

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

#### Amendments to the Pennsylvania Bar Admission Rules and the Pennsylvania Rules of Disciplinary Enforcement Relating to Misstatements or Omissions in Licensure Applications

Notice is hereby given that The Pennsylvania Board of Law Examiners and The Disciplinary Board of the Supreme Court of Pennsylvania are considering recommending to The Supreme Court of Pennsylvania that it amend the Pennsylvania Bar Admission Rules and the Pennsylvania Rules of Disciplinary Enforcement to make clear that a material misstatement or omission by an applicant for a license to practice law may be grounds to revoke the applicant's license.

Pennsylvania Rules of Disciplinary Enforcement 203(b) and 204(a) are proposed to be amended to provide expressly that a material misstatement or omission in an application submitted to the Board of Law Examiners constitutes grounds for discipline. The Disciplinary Board would have the authority to revoke the applicant's license or to impose some other form of discipline. Pennsylvania Bar Admission Rule 201(c) is proposed to be amended to provide notice to applicants that a material misstatement or omission in an application will be grounds for discipline.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Executive Director, Pennsylvania Board of Law Examiners, 5070A Ritter Road, Suite 500, Mechanicsburg, PA 17055, and 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 January 13, 2006.

By *Pennsylvania Board of Law Examiners*

MARK S. DOWS,  
*Executive Director*

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 IV. ADMISSION TO PRACTICE OF LAW CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

#### Subchapter B. ADMISSION TO THE BAR GENERALLY IN GENERAL

**Rule 201. Bar of the Commonwealth of Pennsylvania.**

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(c) *Changes in status under Enforcement Rules.* An attorney admitted to the bar or issued a limited license to practice law as an in-house corporate counsel, military attorney, or foreign legal consultant:

(1) may be disbarred, suspended or transferred to inactive status and may be readmitted or otherwise reinstated pursuant to the Enforcement Rules [ administered by The Disciplinary Board of the Supreme Court of Pennsylvania. ];

(2) may have such admission to the bar or limited license to practice law revoked or another appropriate sanction imposed pursuant to the Enforcement Rules when the attorney made a material misrepresentation of fact or deliberately failed to disclose a material fact in connection with an application submitted under these rules that is not discovered prior to the attorney being admitted to the bar or issued a limited license to practice law.

(d) *Certification of good standing.* Upon written request and the payment of a fee of \$25.00 the Prothonotary shall issue a certificate of good standing to any member of the bar of this Commonwealth or limited licensed attorney entitled thereto. The certificate shall be one appropriate for admission to the bar of the federal courts and other state courts. A certificate of good standing shall not be issued to a member of the bar of this Commonwealth or limited licensed attorney who currently is the subject of:

\* \* \* \* \*

(3) a petition for transfer 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).

**Official Note:** If a person's admission to practice law or limited license to practice law as an in-house corporate counsel or foreign legal consultant is revoked for a material misrepresentation or omission, the person will be required to reapply de novo. Any such persons who are seeking admission to practice law must meet all of the requirements for admission to the bar, including the taking and passing of the current bar examination if more than three years have passed since the prior certificate recommending the person's admission to the bar was issued by the Board. At the time of reapplication, the Board will make a determination as to the applicant's character and fitness to practice law, taking into account all of the existing character issues, including the prior misrepresentation or omission.

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#### Annex B

### PART V. PROFESSIONAL ETHICS AND CONDUCT

#### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

#### Subchapter B. MISCONDUCT

**Rule 203. Grounds for discipline.**

\* \* \* \* \*

(b) The following shall also be grounds for discipline:

\* \* \* \* \*

**(6) Making a material misrepresentation of fact or deliberately failing to disclose a material fact in connection with an application submitted under the Pennsylvania Bar Admission Rules.**

\* \* \* \* \*

**Rule 204. Types of discipline.**

(a) Misconduct shall be grounds for:

\* \* \* \* \*

**(7) Revocation of an attorney's admission or license to practice law in the circumstances provided in Rule 203(b)(6) (relating to grounds for discipline).**

\* \* \* \* \*

[Pa.B. Doc. No. 05-2265. Filed for public inspection December 9, 2005, 9:00 a.m.]

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

**Amended and Restated Regulations for IOLTA; No. 49 Disciplinary Rules; Doc. No. 1**

**Order**

*Per Curiam:*

*And Now*, this 21st day of November, 2005, it is hereby ordered that:

1. The Regulations for the Pennsylvania Interest on Lawyers Trust Account Board are amended and restated to read as follows in Annex A.

2. Whereas prior distribution and publication of these regulations would otherwise be required it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

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

**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 B. RULES FOR INTEREST ON LAWYERS TRUST ACCOUNTS**

**Preamble: Statement of Purpose**

Rule 1.15 of the Pennsylvania Rules of Professional Conduct ("Pa.R.P.C.") has, since the adoption of the Rules of Professional Conduct, required lawyers to segregate property of clients and third persons from the lawyer's own property, and by extension, not to profit by use of property belonging to clients or third persons. This provision of the Pa.R.P.C. for the protection of the client or third person, is designed to ensure the ethical conduct of lawyers, and may not be waived by the client or third person. Pa.R.P.C. 1.15 mandates the maintenance of IOLTA Accounts for certain funds received by a lawyer in connection with a client-lawyer relationship. In addition, Pa.R.P.C. mandates the maintenance of Trust Accounts

(including IOLTA Accounts for Qualified Funds) if, under Pa.R.P.C. 5.7, the lawyer is subject to the Pa.R.P.C. and the lawyer receives funds in connection with services (legal or nonlegal) to the recipient of those services. IOLTA generates income where formerly there was none; this income will aid the citizens of the Commonwealth of Pennsylvania by improving access to the civil legal system by those who otherwise could not afford legal representation, improving the legal educational system in Pennsylvania via funding for legal clinical programs and internships, and assisting in the general administration of justice in Pennsylvania.

**§ 81.101. Definitions.**

The following words and phrases when used in these regulations shall have the meanings given to them in this section unless the context clearly indicates otherwise:

*Board.* The Pennsylvania Interest on Lawyer Trust Account Board.

*Financial institution.* A financial institution approved by the Supreme Court of Pennsylvania pursuant to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."). A financial institution will be a bank, bank and trust company, trust company, savings and loan association, credit union, savings bank or foreign banking institution authorized to do business in the Commonwealth of Pennsylvania, whose deposits are insured by the Federal Deposit Insurance Corporation or an alternate share insurer, and who has been specifically approved as a financial institution within the meaning of Pa.R.D.E. 221.

*Good faith.* Honesty in fact in the conduct or transaction concerned.

*Interest on Lawyer Trust Account or IOLTA Account.* An unsegregated Trust Account with an approved financial institution for the deposit of Qualified Funds by a lawyer.

*Lawyer.* A member in good standing of the bar of the Supreme Court of Pennsylvania, who is not an active or senior member of the judiciary. The term "lawyer" also includes a partnership of lawyers, a professional association of lawyers, and a professional corporation or other organization whose members or shareholders are engaged in the practice of law.

*Member of the Judiciary.* An individual who has been admitted to the Pennsylvania Bar and who has been appointed or elected and is serving as a judicial official of any state or of the United States of America and whose position prohibits the individual from the practice of law within the territorial jurisdiction when the individual serves as a judge. This term shall not include a lawyer who is permitted to and who voluntarily chooses to maintain active lawyer status in Pennsylvania so long as the judicial position does not prevent him or her from practicing law in Pennsylvania.

*Nonqualified Funds.* Rule 1.15 Funds, whether cash, check, money order, or other negotiable instrument received by a lawyer in a representative capacity, and which are not Qualified Funds.

*Qualified Funds.* Rule 1.15 Funds, whether cash, check, money order, or other negotiable instrument received by a lawyer in a representative capacity which, in the good faith judgment of the lawyer, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of earning interest to benefit the client or third person owner of the funds. See Regulation Section 81.104(c) for further guidance.

*Regulations.* These regulations adopted by the Board, and approved by the Supreme Court of Pennsylvania, as they may be amended from time to time.

*Representative capacity.* Received by a lawyer in connection with a client-lawyer relationship, or under circumstances such that the lawyer is subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed. See Regulation Section 81.104. A lawyer who receives funds while acting as a fiduciary for an estate, trust, guardianship, or conservatorship does not receive those funds in a representative capacity.

*Rule 1.15 Funds.* Funds which the lawyer receives in connection with a client-lawyer relationship, or under circumstances described in Pa.R.P.C. 5.7(a), (b), or (c), excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship. Rule 1.15 Funds include all funds of a client or third person received by a lawyer, in a representative capacity, from any person.

*Third Party Owner.* The client or third person whose funds are in the custody of a lawyer.

*Trust Account.* An interest-bearing account maintained in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which or with respect to which a lawyer holds Rule 1.15 Funds, including but not limited to an IOLTA Account.

#### § 81.102. Scope.

(a) All lawyers who maintain a place of practice in the Commonwealth of Pennsylvania and who receive Qualified Funds must comply with the requirement that Qualified Funds be placed in an IOLTA Account as provided in Pa.R.P.C. 1.15 unless and to the extent an exemption is granted pursuant to Pa.R.P.C. 1.15(h) and Section 81.108 of these regulations.

(b) Each lawyer must register his or her IOLTA Account with the Disciplinary Board of the Supreme Court of Pennsylvania annually.

