

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

#### Amendment of Rule 301 of the Pennsylvania Bar Admission Rules; No. 418 Supreme Court Rules; Doc. No. 1

##### Order

*Per Curiam:*

*And Now*, this 29th day of June, 2007, Rule 301 of the Pennsylvania Bar Admission Rules is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa. B.A.R. 301 is hereby found to be required in the interest of justice and efficient administration. This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and the amendment adopted hereby shall be effective September 4, 2007.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

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

##### Subchapter C. RESTRICTED PRACTICE OF LAW IN GENERAL

#### Rule 301. Admission pro hac vice.

(a) *General rule.* The provisions of Subchapter B of these rules (relating to admission to the bar generally) [ , ] do not apply to motions for admission pro hac vice. An attorney, barrister or advocate who is qualified to practice in the courts of another state or of [ any ] a foreign jurisdiction may be specially admitted to the bar of this Commonwealth for purposes limited to a particular matter. [ He or she ] An attorney, barrister or advocate admitted pro hac vice in a matter shall not [ , however, ] thereby be authorized to act as attorney of record in such matter.

(b) *Procedure.* [ In the case of such applicants, the oath shall not be required and there shall be no fee. Such ] The general requirements for applicants seeking admission pro hac vice are:

(1) Applicants shall provide such information and pay such fee to the Pennsylvania Interest on Lawyer Trust Account (IOLTA) Board as is required by the regulations concerning pro hac vice admission that have been adopted by the IOLTA Board and approved by the Court.

(2) Pro hac vice admissions shall be only on motion of a member of the bar of this Commonwealth. Except as otherwise prescribed by general rule, [ written notice

of ] such motion shall be signed by [ such ] the member of the bar, shall recite all relevant facts, including, if applicable, those averments required by regulations adopted by the IOLTA Board, and shall be filed with the clerk of the court in which or with the magisterial district [ justice ] judge before which the matter is pending at least three days prior to the [ motion ] appearance before the court or magisterial district judge by the attorney, barrister, or advocate seeking pro hac vice admission. Any court or magisterial district [ justice ] judge shall grant such a motion unless good cause for denial shall appear, which shall include failure to comply with applicable regulations promulgated by the IOLTA Board.

(3) The oath shall not be required.

\* \* \* \* \*

[Pa.B. Doc. No. 07-1220. Filed for public inspection July 13, 2007, 9:00 a.m.]

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

#### Adoption of IOLTA Regulations and Form for Pro Hac Vice Admission; No. 62 Disciplinary Rules Doc. No. 1

##### Order

*Per Curiam:*

*And Now*, this 29th day of June, 2007, it is hereby ordered that:

The Pennsylvania Interest on Lawyers Trust Account Regulations and Form for Pro Hac Vice Admission are adopted as follows.

This Order should be processed in accordance with Pa.R.J.A 103(b) and shall be effective September 4, 2007.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

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These Regulations are to be read and applied in connection with the Pennsylvania Bar Admission Rules. Nothing in these regulations shall be construed to relieve a lawyer from complying with any other rules applicable to the practice of law in Pennsylvania, including but not limited to the Pennsylvania Bar Admission Rules and the Pennsylvania Rules of Professional Conduct. Where these regulations contain directives pertaining to pro hac vice admission before a court in the Commonwealth of Penn-

sylvania which are more specific than those set forth in the Pennsylvania Bar Admission Rules, the provisions of these regulations shall control.

**§ 81.501. Definitions.**

(a) *Admission pro hac vice.* Special admission to the bar of this Commonwealth for purposes limited to a particular case before a court in this Commonwealth.

(b) *Applicant.* The attorney seeking admission pro hac vice.

(c) *Attorney.* A member in good standing of the bar of the highest court of any state in the United States or admitted to practice law before any court in a foreign jurisdiction.

(d) *Case.* A particular legal action, including appellate review of that action, maintained in a Pennsylvania court which is not a special court. The term "case" does not refer to an action maintained only in a special court.

(e) *Court.* Any Pennsylvania court of common pleas, the Pennsylvania Superior Court, the Pennsylvania Commonwealth Court, the Supreme Court of Pennsylvania, and any other Pennsylvania court established after the effective date of these regulations which is not a special court.

(f) *IOLTA Board.* The Pennsylvania Interest on Lawyer Trust Account Board.

(g) *Special court.* Any Pennsylvania magisterial district court, the Philadelphia Municipal Court, the Philadelphia Traffic Court, the Pittsburgh Municipal Court, and any other special court of similar jurisdiction.

**§ 81.502. Scope.**

(a) An attorney, barrister or advocate who is qualified to practice in the courts of another state or of a foreign jurisdiction may be specially admitted to the bar of this Commonwealth for purposes limited to a particular case.

(b) An attorney admitted pro hac vice shall not be authorized to act as attorney of record for any case in this Commonwealth. The attorney should refer to the Pennsylvania Bar Admission Rules.

(c) Appearance before a Pennsylvania court by a foreign attorney is deemed to commence with the attorney's first appearance in a Pennsylvania court with respect to a particular case, and shall continue until final determination of that case, including appellate review, or until issuance of an order permitting the foreign attorney to withdraw.

**§ 81.503. Requirements and Procedure for Admission Pro Hac Vice.**

(a) No oath shall be required of an attorney seeking admission pro hac vice.

(b) Pro hac vice admission shall be only on motion of a member of the bar of the Commonwealth of Pennsylvania, and, unless waived or otherwise not required, by payment of the fee required by Section 81.505.

(c) These regulations apply to admission pro hac vice before a Pennsylvania court, as defined in these regulations.

(d) Except as otherwise prescribed by general rule, admission pro hac vice shall be by written motion of a member of the bar of the Commonwealth of Pennsylvania, and shall be signed by that member. The motion shall recite all relevant facts and shall be filed with the clerk of the court before which the case is pending at least three days prior to any appearance by the attorney seeking pro hac vice admission.

(e) Each motion for pro hac vice admission shall aver that the fee required by Section 81.505(a) has been paid, or include as an attachment a copy of a fee payment certification from the IOLTA Board, unless payment of the fee is not required pursuant to Section 81.505(c).

(f) Each motion for pro hac vice admission shall aver that the information required by Section 81.504 has been provided to the IOLTA Board.

**§ 81.504. Information to be Provided to IOLTA Board.**

(a) The following information shall be provided to the IOLTA Board with the fee required by Section 81.505:

(i) The name, address, contact information, and Supreme Court identification number of the active member of the bar of this Commonwealth who sponsors the applicant for pro hac vice admission.

(ii) The applicant's complete name, date of birth, law firm address and other contact information.

(iii) The name and address of each court and a full identification of the case.

(iv) The courts before which the applicant has been admitted to practice, the respective period(s) of admission, and the applicant's identification number in the jurisdiction(s) admitted.

(v) An averment that the applicant is familiar with the Pennsylvania Rules of Professional Conduct, the Pennsylvania Rules of Disciplinary Enforcement, and the rules and court procedures of the court before which the applicant seeks pro hac vice admission.

(b) Included as Appendix A to this regulation is a form which may be used to provide the information required by Section 81.504(a).

