THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 19]

Adoption of Rule 1910 of the Rules of Judicial Administration; No. 420 Judicial Administration Doc.

Order

Per Curiam

And Now, this 8th day of January, 2014, *It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910 of the Pennsylvania Rules of Judicial Administration is adopted in the following form.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. No. 103, the immediate promulgation of Pa.R.J.A. No. 1910 is found to be in the interest of efficient administration.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on July 1, 2014.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

BROADCASTING IN THE COURTROOM

Rule 1910. Broadcasting in the Courtroom.

Unless otherwise provided by the Supreme Court of Pennsylvania, judges should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

A. the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;

B. the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

C. the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(1) the means of recording will not distract participants or impair the dignity of the proceedings; and

(2) the parties have consented; and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and

(3) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(4) the reproduction will be exhibited only for instructional purposes in educational institutions; or

D. the use of electronic broadcasting, televising, recording and taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions of any trial court nonjury civil proceeding, however, for the purposes of this subsection, "civil proceedings" shall not be construed to mean a support, custody or divorce proceeding. Subsection C and D shall not apply to nonjury civil proceedings as heretofore defined. No witness or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such witness or party be broadcast or telecast. Permission for the broadcasting, televising, recording and photographing of any civil nonjury proceeding shall have first been expressly granted by the judge, and under such conditions as the judge may prescribe in accordance with the guidelines contained in this rule.

Note:

Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

See the Internal Operating Procedures of the Supreme Court of Pennsylvania and the Commonwealth Court of Pennsylvania regarding broadcasting of proceedings by the Pennsylvania Cable Network.

In implementing this rule, the following guidelines shall apply:

a. *Officers of Court.* The judge has the authority to direct whether broadcast equipment may be taken within the courtroom. The broadcast news person should advise the tipstaff prior to the start of a court session that he or she desires to electronically record and/or broadcast live from within the courtroom. The tipstaff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or tipstaff, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.

b. *Pooling.* Unless the judge directs otherwise, no more than one TV camera should be taking pictures in the courtroom at any one time. Where coverage is by both radio and TV, the microphones used by TV should also serve for radio and radio should be permitted to feed from the TV sound system. Multiple radio feeds, if any, should be provided by a junction box outside of the courtroom, such as in the adjacent public hallway. It should be the responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to who will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

Broadcast coverage outside the courtroom should be handled with care and discretion, but need not be pooled.

c. *Broadcast Equipment.* All running wires used should be securely taped to the floor. All broadcasting equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient file and/or tape capacities should be provided to obviate film and/or tape changes except during court recess. No camera should give any indication of whether it is or is not operating, such as the red light on some studio cameras. No additional lights should be used without the specific approval of the presiding judge, and then only as he may specifically approve.

d. *Decorum.* Broadcast representatives' dress should not set them apart unduly from other trial spectators. Camera operators should not move tripod-mounted cameras except during court recesses. All broadcast equipment should be in place and ready to function no less than five minutes before the beginning of each session of court.

[Pa.B. Doc. No. 14-171. Filed for public inspection January 24, 2014, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 33]

Rescission of Former Code of Judicial Conduct and Adoption of Code of Judicial Conduct of 2014; No. 419 Judicial Administration Doc.

Order

Per Curiam

And Now, this 8th day of January, 2014, *It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the existing provisions of the Code of Judicial Conduct are rescinded effective July 1, 2014, and new Canons 1 through 4 of the Code of Judicial Conduct of 2014 and the corresponding Rules are adopted in the following form.

To the extent that notice of proposed rulemaking would otherwise be required by Pa.R.J.A. No. 103, the immediate promulgation of the Code of Judicial Conduct of 2014 is found to be in the interests of justice and efficient administration.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the Code of Judicial Conduct of 2014 shall be effective on July 1, 2014. A person to whom the Code of Judicial Conduct of 2014 becomes applicable shall comply with all provisions of that Code by July 1, 2014 except for Rules 3.4, 3.7, 3.8 and 3.11; such persons shall comply with Rules 3.4, 3.7, 3.8 and 3.11 as soon as reasonably possible and shall do so in any event by July 1, 2015.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 33. CODE OF JUDICIAL CONDUCT

Subchapter A. CANONS

(*Editor's Note*: The current Code of Judicial Conduct which appears in 207 Pa. Code pages 33-1—33-12, serial pages (334829), (334830), (358463)—(358466), (319845)—(319848), (333491), (360121) and (360122) is replaced with the following Code of Judicial Conduct of 2014.)

Canon

1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Preamble

(1) This Code shall constitute the "canon of . . . judicial ethics" referenced in Article V, Section 17(b) of the Pennsylvania Constitution, which states, in pertinent part: "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the (Pennsylvania) Supreme Court."

(2) An independent, fair, honorable and impartial judiciary is indispensable to our system of justice. The Pennsylvania legal system is founded upon the principle that an independent, fair, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society. The judiciary consequently plays a fundamental role in ensuring the principles of justice and the rule of law. The rules contained in this Code necessarily require judges, individually and collectively, to treat and honor the judicial office as a public trust, striving to preserve and enhance legitimacy and confidence in the legal system.

(3) Judges should uphold the dignity of judicial office at all times, avoiding both impropriety and the appearance of impropriety in their professional and personal lives. They should at all times conduct themselves in a manner that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence.

(4) The Pennsylvania Code of Judicial Conduct denotes standards for the ethical behavior of judges and judicial candidates. It is not an all-encompassing model of appropriate conduct for judges and judicial candidates, but rather a complement to general ethical standards and other rules, statutes and laws governing such persons' judicial and personal conduct. The Code is designed to assist judges in practicing the highest standards of judicial and personal conduct and to establish a basis for disciplinary agencies to regulate judges' conduct.

(5) The Rules of this Code of Conduct are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

(6) Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion. Moreover, it is not intended that disciplinary action would be appropriate for every violation of the Code's provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge,

whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

(7) This Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

(8) The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

(9) In 2014, this Code was reformatted and revised in material respects, upon guidance taken from the 2011 edition of the American Bar Association's Model Code of Judicial Conduct, other states' codes, and experience.

Terminology

Aggregate—In relation to contributions for a candidate, includes contributions in cash or kind made directly to a candidate's campaign committee or indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent.

Appropriate authority—The authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

Contribution—Both financial and in-kind contributions, such as professional or volunteer services, advertising, and other assistance, which if otherwise obtained, would require a financial expenditure.

Domestic partner—A person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

Economic interest—More than a *de minimis* legal or equitable ownership interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

Fiduciary—Includes relationships such as executor, administrator, trustee, or guardian.

Impartial, impartiality, impartially—Absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

Impending matter—A matter that is imminent or expected to occur in the near future.

Impropriety—Includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

Independence—A judge's freedom from influence or controls other than those established by law or Rule.

Integrity—Probity, fairness, honesty, uprightness, and soundness of character.

Judicial candidate—Any person, including a sitting judge, who is seeking appointment, election or retention to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.

Knowingly, knowledge, known, and knows—Actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

Law—Refers to constitutional provisions, statutes, decisional law, Supreme Court Rules and directives, including this Code of Judicial Conduct and the Unified Judicial System Policy of Non-Discrimination and Equal Opportunity, and the like which may have an effect upon judicial conduct.

Member of the candidate's family—The spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

Member of the judge's family—The spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

Member of the judge's family residing in the judge's household—Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

Nonpublic information—Information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentence reports, dependency cases, or psychiatric reports.

Party—A person or entity who has a legal interest in a court proceeding.

Pending matter—A matter that has commenced and continuing on until final disposition.

Personally solicit—A direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication.

Political organization—A political party or group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office, excluding a judicial candidate's campaign committee created as authorized by this Code.

Public election—Includes primary, municipal, and general elections, partisan elections, nonpartisan elections, and retention elections.

Third degree of relationship—Includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

Application

(1) The provisions of this Code shall apply to all judges as defined in paragraph (2) *infra*.

(2) A judge within the meaning of this Code is any one of the following judicial officers who perform judicial functions, whether or not a lawyer: all Supreme Court Justices; all Superior Court Judges; all Commonwealth Court Judges; all Common Pleas Court Judges; all judges of the Philadelphia Municipal Court, except for Traffic Division; and all senior judges as set forth in (3) *infra*.[1]

(3) All senior judges, active or eligible for recall to judicial service, shall comply with the provisions of this Code; provided however, a senior judge may accept extrajudicial appointments which are otherwise prohibited by Rule 3.4 (Appointments to Governmental Positions and Other Organizations); and incident to such appointments a senior judge is not required to comply with Rule 3.2 (Appearances Before Governmental Bodies and Consultation with Government Officials). However, during the period of such extrajudicial appointment the senior judge shall refrain from judicial service.

(4) Canon 4 (governing political and campaign activities) applies to all judicial candidates.

(5) This Code shall not apply to magisterial district judges and judges of the Philadelphia Municipal Court, Traffic Division.[2]

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule
1.1. Compliance with the Law.
1.2. Promoting Confidence in the Judiciary.
1.3. Avoiding Abuse of the Prestige of Judicial Office.

