

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Amendments to the Rules of Disciplinary Enforcement Relating to Proceedings Where an Attorney is Declared to be Incapacitated or Severely Mentally Disabled

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend subsection (e) of Pennsylvania Rules of Disciplinary Enforcement 301 as set forth in Annex A.

The purpose of the proposed amendments is to provide the Court with reasonable assurance that a respondent-attorney who applies for transfer to disability inactive status meets the standard for "incapacity to defend" as set forth in the Rule—that is, that the respondent-attorney has a disabling condition and that the disabling condition makes it impossible for the respondent-attorney to prepare an adequate defense to the pending disciplinary charges.

Current subsection (e) of Rule 301 is largely procedural in nature with no verified substantive component. Thus, a respondent-attorney who desires to be transferred to disability inactive status in lieu of defending a disciplinary prosecution and possible discipline need only "contend" generally "that the respondent-attorney is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to prepare an adequate defense." The current Rule does not require the respondent-attorney to identify the disabling condition or provide proof of a causal connection between the disabling condition and the respondent-attorney's ability to adequately defend against the charges in the pending disciplinary proceeding. Procedurally, the respondent-attorney need only sign his or her name to a certificate of admission of disability and file the certificate with the Supreme Court. Subsection (e) provides that upon receipt of the certificate, the Court shall enter an order immediately transferring the respondent-attorney to disability inactive status. All pending disciplinary proceedings are held in abeyance indefinitely.

The current rule's lack of substantive and procedural safeguards offers the potential for abuse. Under the current rule, a respondent-attorney, although capable of preparing a defense, might choose to file a certificate of admission of disability alleging a physical or mental impairment as a preferable alternative to defending the charges, as the filing of the certificate defers the disciplinary proceedings, and the imposition of a disciplinary sanction, indefinitely.

New subsection (e) would require that in submitting the certificate of admission of disability, the respondent-attorney identify the disability, identify the specific or approximate date of the onset or initial diagnosis of the disabling condition, explain the manner in which the

disabling condition makes it impossible for the respondent-attorney to prepare an adequate defense, attach at least one medical expert report verifying the respondent-attorney's contention of disability, and attach a signed statement verifying upon knowledge or information and belief the truth of all averments of material fact contained in the certificate. The amount of information that the respondent-attorney must provide is no greater than the amount of information that an employee claiming a disability would be required to provide to an employer. The new Rule would give the respondent-attorney the discretion to submit additional records and documents in support of the existence of the disabling condition or the respondent's contention of lack of physical or mental capacity to prepare an adequate defense.

Consistent with the purpose of providing the Court with reasonable assurance that a respondent-attorney qualifies for transfer to disability inactive status, the new Rule would provide a mechanism for Disciplinary Counsel to challenge the respondent-attorney's request. Upon application by Disciplinary Counsel and for good cause shown, the Court may take or direct such action as the Court deems necessary or proper to a determination of whether the respondent-attorney qualifies for transfer to disability inactive status, including ordering the respondent-attorney to be examined by a medical expert designated by the Court. If the court-designated expert were to arrive at a conclusion contrary to the respondent-attorney's contention of incapacitation and the respondent-attorney were to dispute that conclusion, the Court would have the discretion to remand the matter to the Disciplinary Board for a hearing to determine the respondent-attorney's competency.

Although the Court will decide the presence or absence of "good cause" on a case-by-case basis, the Board anticipates that the term will include the circumstance where the respondent-attorney's application and supporting papers do not clearly support a finding that the respondent-attorney meets the standard for "incapacity to defend," or where Disciplinary Counsel learns of extraneous facts and circumstances suggesting that the respondent-attorney has the capacity to defend.

Finally, the new Rule would articulate the prior practice of treating as confidential the certificate of admission of disability and any supporting documentation, with three exceptions: upon order of the Supreme Court; pursuant to an express written waiver by the attorney; and upon a request by the Pennsylvania Lawyers Fund for Client Security Board, which agency would have the duty under Enforcement Rule 521(a) to preserve the confidential nature of the certificate and supporting documentation. The order of the Court transferring the attorney to disability inactive status would be the only public record.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, P.O. Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382) on or before October 1, 2010.

