

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

[204 PA. CODE CHS. 81 AND 83]

Amendments to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15 of the Pennsylvania Rules of Professional Conduct; Disciplinary Rules; No. 67; Doc. No. 1

Order

Per Curiam:

And Now, this 4th day of September, 2008, Rule 1.15 of the Pennsylvania Rules of Professional Conduct is amended to read as set forth in Annex A as follows and Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as set forth in Annex B as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration, shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall govern matters thereafter commenced and, insofar as just and practicable, matters then pending.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

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Rule 1.15. Safekeeping Property.

(a) The following definitions are applicable to Rule 1.15:

(1) **Eligible Institution.** An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to Pa.R.D.E. 221(h).

(2) **Fiduciary.** A Fiduciary is a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position.

(3) **Fiduciary Funds.** Fiduciary Funds are Rule 1.15 Funds which the lawyer holds as a Fiduciary. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

(4) **Financial Institution.** A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan asso-

ciation or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(5) **Interest On Lawyer Trust Account (IOLTA) Account.** An IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account.

(6) **IOLTA Board.** The IOLTA Board is the Pennsylvania Interest On Lawyers Trust Account Board.

(7) **Non-IOLTA Account.** A Non-IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:

(i) a separate client Trust Account for the particular client or matter on which the net income will be paid to the client or third person; or

(ii) a pooled client Trust Account with sub-accounting by the Eligible Institution or by the lawyer, which will provide for computation of net income earned by each client's or third person's funds and the payment thereof to the client or third person.

(8) **Nonqualified Funds.** Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order or other negotiable instrument, which are not Qualified Funds.

(9) **Qualified Funds.** Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(10) **Rule 1.15 Funds.** Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the lawyer receives in any of the foregoing capacities.

(11) **Trust Account.** A Trust Account is an account in an Eligible Institution in which a lawyer holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account.

(b) A lawyer shall hold all Rule 1.15 Funds and property [of clients or third persons that is in a lawyer's possession in connection with a client-

lawyer relationship] separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

(c) Complete records of the receipt, maintenance and disposition of **[such] Rule 1.15 Funds and** property shall be preserved for a period of five years after termination of the client-lawyer or **Fiduciary** relationship or after distribution or disposition of the property, whichever is later. **A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):**

(1) **all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and**

(2) **check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.**

(3) **The records required by this rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.**

[(b)] (d) Upon receiving Rule 1.15 Funds or property [of a client or third person in connection with a client-lawyer relationship,] which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person[.], consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.

(e) Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, **including but not limited to Rule 1.15 Funds**, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding **[such] the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.**

[(c)] (f) When in [connection with a client-lawyer relationship a lawyer is in possession of] possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

[(d) In those parts of this Rule dealing with funds of clients or third persons which the lawyer receives in connection with a client-lawyer rela-

tionship, excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship, the following definitions are applicable:

(1) **Trust Account means an interest-bearing account in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which the lawyer deposits such funds.**

(2) **Qualified funds means such funds when they are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.**

(3) **Nonqualified Funds means all other such funds.**

(4) **An Interest On Lawyer Trust Account (IOLTA Account) is an unsegregated Trust Account for the deposit of Qualified Funds by a lawyer.**

(5) **The IOLTA Board means the Pennsylvania Interest on Lawyers Trust Account Board.**

(e) **] (g) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held.**

(h) **A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying [bank services] service charges on that account, and only in an amount necessary for that purpose.**

(i) **A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.**

(j) **At all times while a lawyer holds [funds of a client or third person in connection with a client-lawyer relationship] Rule 1.15 Funds, the lawyer shall also maintain another account that is not used to hold such funds.**

[(f)] (k) All Nonqualified Funds which are not Fiduciary Funds shall be placed in a [Trust] Non-IOLTA Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

(l) **All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.**

[(g)] (m) All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account. [The rate of interest payable on an IOLTA Account shall not be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts. In no event shall the rate of interest payable on an IOLTA Account be less than the rate paid by the financial institution on negotiable order of withdrawal accounts (NOW) or super negotiable order of withdrawal accounts.