Rule 1.1. Compliance with the Law.

A judge shall comply with the law, including the Code of Judicial Conduct.

Comment:

This Rule concerns a judge's duty to comply with the law. For a judge's duty to uphold and apply the law in judicial decision-making, see Rule 2.2 and Comment (3) to Rule 2.2.

Rule 1.2. Promoting Confidence in the Judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment:

(1) Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

(2) A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

(3) Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

(4) Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

(5) "Impropriety" is a defined term in the Terminology Section of the Code. Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. This test differs from the formerly applied common law test of whether "a significant minority of the lay community could reasonably question the court's impartiality."

(6) Judges are encouraged to initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office.

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment:

(1) It is improper for a judge to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business. A judge should also not lend the prestige of his or her office to advance the private interests of others, nor convey or knowingly permit others to convey the impression that they are in a special position to influence the judge.

(2) A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

(3) Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

(4) Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials

[1] Though not covered by this Code, there is a Code of Conduct for Employees of the Unified Judicial System ("Employee Code"). It applies to "employees" defined as, "Employees of the Unified Judicial System" and includes 1) all state-level court employees, and 2) all county-level court employees who are under the supervision and authority of the President Judge of a Judicial District of Pennsylvania, unless otherwise indicated by Supreme Court order or rule. This Code and the Employee Code do not apply to nonemployee special masters, commissioners, and judges *pro tem*.

[2] Specific rules governing standards of conduct of magisterial district judges, and judges of the Philadelphia Municipal Court, Traffic Division, are set forth in the Supreme Court Rules Governing Standards of Conduct of Magisterial District Judges.

to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising and promotion of such writing to avoid such exploitation.

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule
2.1. Giving Precedence to the Duties of Judicial Office.
2.2. Impartiality and Fairness.
2.3. Bias, Prejudice, and Harassment.
2.4. External Influences on Judicial Conduct.
2.5. Competence, Diligence and Cooperation.
2.6. Ensuring the Right to Be Heard.
2.7. Responsibility to Decide.
2.8. Decorum, Demeanor, and Communication with Jurors.
2.9. Ex parte Communications.
2.10. Judicial Statements on Pending and Impending Cases.
2.11. Disqualification.
2.12. Supervisory Duties.
2.13. Administrative Appointments.
2.14. Disability and Impairment.
2.15. Responding to Judicial and Lawyer Misconduct.
2.16. Cooperation with Disciplinary Authorities.

Rule 2.1. Giving Precedence to the Duties of Judicial Office.

The duties of judicial office, as prescribed by law, shall ordinarily take precedence over a judge's personal and extrajudicial activities.

Comment:

(1) A judge's personal and extrajudicial activities should be arranged so as not to interfere unreasonably with the diligent discharge of the Judge's duties of office.

(2) To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.

(3) Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the administration of justice.

Rule 2.2. Impartiality and Fairness.

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment:

(1) To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

(2) Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. This comment is not intended to restrict the appropriate functions of the courts in statutory or common law review.

(3) When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

(4) It is not a violation of this Rule for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters heard fairly and impartially.

Rule 2.3. Bias, Prejudice, and Harassment.

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment:

(1) A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

(2) Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

(3) Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

(4) Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

(5) The Supreme Court's Rules and Policies, e.g., the Rules of Judicial Administration and the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity, have continued force and effect.

Rule 2.4. External Influences on Judicial Conduct.

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment:

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judi-

ciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5. Competence, Diligence and Cooperation.

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment:

(1) Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

(2) A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

(3) Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end. The obligation of this Rule includes, for example, the accurate, timely and complete compliance with the requirements of Pa.R.J.A. No. 703 (Reports of Judges) where applicable.

(4) In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6. Ensuring the Right to Be Heard.

(A) A judge shall accord to every person or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment:

(1) The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

(2) The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement procedure for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

(3) Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether recusal may be appropriate. See Rule 2.11(A)(1).

Rule 2.7. Responsibility to Decide.

A judge shall hear and decide matters assigned to the judge, except where the judge has recused himself or herself or when disqualification is required by Rule 2.11 or other law.

Comment:

(1) Judges shall be available to decide the matters that come before the court. Although there are times when disqualification or recusal is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge should not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

(2) This Rule describes the duty of a judge to decide matters assigned to the judge. However, there may be instances where a judge is disqualified from presiding over a particular matter or shall recuse himself or herself from doing so. A judge is disqualified from presiding over a matter when a specified disqualifying fact or circumstance is present. *See* Rule 2.11. The concept of recusal envisioned in this Rule overlaps with disqualification. In addition, however, a judge may recuse himself or herself from presiding over a matter even in the absence of a disqualifying fact or circumstance where—in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters—the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required. This test differs from the formerly applied common law test of whether "a significant minority of the lay community could reasonably question the court's impartiality."

(3) A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification or recusal, even if the judge believes there is no proper basis for disqualification or recusal.

Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize the verdict of the jury other than in a court order or opinion in a proceeding. This Rule does not prohibit a judge from expressing appreciation to the jurors for their service to

the judicial system and to the community. Judges are expected to maintain their supervisory role over a deliberating jury.

Comment:

(1) The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(2) Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(3) A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9. Ex parte Communications.

(A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility to decide the matter personally.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

(E) It is not a violation of this Rule for a judge to initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, a judge may assume a more interactive role with the parties, treatment providers, probation officers, social workers, and others.

Comment:

(1) To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(2) Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

(3) The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

(4) A judge shall avoid comments and interactions that may be interpreted as *ex parte* communications concerning pending matters or matters that may appear before the court, including a judge who participates in electronic social media.

(5) A judge may consult with other judges on pending matters, but must avoid *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

(6) The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

(7) A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

(8) In order to obtain the protection afforded to *ex parte* communication under paragraph (E) of this Rule, a judge should take special care to make sure that the participants in such voluntary special court programs are made aware of and consent to the possibility of *ex parte* communications under paragraph (E).

Rule 2.10. Judicial Statements on Pending and Impending Cases.

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment:

(1) This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. A judge should be mindful that comments of a judge regarding matters that are pending or impending in any court can sometimes affect the outcome or impair the fairness of proceedings in a matter. See Rule 1.2.

(2) This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

(3) Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

(4) This Rule is not intended to impede a judge from commenting upon legal issues or matters for pedagogical purposes.

Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer. In doing so, the judge should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement for transportation, lodging, hospitality or other expenses is equal to or less than the amount required to be reported as a gift on a judge's Statement of Financial Interest.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment:

(1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

(5) A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

Rule 2.12. Supervisory Duties.

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment:

(1) A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

(2) Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly. Determinations of the local board of judges in each county, and/or the Supreme Court, will determine whether the President Judge of the county has the supervisory authority contemplated herein.

Rule 2.13. Administrative Appointments.

(A) In making administrative appointments and hiring decisions, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, or the lawyer's spouse or domestic partner, has contributed as a major donor within the prior two years to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless:

(1) the position is substantially uncompensated;

(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or

(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment:

(1) The concept of "appointment" includes hiring decisions. Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

(2) Nepotism is the appointment of a judge's spouse or domestic partner, or any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

(3) The rule against making administrative appointments of lawyers who have contributed as a major donor to a judge's campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.

Rule 2.14. Disability and Impairment.

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment:

(1) "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

(2) Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Rule 2.15. Responding to Judicial and Lawyer Misconduct.

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Pennsylvania Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Pennsylvania Rules of Professional Conduct shall take appropriate action.

Comment:

(1) Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate

authority or other agency or body the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

(2) A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16. Cooperation with Disciplinary Authorities.

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment:

Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule

Rule 3.1. Extrajudicial Activities in General.

Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this Canon. However, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would reasonably appear to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would reasonably appear to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment:

(1) To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

(2) Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

(3) Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

(4) While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive.

(5) Paragraph (E) of this Rule is not intended to prohibit a judge's occasional use of office resources, such as a telephone, for personal purposes.

Rule 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials.

A judge shall not make a presentation to a public hearing before, or otherwise consult with, an executive or legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting *pro se* in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

(D) a judge may consult with and make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, or the administration of justice.

Comment:

(1) Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

(2) In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(3) In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3. Testifying as a Character Witness.

Reserved.

Comment:

In Pennsylvania, this subject matter is addressed in Rule of Judicial Administration 1701(e).

Rule 3.4. Appointments to Governmental Positions and Other Organizations.

(A) A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

(B) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds but may attend fundraising events for such organizations.

(C) Senior judges eligible for recall to judicial service may accept extrajudicial appointments not permitted by Rule 3.4(B) but during the term of such appointment shall refrain from judicial service.

Comment:

(1) Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

(2) A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a governmental position.

Rule 3.5. Use of Nonpublic Information.

Nonpublic information acquired by judges in their judicial capacity shall not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

Comment:

(1) In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

(2) This Rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of the judge's family, court personnel, other judicial officers or other persons if consistent with other provisions of this Code.