*By The Disciplinary Board of the
Supreme Court of Pennsylvania*

ELAINE M. BIXLER,
Secretary

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 301. Proceedings where an attorney is declared to be incapacitated or severely mentally disabled.

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(e) If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to prepare an adequate defense, the respondent shall complete and file with the Court a certificate of admission of disability available to the bar through the Office of the Secretary to the Board. The respondent shall serve a copy of the certificate on the Board and disciplinary counsel. The certificate shall:

- (1) identify the precise nature of the disability and the specific or approximate date of the onset or initial diagnosis of the disabling condition;
- (2) contain an explanation of the manner in which the disabling condition makes it impossible for the respondent to prepare an adequate defense;
- (3) have appended thereto the opinion of at least one medical expert that the respondent is unable to prepare an adequate defense and a statement containing the basis for the medical expert's opinion; and
- (4) contain a statement, signed by the respondent, that all averments of material fact contained in the certificate and attachments are true upon the respondent's knowledge or information and belief and made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

The respondent may attach to the certificate affidavits, medical records, additional medical expert reports, official records, or other documents in support of the existence of the disabling condition or the respondent's contention of lack of physical or mental capacity to prepare an adequate defense.

Upon receipt of the certificate, the Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to aid effectively in the preparation of a defense or to continue to practice law in a proceeding instituted in accordance with the provisions of subdivision (d) of this rule unless the Court finds that the certificate does not comply with the requirements of this subdivision, in which case the Court may deny the request for transfer to disability inactive status or enter any other appropriate order. Before or after the entry of the order transferring the respondent to inactive status under this subdivision, the Court may, upon application by disciplinary counsel and for good cause shown, take or direct such action as the Court deems

necessary or proper to a determination of whether it is impossible for the respondent to prepare an adequate defense, including a direction for an examination of the respondent by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the respondent.

The order transferring the attorney to disability inactive status under this subdivision shall be a matter of public record. The certificate of admission of disability and attachments to the certificate shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement or disciplinary proceeding except:

- (i) upon order of the Supreme Court;
- (ii) pursuant to an express written waiver by the attorney; or
- (iii) upon a request by the Pennsylvania Lawyers Fund for Client Security Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board).

If the Court shall determine at any time that the respondent is able to aid effectively in the preparation of a defense or is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

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[Pa.B. Doc. No. 10-1623. Filed for public inspection September 3, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Court; No. 10-2426

Administrative Order No. 18-2010

And Now, this 23rd day of August, 2010, pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* adopted by the Pennsylvania Supreme Court effective July 1, 2010 and in accordance with Rule of Judicial Administration 103 (c), it is hereby

Ordered and Decreed that, effective September 1, 2010, the Carbon County Court of Common Pleas *Adopts* the following fee schedule to govern public access to the records of the Magisterial District Courts within the 56th Judicial District.

- 1. Copying per page—\$.25;
- 2. Preparing, copying and re-filing requested court documents—\$8.00 per 1/4 hour with no fee charged for the first fifteen minutes;
- 3. Postage at actual cost;
- 4. Estimated costs are to be prepaid; any outstanding difference between the actual and estimated costs shall be paid before delivery of the requested materials;

5. Fees paid for services rendered are nonrefundable; and

6. All monies generated from the above are to be transferred to the County of Carbon General Fund.

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

1. File one (1) certified copy of this Administrative Order and Local Rules with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) computer diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the 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 Administrative Order and Local Rule in the Prothonotary's Office.

By the Court

ROGER N. NANOVIC,
President Judge

[Pa.B. Doc. No. 10-1624. Filed for public inspection September 3, 2010, 9:00 a.m.]

McKEAN COUNTY

Promulgation of Civil Local Rule L1940.1; Civil Division; No. 158 December Term 1904

Order

And Now, this 31st day of July, 2010, the Court *Orders* the following:

1. Local Rule of Civil Procedure L1940.1 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 Rule 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 Domestic Relations Procedural Rules Committee;

d. Keep continuously available for public inspection copies of this *Order* and the pertinent Rule.

