

THE COURTS

Title 225—RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

[225 PA. CODE ART. I]

Order Approving Revision of Comment to Pennsylvania Rule of Evidence 104; No. 456; Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 9th day of January 2009, upon the recommendation of the Committee on Rules of Evidence, and pursuant to Pa.R.J.A. No. 103(a) 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 the revision of Comment is hereby approved as follows.

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

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 104. Preliminary Questions.

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Comment

Paragraph 104(a) is identical to F.R.E. 104(a). The first sentence is consistent with prior Pennsylvania case law. See *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367 (1991).

The second sentence of paragraph 104(a) is based on the premise that, by and large, the law of evidence is a "child of the jury system" and that the rules of evidence [**should**] **need** not be applied when the judge is the fact finder. The theory is that the judge should be empowered to hear any relevant evidence to resolve questions of admissibility. [**Under the Federal Rule, the court may consider even the allegedly inadmissible evidence in deciding whether to admit the evidence. See *Bourjaily v. United States*, 483 U.S. 171 (1987). There is no express authority in Pennsylvania on whether the court is bound by the rules of evidence in making its determinations on preliminary questions. In view of this, the approach of the Federal Rule has been adopted.**] **This approach is consistent with Pennsylvania law. See *Commonwealth v. Raab*, 594 Pa. 18, 934 A.2d 695 (2007).**

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FINAL REPORT

Pa.R.E. 104 Comment Revision

In view of *Commonwealth v. Raab*, 594 Pa. 18, 934 A.2d 695 (2007), the language in the second paragraph of the Comment to Pa.R.E. 104(a) is misleading. The Committee on Rules of Evidence therefore recommended the changes noted to clarify that there now is express authority in

Pennsylvania that the judge may consider hearsay evidence in preliminary hearing under Pa.R.E. 104.

[Pa.B. Doc. No. 09-107. Filed for public inspection January 23, 2009, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Robert E. Martin having voluntarily surrendered his license to practice law in the State of Georgia by Order of the Supreme Court of Georgia dated April 4, 1991, the Supreme Court of Pennsylvania disbarred Robert E. Martin from the practice of law in this Commonwealth by Order dated January 8, 2009, effective February 7, 2009. 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
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 09-108. Filed for public inspection January 23, 2009, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that David W. Boyer having been suspended from the practice of law in the State of New Jersey for a period of 3 months by Order of the Supreme Court of New Jersey dated February 26, 2008, the Supreme Court of Pennsylvania issued an Order dated January 8, 2009, suspending David W. Boyer from the practice of law in this Commonwealth for a period of 3 months, effective February 7, 2009. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme of Pennsylvania*

[Pa.B. Doc. No. 09-109. Filed for public inspection January 23, 2009, 9:00 a.m.]

Notice of Transfer 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 December 1, 2008, under Rule 111(b) Pa.R.C.L.E., which requires that all attorneys admitted to practice in any court of this Commonwealth must pay an annual assessment of \$175. The Order became effective December 31, 2008.

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.