Rule 3.6. Affiliation with Discriminatory Organizations.

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Comment:

(1) A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

(2) An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

(3) When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

(4) A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

(5) This Rule does not apply to national or state military service.

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities.

(A) Avocational activities. Judges may write, lecture, teach, and speak on non-legal subjects and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of their office or interfere with the performance of their judicial duties.

(B) Civic and Charitable Activities. Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not personally solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fundraising events that are not for the advancement of the legal system, but may attend such events.

(3) A judge shall not give investment advice to such an organization.

(C) Notwithstanding any of the above, a judge may encourage lawyers to provide *pro bono publico* legal services.

Comment:

(1) The nature of many outside organizations is constantly changing and what may have been innocuous at one point in time may no longer be so. Cases in point are boards of hospitals and banks. Judges must constantly be vigilant to ensure that they are not involved with boards of organizations that are often before the court.

(2) Judges are also cautioned with regard to organizations of which they were members while in practice, and/or in which they remain members, such as the District Attorney's organization, the Public Defender's organization, and MADD, as examples only. Review should be made to make sure that a reasonable litigant appearing before the judge would not think that membership in such an organization would create an air of partiality on the part of the tribunal.

Rule 3.8. Fiduciary Activities.

A judge shall not serve as the executor, administrator, trustee, guardian, attorney in fact, or other personal representative or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. As family fiduciaries judges are subject to the following restrictions:

(A) They shall not serve if it is likely that as fiduciaries they will be engaged in proceedings that would ordinarily come before them, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(B) While acting as fiduciaries judges are subject to the same restrictions on financial activities that apply to them in their personal capacity.

(C) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment:

(1) Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if divesting the trust of holdings that place the judge in violation of Rule 3.1 of this Code would result in detriment to the trust.

(2) The Effective Date of Compliance provision of this Code, found at No. 419 Judicial Administration Docket, qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

Rule 3.9. Service as Arbitrator or Mediator.

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Comment:

This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Rule 3.10. Practice of Law.

A judge shall not practice law. A judge may act *pro se* in a legal action in which he or she is personally involved, and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum. Such limited practice is also subject to the disclosure of employment within the Unified Judicial System to the parties and the court in which the judge represents himself or herself. A judge is not prohibited from practicing law pursuant to military service, if the judge is otherwise permitted by law to do so.

Comment:

A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before and dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

Rule 3.11. Financial Activities.

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

Comment:

(1) Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

(2) As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule. Alternatively, a jurist may place such investments or other financial interests in a blind trust or similarly protective financial vehicle. So long as continuation will not interfere with the proper performance of judicial duties, a judge serving as an officer or director otherwise precluded by Rule 3.11(B), may complete the term of service if such may be accomplished in twelve months or less.

(3) Pursuant to Order No. 231, Magisterial Docket No. 1 (June 1, 2006), no judge shall have a financial interest, as defined by Section 1512(B) of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. § 1101 et seq.), in or be employed, directly or indirectly, by any licensed racing entity or licensed gaming entity, or any holding, affiliate, intermediary or subsidiary company thereof or any such applicant, or engage in the active ownership or participate in the management of any such entities and related companies. The term "judge" shall include justices, judges of the Superior Court, judges of the Commonwealth Court, judges of the Courts of Common Pleas and judges of the Philadelphia Municipal Court, but shall not include lawyers and non-lawyers performing judicial functions, including but not limited to masters and arbitrators, for the Unified Judicial System.

Rule 3.12. Compensation for Extrajudicial Activities.

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Comment:

(1) A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

(2) Compensation derived from extrajudicial activities shall be subject to public reporting. See Rule 3.15.

Rule 3.13. Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a

lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(D) A judge must report, to the extent required by Rule 3.15, gifts, loans, bequests, benefits, or other things of value received by the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Comment:

(1) Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as a means to influence the judge's decision in a case. Rule 3.13 restricts the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) and (D) to publicly report it.

(2) Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

(3) Businesses and financial institutions frequently offer special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was offered to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

(4) Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. This concern is reduced if the judge merely incidentally benefits from a gift or benefit given to such other persons. A judge should, however, inform family and household members of the restrictions imposed upon judges, and urge them to consider these restrictions when deciding whether to accept such gifts or benefits.

(5) Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

Rule 3.14. Reimbursement of Expenses and Waivers of Fees or Charges.

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses, waivers, partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

Comment:

(1) Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to maintain competence in the law. This Code also permits and supports participation in a variety of other extrajudicial activity.

(2) Often, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, sometimes including reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must reasonably obtain and consider information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

(3) A judge must be confident that acceptance of reimbursement or fee waivers would not reasonably undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or a bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is restricted to programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational, rather than recreational, and whether the costs of the

event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed exclusively for judges.

Rule 3.15. Reporting Requirements.

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $250; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $650.

(B) When public reporting is required by paragraph (A), a judge shall report:

(1) the date, place, and nature of the activity for which the judge received any compensation;

(2) the date and description of any gift, loan, bequest, benefit, or other thing of value accepted;

(3) the date and source of any reimbursement of expenses or waiver or partial waiver of fees or charges; and

(4) the date and source of any gifts, loans, bequests, benefits, or other things of value received by the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(C) The public report required by paragraph (A) shall be made at the filing due date for the Pennsylvania Supreme Court Statement of Financial Interest.

(D) Reports made in compliance with this Rule shall be filed as public documents on the Pennsylvania Supreme Court Statement of Financial Interest form.

Canon 4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rule
4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.
4.2. Political and Campaign Activities of Judicial Candidates in Public Elections.
4.3. Activities of Candidates for Appointive Judicial Office.
4.4. Campaign Committees.
4.5. Activities of Judges Who Become Candidates for Nonjudicial Office.

Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or a candidate for any public office;

(3) publicly endorse or publicly oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) use or permit the use of campaign contributions for the private benefit of the judge or others;

(7) use court staff, facilities, or other court resources in a campaign for judicial office;

(8) knowingly or with reckless disregard for the truth make any false or misleading statement;

(9) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court;

(10) engage in any political activity on behalf of a political organization or candidate for public office except on behalf of measures to improve the law, the legal system, or the administration of justice; or

(11) in connection with cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Comment:

General Considerations

(1) Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the extent reasonably possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

(2) When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct. These Rules do not prohibit candidates from campaigning on their own behalf, from endorsing or opposing candidates for the same judicial office for which they are a candidate, or from endorsing candidates for another elective judicial office appearing on the same ballot. See Rules 4.2(B)(2) and 4.2(B)(3). Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

Participation in Political Activities

(3) Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

(4) Paragraphs (A)(2) and (A)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

(5) Although members of the families of judges and judicial candidates are free to engage in their own political activity, including becoming a candidate for public office, there is no "family exception" to the prohibition in Rule 4.1(A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

(6) Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

(7) The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

(8) Rule 4.1(A)(11) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(9) The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine whether the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

(10) A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

(11) Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(11) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(11), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

Rule 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections.

(A) A judicial candidate in a public election shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by this Rule.

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot;

(4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(5) seek, accept, or use endorsements from any person or organization;

(6) contribute to a political organization or candidate for public office;

(7) identify himself or herself as a member or candidate of a political organization; and

(8) use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office.

(C) A judge who is a candidate for elective judicial office shall not:

(1) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(2) use or permit the use of campaign contributions for the private benefit of the candidate or others;

(3) use court staff, facilities, or other court resources in a campaign for judicial office except that a judge may use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis for other candidates for such office;

(4) knowingly or with reckless disregard for the truth, make, or permit or encourage his or her campaign committee to make, any false or misleading statement; or

(5) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.

Comment:

General Considerations

(1) Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office.

(2) Despite paragraph (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (11), and Rule 4.2(C), paragraph (4).

(3) In public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

(4) Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

(5) For purposes of paragraph (B)(3), candidates are considered to be a candidate for the same judicial office if they are competing for a single judgeship or for one of several judgeships on the same court to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

Statements and Comments Made During a Campaign for Judicial Office

(6) Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(4) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

(7) Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (C)(4) or (C)(5), or Rule 4.1, paragraph (A)(11), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

(8) Subject to paragraph (C)(5), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

(9) Paragraph (C)(5) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Rule 4.3. Activities of Candidates for Appointive Judicial Office.

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

Comment:

When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(11).

Rule 4.4. Campaign Committees.

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, including seeking, accepting, and using endorsements from any person or organization, subject to the provisions of this Code. The candidate shall take reasonable steps to cause his or her campaign committee to comply with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall take reasonable steps to cause the judge's campaign committee:

(1) to solicit and accept only such campaign contributions as are permitted by law or Rule;

(2) not to solicit or accept contributions earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a

candidate for such office, and all fundraising activities in connection with such judicial campaign shall terminate no later than the last calendar day of the year in which the judicial election is held; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Secretary of the Commonwealth a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding $250 and the name and address of each person who has made campaign contributions to the committee in an aggregate value exceeding $50. The report must be filed not later than thirty days following an election, or within such other period as is provided by law.