**§ 81.505. Fees.**

(a) An attorney seeking admission pro hac vice with respect to a case shall pay a fee of One Hundred Dollars (\$100). The fee shall be required for each case in which the attorney is seeking pro hac vice admission. Under no circumstances shall the fee required by this regulation be refunded.

(b) An attorney seeking admission pro hac vice shall pay the fee required by this regulation to the IOLTA Board no later than the time of filing a motion requesting permission to participate in a case proceeding in a court in this Commonwealth.

(c) No fee for admission pro hac vice shall be required if the client being represented has been granted in forma pauperis status, or for actions before a special court.

(d) Fees required by this regulation shall be paid by a check drawn on a United States bank, money order, or bank cashier's check payable in the full amount to the IOLTA Board.

(e) Fees collected under this regulation shall be used by the IOLTA Board to fund the expenses needed to administer this regulation, and to supplement the funding of non-profit organizations that provide civil legal services to the indigent and disadvantaged, or for similar purposes as authorized by the Supreme Court of Pennsylvania.

**§ 81.506. Records Custodian.**

The Pennsylvania IOLTA Board is considered the custodian of records for pro hac vice admission and does not approve or disapprove pro hac vice admission. Approval or disapproval shall be determined by the court before which the attorney wishes to appear.

**Appendix A**  
**PENNSYLVANIA IOLTA BOARD**  
**Form for PRO HAC VICE ADMISSION**

*Use this form if you are an attorney who is qualified to practice in another state or in a foreign jurisdiction, is not admitted to practice law in Pennsylvania, and is seeking to be specially admitted to the Bar of the Commonwealth of Pennsylvania in order to appear before a Pennsylvania court in connection with a particular case.*

**Filing this form and paying the fee is the mandatory first step in your request for permission to participate in proceedings in a Pennsylvania court. The next step is to file a motion in the Pennsylvania court before which you are seeking to appear. The motion must aver payment of the fee or be accompanied by the acknowledgment letter you will receive from the Board. The decision to grant or deny your admission is ultimately made by the court before which you are seeking to appear. Applicable regulations define a case as: a particular legal action, including appellate review of that action, maintained in a Pennsylvania Court of Common Pleas, the Pennsylvania Superior Court, the Pennsylvania Commonwealth Court, or the Supreme Court of Pennsylvania. The term "case" does not refer to an action maintained only in a special court. Each case is subject to the completion of a new form and fee.**

**Appearance before a Pennsylvania court by a foreign attorney is deemed to commence with the attorney's first appearance in a Pennsylvania court with respect to a particular case, and shall continue until final determination of that case, including appellate review, or until issuance of an order permitting the foreign attorney to withdraw.**

It is not necessary to file this form or pay the fee in order to appear before a special court, as defined in applicable regulations.

Carefully follow these instructions and complete this form. Keep a copy of your completed form for future reference, as you may be charged for any copies you request from the Board's file.

No alterations may be made to the text or wording of this form. Before you file your form, verify that you have fully responded to all items and questions, leaving no blanks. If the item or question is inapplicable, write "N/A."

Your form will not be considered filed if incomplete. If incomplete, it may be returned to you. Failure to provide any of the following information will result in an incomplete form:

- a) failure to provide any information required, including names, complete addresses, telephone numbers, or zip/postal codes;
- b) failure to answer any question;
- c) failure to send in the required fee;
- d) alteration of any language of the form; and
- e) failure to sign any document requiring your signature.

**1. Admission fees:** Make your check, money order, or bank cashier's check payable in the full amount due to the PA IOLTA Board. **The admission fee is One Hundred Dollars (\$100).** If you have any questions about the fee, please contact the PA IOLTA Board before submitting this form. Do not postdate your check. A form is not considered filed until all fees are received in the Board's office. If your check for fees is returned for insufficient funds or is otherwise dishonored by your bank, you will be assessed a returned check charge. All fees due after that time must be paid by bank cashier's check or money order. **There is no refund of fees if you withdraw your application for pro hac vice admission or do not meet all requirements for admission. No fee is required if the applicant attorney is representing a person who has been granted in forma pauperis status.**

**2. Filing of Application:** Mail or deliver your form and required fees to the Board as follows:

<b>Mailing Address:</b> <b>PA IOLTA Board</b> <b>P. O. Box 1025</b> <b>Harrisburg, PA 17108-1025</b>	<b>Delivery Address:</b> <b>PA IOLTA Board</b> <b>115 State Street</b> <b>Harrisburg, PA 17101</b>
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**Phone: (717) 238-2001 or 888-PA-IOLTA (724-6582)**

**Web address: [www.paiolta.org](http://www.paiolta.org)**

**E-mail Address: [paiolta@pacourts.us](mailto:paiolta@pacourts.us)**

The Board will acknowledge receipt of your form and fee payment within three (3) working days of its receipt. The acknowledgment letter will serve as your proof of payment of the requisite fee and can be included with your written motion to the Court in Pennsylvania in which you are requesting permission to participate. If you do not receive such an acknowledgment by that time, please contact the Board's office.

**3. Case Number:** List only one (1) case number per form, as this crucial information will be included on the acknowledgment letter.

**4. Pennsylvania Court of Record:** List the Court in which the Motion for Admission Pro Hac Vice will be filed.

**5. Certificate of Good Standing:** Formal Certificates of Good Standing are not necessary.

**6. Forms from the Board web page:** If you are using an electronic version of this form, it is your responsibility to insure that it is printed with the same content and wording as the Board's printed version of this form.

**7. Regulations:** The Applicant should review Rule 301 of the Pennsylvania Bar Admission Rules as well as the regulations of the Pennsylvania Interest on Lawyers Trust Account Board for Pro Hac Vice Admission for further guidance.

**PENNSYLVANIA IOLTA BOARD**

**Form for PRO HAC VICE ADMISSION**

*(For all nonresident attorneys requesting permission to participate in proceedings in a Pennsylvania Court)*

**Applicant** [ ] Mr.

**Name:** [ ] Ms. \_\_\_\_\_  
 Last First Middle

Date of Birth: \_\_\_\_\_

**Your Firm's Name & Mailing Address: (All correspondence will be mailed to this address.)**

\_\_\_\_\_  
 Firm Name

\_\_\_\_\_  
 Street Address/P.O. Box Ste. No. City State Zip Code

**Your Firm's Physical Address:** \_\_\_\_\_ Check here if same as above

\_\_\_\_\_  
 Street Address Ste. No. City State Zip Code

\_\_\_\_\_  
 Office Phone Office Fax Contact E-Mail Address

**Acknowledgment Letter should be faxed to:** \_\_\_\_\_  
 Contact Name Contact Fax

**Name & Office Address of Attorney of Record in the Pennsylvania Proceeding who is filing the Motion for your admission Pro Hac Vice:**

\_\_\_\_\_  
 Name Firm Name (if applicable)

\_\_\_\_\_  
 Street Address/P.O. Box Ste. No. City State Zip Code

\_\_\_\_\_  
 Office Phone Office Fax PA I.D. Number

**Case Number:** \_\_\_\_\_

**Case Name:** \_\_\_\_\_

**Pennsylvania Court of Record:** \_\_\_\_\_

**Address of Court:** \_\_\_\_\_

THE COURTS

- 1. List all foreign, state and federal jurisdictions in which you have been qualified, licensed or admitted to practice law and are currently active and in good standing, the year of licensure, and your license or bar card numbers, if applicable. Use the *Continuation Form* if additional space is needed.

