

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

#### Notice of Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to the Conservators for Interests of Clients

The Disciplinary Board of the Supreme Court (Board) of Pennsylvania is considering recommending to The Supreme Court of Pennsylvania that it amend the Pennsylvania Rules of Disciplinary Enforcement, as set forth in Annex A, to make a number of changes in the rules relating to conservators appointed to protect the interests of clients of absent attorneys.

The proposed amendments reflect the experience of the Board with conservatorships under existing Rules 321, 322, 324, 325 and 328 of the Pennsylvania Rules of Disciplinary Enforcement over the past several years. Among the important changes being proposed are the following:

1. A provision would be added to provide that in cases where the Office of Disciplinary Counsel serves as a conservator, that office still has the authority to investigate and/or prosecute possible misconduct based on evidence obtained during its service as conservator.

2. Under the current rules, the presumption is that conservators will serve without compensation. In cases where nondisciplinary counsel conservators are appointed, the Board is proposing that they be compensated under a written agreement with the Office of Disciplinary Counsel at an hourly rate identical to that received by court-appointed counsel at the noncourt appearance rate in the judicial district where the conservator was appointed.

3. Pa.R.D.E. 321(a) would be amended to require the written concurrence of disciplinary counsel when applications to appoint conservators are filed by any other interested person. This provision would ensure that no attorney will be appointed as conservator until any compensation issues are resolved to Office of Disciplinary Counsel's satisfaction.

4. New Pa.R.D.E. 322(c) would require that the conservator make reasonable effort to identify and send written notice to all clients of the absent attorney whose files were opened within 5 years of the appointment, regardless of whether the case is active or not, and shall also identify and send written notice to all clients whose cases are active, regardless of the age of the file. All clients whose files are identified as both inactive and older than 5 years shall be given notice of the appointment of a conservator by publication of a notice all aspects of which are to be approved by the appointing court.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme

Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before September 8, 2008.

ELAINE M. BIXLER,  
*Secretary*  
*Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

#### 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 C. DISABILITY AND RELATED MATTERS

#### Rule 321. Appointment of conservator to protect interests of clients of absent attorney.

(a) Upon application of Disciplinary Counsel, or any other interested person **with the written concurrence of Disciplinary Counsel**, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

(1) the attorney maintains or has maintained an office for the practice of law within the judicial district; **and**

(2) **[ (Reserved). ] any of the following applies:**

(i) the attorney is made the subject of an order under Enforcement Rule 208(f) (relating to emergency interim suspension orders and related matters); **or**

(ii) the president judge of the court of common pleas pursuant to Enforcement Rule 217(g) (relating to formerly admitted attorneys) by order directs Disciplinary Counsel to file an application under this rule [ , ] ; or

(iii) the attorney **abandons his practice, disappears, dies or** is transferred to inactive status because of incapacity or disability [ , **or disappears or dies** ] ; and

\* \* \* \* \*

(e) The conservator or conservators shall be appointed by the president judge from among members of the bar of this Commonwealth **[ who ] , subject to the following:**

(1) **nondisciplinary counsel conservators:**

(i) **[ are not representing ] shall not represent** any party who is adverse to any known client of the absent attorney; and

**[ (2) ] (ii) shall** have no adverse interest or relationship with the absent attorney or his or her estate.

**Official Note: Nothing in the Rules of Professional Conduct relating to conflict of interest, confidentiality, or any other provision, shall prevent the Office of Disciplinary Counsel from serving as conservator, and from subsequently pursuing an investigation, and disciplinary prosecution of the absent attorney, based upon information gathered during the course of disciplinary counsel's service as a conservator, given that office's unique duties and responsibilities to protect the public and the integrity of the judicial system.**

\* \* \* \* \*

(g) The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:

- (1) the application for appointment of a conservator is denied;
- (2) the conservator is discharged;
- (3) the court, tribunal, magisterial district or other government unit in which a matter is pending orders that the stay be lifted; or
- (4) 30 days after the court, tribunal, magisterial district or other government unit in which a matter is pending is notified that substitute counsel has been retained.

(h) As used in this rule, the term "government unit" has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).

**Rule 322. Duties of conservator.**

\* \* \* \* \*

(c) [ The conservator shall send written notice to all clients of the absent attorney of the fact of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active. A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files. ]

(1) The conservator shall make a reasonable effort to identify all clients of the absent attorney whose files were opened within five (5) years of the appointment of the conservator, regardless of whether the case is active or not, and a reasonable effort to identify all clients whose cases are active, regardless of the age of the file. The conservator shall send all such clients, and former clients, written notice of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active.