Comment:

(1) Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.2(C)(1). This Rule recognizes that in Pennsylvania, judicial campaigns must raise campaign funds to support their candidates, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

(2) Campaign committees may solicit, accept, and use campaign contributions and endorsements, and may generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

(3) At the start of a campaign, the candidate should instruct the campaign committee to solicit or accept only such contributions as are in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification or recusal if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office.

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

(C) Notwithstanding Rule 4.5(A) and (B) a judge may continue to hold a judicial office while being a candidate for election to serve or while serving as a delegate to a state constitutional convention if the judge is otherwise permitted by law to do so.

Comment:

(1) In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

(2) The "resign to run" rule set forth in paragraph (A) is required by Article V, Section 18(d)(4) of the Pennsylvania Constitution, which states: "A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office." It ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Pa.B. Doc. No. 14-172. Filed for public inspection January 24, 2014, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 9, 11, 13 AND 33]

Proposed Amendments to Pa.Rs.A.P. 120, 121, 907, 1112, 1311 and 3304

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 120, 121, 907, 1112, 1311, and 3304. The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold while deleted material is bold and bracketed.

All communications in reference to the proposed amendment should be sent no later than February 24, 2014 to:

Dean R. Phillips, Chief Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, Pennsylvania 17106-2635
or Fax to
(717) 231-9551
or E-Mail to
appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court
Procedural Rules Committee

HONORABLE RENÉE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 120. Entry of Appearance.

[(a) *Filing.*—]Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted on the docket as counsel pursuant to Rules 907(b), 1112(f), 1311(d)**,** or 1514(d). New counsel appearing for a party after docketing pursuant to Rules 907(b), 1112(f), 1311(d), or 1514(d) shall file an entry of appearance **[simultaneous] simultaneously** with or prior to the filing of any papers signed by new counsel. The entry of appearance shall specifically designate each party the attorney represents**,** and the attorney shall file a certificate of service pursuant to **[Subdivision] paragraph** (d) of Rule 121 and **to** Rule 122. Where new counsel enters an appearance on behalf of a party currently represented by counsel and there is no simultaneous withdrawal of appearance, new counsel shall serve the party that new counsel represents and all other counsel of record and file a certificate of service.

* * * * *

Rule 121. Filing and Service.

(a) *Filing.*—Papers required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules, filing shall not be timely unless the papers are received by the prothonotary within the time fixed for filing. If an application under these rules requests relief which may be granted by a single judge, a judge in extraordinary circumstances may permit the application and any related papers to be filed with that judge. In that event the judge shall note thereon the date of filing and shall thereafter transmit such papers to the clerk.

[A pro se filing submitted by a prisoner incarcerated in a correctional facility is deemed filed as of the date it is delivered to the prison authorities for purposes of mailing or placed in the institutional mailbox, as evidenced by a properly executed prisoner cash slip or other reasonably verifiable evidence of the date that the prisoner deposited the pro se filing with the prison authorities.]

(b) *Service of all papers required.*—Copies of all papers filed by any party and not required by these rules to be served by the prothonotary shall, concurrently with their filing, be served by a party or person acting on behalf of that party or person on all other parties to the matter. Service on a party represented by counsel shall be made on counsel.

* * * * *

(e) *Additional time after service by mail and commercial carrier.*—Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party (other than an order of a court or other government unit) and the paper is served by United States mail or by commercial carrier, three days shall be added to the prescribed period.

(f) *Pro se and hybrid representation.*—A *pro se* filing submitted by a prisoner incarcerated in a correctional facility is deemed filed as of the date it is delivered to the prison authorities for purposes of mailing or placed in the institutional mailbox, as evidenced by a properly executed prisoner cash slip or other reasonably verifiable evidence of the date that the prisoner deposited the *pro se* filing with the prison authorities.

Where a litigant is represented by an attorney before the court but submits for filing *pro se* a petition, motion, brief or any other type of pleading in the matter, it shall not be docketed but shall instead be notated on the docket and forwarded to counsel of record; except that in the Superior Court a timely request to proceed *pro se* or for replacement counsel will be docketed as well as provided to counsel of record and will be referred to the trial court for a determination whether the appellant shall proceed *pro se*.

***Official Note*:**

* * * * *

Subdivision (e)—Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice. The amendments to Rules 903(b), 1113(b) and 1512(a)(2) clarified that subdivision (e) does apply to calculating the deadline for filing cross-appeals, cross-petitions for allowance of appeal and additional petitions for review.

***Paragraph (f)*—As to *pro se* filings by persons incarcerated in correctional facilities, *see Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423 (1997); *Smith v. Pa. Bd. of Prob. & Parole*, 546 Pa. 115, 683 A.2d 278 (1996); *Commonwealth v. Johnson*, 860 A.2d 146 (Pa. Super. 2004). The rule on hybrid representation is premised on *Commonwealth v. Ellis*, 534 Pa. 176, 626 A.2d 1137 (1993) and is to be distinguished from litigants who are proceeding *pro se*. *See Commonwealth v. Jette*, 611 Pa. 166, 23 A.3d 1032, 1044 (2011) ("Therefore, we reiterate that the proper response to any pro se pleading is to refer the pleading to counsel, and to take no further action on the pro se pleading unless counsel forwards a motion. Moreover, once the brief has been filed, any right to insist upon self-representation has expired."). The right to proceed *pro se* at the trial level is grounded in the federal constitution, but it is triggered only when a timely and unequivocal request is made in the trial court. *Commonwealth v. El*, 602 Pa. 126, 135, 977 A.2d 1158, 1163 (2009). A court has discretion in responding to a conditional or untimely request in the trial court. *Id.* at 139, 977 A.2d at 1165 (after meaningful trial proceedings have begun, a request to proceed *pro se* is subject to the trial court's sound discretion); *Commonwealth v. Brooks*, 66 A.3d 352 (Pa. Super. 2013) (evaluating the trial court's decision to deny a conditional request to proceed *pro se* as an abuse of**

discretion). There is no comparable federal constitutional right to proceed *pro se* on appeal. *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000). At the least, an appellant's request to proceed *pro se* on appeal must precede the filing of a counseled brief. *Jette*, 611 Pa. at 186, 23 A.3d at 1044.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 907. Docketing of Appeal.

* * * * *

(b) *Entry of appearance.* Upon the docketing of the appeal the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. **[The] Unless that party is entitled by law to be represented by counsel on appeal, the** prothonotary of the appellate court shall upon praecipe of **[any such counsel for other parties] counsel**, filed within 30 days after **[filing] the docketing** of the notice of appeal, strike off or correct the record of appearances. Thereafter**, and at any time if a party is entitled by law to be represented by counsel on appeal,** a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

***Official Note*:** The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of Subdivision (a) of this rule.

[With regard to subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In forma Pauperis).]

A party may be entitled to the representation of counsel on appeal by statute, by rule, or by case law. For example, the Rules of Criminal Procedure provide that counsel appointed in the trial court is to continue representation through direct appeal (Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2)) and when appointed in a post-conviction proceeding (Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b)). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). Because the rule specifies that withdrawal by a simple praecipe is available only to parties other than an appellant, it would be rare for counsel in such cases to consider withdrawing by praecipe, but the 2014 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by praecipe is available only in matters that do not otherwise require court permission to withdraw in addition to being available only to parties other than the appellant.

If a party is entitled to representation on appeal, the appellate court will presume that counsel that represented the party in the trial court will also represent the party on appeal, and counsel will be entered on the appellate court docket. In order to withdraw in such cases, either (1) new counsel must enter an appearance in the appellate court prior to or at the time of withdrawal; (2) counsel must provide the appellate court with an order of the trial court authorizing withdrawal; or (3) counsel must petition the appellate court to withdraw as counsel. Counsel for parties entitled to representation on appeal are cautioned that if any critical filing in the appellate process is omitted because of an omission by counsel, and if the party ordinarily would lose appeal rights because of that omission, counsel may be subject to discipline.

With respect to appearances by new counsel following the initial docketing appearances pursuant to Subdivision (b) of this rule, please note the requirements of Rule 120.

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1112. Appeals by Allowance.

* * * * *

(f) *Entry of appearance.*—Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his or her counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. **[The] Unless that party is entitled by law to be represented by counsel on appeal, the** Prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. **[Thereafter a] If entry of appearance in the trial court extends through appeals** counsel's appearance for a party may not be withdrawn without leave of court**. Appearance cannot be withdrawn without leave of court for counsel who have not filed a praecipe to correct appearance within the first 30 days after the appeal is docketed,** unless another lawyer has entered or simultaneously enters an appearance for the party.

***Official Note*:** Based on 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the Prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

* * * * *

[With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*).]

The Rules of Criminal Procedure provide that counsel appointed in the trial court is to continue representation through direct appeal (Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2)) and when appointed in a post-conviction proceeding (Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b)). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party

in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). Because the rule specifies that withdrawal by a simple praecipe is available only to parties other than an appellant, it would be rare for counsel in such cases to consider withdrawing by praecipe, but the 2014 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by praecipe is available only in matters that do not otherwise require court permission to withdraw in addition to being available only to parties other than the appellant.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule **[1200] 120**.