#### § 81.103. Lawyers.

(a) If a lawyer is required to maintain a Trust Account, the lawyer shall comply with these regulations and participate in IOLTA if the lawyer meets either of the circumstances set forth in (i) or (ii):

(i) Practices law in Pennsylvania: The lawyer practices law from an office within the Commonwealth of Pennsylvania.

(ii) Practices law in and out of Pennsylvania: If a lawyer primarily practices outside of Pennsylvania but also has an office within the Commonwealth, then the lawyer must deposit Qualified Funds generated in Pennsylvania in a Pennsylvania IOLTA Account.

(b) Nothing herein shall be construed to require a lawyer who does not receive funds of a Third Party Owner to maintain an IOLTA Account.

(c) Law Firm Compliance: A lawyer may use an IOLTA Account in common with other lawyers in his or her firm, whether organized as a partnership, professional association, professional corporation, limited liability company or partnership, or other form of organization. However, each lawyer has an individual duty to comply with Pa.R.P.C. and these regulations.

(i) A law firm may register its IOLTA account and submit a list of all lawyers in the firm who use the

IOLTA Account for the maintenance of all Qualified Funds received by the lawyer.

(ii) Each lawyer using the IOLTA Account for the deposit of all Qualified Funds received by him or her will be in compliance with IOLTA.

(d) Newly admitted lawyer: A lawyer newly admitted to the bar of the Supreme Court of Pennsylvania must comply with these regulations within sixty (60) days of admission to the bar.

(e) Change of employment: A lawyer who changes employment status must comply with these regulations within sixty (60) days of the change, unless the lawyer no longer meets the requirements of subsections (a)(i)—(ii) of this Section 81.103 or is no longer required to maintain a Trust Account.

(f) Subsequent eligibility: Any lawyer not having met the requirements of subsections (a)(i)—(ii) of this Section 81.103, who subsequently meets the requirements of subsections (a)(i)—(ii) and who must maintain a Trust Account must comply with these regulations within sixty (60) days of subsequent eligibility.

#### § 81.104. Rule 1.15 Funds.

(a) Rule 1.15 Funds are funds received by a lawyer in a representative capacity from or on behalf of a Third Party Owner. Pa.R.P.C. 1.15 requires the lawyer to maintain funds of a Third Party Owner separate from the lawyer's own property, and to safeguard the funds appropriately. A lawyer may not personally profit from Rule 1.15 Funds.

(i) Received in connection with a client-lawyer relationship: Rule 1.15 Funds are funds received in connection with a client-lawyer relationship.

(ii) Funds received while acting as a fiduciary: Pa.R.P.C.1.15(d) specifically excludes from its application funds received by the lawyer while acting as fiduciary for an estate, trust, guardianship, or conservatorship. However, if these funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify maintaining a segregated account, these funds may be deposited in an IOLTA Account.

(iii) Received in connection with nonlegal services: Under Rule 5.7 of the Pennsylvania Rules of Professional Conduct, there are three situations involving the provision of nonlegal services by a lawyer which trigger the applicability of the Pennsylvania Rules of Professional Conduct. These include: (A) if a lawyer provides nonlegal services that are not distinct from legal services, (B) if the lawyer provides nonlegal services that are distinct from legal services, but the lawyer knows or reasonably should know that the recipient might believe that the recipient of the services is receiving the protection of a client-lawyer relationship, and (C) if the lawyer is a owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services and the lawyer knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship. In each of these three cases, the lawyer will be subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed with the recipient of the services. If a lawyer receives funds in connection with a relationship described in any of these situations, the funds are Rule 1.15 Funds and must be deposited either in an IOLTA Account or in a Trust Account for the benefit of the Third Party Owner.

Factors which should be used to determine whether, under the tests of Pa.R.P.C. 5.7, the nonlegal services (and funds received in connection therewith) are subject to the Pa.R.P.C. include:

(1) whether funds received in connection with the nonlegal services are maintained completely separate from funds received in connection with legal services;

(2) whether the lawyer has advised the Third Party Owner in clear, unambiguous terms that the lawyer is acting in a nonlegal capacity, and is not receiving funds in connection with a client-lawyer relationship;

(3) whether the Third Party Owner can reasonably expect to have the protection of the client-lawyer relationship cover the entire matter;

(4) whether the lawyer performs both legal and nonlegal services from the same office; and

(5) whether the lawyer uses different letterhead in connection with legal and nonlegal services.

(iv) Certain funds handled routinely by a lawyer may not be Rule 1.15 Funds. Rule 1.15 Funds are received by the lawyer in connection with a client-lawyer relationship. Rule 1.15 Funds are also funds received by the lawyer in connection with the provision of nonlegal services under any of the circumstances described in Section 81.104(a)(iii) of these Regulations. These Rule 1.15 Funds must be deposited in an IOLTA Account or a Trust Account for the benefit of the Third Party Owner.

For example, if the lawyer as an agent for a title insurance company handles title insurance and real estate matters in connection with a client-lawyer relationship, or if the provision of title insurance and other services in connection with the real estate matter is not distinct from legal services provided to that recipient, or if the lawyer knows or has reason to know that the recipient of the services believes the relationship to be that of client-lawyer, funds received by the lawyer in connection with the relationship are Rule 1.15 Funds and must be placed in a Trust Account. If the Rule 1.15 Funds are Qualified Funds, the funds must be deposited in an IOLTA Account. The lawyer as title insurance agent may be required to maintain a separate settlement account for each underwriter to process funds handled by that lawyer in connection with acting as a title insurance agent. If the funds deposited in the settlement account are Qualified Funds, each settlement account must be an IOLTA Account.

(b) Subaccounting refers to a process whereby Nonqualified Funds are segregated by the lawyer or the lawyer's financial institution by Third Party Owner, and interest on each subaccount is separately calculated, reported, and paid to the Third Party Owner. Subaccounting attributes all of the interest earned on the Rule 1.15 Funds to the Third Party Owner.

(i) Nothing in these regulations shall be construed to prohibit a lawyer from maintaining and administering a separate subaccount for each Third Party Owner from whom Rule 1.15 Funds are received.

(ii) A lawyer who directly maintains a subaccounting system for Rule 1.15 Funds must comply not only with Pa.R.P.C. regarding such funds, but must also comply with applicable laws and regulations of the United States and of the Internal Revenue Service in particular.

(iii) Nothing in these regulations shall be construed to prohibit a lawyer from delegating to a financial institution the responsibility for maintaining and administering

a separate subaccount for each Third Party Owner from whom the lawyer receives Rule 1.15 Funds.

(c) Qualified Funds: The lawyer should apply an economic benefits test to determine whether Rule 1.15 Funds are Qualified Funds. Rule 1.15 Funds are not Qualified Funds if the lawyer will hold the funds for such a length of time, or if the Rule 1.15 Funds are of sufficient amount that the interest generated on the funds will exceed the cost of earning and conveying the interest to Third Party Owner.

(i) Law firm compliance v. lawyer responsibility: A lawyer who is an employee or member of a law firm that maintains an IOLTA Account is presumed to be in compliance with IOLTA regulations when the lawyer uses only the law firm approved IOLTA Account for the deposit of all Qualified Funds entrusted to him or her. However, the lawyer is ultimately responsible to assure that he or she is in compliance with Pa.R.P.C. 1.15 and these regulations.

(ii) Good faith judgment: A lawyer must use good faith judgment in determining whether Rule 1.15 Funds are Qualified Funds. A lawyer will not be liable for damages or be held to have breached a fiduciary duty or responsibility because the lawyer deposited funds into an IOLTA Account pursuant to the lawyer's judgment in good faith that the funds were Qualified Funds.

(iii) Nominal Rule 1.15 Funds: Funds that when considered alone are not large enough to earn net interest for the Third Party Owner thereof are Qualified Funds.

(iv) Funds held for a short time: Funds which are not expected to be held for sufficient time to provide net interest for the Third Party Owner are Qualified Funds.

(v) Factors which should be used to determine whether funds can reasonably be expected to generate net interest for the Third Party Owner include:

(1) the cost to the lawyer of establishing and maintaining account(s) benefiting Third Party Owners;

(2) the account and service charges of the financial institution in which the account is maintained;

(3) the minimum deposit requirements of the financial institution in which the account is maintained;

(4) accounting fees likely to be incurred by the lawyer in connection with the funds;

(5) the lawyer's anticipated tax reporting requirement costs incurred in connection with the funds;

(6) the nature of the transaction(s) or proceeding(s) involved; and

(7) the likelihood of delay in the relevant transaction(s) or proceeding(s).

(d) Examples of Rule 1.15 Funds and Qualified Funds:

(i) Estates, trusts, guardianships, etc.: Funds held by a lawyer as a personal representative, trustee, guardian, attorney-in-fact or the like are specifically excluded from the definition of Rule 1.15 Funds. However, if these funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify the expense of earning interest for the client or third person, these funds may be deposited in an IOLTA Account.

(ii) Conveying accounts/real estate closings: Funds generated from real estate closings will be Qualified Funds, if the lawyer receives the funds in connection with a client-lawyer relationship or if Pa.R.P.C. 5.7(a), (b), or (c)

apply. Generally, these funds are held for a short period of time and are not expected to provide interest for the Third Party Owner.

(iii) Advanced costs, fees, and refundable retainer accounts: Such advances are Qualified Funds when they are nominal or held for a short period of time, and will remain Qualified Funds until earned/expended by the lawyer and thereby removed from the IOLTA Account.