An account shall not be considered an IOLTA Account unless the financial institution at which the account is maintained shall:

(1) Remit at least quarterly any interest earned on the account to the IOLTA Board.

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of interest remitted from the account and the average daily balance, if available.

(h)] (n) A lawyer shall be exempt from the requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account **which is not income producing**. Exemptions shall be granted if:

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

(2) compliance with this paragraph would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest **[financial institution] Eligible Institution**, or on other compelling and necessitous factors; or

(3) the lawyer's historical annual Trust Account experience, based on information from the **[financial institution] Eligible Institution** in which the lawyer deposits funds, demonstrates that the service charges on the account would significantly and routinely exceed any **[interest] income** generated.

(o) An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:

(1) Remit at least quarterly any income earned on the account to the IOLTA Board;

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of income remitted from the account, and the average daily balance, if available; and

(3) Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its non-IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any.

[(i)] (p) A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in good faith that the monies deposited were Qualified Funds.

[(j)] (q) There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board, which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the

Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appointments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court. **[Additionally, upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA funds for the purpose set forth in this Rule.]**

(r) The IOLTA Board shall comply with the following:

(1) The IOLTA Board shall prepare an annual audited statement of its financial affairs.

(2) **[Disbursement and allocation of IOLTA Funds shall be subject to the prior approval of the Supreme Court.]** The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program **[Additionally, a copy of]** and the IOLTA Board's proposed annual budget **[will be provided to the Court]**, designating the uses to which IOLTA Funds are recommended.

(3) Upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA Funds.

[(k) Interest] (s) Income earned on IOLTA Accounts (IOLTA Funds) may be used only for the following purposes:

(1) delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(2) educational legal clinical programs and internships administered by law schools located in Pennsylvania;

(3) administration and development of the IOLTA program in Pennsylvania; and

(4) the administration of justice in Pennsylvania.

[(l)] (t) The IOLTA Board shall hold the beneficial interest in IOLTA Funds. Monies received in the IOLTA program are not state or federal funds and are not subject to Article VI of the act of April 9, 1929 (P. L. 177, No. 175) known as The Administrative Code of 1929, or the act of June 29, 1976 (P. L. 469, No. 117).

Comment:

(1) A lawyer should hold property of others with the care required of a professional fiduciary. The obligations of a lawyer under this Rule apply when the lawyer has come into possession of property of clients or third persons because the lawyer is acting or has acted as a lawyer in a client-lawyer relationship **[with some person]**, or when the lawyer is acting as a Fiduciary, or as an escrow agent, a settlement agent or a representative payee, or as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such. Securities should be **[kept in a safe deposit box, except when some**

other form of safekeeping is warranted by special circumstances] appropriately safeguarded. All property which is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if [monies] Rule 1.15 Funds, in one or more Trust Accounts, or, if a Fiduciary entrustment, in an investment or account authorized by applicable law or a governing instrument. The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Whenever a lawyer holds [funds of a client or third person] Rule 1.15 Funds, the lawyer must maintain at least two accounts: one in which those funds are held and another in which the lawyer's own funds may be held.

(2) A lawyer should maintain on a current basis books and records in accordance with sound accounting practices consistently applied and comply with any recordkeeping rules established by law or court order, including those records identified in paragraph (c).

[(2) The following books and records shall be maintained for each Trust Account:

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

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

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

(3) The records required by this Rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(4) [(3) While normally it is impermissible to commingle the lawyer's own funds with [client funds] Rule 1.15 Funds, paragraph [(e)] (h) provides that it is permissible when necessary to pay [bank] service charges on that account. Accurate records must be kept regarding [that part of] the funds [which are the lawyer's].