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1311. Interlocutory Appeals by Permission.

* * * * *

(d) *Entry of appearance.*—Upon the filing of the petition for permission to appeal the prothonotary of the appellate court shall note on the record as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for permission to appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. **[The] Unless that party is entitled by law to be represented by counsel on appeal, the** prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. **[Thereafter a] If entry of appearance in the trial court extends through appeals** counsel's appearance for a party may not be withdrawn without leave of court. **The court must also grant permission to withdraw for any other counsel who have not filed a praecipe to correct appearance within the first 30 days after the appeal is docketed**, unless another lawyer has entered or simultaneously enters an appearance for the party.

***Official Note*: Based on 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). See note to Rule 903 (time for appeal). Compare 42 Pa.C.S. § 5574 (effect of application for amendment to qualify for interlocutory appeal).

* * * * *

[With regard to subdivision (d) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).]

The Rules of Criminal Procedure provide that counsel appointed in the trial court is to continue representation through direct appeal (Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2)) and when appointed in a post-conviction proceeding (Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b)). The same is true when counsel enters an appearance in a delinquency matter or on behalf of a child in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). Because the rule specifies that withdrawal by a simple praecipe is available only to parties other than an appellant, it would be rare for counsel in such cases to consider withdrawing by praecipe, but the 2014 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by praecipe is available only in matters that do not otherwise require court permission to withdraw in addition to being available only to parties other than the appellant.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 33. BUSINESS OF THE SUPREME COURT

IN GENERAL

Rule 3304. **[Hybrid Representation] (Reserved)**.

[Where a litigant is represented by an attorney before the Court and the litigant submits for filing a petition, motion, brief or any other type of pleading in the manner, it shall not be docketed but forwarded to counsel of record.

***Official Note*: The present rule is premised on *Commonwealth v. Ellis*, 534 A.2d 176, 626 A.2d 1137 (1993) and is to be distinguished from litigants who are pro se in litigation.]**

* * * * *

Explanatory Comment

The Appellate Court Procedural Rules Committee proposes to amend Rules of Appellate Procedure 120, 121, 907, 1112, 1311, and 3304 to clarify several procedural points relative to the representation of parties—and particularly criminal defendants and Post-Conviction Relief Act ("PCRA") petitioners—on appeal. Some of the principles apply more broadly, however.

Pa.R.Crim.P. 576(A)(4) and Pa.R.A.P. 3304 proscribe hybrid representation, but the appellate rule is included in a chapter governing the Business of the Supreme Court, which by its terms does not apply to matters in the intermediate appellate courts. Hybrid representation is prohibited in the intermediate appellate courts, just as it is in the Supreme Court, however. *See Commonwealth v. Ellis*, 534 Pa. 176, 626 A.2d 1137, 1139 (1993); *Commonwealth v. Cooper*, 611 Pa. 437, 447 n.9, 27 A.3d 994, 1000 n.9 (2011). To make it clear that the prohibition against hybrid representation applies to all appellate courts, the Committee proposes to move the text of current Pa.R.A.P. 3304 into a new paragraph of Pa.R.A.P. 121, and to move the current discussion of *pro se* representation from Pa.R.A.P. 121(a) to Pa.R.A.P. 121(f).

In addition, the Committee recommends revising the language in Pa.R.A.P. 907, 1112, and 1311 and their notes to avoid any confusion about when an attorney has an obligation to continue to represent a party on appeal. Currently, Pa.R.A.P. 907, 1112, and 1311 provide attorneys with an option to praecipe for withdrawal within thirty days after the docketing of an appeal or the filing of a petition for allowance of appeal or for permission to take an interlocutory appeal. Counsel appointed at the trial level who are obligated to continue the representation through appeal, *see, e.g.*, Pa.R.Crim.P. 120(A)(4) and 122(B)(2), cannot withdraw by just filing a praecipe in an appellate court, however. Instead, counsel must file a motion to withdraw in the appellate court which can either grant or deny the motion or refer it to the trial court to grant or deny. The clarifying language in the

notes of those rules (that "counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904") is overly narrow and non-specific. Pa.R.Crim.P. 904 discusses representation only on PCRA, even though counsel appointed to represent a criminal defendant is likewise required to continue the representation through direct appeal, and even though there are other proceedings (such as delinquency and dependency), in which counsel are similarly appointed through appeal. Moreover, the note fails to state that an attorney that has been appointed cannot withdraw by praecipe. And, although appellate courts frequently request that trial courts assist with issues arising during appeal concerning representation, the trial court does not as a general matter retain supervision over counsel while a case is on appeal. The proposed recommendation that follows addresses these concerns.

[Pa.B. Doc. No. 14-173. Filed for public inspection January 24, 2014, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Proposed Amendment of Rule 234.1 Governing Subpoenas to Attend and Testify; Proposed Recommendation No. 259

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 234.1 governing subpoenas to attend and testify be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than February 28, 2014 to:

Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
P.O. Box 62635
Harrisburg PA 17106-2635
FAX 717-231-9526
civilrules@pacourts.us

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 234.1. Subpoena to Attend and Testify.

* * * * *

(c) A subpoena may not be used to compel a person to appear or to produce documents or things ex parte before an attorney, a party or a representative of the party.

(d) A subpoena shall be served reasonably in advance of the date upon which attendance is required.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 234.1 governing subpoenas to attend and testify. It was brought to the Committee's attention that a discrepancy exists between service of a subpoena on a non-party witness and service of a notice to attend on a party. Current Rule 234.3 provides that a party shall be served a notice to attend reasonably in advance of the date the party is required to attend and testify. Current Rule 234.1, on the other hand, is silent as to when a non-party witness should be served a subpoena before attendance is required. The result is that a party who is aware of and involved in litigation is entitled to reasonable notice, but a non-party witness who has no prior knowledge of a trial and no forewarning that he or she may be called to testify can be subpoenaed with no notice. To remedy this discrepancy, the proposed amendment of Rule 234.1 would require that a non-party witness be served a subpoena reasonably in advance of the date the witness is required to attend and testify.

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 14-174. Filed for public inspection January 24, 2014, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Proposed New Pa.R.Crim.P. 771 and Comment Revision to Pa.R.Crim.P. 471

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania adopt new Rule 771 (Disposition Report to the Department of Transportation) to require that the court case dispositions required by 75 Pa.C.S. § 6323 to be reported to the Pennsylvania Department of Transportation be done so electronically and revise the Comment to Rule 471 (Disposition Report) to remove an archaic provision. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

no later than Friday, March 7, 2014.

By the Criminal Procedural Rules Committee

THOMAS P. ROGERS,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART G. Special Procedures in Summary Cases Under the Vehicle Code

Rule 471. Disposition Report.

* * * * *

Comment

* * * * *

[Electronic transmissions are to be made from the District Justice Central Site Computer or other computer facility utilized by issuing authorities.]

***Official Note*: Rule 92 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 471 and amended March 1, 2000, effective April 1, 2001; amended , 2014, effective , 2014.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed Comment revision published for comment at 44 Pa.B. 476 (January 25, 2014).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

(*Editor's Note*: The following rule is new and printed in regular type to enhance readability.)

Rule 771. Disposition Report to the Department of Transportation.

(A) The clerk of courts shall report to the Pennsylvania Department of Transportation all dispositions of charges required by 75 Pa.C.S. § 6323 (relating to reports by courts). The report shall be sent by electronic transmission in the form prescribed by the Department.

(B) The clerk of courts shall sign the report on the form prescribed by the Department by means of an electronic signature as authorized by Rule 103.

(C) The clerk of courts shall print out and sign a copy of the report, which shall include the date and time of the transmission, and a certification as to the adjudication, the sentence, if any, and the final disposition. The copy shall be made part of the record.

(D) Upon the request of the defendant, the attorney for the Commonwealth, or any other government agency, the clerk of courts shall provide a certified copy of the report required by this rule.

Comment

This rule was adopted in 2014 to provide for the electronic transmission of the case information required under 75 Pa.C.S. § 6323 to the Pennsylvania Department of Transportation. The rule provides for procedures at the court of common pleas similar to those already provided under Rule 471 for the reports required to be submitted under 75 Pa.C.S. § 6322 by issuing authorities.

This rule does not address the admissibility of evidence. *See* the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 *et seq.* concerning the Rules of Evidence for documents.

***Official Note*: New Rule 771 adopted , 2014, effective 2014.**

Committee Explanatory Reports:

Report explaining the provisions of the new rule published for comment at 44 Pa.B. 476 (January 25, 2014).