<u>Jurisdiction(s)</u>	<u>Year(s) of Licensure(s)</u>	<u>License Number(s)</u>

- 2. If you have ever practiced law under another name, please state that name here. List also all jurisdictions in which you practiced law under that name, license number, and the time period involved. Use the *Continuation Form* if additional space is needed.

<u>Other Name(s)</u>	<u>Jurisdiction(s)</u>	<u>License Number(s)</u>	<u>Time Period(s)</u>

- 3. Are you familiar with the Pennsylvania Rules of Professional Conduct, Pennsylvania Rules of Disciplinary Enforcement, and the rules and court procedures of the court before which you seek to appear, and will you at all times abide by and comply with the same so long as such Pennsylvania proceeding is pending and you have not withdrawn as counsel therein?

Yes
 No

I certify that the information provided on this form is true. If any statements are false, I realize I am subject to discipline by the Supreme Court of Pennsylvania. I hereby certify that I am enclosing the fee required by Rule 301 of the Pennsylvania Bar Admission Rules. I hereby agree that any action brought against me by the Supreme Court of Pennsylvania or any of its boards or instrumentalities may be brought in the Court of Common Pleas of Allegheny, Dauphin or Philadelphia County, Pennsylvania.

\_\_\_\_\_  
Signature of *Pro Hac Vice* Applicant

\_\_\_\_\_  
Date of Application

**CONTINUATION FORM**

(Use a **separate form** for each statement requiring a *Continuation Form*. Make additional copies of this form as needed.)

**For Question:** \_\_\_\_\_

<b>Name:</b>	<b>Last</b>	<b>First</b>	<b>Middle</b>
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**PART V. PROFESSIONAL ETHICS AND CONDUCT**  
**[204 PA. CODE CH. 83]**

**Amendment of Pennsylvania Rule of Disciplinary Enforcement 102; No. 60 Disciplinary Rules; Doc. No. 1**

**Order**

*Per Curiam:*

*And Now*, this 26th day of June, 2007, Pennsylvania Rule of Disciplinary Enforcement 102 is amended to read as set forth in Annex A.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect immediately.

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT**

**Subpart B. DISCIPLINARY ENFORCEMENT**

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

**Subchapter A. PRELIMINARY PROVISIONS**

**Rule 102. Definitions.**

(a) *General rule.* Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

\* \* \* \* \*

*“Experienced hearing committee member.”*—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has [ **previously** ] served [ **either (i) as a member of the Board, or (ii)** ] as a member of a panel of hearing committee members for at least one year and on a hearing committee that has conducted at least one hearing into formal charges of misconduct by a respondent-attorney.

\* \* \* \* \*

*“Senior hearing committee member.”*—An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has previously served either (i) as a member of the Board, or (ii) a full three-year term on a panel of hearing committee members and on hearing committees that have conducted at least [ **three** ] **two** hearings into formal charges of misconduct by respondent-attorneys [ **for which formal transcripts have been prepared** ].

\* \* \* \* \*

[Pa.B. Doc. No. 07-1222. Filed for public inspection July 13, 2007, 9:00 a.m.]

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

**Amendment of Rules 501, 502, 503, 504, 511, 512, 513, 514, 521 and 531 of the Pennsylvania Rules of Disciplinary Enforcement; No. 61 Disciplinary Rules; Doc. No. 1**

**Order**

*Per Curiam:*

*And Now*, this 29th day of June, 2007, Rules 501, 502, 503, 504, 511, 512, 513, 514, 521 and 531 of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration and shall be effective September 4, 2007.

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT**

**Subpart B. DISCIPLINARY ENFORCEMENT**

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

**Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY [ FUND ]**

**GENERAL PROVISIONS**

**Rule 501. Definitions.**

The following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

*“Board.”* The Pennsylvania Lawyers Fund for Client Security Board.

*“Covered [ attorney ] Attorney.”* An individual defined in Rule 512 (relating to covered attorney).

*“Claimant.”* A person who makes application to the Board for a disbursement from the [ **fund** ] **Fund**.

*“Dishonest [ conduct ] Conduct.”* Conduct defined in Rule 513 (relating to dishonest conduct).

*“Fund.”* The Pennsylvania Lawyers Fund for Client Security.

*“Reimbursable [ losses ] Losses.”* Losses defined in Rule 514 (relating to reimbursable losses).

**Rule 502. Pennsylvania Lawyers Fund for Client Security.**

(a) *General rule.* [ **There is hereby established in the Administrative Office of Pennsylvania Courts** ] **The Supreme Court shall establish** a separate fund to be known as the “Pennsylvania Lawyers Fund for Client Security.” The [ **fund** ] **Fund** shall consist of such amounts as shall be transferred to the [ **fund** ] **Fund** pursuant to this subchapter. The [ **fund** ] **Fund** is created by contributions of the members of the Bar to aid in ameliorating the losses caused to clients and others by defalcating members of the Bar acting as attorney or fiduciary. No [ **claimant** ] **Claimant** or other person shall have any legal interest in such [ **fund** ] **Fund** or right to receive any portion thereof, except for discretionary disbursements therefrom directed by the Board or the

Supreme Court, all payments from the [ fund ] Fund being a matter of grace and not of right. **There shall be no appeal from a decision of the Board. A decision of the Board to grant or deny payment to a Claimant shall not be subject to judicial review by any court.** The Supreme Court reserves the right to amend or repeal this subchapter.

(b) *Additional assessment.* Every attorney who is required to pay an annual assessment under [ Enforcement ] Rule 219 (relating to periodic assessment of attorneys; voluntary inactive status) shall pay an additional annual fee of \$45.00 for [ the use of the fund ] use by the Fund. Such additional annual assessment shall be added to, and collected with and in the same manner as, the basic annual assessment, but the statement mailed by the Administrative Office pursuant to [ Enforcement ] Rule 219 shall separately identify the additional assessment imposed pursuant to this subdivision. All amounts received pursuant to this subdivision shall be credited to the [ fund ] Fund.

(c) *Transfers to fund.* The Administrative Office shall transfer to the [ fund ] Fund all bequests and gifts hereafter made for [ the use of the fund ] use by the Fund. All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

(d) *Audit.* The Board shall annually obtain an independent audit of the [ fund ] Fund by a certified public accountant, and shall file a copy of such audit with the Supreme Court.

### **Rule 503. Pennsylvania Lawyers Fund for Client Security Board.**

(a) *General rule.* The Supreme Court shall appoint a board to be known as the "Pennsylvania Lawyers Fund for Client Security Board" which shall consist of five members of the bar of this Commonwealth and two non-lawyer public members. One of the members shall be designated by the Court as Chair and another as Vice-Chair. **A majority of the members of the Board shall designate a member of the Board to act as Treasurer.**

(b) *Terms; manner of action.* The regular terms of members of the Board shall be for three years, and no member shall serve for more than two consecutive three-year terms. The terms of one-third of the members of the Board, as nearly as may be, shall expire in each year. The terms of members shall commence on April 1. The Board shall act with the concurrence of not less than a majority of the members in office. A majority of the members in office shall constitute a quorum.