(iv) Proceeds from dispute settlements/lawsuits: Generally settlement funds are Qualified Funds if the settlement proceeds are nominal in amount or held for a short period of time. If settlement proceeds are not Qualified Funds, they must be placed in a Trust Account or other investment vehicle specifically agreed upon by the lawyer and the Third Party Owner.

#### § 81.105. Approved Financial Institutions.

(a) The Supreme Court of Pennsylvania approves financial institutions in which a lawyer may maintain a Trust Account. This list of approved financial institutions is published from time to time pursuant to Pa.R.D.E. 221.

(b) All lawyers must deposit Rule 1.15 Funds which are not Qualified Funds in a Trust Account with an approved financial institution, unless an agreement exists between the Third Party Owner and the lawyer to use another investment vehicle.

(c) All lawyers must deposit Rule 1.15 Funds which are Qualified Funds in an IOLTA Account with an approved financial institution. Moreover, each financial institution must send a report to the lawyer showing the interest and account service charges concerning the IOLTA Account. The financial institution must report this same information to the IOLTA Board, and must also report the average daily balance in the account during the remittance period, if that information is available.

(d) Acceptable account title: The lawyer must specifically identify an IOLTA account with the words "IOLTA Trust Account" or "IOLTA Escrow Account" and the name of the lawyer or the law firm who maintains the account in the main title of the account.

(e) Acceptable title on checks/deposit slips: The word "IOLTA" need not be placed on checks or deposit slips.

(f) Credit unions: IOLTA Accounts maintained in credit unions may not be insured. Therefore, IOLTA Accounts must not be established in a credit union unless only Rule 1.15 Funds of owners who are or are eligible to be members of the credit union are deposited into the account.

#### § 81.106. Interest on IOLTA Accounts.

(a) The rate of interest paid on IOLTA Accounts shall be not less than the highest rate of interest generally available from the financial institution to depositors generally for accounts with the same minimum balance and other account eligibility requirements.

(b) A financial institution shall be deemed to have satisfied the requirements of subsection (a) of this regulation if the rate of interest offered by the financial institution on IOLTA Accounts is not less than the rate of interest identified from time to time by the Board as the "safe harbor" rate in the Board's "Guidelines for Financial Institutions."

(c) Under no circumstances may the rate of interest payable on an IOLTA Account be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.

(d) Remittance of interest: Any interest earned under the IOLTA program must be remitted to the Board at least every quarter. The following information must be provided to the Board and to the lawyer who maintains the IOLTA Account at the time of each remittance:

(i) The name of the account;

(ii) The service charges or fees deducted, if any;

(iii) The amount of interest remitted from the account; and

(iv) If available, the average daily balance in the IOLTA Account.

#### § 81.107. Service Charges on IOLTA Accounts.

(a) Financial institutions may impose reasonable service charges for the administration of IOLTA Accounts. A financial institution may not deduct service charges from the principal balance in an IOLTA Account. Reasonable service charges, as well as regular account maintenance fees and transaction charges, can be deducted against the total amount of interest to be paid on the IOLTA Account to which the service charges apply.

(b) All costs associated with check printing, overdraft charges, charges for a temporary extension of credit and similar bank charges shall not be assessed against the principal balance in or interest earned on any accrued interest earned on an IOLTA Account. The lawyer maintaining the account shall be responsible for these costs.

(c) Costs for services such as overdrafts on deposited items, stopped payments, certified checks, and wire transfers at the request of the lawyer or a beneficial owner shall not be assessed against principal balance in or interest earned on an IOLTA Account. The lawyer or the beneficial owner shall be responsible for these costs.

#### § 81.108. Exclusion and Exemptions from IOLTA Participation.

(a) Certain lawyers, because of their employment, are excluded from Pa.R.P.C. 1.15(g). A lawyer who does not receive Rule 1.15 Funds is excluded from IOLTA. Examples include lawyers employed full time in a corporate capacity, by local, state or federal government, as a law clerk, professor, or as a member of the judiciary. A lawyer who does not have an office in Pennsylvania, does not receive Rule 1.15 Funds in a representative capacity from Third Party Owners in the Commonwealth, and who is not otherwise required to maintain Rule 1.15 Funds in a Trust Account in the Commonwealth is excluded from Pa.R.P.C. 1.15(g). A lawyer who is retired or no longer practices law need not maintain an IOLTA account.

(b) Pa.R.P.C. 1.15(h) permits limited exemptions from the requirement that all Qualified Funds must be maintained in an IOLTA Account. No exemption is automatic, although exemptions will be routinely granted under specified circumstances. The Board may declare a lawyer exempt from the requirement of maintaining an IOLTA Account; alternatively, a lawyer may submit a written request for exemption.

(c) Nonqualified Funds are to be deposited in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and Third Party Owner, and the Board is without power to grant an exemption from this requirement. If a lawyer is exempt from the requirement of maintaining an IOLTA Account, the lawyer must still deposit Qualified Funds in a Trust Account.

(d) Under the following circumstances, the Board will routinely grant an exemption from the requirement that a lawyer maintains all Qualified Funds in an IOLTA Account:

(i) Low balance account: Any Trust Account which historically, generally based upon 12 consecutive months of activity, has an average daily balance of Three Thousand Five Hundred (\$3,500) Dollars or less (or such other amount as the Board announces from time to time) will be exempt from being an IOLTA Account. The Board may exempt from IOLTA, without application, a low balance account. A lawyer requesting an exemption based on a low balance account must, as a part of the written request for exemption, include an account analysis or written statement that demonstrates the amount of the average daily balance.

(ii) Account service charges routinely exceed interest: Some Trust Accounts may have an average daily balance of more than \$3,500, but because of the account service charges or the interest rates of the financial institution, the charges would routinely exceed interest earned on the Trust Account. In these cases, an exemption may be requested. A lawyer requesting an exemption based on these circumstances must, as part of the written request for exemption, include an account analysis or written statement that clearly shows the interest earned, or the interest that would have been earned, on the account each month for the past 12 months, plus the account service charges imposed on the account for each of the last 12 months.

(iii) Extreme impracticality or undue hardship: Under limited circumstances it would be unduly burdensome for a lawyer to maintain a Trust Account as an IOLTA Account. When claiming extreme impracticality or undue hardship, the lawyer should provide appropriate details demonstrating undue hardship. An example includes the lack of an approved financial institution that offers IOLTA Accounts in the lawyer's geographical location.

(iv) Other compelling and necessitous reasons: There may be compelling and necessitous reasons justifying an exemption from the requirement that the lawyer maintain a Trust Account as an IOLTA Account. A lawyer who demonstrates a compelling and necessitous reason for not complying with IOLTA may request an exemption. A philosophical objection to IOLTA does not constitute a compelling and necessitous reason for an exemption.

(e) Interest waived by a Third Party Owner: An exemption from the requirement that a Trust Account be maintained as an IOLTA Account will not be granted based on an agreement between a lawyer and Third Party Owner purportedly waiving the Third Party Owner's right to interest or granting the lawyer the power to direct interest earned on Rule 1.15 Funds to the lawyer or to another person of the lawyer's choice.

**§ 81.109. Requests for Exemptions and Reconsideration.**

(a) If the Board denies a lawyer's request for an exemption from maintenance of an IOLTA Account, the lawyer may, within 30 days of written notice of denial from the Board, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail additional facts, if any, not brought before the Board in the request for exemption, as well as the reasons, if any, why an exemption should be granted.

(b) If the Board has determined that a lawyer is exempt from the requirement of maintaining an IOLTA Account, the lawyer may, within 30 days of written notice from the Board that the lawyer is exempt, request in writing a reconsideration of the Board's decision. All requests for reconsideration shall set forth in detail facts, if any, why the lawyer should maintain an IOLTA

Account, and the manner, if any, in which the Board and the purposes of the IOLTA program will be furthered by the lawyer's maintenance of an IOLTA Account.

(c) Notice shall be deemed to have been given to a lawyer under the provisions of subsections (a) and (b) of this Section 81.109 upon the deposit by the Board, postage prepaid, with the United States Postal Service of its written determination regarding the exemption, if any, of the lawyer from IOLTA.

(d) The Board may delegate to its staff or to a committee of the Board the authority to determine exemptions from IOLTA or to reconsider exemption denials or determinations.

**§ 81.110. Annual Certification of Compliance with Pa.R.P.C. 1.15.**

On or before July 1 of each year, each lawyer who is required by Pa.R.D.E. 219 to pay an annual fee must also file with the Administrative Office a signed statement on the prescribed form stating his or her familiarity and compliance with Pa.R.P.C. 1.15 in regards to handling funds, maintaining IOLTA Accounts and Pa.R.D.E. 221. Each lawyer is directed to Pa.R.D.E. 219(d).

**§ 81.111. Refunds.**

(a) The Board may return interest paid to IOLTA under certain circumstances. If a lawyer mistakenly places Nonqualified Funds in an IOLTA Account, or if the lawyer reasonably believed that Rule 1.15 Funds were Qualified Funds, but the Rule 1.15 Funds were in fact not Qualified Funds, then the lawyer may apply for a refund of interest paid to IOLTA.

(b) The following guidelines apply to applications for return of interest:

(i) The lawyer must make the application in writing on firm letterhead.

(ii) The application must be accompanied by verification from the financial institution in which the IOLTA Account is maintained of the interest earned on the Rule 1.15 Funds for which a refund is sought. As needed for auditing purposes, the Board may request additional documentation.