REPORT

Proposed New Pa. R.Crim.P. 771
Proposed Amendments to Pa.R.Crim.P. 471

Electronic Transmission of Court Case Reports to PennDOT

The Committee recently received a request from the Court Administrator of Pennsylvania to consider a rule mandating that the information regarding certain types of cases that courts are statutorily required to report to the Pennsylvania Department of Transportation (PennDOT) be done electronically. Currently, 75 Pa.C.S. § 6323 requires that the clerks of courts report to PennDOT the disposition of any case arising under the Motor Vehicle Code (Title 75) or under Section 13 of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P. S. § 780-113.[1]

This is somewhat similar to 75 Pa.C.S. § 6322 that requires issuing authorities to provide reports of the disposition of summary motor vehicle cases to PennDOT. Rule 471 was adopted in 1993 to require that the transmission of these reports be done electronically. The impetus for Rule 471 was the implementation of the Court's Magisterial District Judge System (MDJS) that gave issuing authorities the capability of transmitting these reports electronically. The Committee is unaware of any procedural problems that have ever arisen by the electronic transmission provisions of Rule 471.

The proposal would extend this type of transmission to the clerks of courts now that the Court's Common Pleas Case Management System (CPCMS) provides the statewide capabilities for electronic transmission from the common pleas courts. The proposed new rule would simply be an extension to the common pleas courts of the procedures already in place for the MDJ courts.

The new rule would be numbered "Rule 771." Since the reports to PennDOT are filed as essentially the last event in a case at the common pleas level, it is placed after the post-sentence procedures rules and before the expungement rules. The particular number is intended to link it to Rule 471.

The text of the Rule would mirror Rule 471 and require the transmittal of the disposition information to be done electronically.

The proposal also contains a provision similar to that in Rule 471 that requires a hard copy of the report to be added to the case file. While the desire is ultimately to move towards paperless case files, the view of the Com-

[1] Section 6323 references a provision in the Controlled Substances Act requiring the suspension of a defendant's driver's license for conviction of a drug offense. This provision, 35 P. S. § 780-113(m) was repealed in 1993 and the suspension provisions are now found in 75 Pa.C.S. § 1532(c).

mittee in the past has been to maintain a traditional paper case file, particularly at the common pleas level. However, given current technology that can reproduce hard copies of the transmittal upon request, the Committee is seeking input from respondents about whether this requirement still is necessary, and if not, should Rule 471 also be amended to delete the requirement to maintain a hard copy in the magisterial district judge case files?

A revision would also be made to the Comment provision in Rule 471 regarding the locations from which the required transmission could be made. Specifically, the fourth paragraph in Rule 471 Comment makes a reference to the "District Justice Central Site Computer," which is an outdated term since all MDJ offices are equipped for transmitting the required information.

[Pa.B. Doc. No. 14-175. Filed for public inspection January 24, 2014, 9:00 a.m.]

[234 PA. CODE CH. 5]

Order Adopting the Amendment to Rule 550 and Approving the Revision of the Comment to Rule 591 of the Rules of Criminal Procedure; No. 445 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 6th day of January, 2014, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 43 Pa.B. 4210 (July 27, 2013), and in the Atlantic Reporter (Third Series Advance Sheets, Vol. 68), 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 amendment to Pennsylvania Rule of Criminal Procedure 550 is adopted and the revision to the Comment to Pennsylvania Rule of Criminal Procedure 591 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective March 1, 2014.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

* * * * *

(D) A defendant who enters a plea of guilty under this rule may, within **[10] 30** days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) **[Ten] Thirty** days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment

* * * * *

Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. See *Commonwealth v. Campana*, **452 Pa. 233,** 304 A.2d 432 (1973), vacated and remanded, **[414 U. S. 808 (1973), on remand,]** 414 U.S. 808 (1973), on remand, 455 Pa. 622, 314 A.2d 854 (1974).

Before accepting a plea:

* * * * *

(d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within **[10] 30** days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

* * * * *

See Rule 590 and the Comment thereto for further elaboration of the required colloquy. *See also Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 (1976), overruled on other grounds in *Commonwealth v. Minarik*, 493 Pa. 573, 427 A.2d 623, 627 (1981); *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Martin*, 445 **[A.2d] Pa.** 49, 282 A.2d 241 (1971).

While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (C) does not preclude verbatim transcription of the colloquy and plea.

The time limit for withdrawal of the plea contained in paragraph (D) was increased from 10 days to 30 days in 2014 to place a defendant who enters a plea to a misdemeanor before a magisterial district judge closer to the position of a defendant who pleads guilty to the same offense in common pleas court or a defendant who pleads guilty to a summary offense before a magisterial district judge. A 30-day time period for withdrawal of the plea is consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period.

Withdrawal of the guilty plea is the only relief available before a magisterial district judge for a defendant who has entered a plea pursuant to this rule. Any further challenge to the entry of the plea must be sought in the court of common pleas.

At the time of sentencing, or at any time within the **[10-day] 30-day** period before transmitting the case to the clerk of courts pursuant to paragraph (E), the magisterial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

* * * * *

***Official Note*:** Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997,

effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006**; amended January 6, 2014, effective March 1, 2014**.

Committee Explanatory Reports:

Final Report explaining the August 22, 1997 amendments that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's order at 27 Pa.B. **[4549] 4548** (September 6, 1997).

* * * * *

Final Report explaining the January 6, 2014 changes to the rule increasing the time for withdrawal of the guilty plea from 10 to 30 days published with the Court's Order at 44 Pa.B. 478 (January 25, 2014).

PART H. Plea Procedures

Rule 591. Withdrawal of Plea of Guilty or *Nolo Contendere*.

* * * * *

Comment

* * * * *

After the attorney for the Commonwealth has had an opportunity to respond, a request to withdraw a plea made before sentencing should be liberally allowed. *See Commonwealth v. Randolph*, **553 Pa. 224,** 718 A.2d 1242 (**[Pa.]** 1998); *Commonwealth v. Forbes*, **450 Pa. 185,** 299 A.2d 268 (**[Pa.]** 1973).

When a defendant is permitted to withdraw a guilty plea or plea of *nolo contendere* under this rule and proceeds with a non-jury trial, the court and the parties should consider whether recusal might be appropriate to avoid prejudice to the defendant. *See, e.g., Commonwealth v. Pierce*, **515 Pa. 153,** 527 A.2d 973 (**[Pa.]** 1987).

For a discussion of plea withdrawals when a guilty plea or plea of *nolo contendere* includes a plea agreement, see the Comment to Rule 590.

For the procedures for withdrawal of guilty pleas entered before a magisterial district judge in a court case, see Rule 550(D).

***Official Note*:** Rule 320 adopted June 30, 1964, effective January 1, 1965; Comment added June 29, 1977, effective September 1, 1977; Comment revised March 22, 1993, effective January 1, 1994; Comment deleted August 19, 1993, effective January 1, 1994; new Comment approved December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 591 and Comment revised March 1, 2000, effective April 1, 2001**; Comment revised January 6, 2014, effective March 1, 2014**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the January 6, 2014 revision to the Comment cross-referencing Rule 550 published with the Court's Order at 44 Pa.B. 478 (January 25, 2014).

FINAL REPORT[1]

Amendment to Pa.R.Crim.P. 550
Revision to the Comment to Pa.R.Crim.P. 591

Withdrawal of Guilty Pleas under Rule 550

On January 6, 2014, effective March 1, 2014, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the amendment of Rule 550 (Pleas of Guilty Before Magisterial District Judge in Court Cases) to increase the amount of time available to a defendant to withdraw a guilty plea entered pursuant to Rule 550 and approved the correlative revision to the Comment to Rule 591 (Withdrawal of Plea of Guilty or *Nolo Contendere*).

As directed by the Court in *Commonwealth v. Garcia*, 615 Pa. 435, 43 A.3d 470 (Pa. 2012), the Committee examined the question of appeals or other relief from a guilty plea to a third degree misdemeanor entered before a magisterial district judge pursuant to Rule 550 other than the 10-day withdrawal provision in Rule 550(D), particularly the perceived "inconsistency in the rules of procedure as applied to defendants who plead guilty to a misdemeanor in the district court as compared to defendants who plead to the same charge in the court of common pleas and as applied to defendants who plead in the district court to misdemeanors as compared to defendants who plead in the district court to summary offenses." 615 Pa. at 448, 43 A.3d at 478, fn.8.

In *Garcia*, the defendant sought relief from her entry of a guilty plea to a third degree misdemeanor before a magisterial district judge pursuant to Rule 550 about a month after its entry and well beyond the 10-day withdrawal period provided in Rule 550(D). Had she entered a plea to a summary offense before the magisterial district judge, she would have had a right to appeal for a trial *de novo* in the court of common pleas. Had she entered a plea to the third degree misdemeanor before a common pleas judge, she could have appealed to the Superior Court. The Commonwealth argued that the Rule 550(D) 10-day withdrawal provision was the exclusive remedy. The question of relief from a Rule 550 guilty plea was not addressed because the Superior Court lacked jurisdiction to review an order from the magisterial district court.

Initially, the Committee examined the circumstances in which relief would be sought for a Rule 550 guilty plea outside of the 10-day withdrawal period. The Committee concluded that the most likely scenario would be for a defendant who enters the plea *pro se* but subsequently seeks advice of counsel due to learning of some collateral consequence to the entry of the plea, such as ineligibility to enter the military or receive a professional license.