(4) A lawyer's obligations with respect to funds of clients and third persons depend on the capacity in which the lawyer receives them, on whether they are Fiduciary Funds as defined in paragraph (a)(3) and on whether they are Nonqualified Funds or Qualified Funds as defined in paragraphs (a)(8) or (9) respectively. If the lawyer receives them in one of the capacities identified in paragraph (a)(10), the obligations in paragraphs (b) through (h), such as safeguarding, notification, and recordkeeping, apply. Nonqualified Funds other than Fiduciary Funds are to be placed in a Non-IOLTA Account, as defined in paragraph (a)(7), in an Eligible Institution, as defined in paragraph (a)(1), unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or

third person. Qualified Funds other than Fiduciary Funds must, subject to certain exceptions, be placed in an IOLTA Account defined in paragraph (a)(5).

(5) If the funds, whether Qualified Funds or Nonqualified Funds, are Fiduciary Funds, they may be placed in an investment or account authorized by the law applicable to the entrustment or authorized by the terms of the instrument governing the Fiduciary Funds. In such investment or account they shall be subject to the obligations of safeguarding, notification and recordkeeping. This Rule is not intended to change the substantive law or procedural rules that govern Fiduciary Funds or property with the exception of the specific recordkeeping requirements, segregation of Fiduciary Funds or property, and where Fiduciary Funds are kept in an Eligible Institution, overdraft reporting pursuant to Pa.R.D.E. 221, to the extent that those requirements underscore or supplement the requirements regarding Fiduciary Funds or property. The goal of the amendments is to require all attorneys to keep appropriate records of entrusted funds, segregate such funds from the attorney's funds, account to those with an interest in the funds, and distribute the funds when due, and to permit the disciplinary system to respond when lawyers fail to comply with these standards.

(6) This Rule does not require a Fiduciary to liquidate entrusted investments or investments made in accordance with applicable law or a governing instrument or to transfer non-income producing fiduciary account balances to an IOLTA Account. This Rule does not prohibit a Fiduciary from making an investment in accordance with applicable law or a governing instrument. Funds which are controlled by a non-lawyer professional co-fiduciary shall not be considered to be Rule 1.15 Funds for the purposes of this Rule.

[(5)] (7) Lawyers often receive funds from which the lawyer's fee will be paid. Unless the fee is non-refundable, it should be deposited to a Trust Account and drawn down as earned. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a Trust Account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[(6) Paragraph (c) also recognizes that third] (8) Third parties may have lawful claims against specific funds or other property in a lawyer's custody such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[(7)] (9) Other applicable law may impose pertinent obligations upon a lawyer independent of [any] and in addition to the obligations arising from this Rule. For example, a lawyer who [serves only] receives funds as an escrow agent [is governed by the law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A lawyer who receives funds while serving as an executor or trustee remains subject to the formal accounting procedures and other supervision of the Orphans Court; when such funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify maintaining a segregated account such funds may, in the discretion of the lawyer, be deposited into the IOLTA account of the lawyer even though such deposit is not required.] a representative payee, or a Fiduciary remains subject to the law applicable to the entrustment, such as the Probate, Estates and Fiduciaries Code, Orphans' Court Rules, the Social Security Act, and to the terms of the governing instrument. If, during the final year of a Fiduciary entrustment, the lawyer who is serving as a Fiduciary reasonably expects that the funds cannot earn income for the client or third person in excess of the cost incurred to secure such income while the funds are held, the lawyer may, in the discretion of the lawyer, deposit the funds into the IOLTA Account of the lawyer, or may arrange to discontinue the payment of interest on the segregated Trust Account.

[(8)] (10) A lawyer must participate in the Pennsylvania Lawyers Fund for Client Security established in Rule 503 of the Pennsylvania Rules of Disciplinary Enforcement. It is a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.

[(9)] (11) Paragraphs [(g)] (q) through [(l)] (t) provide for the Interest on Lawyer Trust Account (IOLTA) program [, and the definitions in paragraph (d) distinguish two types of funds of clients and third persons held by a lawyer: Qualified Funds, which must be placed in an IOLTA account, and Nonqualified Funds, which are to be placed in an interest bearing account unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or third person]. There are further instructions relating to the IOLTA program in Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement and in the Regulations of the Interest [on] On Lawyers Trust Account Board, 204 Pa. Code, § 81.1 et seq., which are referred to as the IOLTA Regulations.