(2) All clients whose files are identified by the conservator as both inactive and older than five (5) years shall be given notice by publication of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The specific method of publication shall be approved by the appointing court, as to both the method, and duration, of publication. The conservator shall deliver proofs of publication to the appointing court at the time of filing the application for discharge.

(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files.

\* \* \* \* \*

(e) The conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in subdivisions (a) through (c) of this rule. If those duties have not been accomplished, then the conservator shall state what progress has been made in that regard. Thereafter, the conservator shall file a similar written report every [ 30 ] 60 days until discharge.

(f) In the case of a deceased attorney, the Conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with Rule 328(c) (relating to compensation and expenses of conservator.)

**Rule 324. Bank and other accounts.**

\* \* \* \* \*

(c) The conservator may engage the services of a certified public accountant when considered necessary to assist in the bookkeeping and auditing of the financial accounts and records of the absent attorney.

(1) If the state of the financial accounts and records of the absent attorney, or other relevant circumstances, render a determination as to ownership of purported client funds unreasonable and impractical, the conservator shall petition the appointing court for permission to pay all funds held by the absent attorney in any trust, escrow, or IOLTA account, to the Disciplinary Board for any unreimbursed costs of the conservatorship and to the Lawyers Fund For Client Security for any awards made to clients of the absent attorney. In the event there are funds remaining in the accounts, the court in its discretion may direct that said funds be paid to the Disciplinary Board, the Lawyers Fund for Client Security or the Interest On Lawyers Trust Account (IOLTA) Board. Any petition filed under this subsection shall be served by publication, the specific method and duration of which shall be approved by the appointing court.

\* \* \* \* \*

**Rule 325. Duration of conservatorship.**

Appointment of a conservator pursuant to these rules shall be for a period of no longer than six months. The appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months. Any order granting such an extension shall include findings of fact in support of the extension. **No additional extensions shall be granted absent a showing of extraordinary circumstances.**

**Rule 328. Compensation and expenses of conservator.**

(a) A conservator [shall normally serve without compensation, but where a conservatorship is expected to be prolonged or require greater effort than normal the appointing court may, with the prior written approval of the Board Chairman, order that the conservator be compensated on an agreed basis. Any such agreement shall be filed with the Office of the Secretary.] not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. Where the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations where extraordinary circumstances are shown to justify enhanced compensation.

[(b) Upon the completion of a conservatorship, the appointing court, with the prior written approval of the Board Chairman, shall have the power to award compensation or to increase compensation previously agreed to upon application of the conservator and upon demonstration by the conservator that the nature of the conservatorship was extraordinary and that failure to award or increase previously agreed compensation would work a substantial hardship on the conservator. In such event, compensation shall be awarded only to the extent that the efforts of the conservator have exceeded those normally required or reasonably anticipated at the time the original compensation agreement was approved.]

[(c)] (b) The necessary expenses (including, but not limited to, the fees and expenses of a certified public accountant engaged pursuant to Enforcement Rule 324(c)) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate. [If not so paid, then upon certification by the president judge of the appointing court and approval by the Board Chairman, the] Any expenses and any compensation of the conservator that are not reimbursed to the Board shall be paid as a cost of disciplinary administration and enforcement. [See Enforcement Rule 219(a) (relating to periodic assessment of attorneys).] Payment of any costs incurred by the Board pursuant to this rule that have not been reimbursed to the Board may be made a condition of reinstatement of a

formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

[Pa.B. Doc. No. 08-1482. Filed for public inspection August 15, 2008, 9:00 a.m.]

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## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

#### [ 234 PA. CODE CH. 6 ]

Order Amending Rule 644 Governing Note Taking by Jurors; No. 366; Doc. No. 2

#### Order

*And Now*, this 31st day of July, 2008, the effective date of the sunset provision of Pa.R.Crim.P. 644(C) is hereby suspended until further Order of Court.

This *Order* shall be effective immediately.

RONALD D. CASTILLE,  
*Chief Justice*

[Pa.B. Doc. No. 08-1483. Filed for public inspection August 15, 2008, 9:00 a.m.]

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## Title 255—LOCAL COURT RULES

### DAUPHIN COUNTY

Promulgation of Local Rule 5005; No. 1793 S 1989

#### Order

*And Now*, this 30th day of July, 2008, Dauphin County Local Rule 5005 is rescinded.