(c) *Vacancies.* **Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.**

(d) *Powers.* The Board shall have the power and duty:

(1) To appoint hearing committees. Each committee shall consist of three members who are members of the bar of the Supreme Court or who are current members of the Board [ of the Pennsylvania Lawyers Fund for Client Security ].

(2) To investigate applications by [ claimants ] Claimants for disbursements from the [ fund ] Fund.

(3) To authorize disbursements from the [ fund ] Fund and to fix the amount thereof.

(4) To determine in January of each year, and to report to the Supreme Court, whether the [ fund ] Fund is of sufficient amount to pay adjudicated claims and other anticipated claims.

(5) To adopt rules of procedure not inconsistent with these rules. Such rules may provide for the delegation to the Chair or the Vice [ - ] Chair of the power to act for the Board on administrative and procedural matters.

(6) To exercise the powers and perform the duties vested in and imposed upon the Board by the Supreme Court.

(7) With prior approval of the Supreme Court to give financial assistance to Pennsylvania non-profit corporations whose purpose it is to assist alcohol or drug impaired Pennsylvania lawyers and judges to regain their health and to restore them to professional competence, **or to such other Supreme Court Committees or Boards as the Court may direct.**

(8) **To prudently invest, per the direction of the Investment Advisory Board or the Court, such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate.**

(9) **To prosecute claims for restitution to which the Fund is entitled.**

[ (d) Assistance and ] (e) *Compensation; expenses.* [ The Administrative Office shall provide necessary clerical assistance to the Board and shall pay the cost thereof and the necessary travel and other expenses of members of the Board and hearing committees out of the fund. ] Members of the Board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

(f) *Conflict of interest.*

(1) **A member of the Board who has or has had a client-attorney relationship or a financial relationship with a Claimant or a Covered Attorney shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;**

(2) **A member of the Board who has or has had a relationship, other than as provided in subparagraph (1) above, with a Claimant or Covered Attorney, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Board member shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;**

(3) **Claims based upon alleged Dishonest Conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged dishonest conduct by Counsel to the Board or Staff shall be submitted directly to the Board for disposition.**

(g) *Immunity.* **Members of the Board, members of hearing committees, Counsel to the Board and Staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, Counsel to the Board or Staff relating to Dishonest Conduct by a Covered Attorney and all testimony given in a proceeding conducted pursuant to this subchapter**



shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 or Rule 504 (relating to confidentiality).

*Official Note:* The provisions of subdivision (g) of the Rule recognize that the submission and receipt of applications by Claimants for disbursements from the Fund, and investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (g) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirements of Rules 402 and 504 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.

Rule 504. [Immunity] Confidentiality.

(a) [Claims submitted to the Board shall be confidential. Members of the Board, members of hearing committees, General Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, General Counsel or staff relating to dishonest conduct by a covered attorney and all testimony given in a proceeding conducted pursuant to this subchapter shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 (relating to confidentiality).] All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.

(b) [Claims based upon alleged dishonest conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged dishonest conduct by General Counsel or staff shall be submitted directly to the Board for disposition.] Notwithstanding subsection (a), the Fund, after an award is approved, may disclose the following information:

- (1) the name of the Claimant (if Claimant has granted permission to disclose);
- (2) the name of the Covered Attorney;
- (3) the amount claimed;
- (4) the amount awarded; and
- (5) a summary of the claim.

(c) Nothing in this Rule shall preclude the Fund from utilizing confidential information in the release of statistical data or in the pursuit of the Fund's subrogation rights.

(d) This Rule shall not be construed to preclude disclosure, at any time during the investigation and/or proceeding, for confidential information requested by the following entities:

- (1) authorized agencies investigating the qualifications of judicial candidates;
- (2) the Judicial Conduct Board and/or its counterpart in other jurisdictions conducting an investigation;
- (3) authorized agencies investigating qualifications for government employment;
- (4) federal courts and/or other jurisdictions investigating qualifications for admission to practice law;
- (5) Office of Disciplinary Counsel and/or the Disciplinary Board investigating misconduct by the Covered Attorney;
- (6) lawyer discipline agencies and client protection funds in other jurisdictions conducting an investigation; or
- (7) law enforcement authorities investigating and/or prosecuting the Covered Attorney for a criminal offense.

(e) Requests for the release of confidential information by any person or entity, other than those identified in subsection (d), must be made to the Fund through the issuance of a subpoena; requests for same made under the Freedom of Information Act will not be honored.

*Official Note:* The provisions of subdivision (a) of the rule recognize that the submission and receipt of applications by claimants for disbursements from the fund, and the investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (a) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirement of Rule 402 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity. ]

#### DISHONEST CONDUCT OF ATTORNEY

**Rule 511. Reimbursement of certain losses authorized.**

The Board in its discretion may authorize a disbursement from the [fund] Fund in an amount not exceeding the [reimbursable loss] Reimbursable Loss caused by the [dishonest conduct of a covered attorney] Dishonest Conduct of a Covered Attorney.

**Rule 512. Covered attorney.**

This subchapter covers conduct of [an active] a member of the bar of the Supreme Court, including attorneys admitted pro hac vice and formerly admitted attorneys whose clients reasonably believed the former attorney to be licensed to practice when the Dishonest Conduct occurred, an active foreign legal consultant, an active military attorney, or a person holding an active Limited In-House Corporate Counsel

License, which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct outside of this Commonwealth of a foreign legal consultant, military attorney or person holding a Limited In-House Corporate Counsel License unless the conduct related to the provision of legal services to a resident of this Commonwealth.

**Rule 513. Dishonest conduct.**

For the purposes of this subchapter, dishonest conduct **[ consists of wrongful acts or omissions committed by a covered attorney in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value ]** means wrongful acts committed by a Covered Attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property or other things of value.

**Rule 514. Reimbursable losses.**

(a) *General rule.* For the purposes of this subchapter reimbursable losses consist of those losses of money, property or other things of value which meet all of the following requirements:

(1) The loss was caused by the **[ dishonest conduct of a covered attorney ] Dishonest Conduct of a Covered Attorney** when acting:

- (i) as an attorney-at-law;
- (ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or
- (iii) as an escrow agent or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so selected as a result of a client-attorney relationship.

(2) The loss was that of money, property or other things of value which came into the hands of the **[ covered attorney ] Covered Attorney** by reason of having acted in the capacity described in paragraph (1) **of this subdivision. Consequential or incidental damages, such as lost interest, or attorney fees or other costs incurred in seeking recovery of a loss, may not be considered in determining the Reimbursable Loss.**

(3) The loss, or the reimbursable portion thereof, was not covered by any insurance or by any fidelity or similar bond or fund, whether of the **[ covered lawyer, or the claimant ] Covered Attorney, or the Claimant** or otherwise.