Annex B

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

(a) For purposes of this rule, [a] the following definitions apply:

(1) **Eligible Institution.** An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.

(2) **Financial Institution.** A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(3) **Fiduciary Funds.** Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

(4) **Rule 1.15 Funds.** Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.

(5) **Trust Account.** A Trust Account [of an attorney] is an account in an Eligible Institution in which an attorney [, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits] holds Rule 1.15 Funds [funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship]. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

(b) An attorney shall maintain a Trust Account with respect to his/her practice in this Commonwealth only in [a financial institution] an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for [financial institutions] Eligible Institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of [approved financial institutions] Eligible Institutions.

[(c) A financial institution shall be approved as a depository for Trust Accounts of attorneys if it shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

(1) whether the instrument is honored, or

(2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(d) For purposes of this Rule, a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(e) The term "financial institution" means banks, bank and trust companies, trust companies, savings and loan associations, credit unions, savings banks or foreign banking corporations, whether incorporated, chartered, organized or licensed under the laws of the Commonwealth of Pennsylvania or the United States, doing business in Pennsylvania and insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration or an alternative share insurer.]

(c) All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds as defined in Rule 1.15(a)(9) of the Pennsylvania Rules of Professional Conduct, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

[(f)] (d) The responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

[(g) The] (e) An attorney shall maintain the following books and records [shall be maintained] for each Trust Account and for any other account in which Rule 1.15 Funds are held:

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

(2)] all transaction records [returned] provided to the attorney by the [financial institution, including] Financial Institution, such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and

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

(2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.

[(h)] (f) The records required by this rule may be maintained in electronic or [other form if they can be retrieved in printed] hard copy form. [Electronic records must be regularly backed up by an appropriate storage device.] If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

[(i)] (g) The records required by this rule may be subject to subpoena and must be produced in connection with an investigation or hearing pursuant to these rules. Failure to produce such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f) (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

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

(k) For purposes of the rule, a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(l) No report need be made when the financial institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(m) A failure on the part of a financial institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.]

(h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board and shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

(1) whether the instrument is honored, or

(2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(i) For purposes of this rule:

(1) A Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the treatment of such funds by the Eligible Institution, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) A check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(j) No report need be made when the Eligible Institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(k) A failure on the part of an Eligible Institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.

[(n) Financial institutions] (l) Eligible Institutions shall be immune from suit for the filing of any reports required by this Rule or believed in good faith to be required by this Rule.

[(o) A financial institution] (m) An Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this rule.

[(p)] (n) A report filed pursuant to this rule shall not, in and of itself, be considered a disciplinary complaint.

[(q)] (o) A designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation. Neither a report filed with the Lawyers Fund for Client Security Board pursuant to this rule nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

[(r)] (p) Reports required to be made under this rule shall be made to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

[Pa.B. Doc. No. 08-1696. Filed for public inspection September 19, 2008, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 1]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam

And Now, this 9th day of September, 2008, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted the amendment to Rule of Procedure No. 121(C), as more specifically hereinafter set forth, *It Is Hereby Ordered:*

That Rule 121(C) shall become effective immediately.

WILLIAM H. LAMB,
President Judge

Annex A

TITLE 207. JUDICIAL CONDUCT PART IV. COURT OF JUDICIAL DISCIPLINE ARTICLE I. PRELIMINARY PROVISIONS CHAPTER 1. GENERAL PROVISIONS DOCUMENTS GENERALLY

Rule 121. Filing; Docketing.

* * * * *

(C) Unless otherwise ordered by the Court, or as otherwise provided by these rules, a filing shall consist of the original and three (3) copies, except, in the case of pleadings in excess of 20 pages, in which case an original and 10 copies are required.