(iii) The application must be received by the Board within six months after the Rule 1.15 Funds have been disbursed from the IOLTA Account.

(iv) The refund will be remitted to the lawyer for his/her distribution to the Third Party Owner. The Board will issue an IRS (Internal Revenue Service) form 1099 to the lawyer who, in turn, is responsible for issuing an IRS form 1099 to the Third Party Owner.

(v) If the financial institution has imposed a service charge with respect to the deposit, only the net amount of interest paid to IOLTA (reduced by applicable service charges) will be refunded.

(vi) The IOLTA program may deduct a processing charge from the refund.

**§ 81.112. Violations.**

(a) The Board will refer to the Office of Disciplinary Counsel the name, address and circumstances surrounding any lawyer who, not being exempted from the maintenance of an IOLTA Account, fails or refuses to comply with the IOLTA provisions of Pa.R.P.C. 1.15 and these regulations.

(b) The Board may reconsider its determination of IOLTA compliance based upon information obtained by

the Office of Disciplinary Counsel during its investigation of a referral from the Board for non-compliance.

### Appendix A

#### The Pennsylvania Interest on Lawyers Trust Account Board

*Promulgated by the Pennsylvania Interest on Lawyers Trust Account Board and Approved by the Supreme Court of Pennsylvania*

These regulations are to be read and applied in connection with the Pennsylvania Rules of Professional Conduct. Nothing in these regulations shall be construed to relieve a lawyer of any provision of the Pennsylvania Rules of Professional Conduct. Where these regulations contain directives pertaining to the Interest on Lawyers Trust Account program which are more specific than those set forth in the Pennsylvania Rules of Professional Conduct, the provisions of these regulations shall control.

#### Questions and Answers Concerning Pennsylvania IOLTA

##### *Statement of Purpose*

The following is a representation of the questions most frequently asked of the Pennsylvania Interest on Lawyers Trust Account Board (the "IOLTA Board") and the answers given. Some of the answers paraphrase the actual Rules of Professional Conduct or Regulations of the IOLTA Board. Reference should be made to the Rules and to the Regulations when appropriate.

##### *What is the Basic Concept of IOLTA?*

Clients and third persons frequently transfer monies to lawyers to hold. Rule 1.15 of the Pennsylvania Rules of Professional Conduct generally requires the lawyer to deposit all monies of clients and third persons ("Rule 1.15 Funds") in a Trust Account. When the amount is large or if the funds will be held for an extended period of time, lawyers invest them for the benefit of the owner. These funds are known as Nonqualified Funds. But when the funds are nominal in amount or expected to be held for a short time, they cannot practically be invested to benefit the owner of the funds. These funds are Qualified Funds.

Rule 1.15 of the Pennsylvania Rules of Professional Conduct requires a lawyer to deposit Qualified Funds in a particular type of Trust Account: an interest-bearing IOLTA Account. The result is that funds that would otherwise earn no interest can be put to constructive use.

The lawyer's bank transfers the interest earned on IOLTA Accounts ("IOLTA Funds"), no less frequently than quarterly, to the IOLTA Board. The Board distributes the IOLTA Funds for the delivery of civil legal assistance to the poor and disadvantaged, educational legal clinical programs and internships administered by law schools, the administration of justice, and for the administration and development of the IOLTA program.

##### *How do lawyers comply with the IOLTA requirements of Rule 1.15?*

An "Enrollment Form for Lawyers and Law Firms" can be used to direct the financial institution to open or convert one or more of the lawyer's Trust Account(s) to interest-bearing IOLTA Accounts. Submit the second copy of the enrollment form, along with a list of all the lawyers who use the IOLTA Account in the regular course of their practice, to the IOLTA Board.

On an annual basis as part of the licensing process, lawyers are required to certify compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regard-

ing the handling of funds and other property of clients or third persons ("Third Party Owners") and the maintenance of their IOLTA Accounts.

##### *What will happen if a lawyer does not comply with Rule 1.15?*

If a lawyer does not comply with the requirements outlined in Rule 1.15 of the Pennsylvania Rules of Professional Conduct, he or she will be subject to the same disciplinary penalties as any lawyer who does not comply with any of the other requirements for the practice of law in Pennsylvania.

The Board will refer to the Office of Disciplinary Counsel the names of lawyers who do not comply with IOLTA.

##### *Are any exemptions from IOLTA participation allowed?*

Yes, a lawyer may apply for an exemption from the requirement that all Qualified Funds be placed in an IOLTA Account. However, the exemption will be granted by the IOLTA Board only for one of the reasons specified in Rule 1.15. Write to the IOLTA Board if you believe any of the permitted exemptions apply. Exemptions will be granted if:

(A) the nature of the lawyer's practice does not require the routine maintenance of a Trust Account in Pennsylvania;

(B) the establishment of an IOLTA Account would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest approved financial institution or on other compelling and necessitous factors;

(C) the lawyer's historical annual Trust Account experience, based on information from the financial institution in which the lawyer deposits Rule 1.15 Funds, demonstrates the service charges on the Trust Account would significantly and routinely exceed any interest generated.

##### *What funds are to be placed in IOLTA Accounts?*

Qualified Funds are monies of a client or third person received by a lawyer, that in the good faith judgment of the lawyer, are nominal in amount or which the lawyer reasonably expects to be held for such a short period of time, such that sufficient interest income will not be generated to justify the expense of earning interest to benefit the client or third person.

A lawyer will not be liable for damages or held to have breached his or her professional responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in good faith that the monies are Qualified Funds.

However, the lawyer should review the funds held in his/her IOLTA Account at reasonable intervals to determine whether circumstances have changed that require changes with respect to the Rule 1.15 Funds held in the IOLTA Account.

##### *Who pays taxes on the interest income earned on IOLTA accounts?*

Nobody. The Internal Revenue Service (IRS) has ruled that there are no tax consequences to the Third Party Owner, the lawyer or the IOLTA Board. Also, there is no IRS reporting requirement for the lawyer, financial institution or Third Party Owner since all IOLTA accounts will use the Tax Identification Number of the IOLTA Board.

*May a lawyers still open a separate account for funds of Third Party Owners?*

Certainly. A lawyer must determine whether funds of Third Party Owners are Qualified Funds or Nonqualified Funds. Nonqualified Funds shall be placed in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and the Third Party Owner.

*How does the IOLTA program affect financial institutions?*

Financial institutions are not mandated to participate in IOLTA. However, financial institutions that wish to offer Trust Accounts into which lawyers can deposit Rule 1.15 Funds (whether Qualified or Nonqualified Funds) must be approved by the Supreme Court of Pennsylvania. A list of approved financial institutions can be obtained from the Disciplinary Board.

An IOLTA Account is an unsegregated Trust Account for the deposit of Qualified Funds by a lawyer. The rate of interest payable on an IOLTA Account cannot be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications. Financial institutions remit the interest at least quarterly to the IOLTA Board.

Financial institutions must transmit to the IOLTA Board and to the lawyer who maintains the IOLTA Account a statement showing certain information. This includes, at a minimum, the name of the account, the service charges or fees deducted, if any, and the amount remitted from the lawyer's IOLTA Account. If available, the financial institution shall also provide information regarding the average daily balance in the account.

*Where do IOLTA funds go?*

Interest earned on IOLTA Accounts may be used only for the following purposes:

- (1) delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations which are tax-exempt under the Internal Revenue Code;
- (2) educational legal clinical programs and internships administered by law schools located in Pennsylvania;
- (3) the administration of justice in Pennsylvania; and
- (4) the administration and development of the IOLTA program in Pennsylvania.

All disbursements and allocations of IOLTA funds are subject to the prior approval of the Supreme Court of Pennsylvania.

*Who is the IOLTA Board?*

The IOLTA Board is the Pennsylvania Interest on Lawyers Trust Account Board composed of nine members appointed by the Supreme Court of Pennsylvania.

*What if a lawyer mistakenly deposits funds which are not Qualified Funds into an IOLTA Account?*

As long as the lawyer used good faith judgment, the lawyer will not be liable in damages for placing Nonqualified Funds into an IOLTA Account, nor will the lawyer be held to have breached any fiduciary duty or responsibility because monies were deposited into an IOLTA Account. Additionally, if timely requested, a refund of IOLTA interest received by the Board attributable to the mistaken deposit, net of an administrative charge, will be made to the lawyer for distribution to the Third Party Owner.

*May all lawyers in a law firm use the same IOLTA Account?*

Yes. If a law firm established an IOLTA Account, each lawyer who deposits all Qualified Funds in that account will be deemed to be in compliance with IOLTA. This account must be set up according to IOLTA regulations. However, each lawyer is ultimately responsible to ensure that he or she is in compliance with IOLTA.

*Can a lawyer deposit Qualified Funds into a credit union or brokerage account?*

Rule 1.15 Funds in IOLTA Accounts, if maintained at credit unions and brokerages, may not be insured. Since all IOLTA Accounts must be insured, only those approved financial institutions which insure IOLTA Accounts can be used as depositories for Qualified Funds. The owner of the Rule 1.15 Funds must qualify for membership in the credit union in order for the funds to be insured.

*What if a lawyer only practices law for part of the year?*

The lawyer must comply with the IOLTA rules, even if he or she only practices law for part of the year.

*What types of legal employment are excluded from IOLTA?*

A lawyer whose employment does not result in the handling of funds of a client or third person will generally be excluded from IOLTA. Examples include corporate or governmental lawyers, judges, and law school professors as long as they do not maintain a private practice.

