

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Pennsylvania Rules of Disciplinary Enforcement 104, 208, 209, 213, 215 and 402; No. 46 Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 26th day of October, 2005, it is ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that:

1. Pennsylvania Rules of Disciplinary Enforcement 104, 208, 209, 213, 215 and 402 are amended as set forth in Annex A.

2. This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

3. The amendments to the Pennsylvania Rules of Disciplinary Enforcement shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter A. PRELIMINARY PROVISIONS

Rule 104. Filings with the Supreme Court.

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(c) *Centralized filing.* All filings with the Supreme Court under these rules shall be made only with the prothonotary, and the person making a filing shall not distribute copies to the members of the Court. **[It shall be the responsibility of the prothonotary to preserve the confidentiality of filings to the extent and as provided in Rule 402 (relating to confidentiality) and elsewhere in these rules.]**

Subchapter B. MISCONDUCT

Rule 208. Procedure.

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(d) *Review and action by Board.*

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(2) The Board shall either affirm or change in writing the recommendation of the hearing committee or special,

master by taking the following action, as appropriate, within 60 days after the adjudication of the matter at a meeting of the Board;

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(iii) *Other discipline.* In the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition or private reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition or private reprimand, it shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court. A respondent-attorney who is unwilling to have the matter concluded by an informal admonition or private reprimand **[shall evidence such unwillingness by filing,] must file within thirty (30) days after notice of the determination of the Board, a notice of appeal [including a statement that the respondent-attorney understands that the effect of the appeal will be to terminate the confidential status of the matter]. [See Rule 402(a)(5) (relating to confidentiality).]** Review by the Supreme Court shall be de novo and the Court may impose a sanction greater or less than that recommended by the Board.

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Rule 209. Immunity.

(a) Complaints submitted to the Board or Disciplinary Counsel shall be confidential **unless the matter results in the filing of formal charges. See Rule 402(a) (relating to access to disciplinary information and confidentiality).** Members of the Board, members of hearing committees, special masters, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, special master, or Disciplinary Counsel relating to misconduct by a respondent-attorney and all testimony given in a proceeding conducted pursuant to these rules shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 **[(relating to confidentiality)].** For purposes of this subdivision (a), the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules or the rules of the Board.

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Rule 213. Subpoena power, depositions and related matters.

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(c) *Confidentiality.* A subpoena issued under this rule shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under these rules, and that it is regarded as contempt of the Supreme Court or grounds for discipline under these rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney. The subpoena and deposition **[producers] procedures** of these rules

shall be subject to the protective requirements of confidentiality provided in Rule 402 (relating to **access to disciplinary information and confidentiality**).

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Rule 215. Discipline on consent.

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(c) *Confidentiality of resignation statement.* The order disbaring the attorney on consent shall be a matter of public record [, **but for the purposes of Enforcement Rule 402(a)(1) (relating to confidentiality) the order shall not be an order for the imposition of public discipline**]. [**The**] If the statement required under the provisions of subdivision (a) of this rule **is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement** shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

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(g) *Public discipline.* 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. If the Court grants the Petition, the Court shall enter an appropriate order disciplining the attorney on consent. [**The order and the Petition shall be a matter of public record in accordance with Enforcement Rule 402.**]

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Subchapter D. MISCELLANEOUS PROVISIONS

Rule 402. **Access to Disciplinary Information and Confidentiality.**

(a) **Except as provided in subdivisions (b) and (d), all proceedings under these rules shall be open to the public after:**

- (1) **the filing of an answer to a petition for discipline;**
- (2) **the time to file an answer to a petition for discipline has expired without an answer being filed; or**
- (3) **the filing and service of a petition for reinstatement.**

(b) **Notwithstanding subdivision (a), an informal proceeding under these rules in which it is determined that private discipline should be imposed but that subsequently results in the filing of formal charges shall not be open to the public until or unless the Supreme Court enters its order for the imposition of public discipline**

(c) [**All**] **Until the proceedings are open under subdivision (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential [until or] unless:**

- (1) [**the Supreme Court enters its order for the imposition of public discipline;**
- (2)] **the respondent-attorney requests that the matter be public, or waives confidentiality for a particular purpose specified in writing;**
- [(3)] (2) **the investigation is predicated upon a conviction of the respondent-attorney for a crime or reciprocal discipline;**

[(4)] (3) **in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Enforcement Rule 301 (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated) [, or ,]**