[Pa.B. Doc. No. 08-1697. Filed for public inspection September 19, 2008, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Amendment of Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 248 Magisterial Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 9th day of September, 2008, upon the recommendation of the Minor Court Rules Committee, the proposal having been published before adoption at Volume 38, *Pennsylvania Bulletin*, page 2046 (May 3, 2008), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.C.P.M.D.J. No. 209 be, and hereby is, amended to read as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2008.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART. I GENERAL

**CHAPTER 200. RULES OF CONSTRUCTION;
GENERAL PROVISIONS**

Rule 209. Continuances.

* * * * *

E. Continuances shall be granted in compliance with federal or state law, such as the Servicemembers Civil Relief Act., 50 App. U.S.C.A. § 501 et seq.

Official Note: This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. The grounds set forth in [subdivision] subdivisions D and E, of course, are not intended to be the only grounds on which a continuance will be granted.

Adopted March 15, 1994, effective April 2, 1994. Amended December 16, 2004, effective July 1, 2005; January 6, 2005, effective January 29, 2005; **September 9, 2008, effective October 1, 2008.**

FINAL REPORT

Amendment to Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

On September 9, 2008, effective October 1, 2008, upon recommendation of the Minor Court Rules Committee,¹ the Supreme Court of Pennsylvania approved an amendment to Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.²

I. Background

In 2007, several magisterial district judges questioned why the rules of civil procedure did not specifically address continuances for military personnel. Based upon the reported uncertainty of some magisterial district judges in dealing with military personnel's requests for continuances, the Minor Court Rules Committee ("the Committee") recommended an amendment to Rule 209 referencing the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 501 et seq. ("Act"). The Committee believed the amendment would provide a quick statutory reference as well as foster a uniform, statewide practice.

II. Discussion

The Committee determined that its main concern was ensuring that magisterial district judges were aware of the Act and follow it, when appropriate. In its deliberations, the Committee reviewed a sample request for a continuance pursuant to the Act; the Act itself; 51 Pa.C.S.A. § 7314 ("Stay of proceedings when military service affects conduct thereof") and Pa.R.C.P. No. 1920.46 ("Affidavit of Non-military Service").

The Committee decided that the simplest way to achieve its goal of compliance with the Act was through a

¹ Minor Court Rules Committee Recommendation 10-2008.
² Supreme Court of Pennsylvania Order No. 248, Magisterial Docket No. 1 (September 9, 2008).

statutory reference. While the Committee considered including a reference to the Act in the note, rather than the rule, the eventual decision was to draft a new subdivision within the rule itself. The Committee members felt strongly that individuals meeting the criteria of the Act should be granted continuances. By including the language in the rule, the exception for qualifying military personnel becomes mandatory; if simply included in the note, the reference would not be binding, as the Supreme Court of Pennsylvania does not adopt the contents of the Committee's notes to the rules.

III. Approved Rule Changes

To address the issues discussed above, the Committee included a new subdivision "E," directly following the current subdivision "D." As explained above, the new subdivision "E" provides a statutory reference to the Act.

The note was also amended to clarify that subdivisions D and E are not the exclusive grounds for granting continuances.

[Pa.B. Doc. No. 08-1698. Filed for public inspection September 19, 2008, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 300]

Amendment of Rules 341 and 342 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 247 Magisterial Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 9th day of September, 2008, upon the recommendation of the Minor Court Rules Committee, the proposal having been published before adoption at Volume 37, *Pennsylvania Bulletin*, page 6745 (December 22, 2007), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.C.P.M.D.J. Nos. 341 and 342 be, and hereby are, amended to read as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2008.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART. I GENERAL

CHAPTER 300. CIVIL ACTION

SATISFACTION OF MONEY JUDGMENTS

Rule 341. Request for Entry of Satisfaction; Service; Entry of Satisfaction.

* * * * *

Official Note: Subdivision A provides a mechanism for a judgment debtor, or anyone interested in the judgment, to file a written request for entry of satisfaction in the office of the magisterial district judge who rendered the judgment. See Section 8104(a) of the Judicial Code, 42 Pa.C.S. § 8104(a).