The Committee concluded that a majority of these types of cases could be resolved simply by permitting a defendant 30 days to withdraw the appeal. This would be consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period. In other words, the case would stay with the magisterial district court for 30 days after the entry of the plea during which the plea could be withdrawn.

[1] The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

The Committee examined the history of Rule 550 to determine if there were any impediments to increasing the period for withdrawal of the guilty plea. Based on that history, the provisions regarding the time limitation for withdrawal of the guilty plea and the certification of the case to the court of common pleas were entirely products of the rules, implemented as a means of providing structure to statutory changes to magisterial district judges' jurisdiction to permit them to accept guilty pleas in third degree misdemeanor cases. The Committee concluded that the period for withdrawal as well as the period for certifying the case to the court of common pleas could be changed from 10 days to 30 as a rules matter.

This would be the only relief available while the case remained at the magisterial district court. In those exceptional cases in which relief is sought after the 30-day period for withdrawal, further relief would have to be sought in the court of common pleas, likely by a motion to withdraw *nunc pro tunc*.

Therefore, the amendments provide for a simple change to the language to Rule 550 changing the period for withdrawal of the guilty plea from 10 to 30 days. Additionally, the time at which the case would be certified from the magisterial district court to the court of common pleas has been increased from 10 to 30 days. Comment language describes the reasoning for this change. Finally a cross-reference to Rule 550 has been added to the Comment to Rule 591 (Withdrawal of Plea of Guilty or Nolo Contendere) to clarify that, when a guilty plea to a third degree misdemeanor is entered before a magisterial district judge, the withdrawal of the plea would be made pursuant to Rule 550.

[Pa.B. Doc. No. 14-176. Filed for public inspection January 24, 2014, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 300]

Proposed Rules 302.1 and 302.2 of the Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 302.1 and 302.2 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed new rules precedes the Report.

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

Pamela S. Walker, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9546
or email to: minorrules@pacourts.us

no later than March 28, 2014.

By the Minor Court Rules Committee

MARY P. MURRAY,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 302.1 Dismissal for Lack of Personal Jurisdiction.

A. The magisterial district judge may dismiss a complaint at any time for lack of personal jurisdiction.

B. The magisterial district judge shall issue written notice of the dismissal to the parties.

***Official Note*:** This rule addresses dismissal due to lack of persona jurisdiction. Jurisdictional issues must be raised at a hearing. A party aggrieved by a determination regarding jurisdiction over the parties should follow the procedures for filing a praecipe for a writ of certiorari, set forth in Rule 1009.

Rule 302.2 Transfer of Action for Lack of Subject Matter Jurisdiction.

A. When an action is commenced in a magisterial district court but the court does not have jurisdiction over the subject matter of the action, the magisterial district court shall not dismiss the action if there is another court of appropriate jurisdiction within the Commonwealth in which the action could originally have been brought.

B. The magisterial district court shall transfer the action at the cost of the plaintiff to the court of appropriate jurisdiction.

C. The magisterial district court in which the action is commenced shall transfer the complaint to the prothonotary or clerk of the court to which the action is transferred.

***Official Note*:** This rule authorizes a magisterial district court to transfer a case to another court within the Commonwealth when the magisterial district court does not have jurisdiction over the subject matter of the action. The jurisdictional scope of the magisterial district courts is governed by Section 1515 of the Judicial Code, 42 Pa.C.S. § 1515.

Rule 302.2 is derived in part from Section 5103(a) of the Judicial Code, 42 Pa.C.S. § 5103(a). "If an appeal or other matter is taken to or brought in a court or magisterial district of the Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth." 42 Pa.C.S. § 5103(a). Rule 302.2 is also derived in part from

Pa.R.C.P. No. 213(f) (authorizing transfer of actions for lack of subject matter jurisdiction).

When a complaint is transferred under this rule, it is treated as if it was originally filed in the transferee court on the date first filed in the magisterial district court. It is the intent of this rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in this rule prohibits a court other than a magisterial district court from transferring a case to a magisterial district court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court.

There may be additional costs when a case is transferred, including, but not limited to, service costs.

REPORT

Proposed New Rules 302.1 and 302.2 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges

Dismissals and Transfers for Lack of Jurisdiction

I. *Introduction*

The Minor Court Rules Committee ("Committee") is proposing new Rules 302.1 and 302.2 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges. The goal of these proposed new rules is to clarify procedures when a case is brought in a magisterial district court, but the court is lacking either personal jurisdiction or subject matter jurisdiction.

II. *Discussion*

The Minor Court Rules Committee has been examining procedures related to withdrawals, settlements and dismissals of cases in the magisterial district courts.[1] In conducting its review, the Committee observed that the rules lacked procedures for addressing cases where the court is lacking either personal jurisdiction over a party or subject matter jurisdiction.

With regard to personal jurisdiction, the Committee noted that the rules are silent on the action to be taken by a magisterial district court if such jurisdiction is found to be lacking. The Committee agreed that such a rule could provide useful guidance to the magisterial district courts, and drafted proposed new Rule 302.1 to cover these scenarios.

With regard to subject matter jurisdiction, the Committee noted that the rules are silent on the action to be taken by a magisterial district court if such jurisdiction is found to be lacking. The Committee observed that Section 5103(a) of the Judicial Code, 42 Pa.C.S. § 5103(a) provides "[i]f an appeal or other matter is taken to or brought in a court or magisterial district of the Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth." 42 Pa.C.S. § 5103(a). The Committee further noted that the Pennsylvania Rules of Civil Procedure currently provide for transfers of matters due to lack of subject matter jurisdiction. *See* Pa.R.C.P. 213(f). While Pa.R.C.P.M.D.J. No. 302H provides for transfers in cases of improper venue, it does not address cases lacking subject matter jurisdiction. The Committee drafted proposed new Rule 302.2 to address these scenarios.

III. *Proposed Rule Changes*

Proposed new Rule 302.1 provides that a magisterial district judge may dismiss a complaint at any time for lack of personal jurisdiction, and shall issue a written notice of such dismissal. The Official Note provides that jurisdictional issues must be raised at a hearing, and that a party aggrieved by a decision regarding jurisdiction should follow the procedures for filing a praecipe for a writ of certiorari as set forth in Pa.R.C.P.M.D.J. No. 1009.

Proposed new Rule 302.2 is derived in part from 42 Pa.C.S. § 5103(a) and Pa.R.C.P. 213(f). The proposed new rule provides for the transfer of actions for lack of subject matter jurisdiction, and notes that there may be additional costs to the plaintiff when a case is transferred, including, but not limited to, service costs.

[Pa.B. Doc. No. 14-177. Filed for public inspection January 24, 2014, 9:00 a.m.]

[1] Proposed rules pertaining to withdrawals and settlements were published for public comment at 44 Pa.B. 10 (January 4, 2014).

Title 255—LOCAL COURT RULES

SNYDER COUNTY

Act 35 Supervision Fee; No. MC-2-2-14 Full Court; No. CP-55-AD-0000002-2013

Order

And Now, this 31st day of December, 2013, it is hereby *Ordered* that effective January 1, 2014, the offender supervision fee provided for in 18 P. S. § 11.1102(c), commonly referred to as the "Act 35 Supervision Fee," shall be $45.00 per month.

This increase shall only affect those cases in which the Court imposes the obligation to pay the fee on or after January 1, 2014. It shall not increase the monthly fee paid by those defendants upon whom the obligation has been imposed prior to January 1, 2014.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 14-178. Filed for public inspection January 24, 2014, 9:00 a.m.]

SNYDER COUNTY

Mediation Fee; No. MC-0003-2014 Full Court

Order

And Now, this 31st day of December, 2013, Local Rule 17 CV-1915(e) shall be amended as follows:

1. 17CV1915.4(e)

(e). There shall be imposed on each party a $25.00 fee to be paid to the Central Susquehanna Valley Mediation Center, Inc. This fee shall be paid at the first (1st) Mediation Session for the purpose of deferring the cost of

the mediation services. In extraordinary circumstances as determined by the Mediator, this fee may be waived for either party.

2. This amendment to the Local Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

3. The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

3.1. File seven (7) certified copies of this Order and of the pertinent Local Rule with the Administrative Office of Pennsylvania Courts.

3.2 Distribute two (2) certified copies of this Order and the pertinent Local Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* for publication.

3.3. File one (1) certified copy of this Order and the pertinent Local Rule with the Civil Procedural Rules Committee.

3.4. Provide one (1) copy of this Order and the pertinent Local Rule to each member of the Snyder-Union County Bar Association that maintains an active practice in Snyder and Union Counties.

3.5. Keep continuously available for public inspection copies of this Order and the pertinent Local Rule.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 14-179. Filed for public inspection January 24, 2014, 9:00 a.m.]