(4) The loss was not incurred by:

- (i) the spouse or other close relative, partner, associate, employer or employee of the **[ covered attorney ] Covered Attorney**, or a business entity controlled by the **[ covered attorney ] Covered Attorney**, or any entity controlled by any of the foregoing;
- (ii) an insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing; **[ or ]**
- (iii) any government unit **[ . ]**;

**(iv) any financial institution that may recover under a "banker's blanket bond" or similar commonly available insurance or surety contract; or**

**(v) an individual or business entity suffering a loss arising from personal or business investments not arising in the course of the client-attorney relationship.**

(5) **In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, and consistent with the purpose of the Fund, recognize a claim which would otherwise be excluded under this subchapter.**

(6) **In cases where it appears that there will be unjust enrichment, or the Claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.**

(7) A payment from the **[ fund ] Fund**, by way of subrogation or otherwise, will not benefit any entity specified in paragraph (4) **of this subdivision.**

(b) *Maximum recovery.* The maximum amount which may be disbursed from the **[ fund ] Fund** to any one **[ claimant ] Claimant** with respect to the **[ dishonest conduct of any one covered attorney ] Dishonest Conduct of any one Covered Attorney** shall be \$75,000.

(c) **No lawyer shall accept payment for assisting a Claimant with the filing of a claim with the Fund, unless such payment has been approved by the Board.**

**PAYMENT OF CLAIMS**

**Rule 521. Investigation and payment of claims.**

(a) *Cooperation with Disciplinary Board.* At the request of the Board, the Disciplinary Board of the Supreme Court of Pennsylvania shall make available to the Board all reports of investigations and records of formal proceedings conducted under these rules with respect to any attorney whose conduct is alleged to amount to **[ dishonest conduct causing reimbursable loss to a claimant ] Dishonest Conduct causing Reimbursable Loss to a Claimant**, and shall otherwise cooperate fully with the Board. The Board shall cooperate fully with the Disciplinary Board of the Supreme Court of Pennsylvania and shall preserve the confidential nature of any information which is required to be kept confidential under these rules.

(b) *Hearing committees.* The Board may utilize a hearing committee to conduct any hearings under this subchapter for the purpose of resolving factual issues. Imposition of discipline under Rule 204 (relating to types of discipline) or otherwise shall not be a prerequisite for favorable action by the Board with respect to a claim against the **[ fund, but the covered attorney ] Fund, but the Covered Attorney** involved shall be given notice of and an opportunity to contest any claim made with respect to his or her alleged **[ dishonest conduct ] Dishonest Conduct.**

(c) *Subpoenas.* At any stage of an investigation under this subchapter the Board, a **[ claimant ] Claimant** and a contesting **[ covered attorney ] Covered Attorney** shall have the right to summon witnesses before a hearing committee and require production of records before the same by issuance of subpoenas in substantially the same manner, and with the effect provided by Rule 213(b), (e), (f), (g) and (h), and if applicable, (c) and (d) (relating to subpoena power, depositions and related matters).

(d) *Factors to be considered.* In exercising its discretion under Rule 511 (relating to reimbursement of certain losses authorized) the Board may consider, among other things:

(1) The amount available and likely to become available to the [ **fund** ] **Fund** for payment to [ **claimants** ] **Claimants**.

(2) The size and number of claims which are likely to be presented in the foreseeable future.

(3) The total amount of losses caused by [ **dishonest conduct by any one covered attorney** ] **Dishonest Conduct by any one Covered Attorney** or associated group of [ **covered attorneys** ] **Covered Attorneys**.

(4) The degree of hardship the [ **claimant** ] **Claimant** has suffered by the loss.

(e) **The Claimant or Covered Attorney may request a reconsideration of the denial or approval of an award. Such request for a reconsideration shall be made in writing and shall be received by the Fund within 30 days of the date of the notification of the Board's denial or approval of an award. If the Claimant or Covered Attorney fails to make such a request, or the request is denied, the decision of the Board is final and there is no further right of appeal.**

(f) *Conditions.* In addition to such other conditions and requirements as it may impose, the Board shall:

(1) require each [ **claimant** ] **Claimant**, as a condition of payment, to execute such instruments, to take such action, and to enter into any agreements, including assignments of claims and subrogation agreements, as may be feasible in order to maximize the possibility that the [ **fund** ] **Fund** will be appropriately reimbursed for payments made from it. Amounts recovered pursuant to any such arrangements shall be paid to the [ **Administrative Office for reimbursement of the fund; and** ] **Fund**;

(2) require each [ **claimant** ] **Claimant**, as a condition of payment, to file a formal complaint with the Disciplinary Board of the Supreme Court of Pennsylvania against the [ **covered attorney** ] **Covered Attorney** and to cooperate in the fullest with the Disciplinary Board or other authorities in connection with other investigations of the alleged [ **dishonest conduct.** ] **Dishonest Conduct; and**

(3) require a **Claimant who has commenced an action to recover unreimbursed losses against the Covered Attorney, or another entity or third party who may be liable for the Claimant's loss, to notify the Board of such action.**

#### REINSTATEMENT

##### **Rule 531. Restitution a condition for reinstatement.**

The Board shall file with the Supreme Court a list containing the names of all formerly admitted attorneys with respect to the [ **dishonest conduct** ] **Dishonest Conduct** of which the Board has made unrecovered disbursements from the [ **fund** ] **Fund**. No person will be reinstated by the Supreme Court under Rule 218 (relating to reinstatement), Rule 219(h) (relating to periodic

assessment of attorneys; voluntary inactive status), [ **or** ] Rule 301(h) (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated) [ **or** ], Pennsylvania Rules for Continuing Legal Education, Rule 111(b) (relating to noncompliance with continuing legal education rules) **or who has been suspended from the practice of law for any period of time, including, but not limited to suspensions under Rule 208(f) (relating to emergency temporary suspension) until the [ fund ] Fund has been repaid in full, plus 10% per annum interest, for all disbursements made from the [ fund ] Fund with respect to the [ dishonest conduct ] Dishonest Conduct of such person.**

[Pa.B. Doc. No. 07-1223. Filed for public inspection July 13, 2007, 9:00 a.m.]

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CHS. 13 AND 21]

Order Amending Pa.R.A.P. 1301 and 2187; No. 186  
Appellate Procedural Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 26th day of June, 2007, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. 103(a)(3):

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rules of Appellate Procedure 1301 and 2187 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall become effective immediately upon adoption.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

##### **Rule 1301. Form of Papers. Number of Copies.**

All papers filed under this chapter may be [ **typewritten** ] **produced on a word processor/computer or typewriter**. Eight copies shall be filed with the original in the Supreme Court. [ **Twenty-three** ] **Six** copies shall be filed with the original in the Superior Court. [ **Eleven copies** ] **One copy** and the original shall be filed in the Commonwealth Court.