By the Court

JOHN H. PAVLOCK,
President Judge

Rule L1940.1. Contested Child Custody Cases—Mediation Referral Procedure.

1. Except as further modified by these rules, all parties in a contested custody action are required to attend a

Child Custody Orientation Session/Conference and Child Custody Mediation. Except as further modified in these rules, all pleadings raising an issue of child custody shall be forwarded by the Prothonotary's Office to the Family Law Master's Office for the scheduling of the Orientation Session/Conference and Mediation. The Family Law Master's Office shall schedule the Orientation Session/Conference no later than thirty (30) days from the date of the filing of the pleading raising a child custody issue. The Family Law Master's Office shall schedule Mediation no later than forty five (45) days after the Custody Orientation Session/Conference.

2. During the Orientation Session/Conference the custody mediator shall explain the custody mediation process and the custody litigation process to the parties. The mediator shall make sure that all parties have received the McKean County Custody Information Packet outlined in paragraph 4 of this Rule. Further, the mediator shall assure him/herself that the parties understand the custody litigation process and their rights and obligations. The mediator shall also obtain from the parties their completed McKean County Custody Background Information form described in paragraph 4 of this Order. After the mediator meets with the parties and provides them with general information, the parties and their counsel shall meet for a conference, without the mediator present, and discuss which aspects of their case can be stipulated/agreed upon and which areas remain in dispute. After this conference between the parties they shall report back to the mediator and inform him/her of the status of the case. If a complete agreement is reached, the mediator shall assist the parties in documenting its terms so that they can be presented to the Court for their adoption as an Order of Court. At the mediators discretion, the conference portion of the Initial Orientation Session/Conference can be waived if counsel for the parties demonstrates that the parties had already met and conferenced the case and further conference would not be productive.

3. Custody mediation shall be conducted by a Custody Mediator appointed by the Court. The purpose of the mediation session is to provide a nonadversarial forum for the parties to attempt to work out their disputes regarding child custody issues and reach an agreement that can be adopted by the Court. If the parties reach an agreement the mediator shall reduce said agreement into writing and have the parties sign it. The mediator shall then forward the parties' agreement to the Court and the Court shall, if it deems appropriate to do so, adopt its terms as a binding Order of Court.

4. Within seven days of the filing of a pleading raising a child custody issue, the McKean County Prothonotary's office shall forward a McKean County Custody Information Packet to all parties named in said action (to counsel or, if a party is pro se, directly to said party). This information packet shall be developed by the Family Law Master's Office and the Court in consultation with the Prothonotary and the McKean County Bar Association. It shall be modified from time to time as the Court deems appropriate. In general, said information packet shall contain a summary of the McKean County custody and mediation process and the factors and standard that the Court must consider when addressing a custody dispute. Said packet shall specifically advise the parties of the

information set forth at Pa.R.C.P. 1940.5(a)(1)—(6) and 1940.5(b). Counsel shall assure that their clients receive, in a timely manner, the McKean County Custody Information Packet. Included in every Custody Information Packet shall be a McKean County Custody Background Information form. This form shall be developed by the Family Law Master's Office and the Court in consultation with the McKean County Bar Association. In general, this form shall request basic information to assist the custody mediator including, but not limited to, the name, age and address of the parties and children, a summary of the custody arrangement for the child(ren), and an outline of the request of each party regarding child custody. The parties shall be required to complete this form and return it to the Family Law Master's Office at the time of their scheduled Orientation Session/Conference. The Custody Information Packet shall also include the Notice of Bar to Conference/Mediation Form outlined in paragraph 3 of this Order.

5. Included in the McKean County Custody Information packet provided to the parties shall be a Notice of Bar to Conference/Mediation Form. This Form shall contain the language set forth in 23 Pa.C.S. § 3901(c)(2) which bars the Orientation Session/Conference and Mediation if a party or a child of either party is or has been the subject of domestic violence or child abuse either during the pendency of the action or within 24 months preceding the filing of the action. This form shall also include instructions to each party that, if he/she asserts that domestic violence and/or child abuse has occurred and, therefore, he/she requests that the Orientation Session/Conference and Mediation be barred, he/she shall sign the pre-printed request located at the bottom of the Notice and promptly return it to the Family Law Master's Office. If the Family Law Master's Office receives this signed form back, or a request is otherwise made to invoke the provisions of 23 Pa.C.S. § 3901(c)(2), the matter shall be referred to the Court and an Orientation Session/Conference and Mediation shall not be scheduled for that case.