Subdivision B is intended to provide a number of alternative methods of service. See Rules 307, 308, 309, 310, 311, 312 and 313. When permitted, service by mail should be at the option of the person filing the request for entry of satisfaction. **The requester shall be required to pay for all costs associated with initiating entry of satisfaction.**

* * * * *

Adopted April 5, 2002, effective January 1, 2003.
Amended September 9, 2008, effective October 1, 2008.

Rule 342. Failure of Judgment Creditor to Enter Satisfaction; Supplementary Action.

* * * * *

Official Note: A judgment debtor may seek damages pursuant to Section 8104(b) of the Judicial Code, 42 Pa.C.S. § 8104(b). The action commenced under subdivision A of this Rule is a supplementary proceeding in the matter in which the judgment was entered. As such, it must be filed in the office of the magisterial district judge in which the request for entry of satisfaction was filed. Also, it must be indexed to the same docket number as, and made a part of the record of, the underlying action. See Rule 306 and Note. Because the supplementary action is merely a continuation of the underlying action, there are no filing costs for it, however there may be costs for service of the action. **The requester shall be required to pay for all costs associated with initiating entry of satisfaction.**

* * * * *

Adopted April 5, 2002, effective January 1, 2003.
Amended January 6, 2005, effective January 29, 2005.
Amended September 8, 2008, effective October 1, 2008.

FINAL REPORT

Amendment to the Notes to Rules 341 and 342 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

On September 9, 2008, effective October 1, 2008, upon recommendation of the Minor Court Rules Committee,¹ the Supreme Court of Pennsylvania approved an amendment to the Notes to Rules 341 and 342 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.²

I. Background

The Minor Court Rules Committee (the Committee) undertook a review of Rules 341 and 342 following an inquiry from a District Court administrator. The administrator pointed out that Pa.R.C.P.M.D.J. No. 341 does not address who is required to pay for service of a request for entry of satisfaction. Instead, Rule 341 simply requires service "in accordance with the rules in the 300 Series regarding service of the complaint." See Pa.R.C.P.M.D.J. No. 341B.

II. Discussion and Proposed Rule Changes

After reviewing the administrator's inquiry, the Committee agreed that the lack of direction in Pa.R.C.P.M.D.J. No. 341, with regard to payment of service costs, was problematic. In attempting to fashion a

solution, the Committee members settled upon adding language to the Notes of both Rules 341 and 342. The additional language makes it clear that the person who is requesting entry of satisfaction is the individual responsible for payment of any costs associated with his or her request.

[Pa.B. Doc. No. 08-1699. Filed for public inspection September 19, 2008, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Magisterial District Court 56-3-01 and Magisterial District Court 56-3-02; CP-13-AD-000007-2008

Administrative Order No. 19-2008

And Now, this 4th day of September, 2008, in order to provide efficient handling of cases by cooperative agreement between Weissport Borough and Parryville Borough regarding police coverage and pursuant to Rule 130(A)(6) of the Pennsylvania Rules of Criminal Procedure, it is hereby

Ordered and Decreed that, effective September 5, 2008, the Court temporarily assigns the following classes of cases arising within the Magisterial District Judge's jurisdiction of Parryville Borough—Traffic and Criminal—to Magisterial District Court 56-3-01 until further Order of this Court, but only on condition that the Magisterial District Judge of Magisterial District Court 56-3-01 waive any right to additional compensation under 42 Pa.C.S.A., Section 4122, or otherwise.

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 Civil Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order in the Clerk of Courts' Office.

By the Court

ROGER N. NANOVIC,
President Judge

[Pa.B. Doc. No. 08-1700. Filed for public inspection September 19, 2008, 9:00 a.m.]

¹ Minor Court Rules Committee Recommendation 2-2008.

² Supreme Court of Pennsylvania Order No. 247, Magisterial Docket No. 1, (September 9, 2008.)