\* \* \* \* \*

CHAPTER 21. BRIEFS AND REPRODUCED  
RECORD

FILING AND SERVICE

**Rule 2187. Number of Copies to be Served and Filed.**

(a) *General rule.*—Unless the appellate court directs otherwise, each party shall file:

\* \* \* \* \*

(2) 15 copies of each definitive brief and [ **eight** ] five copies of each reproduced record in the Commonwealth Court;

\* \* \* \* \*

[Pa.B. Doc. No. 07-1224. Filed for public inspection July 13, 2007, 9:00 a.m.]

**Title 225—RULES  
OF EVIDENCE**

[225 PA. CODE ART. IV]

**Proposed Amendment of Rule 408 and Revision of Comment**

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Amendment of Pa.R.E. 408 and Revision of Comment. The changes are being proposed to adopt certain changes as a consequence of the adoption of new F.R.E. 408.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Additions are bold, and deletions are in bold and brackets.

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

Richard L. Kearns, Staff Counsel  
Supreme Court of Pennsylvania  
Committee on Rules of Evidence  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than August 17, 2007.

*By the Committee on Rules of Evidence*

SANDRA D. JORDAN,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE IV. RELEVANCY AND ITS LIMITS**

**Rule 408. Compromise and Offers to Compromise.**

[ Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require

the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Comment**

This rule is identical to F.R.E. 408.

The 2000 amendments abolish the common law rule that distinct admissions of fact made during settlement discussions are admissible, see *Rochester Marine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982) (plurality), bringing Pennsylvania in line with F.R.E. 408 and most of the states.

The 2000 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice. See *Heyman v. Hanauer*, 152 A. 910 (Pa. 1930) (if proposal was offer to settle, it could have been used to impeach witness).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

**§ 6141. Effect of certain settlements**

(a) *Personal injuries.*—Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to property.*—Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in evidence.*—Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992) (evidence of “Mary Carter” agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the

purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence. ]

(a) *Prohibited uses.* Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations.

(b) *Permitted uses.* This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice, negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

#### Comment

This rule differs from to F.R.E. 408 as follows:

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases.

The federal rule does not contain the last sentence of Pa.R.E. 408(b).

This rule does not follow the common law rule that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Marine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982). Instead, like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice of a witness, but specifically prohibits use of such evidence to impeach a witness through a prior inconsistent statement or contradiction.

The rule is consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

#### § 6141. Effect of certain settlements

(a) *Personal Injuries.* Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on

whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to Property.* Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in Evidence.* Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992)(evidence of "Mary Carter" agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.

#### REPORT

#### Proposed Amendments to Pa.R.E. 408 and Revision of Comment Compromise and Offers to Compromise

The language of Federal Rule of Evidence 408 was changed substantially. The changes were aimed at clarifying the meaning of the rule, and answering several questions that had arisen in the application of the rule. Prior to the amendment, Pa.R.E. 408 was identical to the federal rule. We recommend that we adopt some, but not all of the changes. First, we recommend the adoption of the changes aimed at clarifying the meaning of the rule. Essentially, this is accomplished by breaking up one long paragraph into several, and placing in the first paragraph some language that was previously in the middle of the paragraph. These changes have no substantive impact.

The second change in the rule is the language at the end of the first paragraph, prohibiting the use of the prohibited evidence to impeach through a prior inconsistent statement or contradiction. This had been a question in the federal courts. May a witness (usually a party) be impeached with a statement made during compromise negotiations that is arguably inconsistent with the witness's trial testimony? The federal courts had been split on this question. The federal drafters amended the rule, so that it now prohibits the use of statements made in negotiations as inconsistent statements. The drafters believed this was most consistent with the purpose of the rule, which is to encourage parties to engage in frank and

open negotiations in order to compromise disputes. There is no authority on this question in Pennsylvania. We think that the federal drafter's approach is better, and, therefore, recommend adoption of this portion of the rule.

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases. We do not recommend the adoption of this portion of the federal rule, because we believe it will deter parties in civil matters from frank and open negotiations with government regulators, if there is a risk that their statements will then be used in criminal prosecutions.

The last sentence of the proposed rule was deleted from the federal rule, because it was believed to be superfluous. We recommend its retention as a precaution against frivolous argument.

We have not used the usual markup signals for the changes to the proposed Rule and Comment, because the changes are so many that the documents would be difficult to read.

[Pa.B. Doc. No. 07-1225. Filed for public inspection July 13, 2007, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CH. 1000]

#### Promulgation of Rule 1012.1 Governing Motions for Admission Pro Hac Vice; No. 481 Civil Proce- dural Rules; Doc. No. 5

#### Order

*Per Curiam:*

*And Now*, this 29th day of June, 2007, Pennsylvania Rule of Civil Procedure 1012.1 is promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 4, 2007.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1000. ACTIONS

#### Subchapter A. CIVIL ACTION

#### PLEADINGS

#### Rule 1012.1. Admission Pro Hac Vice. Motion. Con- tent.

(a) As used in this rule,

"candidate" means an attorney who is not admitted to the bar of the Commonwealth of Pennsylvania, but is admitted to the bar of and authorized to practice law in the highest court of another state or foreign jurisdiction and seeks admission pro hac vice;

**Official Note:** Pa.B.A.R. 301 states that the attorney seeking admission pro hac vice cannot act as the attorney of record.

"sponsor" means an attorney who is admitted to the bar of the Commonwealth of Pennsylvania and moves for the admission of a candidate pro hac vice.

(b) The sponsor shall file a written motion for admission pro hac vice in the action for which admission is sought. The verifications required by subdivisions (c) and (d)(2) shall be attached to the motion.

(c) A candidate shall submit a verified statement

(1) identifying the jurisdictions in which he or she is or has been licensed and the corresponding bar license numbers. With respect to each jurisdiction identified, the candidate shall state whether he or she

(i) is or has ever been suspended, disbarred, or otherwise disciplined. The candidate shall provide a description of the circumstances for each occurrence of suspension, disbarment or other disciplinary action,

(ii) is subject to any disciplinary proceedings. The candidate shall provide a description of the circumstances under which the disciplinary action has been brought,

(2) setting forth the number of pending actions in all courts of record in Pennsylvania in which the candidate has applied for admission pro hac vice, and the number of actions in which the motion has been denied. If any motion for admission pro hac vice has been denied, the candidate shall list the caption, court and docket number of the action, and describe the reasons for the denial of the motion.

(3) stating that he or she shall comply with and be bound by the applicable statutes, case law and procedural rules of the Commonwealth of Pennsylvania, including the Pennsylvania Rules of Professional Conduct,

(4) stating that he or she shall submit to the jurisdiction of the Pennsylvania courts and the Pennsylvania Disciplinary Board with respect to acts and omissions occurring during the appearance in the matter for which admission pro hac vice is being sought,

(5) stating that he or she has consented to the appointment of the sponsor as the agent upon whom service of process shall be made for all actions, including disciplinary actions, that may arise out of the practice of law in the matter for which admission pro hac vice is sought.

(d)(1) The sponsor shall enter an appearance as attorney of record in the action on behalf of the party whom the candidate seeks to represent. Upon the motion being granted, the sponsor shall remain the attorney of record for that party, and shall sign and serve, or be served with as the case may be, all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the court unless excused by the court. Attendance of the sponsor at a deposition in discovery shall not be required unless ordered by the court.