6. If the parties do not reach an agreement after custody mediation, or the case is referred directly to the Court without mediation having been held, custody evaluations will not be ordered unless: A) the mediator recommends that a custody evaluation occur and the Court adopts this recommendation; or, B) one or both of the parties files a written motion requesting that a custody evaluation be ordered and the Court grants this request; or, C) the Court believes that an evaluation is warranted and therefore orders one. If the parties do not mutually agree on an evaluator to conduct the custody evaluation, then they shall so notify the Court. Further, each party shall provide the Court with the names of two suggested and properly qualified evaluators. The Court will then issue an order appointing a custody evaluator. If the Court orders that a custody evaluation occur, then McKean County shall initially pay the evaluator for his reasonable costs and the parties shall each reimburse the County for one-half (1/2) of the total costs.

7. As authorized by 23 Pa.C.S. § 3902(a), an additional filing fee of \$20.00 shall be assessed for the filing of every divorce and custody complaint, including any petition to modify an existing custody order. This fee shall be paid to McKean County as reimbursement for McKean County's mediation program.

8. As authorized by 23 Pa.C.S. § 3902(b), as reimbursement to McKean County for the cost of mediation, whenever mediation is scheduled each party shall pay

one-half (1/2) of a \$400.00 mediation fee (each party to pay \$200.00). This \$200.00 fee shall be paid at the conclusion of the Orientation Session/Conference if the mediator concludes that the parties have been unable to reach a complete agreement and it is therefore necessary to schedule the case for custody mediation (paid to Family Law Master's Office before parties leave the Orientation Session/Conference).¹ The Family Law Master's Office shall, within seven (7) days of payment of the mediation fee (or waiver of the fee), schedule a date for mediation. The Family Law Master's Office shall strive to schedule mediation within forty five (45) days of when the parties have each paid the mediation fee or the fee has been waived. Under no circumstances shall mediation be scheduled any later than sixty (60) days from payment or waiver of the mediation reimbursement fee. If the parties reach a complete and written custody agreement that resolves the need for custody mediation, and said agreement is provided to the mediator at least ten (10) days prior to the scheduled mediation date, then the parties shall be refunded \$150.00 of the \$200.00 mediation fee that they had paid. If a party fails to pay the mediation reimbursement fee at the conclusion of the Orientation Session/Conference, the matter shall be scheduled for a contempt hearing for failure to pay.

[Pa.B. Doc. No. 10-1625. Filed for public inspection September 3, 2010, 9:00 a.m.]

WESTMORELAND COUNTY

Adoption of Rule WJ510: Magisterial District Court Records; No. 3 of 2010

Administrative Order

And Now this 18th day of August, 2010 *It Is Hereby Ordered*, pursuant to the Public Access Policy of the United Judicial System Magisterial District Court Records, that Westmoreland County Rule of Judicial Administration WJ510 is adopted and effective 30 days after publication in the *Pennsylvania Bulletin*:

By the Court

JOHN E. BLAHOVEC,
President Judge

Rule WJ510. Public Access of Official Case Records in the Magisterial District Courts.

A. The following are the fees to be charged for accessing and copying case records in the Westmoreland County magisterial district courts:

1. \$0.25 per page copied (No fee shall be charged to a party for copies of their own case records).

2. \$8.00 for each completed quarter (1/4) hour associated with the preparation, copying and re-filing of requested court records (This fee is only for bulk requests and shall not be charged if service time is less than 15 minutes).

B. Fees paid for services are non-refundable.

C. Pre-payment of estimated costs for services may be required at the discretion of the magisterial district court judge.

[Pa.B. Doc. No. 10-1626. Filed for public inspection September 3, 2010, 9:00 a.m.]

¹ At the discretion of the mediator, this fee can be waived if a party petitions for and receives in forma pauperas status by the Court.