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that W. Eric Cloud having been disbarred from the practice law in the District of Columbia by Opinion and Order of the District of Columbia Court of Appeals decided December 28, 2007, the Supreme Court of Pennsylvania disbarred W. Eric Cloud from the practice of law in this Commonwealth, effective October 4, 2008. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 08-1701. Filed for public inspection September 19, 2008, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 4, 2008, William S. Lerach is disbarred on consent from the practice of law in this Commonwealth, to be effective October 4, 2008. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 08-1702. Filed for public inspection September 19, 2008, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Deborah Ann Pierce having been suspended from the practice of law in the State of New Jersey for a period of 1 year by Order of the Supreme Court of New Jersey dated December 4, 2007, the Supreme Court of Pennsylvania issued an Order dated September 4, 2008, suspending Deborah Ann Pierce from the practice of law in this Commonwealth for a period of 1 year. In accordance with Rule 217(f), Pa.R.D.E., since this formerly attorney reside outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 08-1703. Filed for public inspection September 19, 2008, 9:00 a.m.]

Notice of Transfers of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated August 7, 2008, under Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective September 6, 2008, for Compliance Group 3 due December 31, 2007.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Alpha, Jennifer J.
Washington, DC

Andino III, Ralph
San Rafael, CA

Bennett, Patrick A.
Colliers, WV

Blanchard, Anne E.
Camden, NJ

Bollar, Carlos Manuel
Haddonfield, NJ

Burgess, Susan K.
Jacksonville, FL

Burke, Brian J.
Chicago, IL

Burke Jr., Roger William
Washington, DC

Case, Heather S.
Naples, FL

Coleman, Steven E.
Chesterfield, MO

Desilets Jr., Roland B.
Mount Laurel, NJ

Evans, Cheryk L.
Alexandria, VA

Gamble, Bruce
Washington, DC

Gee, Adam Michael
Elmira, NY

Gilberti, William Joseph
Syracuse, NY

Harris, Joyce Barnett
Washington, DC

Henry, Katherine J.
Washington, DC

Ikegwuonu, Patricia Ryan
Albany, GA

Jennings, Valorie Elois
Rockaway, NJ

Johnson, Joanne Du
Los Angeles, CA

Johnson, Kristen Elizabeth
Brick, NJ

Jones, Kevin Darrow
Washington, DC

Karinch, Matthew Macleod
Claymont, DE

Khalil, Gary Alan
Arlington, VA

Kucskar, Kathryn A.
Raleigh, NC

Laquintano, Nicole Marie
McLean, VA

Lee, Peter Y.
Waltham, MA

Levenson, Scott Craig
Elmwood Park, NJ

Mathena, Daniel Calderon
Arlington, VA

McGinley, Patrick C.
Morgantown, WV

Mickletz, Jeffrey C.
New York, NY

Nardone, Susan Lynn
Newark, NJ

O'Rourke, Thomas J.
Rockville, MD

Pasquariello, Anthony James
Rockaway, NJ

Rhatican, James Patrick
Roseland, NJ

Robinson, Gary A.
Fort Myers, FL

Salvatore, David
Hazlet, NJ

Sfara, David Louis
Waterbury, CT

Slocum, Carol Ann
Cherry Hill, NJ

Somers, Alan Victor
Preston, MD

Steinberg, Saul J.
Camden, NJ

Sterba, Melissa Anne
Westfield, NJ

Stiles, Jacqueline Hawkins
Atlantic City, NJ

Stumpf, Eugene Stephen
New York, NY

Thompkins, Nathaniel Valencia
Santa Fe, NM

Toll, Rachel Emily
Las Vegas, NV

Tranel, Monica Joan
Whitehall, MT

Trautmann, Gregg Douglas
Rockaway, NJ

Tutoki, Christopher R.
Zurich, Switzerland

Wallace, William Lindsay
Washington, DC

White, Martin F.
Warren, OH

Wyatt, Keith Orlando E.
Houston, TX

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 08-1704. Filed for public inspection September 19, 2008, 9:00 a.m.]