(2) The sponsor shall submit a verified statement

(i) stating that after reasonable investigation, he or she reasonably believes the candidate to be a reputable and competent attorney and is in a position to recommend the candidate's admission,

(ii) setting forth the number of cases in all courts of record in this Commonwealth in which he or she is acting as the sponsor of a candidate for admission pro hac vice, and

(iii) stating that the proceeds from the settlement of a cause of action in which the candidate is granted admission pro hac vice shall be received, held, distributed and accounted for in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, including the IOLTA provisions thereof, if applicable.

(e) The court shall grant the motion unless the court, in its discretion, finds good cause for denial.

**Official Note.** Good cause may include one or more of the following grounds:

(1) the admission may be detrimental to the prompt, fair and efficient administration of justice,

(2) the admission may be detrimental to legitimate interests of the parties to the proceedings other than the client whom the candidate proposes to represent,

(3) the client who the candidate proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,

(4) the candidate is not competent or ethically fit to practice law,

(5) the candidate is, in effect, practicing as a Pennsylvania attorney, in light of the nature and extent of the activities of the candidate in the Commonwealth, without complying with the Pennsylvania requirements for the admission to the bar. The court may weigh the number of other admissions to practice sought and/or obtained by the candidate from Pennsylvania courts, the question of whether or not the candidate maintains an office in Pennsylvania although the candidate is not admitted to practice in Pennsylvania courts, and other relevant factors,

(6) the number of cases in all courts of record in this Commonwealth in which the Pennsylvania attorney is acting as the sponsor prohibits the adequate supervision of the candidate,

(7) failure to comply with this rule, or

(8) any other reason the court, in its discretion, deems appropriate.

(f) The court may revoke an admission pro hac vice sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice is inappropriate or inadvisable.

#### Explanatory Comment

New Rule 1012.1 governs admission of an attorney pro hac vice. The rule achieves a uniform statewide practice, provides information and guidance to the court in the evaluation of a motion for such an admission, and imposes obligations upon both the attorney seeking admission and the attorney sponsoring the admission.

Pennsylvania Bar Admission Rule 301 authorizes a court to grant admission pro hac vice to an applicant attorney provided that there is a Pennsylvania attorney who has agreed to act as the attorney of record. Procedurally, Rule 301 requires written notice of the motion to be signed by the attorney of record, to recite all relevant facts, and to be filed with the clerk of court or magisterial

district judge office in which the matter is pending. New Rule 1012.1 supplements the Bar Admission rule by requiring the motion to provide the court with certain information regarding both the applicant attorney and the attorney of record.

Subdivision (a) of Rule 1012.1 designates the applicant attorney requesting admission pro hac vice as a "candidate" and the Pennsylvania attorney of record as a "sponsor."

Subdivision (b) requires the sponsor to file the motion for admission pro hac vice in the action in which admission is sought. The motion must include verified statements from both the candidate and the sponsor.

Subdivision (c) of the rule governs the requirements of the candidate's verification. One purpose of this verification is to gather relevant information regarding the candidate's disciplinary history, if any, in all jurisdictions in which he or she is licensed to practice law, as well as the extent of his or her admissions pro hac vice in Pennsylvania. The rule eliminates the concern that there may be attorneys who are not licensed in Pennsylvania, but routinely take on Pennsylvania cases by seeking admission pro hac vice.

A second purpose of the candidate's verification is to ensure that the court exercises the same supervision over an attorney admitted pro hac vice as over a Pennsylvania attorney. The verification must contain statements by the candidate with respect to (1) compliance with Pennsylvania law, (2) submission to the jurisdiction of Pennsylvania courts and the Pennsylvania Disciplinary Board, and (3) consent to the appointment of the sponsor as agent for service of process in actions arising out of the practice of law in the matter for which admission is sought.

Subdivision (d) of the rule governs the requirements for the sponsor's verification and imposes obligations upon him or her. Paragraph (2) requires the Pennsylvania attorney acting as sponsor through statements in the verification to assume the obligation to evaluate the candidate for reputation and competency before agreeing to sponsor him or her, and to supervise the candidate once admitted. A court may deny the motion on the basis that the Pennsylvania attorney is acting as sponsor in too many cases to adequately supervise the candidate.

Subdivision (d)(1) also requires the sponsor to enter an appearance as the attorney of record in the action on behalf of the party whom the candidate seeks to represent and to remain the attorney of record if the motion is granted. Further, the sponsor is obligated to sign and serve, or be served with, notices and papers filed in the actions and, unless excused, to attend proceedings before the court.

Subdivision (e) provides that the court must grant the motion for admission pro hac vice unless it finds good cause for denial. The note to subdivision (e) lists eight grounds for good cause.

Subdivision (f) provides for the revocation of admission pro hac vice either sua sponte by the court or upon motion of a party.

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,

*Chair*

[Pa.B. Doc. No. 07-1226. Filed for public inspection July 13, 2007, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## ADAMS COUNTY

### Amendments to Rule 1920; Administrative Order No. 17 of 2007; 07-M-19

#### Order of Court

*And Now*, this 22nd day of June, 2007, the Court does hereby amend Local Rule 1920 as follows:

#### Action of Divorce or Annulment of Marriage

##### Rule 1920(a). Uncontested Divorce.

A party may file a praecipe directing the Prothonotary to forward all papers to the Court for review and for entry of a final decree when all costs have been paid or excused and when all requirements of law and the Rules of Civil Procedure have been fulfilled. If the defendant files the praecipe, he or she shall state by what authority he or she acts.

##### Rule 1920(d). Master's List and Compensation.

The Court Administrator shall maintain a list of all attorneys primarily practicing in Adams County and who have not been excused from serving as masters in divorce or annulment. Any attorney may request the President Judge to excuse him or her from such service. Upon motion, the Court will appoint a master from the list to hear the issues set forth in the motion. The master shall be compensated at an hourly rate that will be periodically set by administrative order. Until changed, the hourly rate shall be \$65.00 per hour. No motion shall be considered unless there has been deposited with the Prothonotary the sum of \$500.00 for the purpose of guaranteeing payment of the master's and stenographer's fees. The master may direct at any point that additional deposits be made.

##### Rule 1920(e). Withdrawal of Issues.

Upon motion of any party, the Court may withdraw issues from the master, whether the master has yet acted upon those issues.

##### Rule 1920(f). Payment.

Upon notice to the parties, the master may request an order directing the Prothonotary to disburse fees. If a master's report has not been filed within sixty (60) days of the hearing date, the stenographer may request payment by filing the bill with the Prothonotary. If no exceptions to the sums are filed within ten (10) days, the Prothonotary shall disburse funds as requested.

Following the filing of the Report and Recommendation of the Master, the master may request by Motion and Proposed Order, the payment of stenographer and master's fees. The Proposed Order shall provide for the payment by the Prothonotary of the stenographer fees if sufficient amount is on deposit, and the master's fees after that, if available, from the Prothonotary's deposit. In the event there are not sufficient funds on deposit with the Prothonotary, the Order submitted with the Motion shall provide for payment of the stenographer's fees first. Such Proposed Order may also provide for the payment of such additional fees not covered by the Prothonotary's deposit by the parties in accordance with the Master's Report and Recommendation or by such third parties as the Court may direct.