*What are some factors which should be used to determine whether monies are Qualified Funds?*

Factors which can be used to determine which monies are Qualified Funds include: (1) the cost to the lawyer of establishing and maintaining account(s) benefiting the client or third person; (2) the financial institution's service charges; (3) the minimum deposit requirements; (4) the accounting fees; (5) the tax reporting requirements; (6) the nature of the transaction(s) or proceedings(s) involved; and (7) the likelihood of delay in the relevant transaction(s) or proceeding(s).

*Must a lawyer who receives funds while acting as a fiduciary deposit those funds into an IOLTA Account?*

Rule 1.15(d), as amended in April 2005, specifically excludes funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship. However, Comment 7 to the Rule, as amended in April, 2005, does state that funds received by a lawyer while serving as an executor or trustee, if nominal in amount or expected to be held for such a short period of time that sufficient interest will not be generated to justify maintaining a segregated account may, in the discretion of the lawyer, be deposited into an IOLTA Account, although such deposit is not required.

*Must a lawyer who receives funds of clients or third persons other than in connection with a client-lawyer relationship deposit those funds in a Trust Account, including an IOLTA Account?*

Rule of Professional Conduct 5.7 provides that a lawyer is subject to the Pennsylvania Rules of Professional Conduct with respect to the provision of both legal and nonlegal services: (i) if a lawyer provides nonlegal services that are not distinct from legal services, (ii) if the lawyer provides nonlegal services that are distinct from legal services, but the lawyer knows or reasonably should know that the recipient might believe that the recipient of the services is receiving the protection of a client-lawyer relationship, or (iii) if the lawyer is a owner, controlling party, employee, agent, or is otherwise affli-



ated with an entity providing nonlegal services and the lawyer knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship. In each of these three cases, the lawyer will be subject to the obligations of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and these Regulations as if a client-lawyer relationship existed with the recipient of the services. The lawyer then must deposit all funds of the client or a third person which are received in connection with that relationship in a Trust Account, regardless of whether the funds resulted from legal or nonlegal services. If the funds are Qualified Funds, those funds are to be placed in an IOLTA Account.

*Who pays the service charges for IOLTA Accounts?*

Account service charges on an IOLTA Account will be paid by offsetting the service charges against interest earned on that account.

Bank charges pertaining to the lawyer's practice (e.g. check printing charges, overdraft charges, charges for temporary extensions of credit, etc.) and costs billable to others (e.g. overdraft charges on deposited items, certified checks, wire transfers, etc.), will be the responsibility of the lawyer.

*How can I find out more about IOLTA?*

For additional information concerning IOLTA, contact the office of the IOLTA Board by calling (717) 238-2001. The Board's fax number is (717) 238-2003.

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## Title 207—JUDICIAL CONDUCT

### PART II. CONDUCT STANDARDS

#### [207 PA. CODE CHS. 33 AND 51]

Order Revising the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges; No. 222 Magisterial Doc. No. 1

#### Order

*Per Curiam*

*And Now*, this 21st day of November, 2005, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, it is hereby ordered that the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges are revised to address gender neutrality issues and to make other minor, technical corrections.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of the Code of Judicial Conduct and Rules Governing Standards of Conduct of Magisterial District Judges is hereby found to be required in the interest of justice and efficient administration.

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

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART II. CONDUCT STANDARDS

#### CHAPTER 33. CODE OF JUDICIAL CONDUCT

#### Subchapter A. CANONS

Canon 1. [A judge] Judges should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. [A judge] Judges should participate in establishing, maintaining, and enforcing, and should [himself] themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. [A judge] Judges should avoid impropriety and the appearance of impropriety in all [his] their activities.

A. [A judge] Judges should respect and comply with the law and should conduct [himself] themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. [A judge] Judges should not allow [his] their family, social, or other relationships to influence [his] their judicial conduct or judgment. [He] They should not lend the prestige of [his] their office to advance the private interests of others; nor should [he] they convey or knowingly permit others to convey the impression that they are in a special position to influence [him] the judge. [He] Judges should not testify voluntarily as a character witness.

*Official Note:* Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. [A judge] Judges must avoid all impropriety and appearance of impropriety. [He] They must expect to be the subject of constant public scrutiny. [He] They must therefore accept restrictions on [his] their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of [a judge as a character witness] judges as character witnesses injects the prestige of [his] their office into the proceeding in which [he testifies] they testify and may be misunderstood to be official testimonial. This Canon, however, does not afford [him] them a privilege against testifying in response to an official summons.

Canon 3. [A judge] Judges should perform the duties of [his] their office impartially and diligently.

The judicial duties of [a judge] judges take precedence over all [his] their other activities. [His] Their judicial duties include all the duties of [his] their office prescribed by law. In the performance of these duties, the following standards apply:

A. *Adjudicative responsibilities.*

(1) [A judge] Judges should be faithful to the law and maintain professional competence in it. [He] They should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) **[ A judge ] Judges** should maintain order and decorum in proceedings before **[ him ] them**.

(3) **[ A judge ] Judges** should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom **[ he deals in his ] they deal in their** official capacity, and should require similar conduct of lawyers, and of **[ his ] their** staff, court officials, and others subject to **[ his ] their** direction and control.

**Official Note:** The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) **[ A judge ] Judges** should accord to **[ every person who is ] all persons who are** legally interested in a proceeding, or **[ his lawyer ] their lawyers**, full right to be heard according to law, and, except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

(5) **[ A judge ] Judges** should dispose promptly of the business of the court.

**Official Note:** Prompt disposition of the court's business requires **[ a judge ] judges** to devote adequate time to **[ his ] their** duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with **[ him ] them** to that end.

(6) **[ A judge ] Judges** should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to **[ his ] their** direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

**Official Note:** "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility.

(7) **[ A judge ] Judges** should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

\* \* \* \* \*

#### B. *Administrative responsibilities.*

(1) **[ A judge ] Judges** should diligently discharge **[ his ] their** administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) **[ A judge ] Judges** should require **[ his ] their** staff and court officials subject to **[ his ] their** direction and control to observe the standards of fidelity and diligence that apply to **[ him ] judges**.

(3) **[ A judge ] Judges** should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

**Official Note:** Disciplinary measures may include reporting a judge's or lawyer's misconduct to an appropriate disciplinary body.

(4) **[ A judge ] Judges** should not make unnecessary appointments. **[ He ] They** should exercise **[ his ] their** power of appointment only on the basis of merit, avoiding favoritism. **[ He ] They** should not approve compensation of appointees beyond the fair value of services rendered.

**Official Note:** Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

#### C. *Disqualification.*

(1) **[ A judge ] Judges** should disqualify **[ himself ] themselves** in a proceeding in which **[ his ] their** impartiality might reasonably be questioned, including but not limited to instances where:

(a) **[ he has ] they have** a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) **[ he ] they** served as a lawyer in the matter in controversy, or a lawyer with whom **[ he ] they** previously practiced law served during such association as a lawyer[, ] concerning the matter, or the judge or such lawyer has been a material witness concerning it;

**Official Note:** A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; **[ a judge ] judges** formerly employed by a governmental agency, however, should disqualify **[ himself ] themselves** in a proceeding if **[ his ] their** impartiality might reasonably be questioned because of such association.

(c) **[ he knows that he ] they know that they**, individually or as a fiduciary, or **[ his ] their** spouse or minor child residing in **[ his ] their** household, **[ has ] have** a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) **[ he or his ] they or their** spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

**Official Note:** The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that **[ his ] their** impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require **[ his ] the judge's** disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) **[ A judge ] Judges** should inform **[ himself about his ] themselves about their** personal and fiduciary financial interests, and make a reasonable effort to inform **[ himself ] themselves** about the personal financial interests of **[ his ] their** spouse and minor children residing in **[ his ] their** household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

**Official Note:** According to the civil law system, the third degree of relationship test would, for example, disqualify **[ the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband ] judges if their or their spouse's parents, grandparents, aunts or uncles, siblings, nieces or nephews or their spouses** were a party or lawyer in the proceeding, but would not disqualify **[ him ] them** if a cousin were a party or lawyer in the proceeding.

\* \* \* \* \*

Canon 4. **[ A judge ] Judges** may engage in activities to improve the law, the legal system, and the administration of justice.

**[ A judge ] Judges**, subject to the proper performance of **[ his ] their** judicial duties, may engage in the following quasi-judicial activities, if in doing so **[ he does ] they do** not cast doubt on **[ his ] their** capacity to decide impartially any issue that may come before **[ him ] them**:

A. **[ He ] They** may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. **[ He ] They** may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and **[ he ] they** may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. **[ He ] They** may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. **[ He ] They** may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. **[ He ] They** may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

**Official Note:** As a judicial officer and person specially learned in the law, **[ a judge is ] judges are** in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that **[ his ] their** time permits, **[ he is ] they are** encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

Canon 5. **[ A judge ] Judges** should regulate **[ his ] their** extra-judicial activities to minimize the risk of conflict with **[ his ] their** judicial duties.

A. *Avocational activities.*

**[ A judge ] Judges** may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of **[ his ] their** office or interfere with the performance of **[ his ] their** judicial duties.

**Official Note:** Complete separation of **[ a judge ] judges** from extra-judicial activities is neither possible nor wise; **[ he ] they** should not become isolated from the society in which **[ he lives ] they live**.