#### [ RULE 5005 FORFEITURE ACTIONS

1. All petitions in forfeiture filed pursuant to 42 Pa.C.S.A. § 6801 and § 6802 shall be filed and indexed in the Office of the Prothonotary.

The caption shall include a cross-reference (by defendant name and docket number) to any criminal action. The case shall thereafter proceed in accordance with the procedures set forth in § 6802.

2. Dauph. R.C.P. 1301—Arbitration shall be applicable to all actions in forfeiture.

3. Pa.R.C.P. 1007.1—Jury Trial. Demand, Waiver is made applicable to all actions in forfeiture. ]

COMMENT 2008: Rule 5005 is rescinded since the subject matter has been included in Rule 206.4(c).

The amendment will be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 08-1484. Filed for public inspection August 15, 2008, 9:00 a.m.]

**McKEAN COUNTY**

**Promulgation of Rule L1302; Civil Division; No. 158 December 1904**

**Order**

And Now, this 7th day of August, 2008, the Court Orders the following:

1. Local Rule of Civil Procedure L1302 is hereby amended and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*;
2. The Court Administrator of the 48th Judicial District is hereby *Ordered* and *Directed* to do the following:
  - a. File seven (7) certified copies of this *Order* and the pertinent Rules with the Administrative Office of Pennsylvania Courts;
  - b. File two (2) certified copies and a computer diskette containing this *Order* and the pertinent Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
  - c. File one (1) certified copy of this *Order* and the pertinent Rule with the Civil Procedure Rules Committee;
  - d. Keep continuously available for public inspection, copies of this *Order* and the Local Rules.

JOHN H. YODER,  
*President Judge*

CIVIL ACTION-(LAW) (EQUITY)

No. \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,

Type of Case: \_\_\_\_\_

vs.

Type of Pleading: \_\_\_\_\_

**Compulsory Arbitration** \_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

\_\_\_\_\_,  
Defendant.

Filed on Behalf of:

\_\_\_\_\_  
(Plaintiff/Defendant)

Counsel of Record for this Party:

\_\_\_\_\_  
(Name of Attorney)

Supreme Court No: \_\_\_\_\_

\_\_\_\_\_  
(Firm name, if any)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone)

Dated: \_\_\_\_\_ Counsel of Record For Adverse Party:

**RULE L1302**

**ARBITRATION**

(a) All cases which are at issue, where the amount in controversy (exclusive of interest and costs) shall be **\$50,000** or less, except those involving title to real estate,

equity actions, actions upon bail bonds and recognizances, actions upon penal statutes, and other actions which do not involve the recovery of money damages, including divorce, mandamus and quo warranto, shall be submitted to and heard and decided by a Board of Arbitration which shall be composed of three (3) attorneys. The Prothonotary shall maintain a list of available arbitrators who shall all be members of the Bar actively engaged in the practice of law primarily in McKean County.

**After an arbitration panel has been selected and all parties notified thereof, any party or their counsel may request that an Arbitrator disqualify themselves if their impartiality might reasonably be questioned including but not limited to instances where: they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; or they have served as a lawyer in the matter in controversy or they have a substantial financial interest in the matter in controversy.**

(b) Cases which are not at issue, and whether or not suit has been filed, may be submitted to a Board of Arbitration by agreement of reference signed by all parties or their counsel. The agreement of reference shall define the issues to be submitted to the Board, and, when agreeable to the parties, shall also contain stipulations with respect to facts agreed or defenses waived. When a case is submitted to the Board by agreement of reference, the agreement shall take the place of pleadings and shall be filed of record in the office of the Prothonotary and shall be assigned a number and term.

(c) Cases shall be placed on the arbitration list by one or more of the parties in the case or their counsel filing a Praeceptum for Arbitration, together with a listing fee in the amount of \$100. Ten days after the case has been praeciped onto the list, if no objection thereto have been filed, the Prothonotary shall promptly appoint a panel of three (3) arbitrators to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. The chairman so appointed shall forthwith establish the time, date and place of trial and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All trials shall be held within 60 days of the date the chairman is appointed by the Court. In the event the matter is settled prior to hearing but after the chairman has scheduled a hearing, \$50 of the filing fee shall be paid to the chairman as reimbursement for office expenses. In the event the matter has been settled prior to hearing and before the chairman has scheduled a hearing, \$50 of the filing fee shall be refunded to the party who paid it. In either event the remaining \$50 shall be retained by the Prothonotary to reimburse expenses. The filing fee shall be charged to the party first listing the case for hearing, and only be assessed one time per case.