##### Rule 1920(l). Exceptions.

Exceptions to the master's report, or any motions or reasons for a new trial in relation to the verdict of any jury, where applicable, which either party desire to make, shall be filed with the Prothonotary, and a copy thereof served at the same time upon the opposite party of his/her attorney of record. If no exceptions are filed by either party, or if exceptions have been filed and an Order has been entered disposing of the exceptions, the Court will, upon praecipe of either party, enter the final decree.

##### Rule 1920(n). Counseling.

If either party requests counseling under § 3302 of the Divorce Code, the party making such request shall deposit seventy-five dollars (\$75.00), with the Prothonotary at the time of filing the request to cover the cost of the counselor's report, unless the court shall order otherwise.

The party requesting counseling shall provide the appointed counselor with a copy of the Court Order directing such counseling.

These amendments shall become effective upon publication on the Pennsylvania Judiciary's Web Application Portal.

*By the Court*

JOHN D. KUHN,  
*President Judge*

[Pa.B. Doc. No. 07-1227. Filed for public inspection July 13, 2007, 9:00 a.m.]

## CARBON COUNTY

### Availability and Temporary Assignments of Magisterial District Judges; No. 07-0164; CP-13-AD-000004-2007 (Old Number-MD023-2007)

#### Administrative Order 14-2007

*And Now*, this 27th day of June, 2007, in order to ensure compliance with Pa.R.C.P.M.D.J.112 governing the Rules of Conduct, Office Standards, and Civil Procedure for Magisterial District Judges, Pa.R.Crim.P. 132 governing the Temporary Assignment of Issuing Authorities, Pa.R.C.P. 1901.2 governing Scheduling of Temporary Protection From Abuse matters, Carbon County's Administrative Order 27-2001 governing when the Court is available to address Temporary Protection From Abuse matters, Carbon County Local Rule CARB.R.C.P. 1901.5 governing Enforcement of Protection From Abuse matters and 35 P. S. § 10225.307 governing Involuntary Intervention by Emergency Court Order under the Older Adult Protective Services Act, it is hereby

*Ordered and Decreed* that the schedule attached hereto be and is hereby *Approved* and said attachment *Shall Establish* the on-call schedule and temporary assignments for the Magisterial District Judges of Carbon County for the period of August 1, 2007 to December 31, 2007.

*It Is Further Ordered and Decreed* that the same Magisterial District Judge temporarily assigned on this schedule *Shall Serve* as the temporary issuing authority during regularly scheduled hours for any Magisterial District Judge unavailable due to duties outside the county, mandatory continuing education classes, illness or vacation.



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 Minor Court Rules Committee and Pennsylvania Criminal Procedural Court 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. Forward one (1) copy to the Chief of Police of each Borough and Township in Carbon County to be conspicuous placed in their respective offices.
7. Keep continuously available for public inspection a copy of the Order in the Magisterial District Judges' Offices, Prothonotary's Office and Clerk of Courts Office.

*By the Court*

ROGER N. NANOVIC,  
*President Judge*

THE FOLLOWING SCHEDULE IS FOR NON-BUSINESS HOURS AND EMERGENCIES FOR CARBON COUNTY MAGISTERIAL DISTRICT JUDGES COVERING COURTS 3-1, 3-2, 3-3 AND 3-4 BEGINNING 4:30 P.M. EACH MONDAY AND ENDING THE FOLLOWING MONDAY AT 4:30 P.M. IN ADDITION, THIS ON-CALL SCHEDULE APPLIES TO CIVIL MATTERS PURSUANT TO PA.R.C.P.M.D.J. 112 DURING NORMAL BUSINESS HOURS.

August 6, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
August 13, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
August 20, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
August 27, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
September 3, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
September 10, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
September 17, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
September 24, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
October 1, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
October 8, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
October 15, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
October 22, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
October 29, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
November 5, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4

August 6, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
November 12, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
November 19, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
November 26, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
December 3, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
December 10, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
December 17, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
December 24, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
December 31, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2

[Pa.B. Doc. No. 07-1228. Filed for public inspection July 13, 2007, 9:00 a.m.]

**DAUPHIN COUNTY**

**Promulgation of Rule of Criminal Procedure 117 (MDJ Night Court Duty Procedure); AO-15-2007 No. 4-13 MD 2007 (Amending 1793 S 1989 and 0091-7 MD 2006)**

**Order**

*And Now*, this 19th day of April, 2007, Dauphin County Local Rule of Criminal Procedure 117 is amended as follows:

**Rule 117. Magisterial District Judge Night Court Duty Procedures.**

Pursuant to Pa.R.Crim.P. 117, the following schedule shall be implemented for ensuring provision of services:

4. In accordance with Pa.R.Crim.P. 117(B), the following schedule is hereby established for Night Court coverage:

a. **Sunday**, Monday, Tuesday, Wednesday, and Thursday evenings: the Night Court Duty Judge shall be present at either Night Court or his/her own office from 9:00 PM—12:00 AM. Any matters presented during those hours shall be resolved by the Night Court Duty Judge.

b. Friday[, ] and Saturday[, and Sunday ] evenings: the Night Court Duty Judge shall be present at either Night Court or his/her own office from 10:00 PM—1:00 AM. Any matters presented between those hours shall be resolved by the Night Court Duty Judge.

This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

*By the Court*

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 07-1229. Filed for public inspection July 13, 2007, 9:00 a.m.]

## DAUPHIN COUNTY

Promulgation of Rule; Juvenile Dependency; No. 1793 CV 1989; No. 4-MD 2007

**Order**

*And Now*, this 9th day of April, 2007, Dauphin County Local Rule (Juvenile Procedure) 1167(B)(2) is adopted pursuant to Pennsylvania Rule of Juvenile Court Procedure 1167(B)(2):

**Rule 1167(B)(2). Service of Court Orders and Notices**

Dauphin County Social Services for Children and Youth is hereby designated to effectuate service of Juvenile Dependency Court Orders and Court Notices upon all parties pursuant to the Pennsylvania Rules of Juvenile Court Procedure Pa. R.J.C.P. 1167(B)(2).

This rule shall be effective thirty (30) days from date of publication in the *Pennsylvania Bulletin*.

*By the Court*

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 07-1230. Filed for public inspection July 13, 2007, 9:00 a.m.]

## DELAWARE COUNTY

Rule of Civil Procedure; No. 07-0756

**Order**

*And Now*, this 25th day of June, 2007, it is hereby *Ordered* and *Decreed* that this Court's Order of February 13, 2007 entered in the above matter and which rescinded Delaware County Local Rule of Civil Procedure 204.5 is *Vacated*.

It is further *Ordered* and *Decreed* that Delaware County Local Rule of Civil Procedure 205.4 is *Rescinded*.

*By the Court*

EDWARD J. ZETUSKY,  
*President Judge*

[Pa.B. Doc. No. 07-1231. Filed for public inspection July 13, 2007, 9:00 a.m.]