[(5) **the respondent-attorney appeals under Rule 208(d)(2)(iii) (relating to review and action by Board) a determination by the Board imposing an informal admonition or private reprimand.]**

(4) **the proceeding is based upon allegations that have become generally known to the public; or**

(5) **there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.**

[(b)] (d) **This rule shall not be construed to:**

(1) **Deny access to relevant information at any point during a proceeding under these rules to:**

- (i) **authorized agencies investigating the qualifications of judicial candidates, [or to]**
- (ii) **the Judicial [Inquiry and Review] Conduct Board [, or to] with respect to an investigation it is conducting,**
- (iii) **other jurisdictions investigating qualifications for admission to practice [or to];**

(iv) **law enforcement agencies investigating qualifications for government employment;**

(v) **lawyer disciplinary enforcement agencies in other jurisdictions investigating misconduct by the respondent-attorney; or**

(vi) **the Pennsylvania Lawyers Fund for Client Security Board investigating a claim for reimbursement arising from conduct by the respondent-attorney.**

(2) **Require Disciplinary Counsel to refrain from reporting to law enforcement authorities the commission or suspected commission of any criminal offense or information relating to a criminal offense.**

(3) **Prevent the Pennsylvania Lawyers Fund for Client Security from utilizing information obtained during any investigation to pursue subrogated claims.**

(e) **Subdivision (a) shall not be construed to provide public access to:**

- (1) **the work product of the Board, Disciplinary Counsel, hearing committee members, or special masters;**
- (2) **deliberations of a hearing committee, special master, the Board or the Court; or**
- (3) **information subject to a protective order issued by the Board under subdivision (f).**

(f) **The Board may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential, and the Board may direct that proceedings be conducted so**

as to implement the order, including requiring that a hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of a protective order.

(g) Except as provided in subdivision (h), if nonpublic information is requested pursuant to subdivision (d)(1) and the respondent-attorney has not signed an applicable waiver of confidentiality, the respondent-attorney shall be notified in writing at the last known address of the respondent-attorney of what information has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency or board. The notice shall advise the respondent-attorney that the information will be released 20 days after mailing of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency or board obtains an order of the Supreme Court requiring its release or the respondent-attorney withdraws the objection.

(h) If an agency or board requesting the release of information under subdivision (d)(1) has not obtained an applicable waiver of confidentiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

(1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent-attorney;

(2) the information is essential to that investigation; and

(3) disclosure of the existence of the investigation to the respondent-attorney would seriously prejudice the investigation.

(i) [In addition, the] The Board shall transmit notice of all public discipline imposed by the Supreme Court, [or transfer] transfers to or from inactive status[,] for disability, and reinstatements to the National [Discipline] Lawyer Regulatory Data Bank maintained by the American Bar Association.

(j) This rule does not permit broadcasting, televising, recording or taking photographs during a proceeding under these rules, except that a hearing committee, a special master, the Board or the Supreme Court when conducting a proceeding may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration.

Official Note: Paragraph [(b)](d)(2) is based on 18 Pa.C.S. § 5108 (relating to compounding). Otherwise Disciplinary Counsel may be in the anomalous position of violating Rule 8.4 of the Pennsylvania Rules of Professional Conduct.

[Pa.B. Doc. No. 05-2077. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 100]

Order Amending Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 220 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the Supreme Court of Pennsylvania's Order amending Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges, effective January 1, 2006. This rule change increases the minimum bond amount required for each magisterial district judge. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 27th day of October, 2005, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at Volume 35, *Pennsylvania Bulletin*, page 1974 (April 2, 2005), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be, and hereby is, amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2006.

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 110. Bonds of Magisterial District Judges.

Each magisterial district judge is required to give bond in such sum, not less than [Two Thousand Five Hundred Dollars (\$2,500.00)] \$25,000, as shall be directed by the president judge of the court of common pleas of the judicial district in which is located the magisterial district of the magisterial district judge, with one or more sufficient sureties[, the]. The bond shall be lodged with the [Prothonotary] prothonotary of the court of common pleas, be conditioned on the faithful application of all moneys that come into the hands of the magisterial district judge as an officer, and be for the benefit of the Commonwealth and its political subdivisions and all persons who may sustain injury from the magisterial district judge in his or her official capacity.

Official Note: This rule sets forth only the minimum bond amount for each magisterial district judge. The amount of money collected by the district courts varies greatly however, and the president judge is free to require higher bond amounts for some or all of the courts in the judicial district.