(d) Each member of a Board of Arbitrators who has signed the award shall receive as compensation for his services in each case a fee of Two Hundred Fifty (\$250.00) Dollars. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the Court, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing an award with the Prothonotary. When the same is filed, the Prothonotary shall issue an order for payment of such fees which shall be immediately paid

from County funds as in the case of all other County debts. Fees paid to Arbitrators shall not be taxed as costs nor follow the award as other costs.

(e) Before entering upon their duties the members of the Board of Arbitrators shall subscribe to an oath to perform their duties and decide the case submitted to them justly and equitably, and with due diligence, which oath shall be filed with their award. In all cases, a decision by majority of the members of the Board of Arbitrators shall be conclusive. **If a case is listed for arbitration and is settled before hearing counsel shall notify the Chairman of the Board of Arbitrators of the terms of the settlement and the Board of Arbitrators shall enter an award consistent with the terms of settlement and file the same with the Prothonotary.**

(f) The Board of Arbitrators, or a majority of the members thereof, shall conduct the hearing before them with due regard to the law and according to the established rules of evidence, and shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Board as in other civil actions, and to issue an attachment upon allowance by the Court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which they shall deem material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) To adjourn their meetings from time to time. Requests for continuances shall be made to the Court of Common Pleas.

(a) If, after the appointment of a Board of Arbitrators, but before hearings, one of the members thereof shall die or become incapable of acting, or shall refuse to attend the hearing, or shall remove or depart from the county, the remaining members of the Board shall, upon agreement of the parties, proceed to hear the matter at issue.

(b) If a member of the Board dies or becomes incapable of acting, or shall fail or refuse to perform his duties, after hearing but before an award shall be made, the case shall be decided and the award signed by the remaining members of the Board. If they cannot agree, the matters shall be heard de novo by a new Board, to consist of the remaining members plus a third to be appointed by the Prothonotary.

(c) The Board shall have the right to proceed *ex parte* in a proper case if, after due notice, one of the parties fails to appear at the hearing and does not request a continuance for good cause.

(d) The Board of Arbitrators shall file an award with the Prothonotary within 20 days after the hearing. The award shall be signed by all or a majority of the members of the Board. The Prothonotary shall file the award and enter the same in the proper dockets and transmit a copy

thereof by mail to the parties or their counsel. The Prothonotary shall record any award in the judgment index as verdicts are now recorded.

(e) The award, if any, unless appealed from as herein provided, shall be final and shall have all the attributes and legal effect of a judgment entered by a court of competent jurisdiction. If no appeal is taken within the time allotted therefor, execution process may be issued on the award as in the case of other judgments.

(f) An appeal from an award by the Board of Arbitrators may be taken pursuant to procedure established in the Pennsylvania Rules of Civil Procedure.

(g) All appeals shall be de novo. Despite any costs which a successful appellant may recover from the adverse party, he shall nevertheless not be entitled to recover the arbitrators' fees paid by him as a condition of taking his appeal.

(h) Any party may file exceptions with the Court from the decision of the Board of Arbitration within twenty (20) days from the filing of the award for either or both of the following reasons and for no other:

(1) That the arbitrators misbehaved themselves in the conduct of the case;

(2) That the actions of the Board was procured by corruption or other undue means. If such exceptions shall be sustained, the award of the Board shall be vacated by the Court.

(g) Any case not arbitrable under the foregoing provisions of this Rule may be submitted to arbitration according to the procedure herein provided, by stipulations of all Parties thereto or their counsel.

(h) This Rule shall apply to cases involving more than one claim, including counter claims, if none of such claims exceed \$25,000.

(i) This Rule shall govern cases pending in the Court of Common Pleas of McKean County on the effective date hereof, and all such cases to which the rule shall be applicable which are listed for trial shall be stricken from the trial list and referred to arbitration under the provisions hereof.

(j) The Prothonotary shall provide such printed forms as shall be appropriate to effectuate the provisions of this rule.

(k) All rules of this court or portions thereof which are inconsistent herewith are hereby repealed.

#### CERTIFICATION

I hereby certify that this is a true and correct copy of the proposed changes to McKean County Local Rule 1302.

*By the Court:*

JOHN H. YODER,  
*President Judge*

[Pa.B. Doc. No. 08-1485. Filed for public inspection August 15, 2008, 9:00 a.m.]