B. *Civic and Charitable Activities.*

**[ A judge ] Judges** may participate in civic and charitable activities that do not reflect adversely upon **[ his ] their** impartiality or interfere with the performance of **[ his ] their** judicial duties. **[ A judge ] Judges** may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) **[ A judge ] Judges** should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before **[ him ] them** or will be regularly engaged in adversary proceedings in any court.

**Official Note:** The changing nature of some organizations and of their relationship to the law makes it necessary for **[ a judge ] judges** regularly to reexamine the activities of each organization with which **[ he is ] they are** affiliated to determine if it is proper for **[ him ] them** to continue **[ his ] their** relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) **[ A judge ] Judges** should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of **[ his ] their** office for that purpose, but **[ he ] they** may be listed as an officer, director, or trustee of such an organization. **[ He ] They** should not be a speaker or the guest of honor at an organization's fund raising events, but **[ he ] they** may attend such events.

(3) **[ A judge ] Judges** should not give investment advice to such an organization, but **[ he ] they** may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

**Official Note:** A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. *Financial activities.*

(1) **[ A judge ] Judges** should refrain from financial and business dealings that tend to reflect adversely on **[ his ] their** impartiality, interfere with the proper per-

formance of **[ his ] their** judicial duties, exploit **[ his ] their** judicial position, or involve **[ him ] them** in frequent transactions with lawyers or persons likely to come before the court on which **[ he serves ] they serve**.

(2) Subject to the requirement of subsection (1), **[ a judge ] judges** may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a family business.

**Official Note:** The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

(3) **[ A judge ] Judges** should manage **[ his ] their** investments and other financial interests to minimize the number of cases in which **[ he is ] they are** disqualified. As soon as **[ he ] they** can do so without serious financial detriment, **[ he ] they** should divest **[ himself ] themselves** of investments and other financial interests that might require frequent disqualification.

(4) Information acquired by **[ a judge in his ] judges in their** judicial capacity should not be used or disclosed by **[ him ] them** in financial dealings or for any other purpose not related to **[ his ] their** judicial duties.

#### D. *Fiduciary Activities.*

**[ A judge ] Judges** should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of **[ his ] their** family, and then only if such service will not interfere with the proper performance of **[ his ] their** judicial duties. "Member of **[ his ] their** family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary **[ a judge is ] judges are** subject to the following restrictions:

(1) **[ He ] They** should not serve if it is likely that as a fiduciary **[ he ] they** will be engaged in proceedings that would ordinarily come before **[ him ] them**, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which **[ he serves ] they serve** or one under its appellate jurisdiction.

**Official Note:** The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary **[ a judge is ] judges are** subject to the same restrictions on financial activities that apply to **[ him in his ] them in their** personal capacity.

**Official Note:** **[ A judge's obligation ] Judges' obligations** under this Canon and **[ his obligation ] their obligations** as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

#### E. *Arbitration.*

**[ A judge ] Judges** should not act as an arbitrator or mediator.

#### F. *Practice of law.*

**[ A judge ] Judges** should not practice law.

#### G. *Extra-judicial appointments.*

**[ A judge ] Judges** should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. **[ A judge ] Judges**, however, may represent **[ his ] their** country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

**Official Note:** Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on **[ judicial manpower ] judges** created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

#### **Canon 6. Compensation received for quasi-judicial and extra-judicial activities permitted by this code.**

**[ A judge ] Judges** may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing **[ the judge ] judges in [ his ] their** judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

##### A. *Compensation.*

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

##### B. *Expense reimbursement.*

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by **[ the judge ] judges** and, where appropriate to the occasion, by **[ his spouse ] their spouses**.

Canon 7. **[ A judge ] Judges** should refrain from political activity inappropriate to **[ his ] their** judicial office.

##### A. *Political conduct in general.*

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office; except as authorized in subsection A(2);

**Official Note:** **[ A candidate does ] Candidates do** not publicly endorse another candidate for public office by having **[ his ] their** name on the same ticket.

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) **[A judge] Judges** holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on **[his] their** own behalf when **[he is] they are** a candidate for election or reelection, or speak on behalf of any judicial candidate for the same office, identify **[himself] themselves** as a member of a political party, and contribute to a political party or organization.

(3) **[A judge] Judges** should resign **[his] their** office when **[he becomes] they become** a candidate either in a party primary or in a general election for a non-judicial office, except that **[he] they** may continue to hold **[his] their** judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if **[he is] they are** otherwise permitted by law to do so.

(4) **[A judge] Judges** should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

#### B. Campaign conduct.

(1) **[A candidate] Candidates**, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of **[his] their** family to adhere to the same standards of political conduct that apply to **[him] them**;

(b) should prohibit public officials or employees subject to **[his] their** direction or control from doing for **[him what he is] them what judges are** prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), **[he] they** should not allow any other person to do for **[him] them** what **[he is] judges are** prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent **[his] their** identity, qualifications, present position, or other fact.

(2) **[A candidate] Candidates**, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not **[himself] themselves** solicit or accept campaign funds, or solicit publicly stated support, but **[he] they** may establish committees of responsible persons to secure and manage the expenditure of funds for **[his] their** campaign and to obtain public statements of support for **[his] their** candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. **[A candidate's] Candidates'** committees may solicit funds for **[his] their** campaign no earlier than thirty days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities in connection with such judicial campaign shall terminate no later than the last

calendar day of the year in which the judicial election is held. **[A candidate] Candidates** should not use or permit the use of campaign contributions for the private benefit of **[himself] themselves** or members of **[his] their** family.

(3) **[An incumbent judge who is a candidate] Incumbent judges who are candidates** for retention in or reelection to office without a competing candidate may campaign and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

#### Compliance With The Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

*Senior Judge.* **[A senior judge who receives] Senior judges who receive** the same compensation as **[a] full-time [judge] judges** on the court from which **[he] they** retired and **[is] are** eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but **[he] they** should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other senior judges eligible for recall to judicial service should comply with the provisions of this Code.

This Code shall not apply to **[justices of the peace, police magistrates of the City of Pittsburgh] magisterial district judges** and judges of the Traffic Court of the City of Philadelphia.

*Official Note:* Specific rules governing standards of conduct of **[justices of the peace, including police magistrates of the City of Pittsburgh] magisterial district judges**, and judges of the Traffic Court of the City of Philadelphia, are set forth in the Rules Governing Standards of Conduct of **[Justices of the Peace] Magisterial District Judges**.

#### Effective Date of Compliance

**[A person] Persons** to whom this Code becomes applicable should arrange **[his] their** affairs as soon as reasonably possible to comply with it. If, however, the demands on **[his] their** time and the possibility of conflicts of interest are not substantial, **[a person who holds] persons who hold** judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or nonlegal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of **[his] their** family.

#### Reliance on Advisory Opinions

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, justices and other judicial officers subject to the Code of Judicial Conduct, and, although such opinions are not per se binding upon **[either the Judicial Inquiry and Review Board] the Judicial Conduct Board, the Court of Judicial Discipline** or

the Supreme Court of Pennsylvania, action taken in reliance thereupon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

*Commentary.* The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), concluded that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” is violative of the First Amendment of the United States Constitution.

**CHAPTER 51. STANDARDS OF CONDUCT OF  
MAGISTERIAL DISTRICT JUDGES  
PENNSYLVANIA RULES FOR MAGISTERIAL  
DISTRICT JUDGES**

**Rule 1. Integrity and Independence of Judiciary.**

An independent and honorable judiciary is indispensable to justice. [A magisterial district judge] Magisterial district judges should participate in establishing, maintaining and enforcing, and shall [himself] themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions for these rules governing standards of conduct of magisterial district judges shall be construed and applied to further that objective.

*Official Note:* This rule is derived from Canon 1, American Bar Association Code of Judicial Conduct. This and the following rules governing standards of conduct of magisterial district judges provide a complete and exclusive code of conduct for magisterial district judges in Pennsylvania. Those canons of the Code of Judicial Conduct of the American Bar Association thought applicable to magisterial district judges have been paraphrased in these rules, and some of the former standards of conduct rules, which were thought to be more pertinent to magisterial district judges in Pennsylvania than counterpart canons of the American Bar Association Code of Judicial Conduct, have been retained. In determining the standards that apply to [him] them, the magisterial district judges need now consult only these rules and will not be required to consult other sources as was the case heretofore. When canons of the American Bar Association Code of Judicial Conduct have been paraphrased in these rules, pertinent official commentaries to those canons and those parts of the canons thought to be merely expository are set forth in the notes rather than in the rules.

**Rule 2. Impropriety and Appearance of Impropriety to be Avoided; Voluntary Appearance as Character Witness Prohibited.**

A. [A magisterial district judge] Magisterial district judges shall respect and comply with the law and shall conduct [himself] themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [A magisterial district judge] Magisterial district judges shall not allow [his] their family, social or other relationships to influence [his] their judicial conduct or judgment. [He] They shall not lend the prestige of [his] their office to advance the private interest of others, nor shall [he] they convey or permit others to convey the impression that they are in a special position to influence [him] the judge.

B. [A magisterial district judge] Magisterial district judges shall not testify voluntarily as [a] character [witness] witnesses.