FINAL REPORT¹**Amendment to Rule 110 of the Rules of Conduct,
Office Standards and Civil Procedure for
Magisterial District Judges****Increase in Minimum Bond Amount**

On October 27, 2005, effective January 1, 2006, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.³

I. Background

The Minor Court Rules Committee (the Committee) undertook a review of Rule 110 (Bonds 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).⁴ In its report to the Supreme Court, the Task Force Subcommittee recommended that Rule 110 be amended to increase the minimum amount of the bond that each magisterial district judge must file in accordance with the Rule.⁵ In response to this recommendation, the Supreme Court referred the matter to the Committee for its consideration, and the Committee recommended that Rule 110 be amended as explained below.

II. Discussion and Rule Changes

Prior to this amendment, Rule 110 provided that

[e]ach magisterial district judge is required to give bond in such sum, *not less than Two Thousand Five Hundred Dollars (\$2,500.00)*, as shall be directed by the president judge of the court of common pleas of the judicial district in which is located the magisterial district of the magisterial district judge, with one or more sufficient sureties, the bond shall be lodged with the Prothonotary of the court of common pleas, be conditioned on the faithful application of all moneys that come into the hands of the magisterial district judge as an officer, and be for the benefit of the Commonwealth and its political subdivisions and all persons who may sustain injury from the magisterial district judge in his official capacity.⁶

As the Task Force Subcommittee noted in its report, “[g]iven the case loads of and the amount of money collected by most district courts, the [\$2,500] minimum bond amount required by this rule is likely insufficient to cover” any loss that may result from the malfeasance of a

[magisterial] district [judge] with regard to the handling of funds that are paid into his or her court.⁷ The Committee agreed, and determined that the minimum bond amount should be increased to a level that is more commensurate with the average bank account balances of the magisterial district courts. To assist the Committee in recommending an increased minimum bond amount, the Administrative Office of Pennsylvania Courts (the AOPC) was able to extract data from the Magisterial District Judge System (the MDJS)⁸ regarding average bank account balances in the district courts. Based on the MDJS data, the Committee recommended that the minimum bond amount to be required under Rule 110 be increased to \$25,000.⁹

The Committee was mindful that the Task Force Subcommittee's recommendation included, in addition to an increase in the minimum bond amount, a proposal to tie an individual magisterial district judge's bond amount to his or her district court's bank account balance. Specifically, the Task Force Subcommittee recommended that the bond amounts be “based on the average balance of that [magisterial] district [judge's] district court bank account in the preceding twelve months” and that “local court administrators would be responsible for reviewing annual audit reports or other data to determine the average account balance, and then make recommendations to the president judge as to the appropriate bond amount for each [magisterial] district [judge] in the judicial district.”¹⁰ While the Committee recognizes the merit in this proposal, the Committee chose an alternative to the Task Force Subcommittee's recommendation to avoid an unnecessary burden on court officials, whether on the president judges or on their designated agents, to monitor the more than 550 bank account balances annually and perhaps to change the bond amounts frequently. The Committee believes that a uniform minimum amount for all bonds for all courts will be more efficient and easier for compliance. As by this amendment, the minimum amount for the bond may be changed in the future if appropriate. In addition, the Committee notes that Rule 110 sets forth only the *minimum* bond amount, and a president judge is free to require higher bond amounts for some or all of the district courts in his or her judicial district.

Therefore, the Committee recommended that Rule 110 be amended to increase the minimum bond amount to \$25,000 while keeping the other essential provisions of the Rule as currently written. In addition to the substantive changes discussed here, the Committee recommended the addition of a clarifying Official Note, and minor technical or “housekeeping” changes to enhance readability and address gender neutrality.

[Pa.B. Doc. No. 05-2078. Filed for public inspection November 11, 2005, 9:00 a.m.]

¹ The Committee's Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Official Notes or the contents of the explanatory Final Report.

² Recommendation No. 3 Minor Court Rules 2005.

³ Supreme Court of Pennsylvania Order No. 220, Magisterial Docket No. 1 (October 27, 2005).

⁴ 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).

⁵ Id. at 51-52.

⁶ 246 Pa. Code Rule 110 (emphasis added).

⁷ Task Force Report at 51.

⁸ The MDJS is the statewide computer system that automates all case processing and accounting functions of the magisterial district courts.

⁹ The AOPC staff used the MDJS data to examine the month-end bank account balances for 567 courts over an 18 month period (December 2002—August 2004) and found the average to be \$29,621.

¹⁰ Task Force Report at 51-52. The Task Force Subcommittee recommended that this provision be added to the Rule in addition to the minimum bond amount.