Abromson, Ellen J.
Washington, DC

Acker, Susan J.
Twinsburg, OH

Adges, Michael C.
Mineola, NY

Apoldo, Louis J.
Cherry Hill, NJ

Barrett, Mark J.
Denver, CO

Bernard Jr., Harold
Sterling, VA

Bodnar, Joseph J.
Wilmington, DE

Bradley, Kyle K.
Willingboro, NJ

Brennan, Frank P.
Cherry Hill, NJ

Brennan, Patricia L.
Kensington, MD

Brewer, Carol A.
APO AE

Brown, David J.
North Bethesda, MD

Buividas, Stephen J.
Cherry Hill, NJ

Bungard, Jessica M.
Fredericksburg, VA

Burgess, Kelton M.
Pacifica, CA

Butler, Reeda L.
Hyattsville, MD

Buzzinotti, Elaine M.
Retsof, NY

Byers, Eugene S.
New York, NY

Cameron, Patricia K.
Oceanside, CA

Camiso, Nichole
Bordentown, NJ

Carlton Jr., Emmitt H.
Capital Heights, MD

Carman, Michael L.
Ithaca, NY

Cassin, Lionel
Corpus Christi, TX

Christopher, Tracey M.
Snellville, GA

Ciervo, George A.
Gloucester City, NJ

Connor, Noelle A.
Woodbury, NJ

Corgan, Anne C.
Montgomery Village, MD

Daly, Elizabeth A.
Mendham, NJ

DePhillips, Kathleen M.
Barrington, RI

Dorris, Evanjerl
Clarksburg, MD

Endres, Dawn L.
Towson, MD

Fagan, Charles E.
Jamestown, NY

Feldman, Lori L.
Las Vegas, NV

Ferzli, Adib E.
Washington, DC

Freney, Sandra M.
Alexandria, VA

Gardner, Brian T.
Birmingham, MI

Gehring, Holly S.
Arnold, MD

Goebel, Michael J.
Akron, OH

Goellner, Alfred O.
Plano, TX

Goldberg, Joan L.
Weston, MA

Green, Angela T.
Washington, DC

Greene, Douglas C.
Arlington, TX

Grosvenor, Nicole P.
Deptford, NJ

Handel, Cheryl A.
Morristown, NJ

Harbold, Tamara M.
Buffalo, NY

Harris, William E.
Troy, NY

Haumann, William A.
Hamilton, NJ

Hawkins, James R. A.
Manassas, VA

Heit, Ellan A.
Pearl River, NY

Hill, Knut R.
Ann Arbor, MI

Hillman, Jason C.
Winchester Center, CT

Hoffman Jr., Gilbert S.
Marlton, NJ

Iacono, Michael A.
Williamsville, NY

Iwanyshyn, Roman
Miami, FL

Jargiello, David M.
Palo Alto, CA

Johnson, Michael L.
Los Angeles, CA

Katz, Joshua
Rego Park, NY

Kemp, Jeffrey M.
Coventry, VT

Koether, Jennifer S.
Warren, NJ

Koplove, Andrea B.
Santa Monica, CA

Lambert, Bernard
Newark, NJ

Lazerwitz, Alison R.
France

Lopez, David A.
Saratoga Springs, UT

Lubin, Eric H.
Brigantine, NJ

Luongo, Christopher P.
East Hanover, NJ

Madayag III, Robert A.
Marietta, GA

Marquis, David W.
Dayton, OH

McCartney, James W.
Puerto Rico

McStravick, Terrence M.
Cinnaminson, NJ

Mercer III, Henry M.
Chocowinity, NC

Merchlinski, Joshua T.
College Park, MD

Meyer, Donna J.
Rockville, MD

Michaelson, Dwight J.
Edison, NJ

Millard, Howard L.
Baltimore, MD

Mirel, Robert J.
North Miami Beach, FL

Mitchell-Wallace, Keeley P.
Raleigh, NC

Moore, Robert E.
Honolulu, HI

Morris, Cheryl A.
San Francisco, CA

Muir, Gregory R.
San Jose, CA

Nichols, Paul F.
Woodbridge, VA

Omoloyin, Esther F.
Haddon Township, NJ

Parthemer, Linda L.
Mullica Hill, NJ

Pate, Mhkeeba L.
Seattle, WA

Pemberton, Christian A.
Sicklerville, NJ

Raboin, Michael F.
Switzerland

Raff, Elliot D.
Cherry Hill, NJ

Ray, Patricia
Torrance, CA

Rebel, Jessica L.
Kansas City, MO

Ringgold, Kenisha L.
Newark, DE

Rivera, Orlando M.
Pennsauken, NJ

Rosenfeld, Maura A.
Israel

Schambelan, Joseph N.
New York, NY

Shanni, Erik.
Summit, NJ

Sheehan, Kerry A.
New York, NY

Smith, Tonya M.
Newark, NJ

Soong, Ismael C.
Taiwan

Spivak, Gayl C.
Cherry Hill, NJ

Stefel, Shari B.
Aventura, FL

Stevens, Walter S.
Vista, CA

Stollman, David M.
Wilmington, DE

Strom, Elisabeth A.
Woodbury, NJ

Taub, David L.
Riverside, CA

Tesfatsion, Menna
New York, NY

Trigoboff, Daniel
Fayetteville, NC

Tulli, Emily L.
Bridgeton, NJ

Twardzik, Lori L.
Arlington, VA

Vyas, Nita S.
New York, NY

Wachsmann, Harvey F.
Upper Brookville, NY

Walkes, Staci B.
Washington, DC

Wallace, Gregory G.
Seattle, WA

Weisenfeld, Joseph J.
Miami, FL

Whiteside, Brett T.
Wilmington, DE

Yiannopoulos II, Konstantinos
New York, NY

Zidow, Geraldine
Mount Laurel, NJ

Zitron, Jordan C.
Boca Raton, FL

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

[Pa.B. Doc. No. 09-110. Filed for public inspection January 23, 2009, 9:00 a.m.]
