temporary reassignment of a magisterial district judge to ensure fair and impartial proceedings. Under this provision a party may file a motion with the president judge that sets forth the factual basis for the reassignment request, and the parties would be provided with reasonable notice and opportunity to respond.

The proposed expanded Official Note to the rule would also provide extensive explanation of Subdivision B. Among other things, the Note would make clear that the president judge may order a response and schedule a hearing with regard to a motion filed pursuant to subdivision B(3), but would also make clear that this provision is not intended to require a formal hearing. In addition, the Note would make clear that a magisterial district judge may of course disqualify himself or herself from a matter at the request of a party or sua sponte, as is often the case in these matters.

C. *Technical or “Housekeeping” Amendments*

In addition to the substantive amendments discussed above, existing subdivision B would become subdivision C. Also, a cross reference to Rule 17 of the Standards of Conduct of Magisterial District Judges would be included in the Official Note, along with a statement clarifying that nothing in Rule 112 is intended to conflict with Rule 17. Rule 17 sets forth the president judges’ general supervisory authority of the magisterial district courts in the judicial district. Finally, in order to properly describe the expanded content of the rule, the title of the rule would be changed to “Availability and Temporary Assignments of Magisterial District Judges.”

[Pa.B. Doc. No. 05-1476. Filed for public inspection August 5, 2005, 9:00 a.m.]

⁷ See supra, note 1 and Pa. R.C.P.M.D.J. Nos. 1201-1211.

⁸ The former Pittsburgh Magistrates Court has been transitioned into the Magisterial District Judge system, and the president judge of the Fifth Judicial District (Allegheny County) has authority to assign magisterial district judges to hear cases that would formerly be heard in the Pittsburgh Magistrates Court and the Pittsburgh Housing Court. Supreme Court of Pennsylvania Order No. 212, Magisterial Docket No. 1 (November 29, 2004) (34 Pa.B. 6507) and Supreme Court of Pennsylvania Order No.

215, Magisterial Docket No. 1 (February 25, 2005) (35 Pa.B. 1662). Temporary assignments of magisterial district judges to the Traffic Court of Philadelphia are accomplished by order of the Supreme Court of Pennsylvania and coordinated by the Administrative Office of Pennsylvania Courts. Accordingly, Rule 112 need not specifically refer to either court.