*Official Note:* This rule is derived from Canon 2, American Bar Association Code of Judicial Conduct, and Pa. R.J.A. No. 1701. Public confidence in the judiciary is eroded by irresponsible or improper conduct by members of the judiciary. [A magisterial district judge] Magisterial district judges must avoid all impropriety and appearance of impropriety. [He] They must expect to be the subject of constant public scrutiny. [He] They must therefore accept restrictions on [his] their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of magisterial district [judge] judges as [a] character [witness] witnesses injects the prestige of [his] their office into the proceeding in which [he testifies] they testify and may be misunderstood to be an official testimonial. Rule 2B, however, does not afford [him] them a privilege against testifying as [a] character [witness] witnesses in response to a subpoena the issuance of which has been specifically allowed by the Supreme Court under Pa. R.J.A. No. 1701.

**Rule 3. Priority of Judicial Business.**

A. [A magisterial district judge] Magisterial district judges shall devote the time necessary for the prompt and proper disposition of the business of [his] their office, which shall be given priority over any other occupation, business, profession, pursuit or activity.

B. [A magisterial district judge] Magisterial district judges shall not use or permit the use of the premises established for the disposition of [his] their magisterial business for any other occupation, business, profession or gainful pursuit.

\* \* \* \* \*

**Rule 4. Adjudicative Responsibilities.**

A. [A magisterial district judge] Magisterial district judges shall be faithful to the law and maintain competence in it. [He] They shall be unswayed by partisan interests, public clamor or fear of criticism.

B. [A magisterial district judge] Magisterial district judges shall maintain order and decorum in the proceedings before [him] them. [He] They shall wear judicial robes while conducting hearings and trials.

C. [A magisterial district judge] Magisterial district judges shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom [he deals in his] they deal in their official capacity, and shall require similar conduct of lawyers, of [his] their staff and others subject to [his] their direction and control.

D. [A magisterial district judge] Magisterial district judges shall accord to every person who is legally interested in a proceeding, or [his] their lawyer, full right to be heard according to law and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. [A magisterial district judge] Magisterial district judges, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before [him if he gives] them if they give notice to the parties of the person consulted and the substance

of the advice and **[affords]** **afford** the parties reasonable opportunities to respond.

**Official Note:** This rule is derived from Canon 3A(1)-(4) of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct. Magisterial district judges are to be provided with the judicial robes required by subdivision B as part of the expense of operating their offices (See Rule 101(3)). The proscription against communications in subdivision D includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude **[a magisterial district judge]** **magisterial district judges** from consulting with other members of the judiciary or with court personnel whose function it is to aid the judiciary in carrying out adjudicative responsibilities.

**Rule 5. Administrative Responsibilities.**

A. **[A magisterial district judge]** **Magisterial district judges** shall diligently discharge **[his]** **their** administrative responsibilities, maintain competence in judicial administration and facilitate the performance of the administrative responsibilities of **[his]** **their** staff and of other members of the judiciary and court officials.

B. **[A magisterial district judge]** **Magisterial district judges** shall require **[his]** **their** staff to observe the standards of fidelity and diligence that apply to **[him]** **them**.

C. **[A magisterial district judge]** **Magisterial district judges** shall not make unnecessary appointments to **[his]** **their** staff. **[He]** **They** shall exercise any such power of appointment that **[he]** **they** may have only on the basis of merit, avoiding nepotism and favoritism.

\* \* \* \* \*

**Rule 6. Public Comment.**

**[A magisterial district judge]** **Magisterial district judges** shall abstain from public comment about a proceeding pending or impending in **[his office]** **their offices** or in any court, and shall require similar abstention on the part of **[his]** **their** staff. This rule does not prohibit magisterial district judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

\* \* \* \* \*

**Rule 7. Broadcasting, Televising, Recording, Photography.**

**[A magisterial district judge]** **Magisterial district judges** shall prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions or recesses between sessions, except that **[a magisterial district judge]** **magisterial district judges** may authorize:

\* \* \* \* \*

**Rule 8. Disqualification.**

A. **[A magisterial district judge]** **Magisterial district judges** shall disqualify **[himself]** **themselves** in a proceeding in which **[his]** **their** impartiality might reasonably be questioned, including but not limited to instances where:

(1) **[he has]** **they have** a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) **[he]** **they** served as a lawyer in the matter in controversy, or a lawyer with whom **[he]** **they** previously practiced law served during such association as a lawyer concerning the matter, or the magisterial district judge or such lawyer has been a material witness concerning it;

(3) **[he knows that he]** **they know that they**, individually or as a fiduciary, or **[his]** **their** spouse or a minor child residing in **[his]** **their** household has a financial interest in the subject matter in controversy or is a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding;

(4) **[he or his]** **they or their** spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

\* \* \* \* \*

B. **[A magisterial district judge]** **Magisterial district judges** shall inform **[himself about his]** **themselves about their** personal and fiduciary financial interests and make a reasonable effort to inform **[himself]** **themselves** about the personal financial interests of **[his]** **their** spouse and minor children residing in **[his]** **their** household.

**Official Note:** This rule is derived from Canon 3C, American Bar Association Code of Judicial Conduct. For the purpose of this rule, "fiduciary" includes such relationships as executor, administrator, trustee and guardian, and "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that: (1) ownership in mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the magisterial district judge participates in the management of the fund; (2) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization; (3) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and (4) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities. "Degree of relationship" is calculated according to the civil law system. Thus, the third degree of relationship test would, for example, disqualify the magisterial district judge if **[his or his spouse's father, grandfather, uncle, brother or niece's husband]** **they or their spouse's parents, grandparents, uncles or aunts, siblings, or nieces or nephews or their spouses** were a party or a lawyer in the proceeding, but would not disqualify **[him]** **them** if a cousin were a party or lawyer in the proceeding.

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of subdivision A(2). **[A magisterial district judge]** **Magisterial district judges**

formerly employed by a governmental agency, however, should disqualify [ himself ] themselves in a proceeding if [ his ] their impartiality might reasonably be questioned because of such association.

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the magisterial district judge is affiliated does not of itself disqualify the magisterial district judge. Under appropriate circumstances, the fact that “[ his ] their impartiality might reasonably be questioned” under subdivision A, or that the lawyer-relative is known by the magisterial district judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under subdivision A(4)(c) may require [ his ] their disqualification.

**Rule 9. Remittal of Disqualification; Minimizing Disqualification.**

A. [ A magisterial district judge ] Magisterial district judges disqualified by Rule 8A(3) or (4) may, instead of withdrawing from the proceeding, disclose the basis of [ his ] their disqualification. If, based on such disclosure, the parties and lawyers independently of the participation of the magisterial district [ judge ] judges all agree in writing that the relationship of the magisterial district [ judge ] judges is immaterial or that [ his ] their financial interest is insubstantial, the magisterial district [ judge is ] judges are no longer disqualified and may participate in the proceeding. The agreement signed by all parties and lawyers, shall be attached to the record copy of the complaint form.

B. [ A magisterial district judge ] Magisterial district judges shall manage [ his ] their investments and other financial interests to minimize the number of cases in which [ he is ] they are disqualified. As soon as [ he ] they can do so without serious financial detriment, [ he ] they shall divest [ himself ] themselves of investments and other financial interests that might require frequent disqualification.

*Official Note:* Subdivision A is derived from Canon 3D, American Bar Association Code of Judicial Conduct. The procedure in this subdivision is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the magisterial district [ judge ] judges may proceed on the written assurance of the [ lawyer that his party's ] lawyers that their parties' consent will be subsequently filed.

\* \* \* \* \*

**Rule 10. Information Acquired in Judicial Capacity.**

Information acquired by [ a magisterial district judge in his ] magisterial district judges in their judicial capacity shall not be used or disclosed by [ him ] them in financial dealings or for any other purpose not related to [ his ] their judicial duties.

\* \* \* \* \*

**Rule 11. Solicitation of Funds.**

[ A magisterial district judge ] Magisterial district judges shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of [ his ] their office for that purpose, but [ he ] they may be listed as an officer,

director or trustee of such an organization. [ He ] They shall not be a speaker or the guest of honor at such an organization's public fund raising events, but [ he ] they may attend such events.

\* \* \* \* \*

**Rule 12. Gifts and Loans.**

A. [ A magisterial district judge ] Magisterial district judges may accept a gift incident to a public testimonial to [ him ] them and books supplied by publishers on a complimentary basis for public use. [ A magisterial district judge ] Magisterial district judges or a member of [ his ] their family residing in [ his ] their household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not magisterial district judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.

B. [ A magisterial district judge ] Magisterial district judges or a member of [ his ] their family residing in [ his ] their household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the magisterial district judge.

*Official Note:* This rule is derived from Canon [ 50(4) ] 5C(4), American Bar Association Code of Judicial Conduct. For the purpose of this rule, “member of [ his ] their family residing in [ his ] their household” means any relative of the magisterial district [ judge ] judges by blood or marriage, or a person treated by the magisterial district [ judge ] judges as a member of [ his ] their family, who resides in [ his ] their household.

**Rule 13. Incompatible Practices.**

Magisterial district judges and all employees assigned to or appointed by magisterial district judges shall not engage, directly or indirectly, in any activity or act incompatible with the expeditious, proper and impartial discharge of their duties, including, but not limited to, (1) in any activity prohibited by law; (2) in the collection business; or (3) in the acceptance of any premium or fee for any judicial bond. [ A magisterial district judge ] Magisterial district judges shall not exploit [ his or her ] their judicial position for financial gain or for any business or professional advantage. [ A magisterial district judge ] Magisterial district judges shall not receive any fee or emolument for performing the duties of an arbitrator.