UNION COUNTY

Mediation Fee; No. 140012

Order

And Now, this 31st day of December, 2013, Local Rule 17 CV-1915(e) shall be amended as follows:

1. 17CV1915.4(e)

(e). There shall be imposed on each party a $25.00 fee to be paid to the Central Susquehanna Valley Mediation Center, Inc. This fee shall be paid at the first (1st) Mediation Session for the purpose of deferring the cost of the mediation services. In extraordinary circumstances as determined by the Mediator, this fee may be waived for either party.

2. This amendment to the Local Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

3. The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

3.1. File seven (7) certified copies of this Order and of the pertinent Local Rule with the Administrative Office of Pennsylvania Courts.

3.2 Distribute two (2) certified copies of this Order and the pertinent Local Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* for publication.

3.3. File one (1) certified copy of this Order and the pertinent Local Rule with the Civil Procedural Rules Committee.

3.4. Provide one (1) copy of this Order and the pertinent Local Rule to each member of the Snyder-Union County Bar Association that maintains an active practice in Snyder and Union Counties.

3.5. Keep continuously available for public inspection copies of this Order and the pertinent Local Rule.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 14-180. Filed for public inspection January 24, 2014, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated December 9, 2013, pursuant to 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 January 8, 2014 for Compliance Group 1.

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.

Barrow, Kenita Valencia
Silver Spring, MD

Becker, Michael D.
Collingswood, NJ

Brown, Glenn J.
Ketchikan, AK

Bush, Robin Cassandra
Davidson, NC

Cutler, Mary James
Wilmington, DE

Davis, Lisa A.
Waxhaw, NC

Dulski, Jennifer Kay
Berwyn, IL

Foster, Maurice
Upper Marlboro, MD

Gentile, Brynn Nicole
New York, NY

Keefer, Scott Andrew
Apple Valley, MN

Mansori, Zubair S.
Altamonte Springs, FL

Mitlitzky, Steven Ross
Woodmere, NY

Myers, William Anthony
Youngstown, OH

Prevoznik, Michael E.
Madison, NJ

Robinson, Colin Robert
Wilmington, DE

Rubenstein, Alan Bendix
Boston, MA

Savage, Daryl Davinci
Herndon, VA

Sprang, Kenneth Allyn
Chevy Chase, MD

Thompson, Rahsaan W.
South San Fancisco, CA

Uwah, Eduok Efiong
Salem, NJ

Votaw, Catherine
Washington, DC

Williams, Kevin Theodore
Southfield, MI

SUZANNE E. PRICE,
Attorney Registrar
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 14-181. Filed for public inspection January 24, 2014, 9:00 a.m.]

Notice of Transfer to Disability Inactive Status

Notice is hereby given that Leslie Levi Payton, having been transferred to disability inactive status in the Territory of the Virgin Islands by Order of the Supreme Court of the Virgin Islands dated July 19, 2013, the Supreme Court of Pennsylvania issued an Order on January 7, 2014, immediately transferring him to disability inactive status in this Commonwealth, pursuant to Rule 216, Pa.R.D.E. 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. 14-182. Filed for public inspection January 24, 2014, 9:00 a.m.]

SUPREME COURT

Electronic Filing System in the Appellate Courts; No. 418 Judicial Administration Doc.

Order

Per Curiam

And Now, this 6th day of January, 2014, the Order dated October 24, 2012, is amended as follows with deletions in brackets and additional language bold:

And Now, this 24th day of October, 2012, electronic filing of appellate court filings through the PACFile appellate court electronic filing system is hereby authorized. The use of the PACFile system shall not affect the form or content of documents to be filed. The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing. After experience is gained with electronic filing, the Pennsylvania Rules of Appellate Procedure shall be amended to incorporate, where needed and as appropriate, procedures relating specifically to electronic filing and service of documents. In the interim, electronic filing and service shall be governed by this Order.

I. *Participation and Fees*

The PACFile system shall permit attorneys and parties proceeding without counsel to file electronically. An attorney must establish an account in order to use the PACFile system. An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney's account. The PACFile system will permit parties who are proceeding without counsel to access their cases through an authorization process. Service of electronic filings on attorneys who have established an account and on parties without counsel who have been authorized will be made automatically by the PACFile system.

Applicable filing fees shall be paid electronically through procedures established by the appellate courts and the Administrative Office of Pennsylvania Courts, and at the same time and in the same amount as required by statute, court rule or order. In addition to the filing fees now applicable, an online payment convenience fee for use of the PACFile system shall be imposed. *See* 204 Pa. Code § 207.3.

II. *Use of the Electronic Filing System*

(A) Electronic filings may be submitted at the UJS web portal: http://ujsportal.pacourts.us beginning on November 1, 2012, in accordance with the filing instructions available at that site.

(B) Electronic filings may be submitted at any time (with the exception of periodic maintenance). The electronic filing must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day.

(C) Sealed or confidential documents may be submitted for electronic filing in a manner that maintains confidentiality under applicable law.

(D) Signatures on electronic filings shall use the following form: /s/ *Chris L. Smith*.

(E) The original of a sworn or verified document that is an electronic filing (e.g., affidavit) or is contained within an electronic filing (e.g., verification) shall be maintained by the electronic filer and made available upon direction of the court or reasonable request of the signatory or opposing party.

(F) Use of the PACFile system shall constitute the filer's certification that:

(1) The submission is authorized; and

(2) Electronic notice and service of other documents through the PACFile system will be accepted by the filer.

(G) The submission of an electronic filing shall satisfy the service requirements of Pa.R.A.P. 121 and 122 on any attorney or party who has established a UJS web portal account. **A party who is electronically served as a result of the submission of an electronic filing and who is required or permitted to act within a prescribed period after service shall have three days added to the prescribed period to the same extent as parties who proceed pursuant to Pa.R.A.P. 121(e).**

(H) Service of electronic filings on any attorney or party who has not established a UJS web portal account shall be made by the traditional methods required under Pa.R.A.P. 121 and 122.

(I) Within seven days of the submission of any electronic filing, the electronic filer shall submit **[one] to the court a** paper version of the electronic filing **[to the court's filing office] with as many copies as the court requires**. The paper version of the electronic filing shall be considered the original for archival purposes only. The electronic filer shall not be required to serve a paper copy of the electronic filing on the opposing party except as provided in subsection (H), above.

(J) If a rule of appellate procedure requires that a court provide notice by mail (as, for example, in Pa.R.A.P. 1931(d)), that court may instead provide that notice by means of its electronic filing system to a registered user of its system.

[(J)] (K) The procedures described in this order apply in lieu of those prescribed by the Pennsylvania Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise the Rules of Appellate Procedure continue to apply with full force and effect.

[Pa.B. Doc. No. 14-183. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 15th Judicial District; No. 302 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Order dated January 24, 2013, that Reestablished the Magisterial Districts of the 15th Judicial District (Chester County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: The realignment of Magisterial Districts 15-1-02 and 15-4-01, shall be effective January 6, 2014. The Order of January 18, 2013, and Amended Order of July 3, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-184. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 22nd Judicial District; No. 336 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Order dated March 19, 2013, that Reestablished the Magisterial Districts of the 22nd Judicial District (Wayne County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: The elimination of Magisterial District 22-3-03, and the realignment of Magisterial Districts 22-3-01, 22-3-02, and 22-3-04 shall be effective January 1, 2014. The Order of March 19, 2103, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-185. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 27th Judicial District; No. 351 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Order dated April 23, 2013, that Reestablished the Magisterial Districts of the 27th Judicial District (Washington County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: West Alexander Borough shall be eliminated from the list of municipalities contained in Magisterial District 27-3-10, effective immediately. That District shall consist of the following municipalities:

Claysville Borough
Green Hills Borough
West Middletown Borough
Amwell Township
Blaine Township
Buffalo Township
Donegal Township
East Finley Township
Hopewell Township
Independence Township
Morris Township
South Franklin Township
West Finely Township

The Order of April 23, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-186. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 28th Judicial District; No. 340 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Order dated April 23, 2013, and Amended Order dated July 3, 2013, that Reestablished the Magisterial Districts of the 28th Judicial District (Venango County) of the Commonwealth of Pennsylvania, are hereby *Amended* as follows: The Magisterial District identified in the July 3, 2013 order as 28-2-04, should instead be 28-3-04. The elimination of District 28-3-04 shall be effective January 6, 2015. The Order of April 23, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-187. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 39th Judicial District; No. 308 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Amended Order dated July 3, 2013, that Reestablished the Magisterial Districts of the 39th Judicial District (Franklin and Fulton Counties) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: Orrstown Borough and Shippensburg Borough shall be in Magisterial District 39-3-04, instead of Magisterial District 45-3-04. The Order of February 11, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-188. Filed for public inspection January 24, 2014, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 47th Judicial District; No. 300 Magisterial Rules Doc.

Amended Order

And Now, this 6th day of January 2014, the Order dated January 18, 2013, that Reestablished the Magisterial Districts of the 47th Judicial District (Cambria County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: The realignment of Magisterial Districts 47-3-03 and 47-3-05, shall be effective January 6, 2014. The Order of January 18, 2013, and Amended Order of July 3, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-189. Filed for public inspection January 24, 2014, 9:00 a.m.]