\* \* \* \* \*

**Rule 14. Prohibited Practice of Attorney Magisterial District [ Judge ] Judges.**

A. [ An attorney who is a magisterial district judge ] Attorneys who are magisterial district judges shall not practice before any magisterial district judge in the Commonwealth, nor shall [ he ] they act as a lawyer in a proceeding in which [ he has ] they have served as a magisterial district judge or in any other proceeding related thereto. Nor shall [ he ] they practice criminal law in the county within which [ his ] their magisterial district is located. An employer, employee,



partner of office associate of such magisterial district **[judge] judges** shall not appear or practice before **[him] them**.

B. **[An attorney who is a magisterial district judge] Attorneys who are magisterial district judges** shall not practice before, or act as an attorney or solicitor for, any county or local municipal, governmental or quasi governmental agency, board, authority or commission operating within the Commonwealth.

\* \* \* \* \*

**Rule 15. Public Office and Political Activity.**

A. **[A magisterial district judge] Magisterial district judges** shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

B. **[A magisterial district judge] Magisterial district judges** or a candidate for such office shall not:

(1) hold office in a political party or political organization or publicly endorse candidates for political office.

(2) engage in partisan political activity, deliver political speeches, make or solicit political contributions (including purchasing tickets for political party dinners or other functions) or attend political or party conventions or gatherings, except as authorized in subdivision C of this rule. Nothing herein shall prevent **[a magisterial district judge or a candidate for such office] magisterial district judges or candidates for such offices** from making political contributions to a campaign of a member of **[his] their** immediate family.

C. **[A magisterial district judge or a candidate for such office] Magisterial district judges or candidates for such offices** may in the year **[he runs] they run** for office, attend political or party conventions or gatherings, speak to such gatherings or conventions on **[his] their** own behalf, identify **[himself] themselves** as **[a member] members** of a political party, and contribute to **[his] their** own campaign, a political party or political organization (including purchasing tickets for political party dinners or other functions).

D. With respect to **[his] their** campaign conduct, **[a magisterial district judge or a candidate] magisterial district judges or candidates** for such office shall:

(1) maintain the dignity appropriate to judicial office, and shall encourage members of **[his] their** family to adhere to the same standards of political conduct that apply to **[him] them**.

(2) prohibit public officials or employees subject to **[his] their** direction or control from doing for **[him what he is] them what they are** prohibited from doing under this rule; and except to the extent authorized under subdivision D(4) of this rule shall not allow any other person to do for **[him what he is] them what they are** prohibited from doing under this rule.

(3) not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the

court; or misrepresent **[his] their** identity, qualifications, present position, or other fact.

*Commentary.* The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002) concluded that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” is violative of the First Amendment of the United States Constitution.

(4) not **[himself] themselves** solicit or accept campaign funds, or solicit publicly stated support, but **[he] they** may establish committees of responsible persons to secure and manage the expenditure of funds for **[his] their** campaign and to obtain public statements of support for **[his] their** candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. **[A candidate’s] Candidates’** committees may solicit funds for **[his] their** campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions, and all fundraising activities in connection with such campaign shall terminate no later than the last calendar day of the year in which the election is held. **[A candidate] Candidates** should not use or permit the use of a campaign contribution for the private benefit of **[himself] themselves** or members of **[his] their** family.

E. **[A magisterial district judge] Magisterial district judges** shall resign **[his] their** office when **[he becomes a candidate] they become candidates** either in a party primary or in a general election for a non-judicial office.

*Official Note:* This rule is derived from former Rule 15 and from Canon 7 of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct. **[this] This** rule prohibits only political activity that is partisan in nature and consequently there is no objection to **[a magisterial district judge] magisterial district judges** becoming engaged in political activity of a public service nature, such as, for example, political activity in behalf of measures to improve the law, the legal system or the administration of justice.

**Rule 16. Transfer of Dockets and Other Papers.**

A. Except for judges of **[the Pittsburgh Magistrates Court and of the traffic courts of Pittsburgh and Philadelphia, every] Philadelphia Traffic Court**, magisterial district **[judge] judges** shall on the expiration of **[his] their** term of office, or upon the effective date of **[his] their** resignation or removal from office or upon **[his] their** abandonment of **[his] their** office or its duties deliver all **[his] their** dockets and other official or like papers to the magisterial office established for the magisterial district in which the former or inactive magisterial district **[judge] judges** maintained **[his] their** residence.

B. If **[a magisterial district judge dies] magisterial district judges die** in office, **[his personal representative] their personal representatives** shall make any delivery required under subdivision A of this rule.

**Rule 17. Supervision of Magisterial District Courts by President Judges.**

\* \* \* \* \*

(B) The president judge's administrative authority over magisterial district courts within the judicial district includes but is not limited to, and shall be governed by, the following:

\* \* \* \* \*

(3) *Staff in the Magisterial District Courts—*

\* \* \* \* \*

(c) Subject to subparagraphs (a) and (b) above, [ a magisterial district judge ] magisterial district judges

(i) shall be responsible for the management of authorized staff in [ his or her ] their court;

(ii) shall assign work among authorized staff in [ his or her ] their court, and;

\* \* \* \* \*

(4) *Magisterial District Judge Leave; Coverage During Leave—*

\* \* \* \* \*

(b) Subject to the provisions of subparagraph (a) above, [ a magisterial district judge ] magisterial district judges shall enjoy autonomy with respect to choosing when to take leave, subject to reasonable coordination by the president judge with the schedules of the other magisterial district judges in the judicial district.

\* \* \* \* \*

Rule 18. Applicability to Judges [ of the Pittsburgh Magistrates Court and ] of the Traffic [ Courts of Pittsburgh and ] Court of Philadelphia.

Except for Rule 16, the above rules governing standards of conduct for magisterial district judges also apply to, and "magisterial district judge" as used therein additionally includes, the judges of the [ Pittsburgh Magistrates Court and of the traffic courts of Pittsburgh and ] Philadelphia Traffic Court.

Rule 19. Certification requirements of interested persons.

\* \* \* \* \*

Any [ person ] persons successfully completing the course of training and instruction and examination, who [ has ] have not served as a magisterial district judge, bail commissioner or Judge within two years, will be required to update [ his ] their certification by taking a review course as defined by the Minor Judiciary Education Board and passing an examination, prior to being certified by the Administrative Office of Pennsylvania Courts as qualified to perform [ his or her ] their duties as required by the Constitution of Pennsylvania. Individuals who have completed the continuing education course every year since being certified are exempt from this provision.

Rule 20. Continuing education requirement.

Every magisterial district judge shall complete a continuing education program each year equivalent to not less than 32 hours per year in such courses or programs as are approved by the Minor Judiciary Education Board. If a magisterial district judge fails to meet these continuing education requirements, [ he or she ] the judge shall be subject to suspension by the Supreme Court until such time as evidence of compliance with such require-

ments is submitted by the board, but in no event longer than six months at which time the failure to meet the continuing education requirements shall be grounds for the Supreme Court, after a hearing, to declare a vacancy in that district.

\* \* \* \* \*

Rule 21. Admission of Senior Magisterial District Judges and Those Persons Who Have Successfully Completed the Course of Training and Instruction and Examination and Who Have Not Served as a Magisterial District Judge, Bail Commissioner or Judge.

Any magisterial district judge who has left that Judicial Office for any good reason and who has been certified by the Administrative Office of Pennsylvania Courts as eligible to serve as Senior Magisterial District Judges shall be admitted to the continuing education program sponsored by the Minor Judiciary Education Board every year as required by 42 Pa.C.S.A.[ , ] Section 3118. Any person successfully completing the course of training and instruction and examination and who has not served as a magisterial district judge, bail commissioner or judge may apply to the Administrative Office of Pennsylvania Courts to be enrolled in the continuing education course based on the availability of space. Such enrollment will be at the expense of the party.

\* \* \* \* \*

Rule 22. Continuing Education Requirement: Philadelphia Traffic Court.

Every Philadelphia Traffic Court judge shall complete a continuing education program each year equivalent to not less than twenty (20) hours per year in such courses or programs as are approved by the Minor Judiciary Education Board. If a Philadelphia Traffic Court judge fails to meet these continuing education requirements [ he or she ] the judge shall be subject to suspension until such time as evidence of compliance with such requirements is submitted by the Minor Judiciary Education Board, but in no event for longer than six months at which time the failure to meet the continuing education requirements shall be grounds for removal and the declaration of a vacancy in the Philadelphia Traffic Court.

[Pa.B. Doc. No. 05-2267. Filed for public inspection December 9, 2005, 9:00 a.m.]

Title 255—LOCAL COURT RULES

Carbon County

Electronic Monitoring Fees; No. AD 3-2005 (Previously Filed to 046 MI 97)

Administrative Order 17—2005

And Now, this 28th day of November, 2005, in order to assess the costs of administering the Carbon County Home Electronic Monitoring Program, it is hereby

Ordered and Decried that, effective January 1, 2006, the Court hereby increases the Home Electronic Monitoring Fee to fifteen dollars (\$15.00) per day for all defendants placed into the Carbon County Home Electronic

Monitoring Program from the time they are ordered into the Program until the time they are released from the Program.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

*By the Court*

ROGER N. NANOVIC,  
*President Judge*

[Pa.B. Doc. No. 05-2268. Filed for public inspection December 9, 2005, 9:00 a.m.]

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