

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Proposed Amendments to the Pennsylvania Rules of Professional Conduct Regarding Sale of Law Practice

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it adopt the amendments to Pennsylvania Rule of Professional Conduct (PA RPC) 1.17 that were approved by the Pennsylvania Bar Association (PBA) in May 2015 and amend PA RPC 1.17, as set forth in Annex A.

In 1990, ABA Model Rule 1.17, Sale of Law Practice was adopted which permitted for the first time the sale of a law practice, including the good will, conditioned upon selling the practice in its entirety to a single purchaser willing to undertake all client matters subject to client notice and consent, and providing that the seller cease to engage in the private practice of law in the specified jurisdiction. Following a Notice of Proposed Rulemaking issued by the Disciplinary Board, the Supreme Court of Pennsylvania adopted new PA RPC 1.17 in June 2001, and the Rule was thereafter amended in minor respects in 2004 and 2009.

In 2002, ABA Model Rule 1.17 was amended to eliminate the requirement that a lawyer sell the law practice to a single purchaser, in its entirety, and cease to engage in the private practice of law. The current ABA rule provides for the sale of an area of practice, in addition to sale of the entire practice, to one or more lawyers or law firms.

Pennsylvania has historically supported adoption of the ABA Model Rule amendments to promote consistency in application and interpretation of the rules from jurisdiction to jurisdiction, except where controlling Pennsylvania precedent or other important policy considerations justify a deviation from the Model Rule language. The within proposed amendments more closely conform the Pennsylvania Rule to American Bar Association (ABA) Model Rule 1.17 and related guidance issued by the ABA Standing Committee on Ethics and Professional Responsibility.

Current PA RPC 1.17 permits the sale or purchase of a law practice, including good will, as an entirety to a single lawyer on the condition that the seller cease to engage in the private practice of law in Pennsylvania. The justification for the existing requirement that the practice be sold as an entirety to a single lawyer is to avoid a piecemeal sale whereby a purchaser might only purchase a seller's more profitable cases or matters, leaving clients whose matters are less lucrative unrepresented. However, the present requirement to sell as an entirety can pose difficulties in identifying a capable, competent purchaser where the law practice consists of disparate practice areas. The law is constantly

evolving and a single lawyer may not be willing, able or committed to staying abreast of current developments in all areas of the seller's areas of practice. The proposed amendments provide flexibility to lawyers while protecting the interests of clients.

The proposed amendment to PA RPC 1.17(a) changes the strict requirement that the seller must cease to engage in the private practice of law in Pennsylvania and permits a lawyer who wishes to cease practice in one area of law to do so, but allows that lawyer to continue to practice in other areas of law. Thus, the lawyer may limit the sale to one or more areas of the practice, thereby preserving the lawyer's ability to continue practice in the areas of the practice that were not sold. Furthermore, proposed language has been added to paragraph (a) to provide that the seller is not prohibited from assisting the buyer or buyers in the orderly transition of active client matters for a reasonable period after the closing without a fee. It is reasonable to conclude that the transition of active client matters from a selling lawyer or law firm to a purchasing lawyer or law firm need not be immediate and transitional assistance will better serve a client affected by a sale. Neither the selling lawyer or law firm nor the purchasing lawyer or law firm may bill clients for time spent only on the transition of matters. This ensures that the client will not experience any adverse economic impact from the sale of a practice or area of practice.

The proposed amendment to PA RPC 1.17(b) eliminates the current requirement that a practice be sold in its entirety to a single lawyer, and permits the sale of an entire area of practice, in addition to an entire practice, to one or more lawyers or law firms. It is in the interests of clients and the public to allow a lawyer or law firm to sell an area of practice because the selling lawyer may have difficulty finding a purchaser who desires the same practice mix as the lawyer selling the practice. Permitting one or more lawyers or law firms to purchase an area of practice gives needed flexibility and options to the seller which by extension will benefit the clients, as selling a practice area to a lawyer or law firm competent in that area helps to ensure that clients are competently represented.

The proposed amendment to PA RPC 1.17(c) places the responsibility on the seller to give written notice to each of the seller's clients. No specific method of written notice is provided for; it is up to the seller to determine the most effective and efficient means for doing so. In contrast, the current Rule does not identify the party responsible for the provision of written notice to the clients. Proposed paragraph (c) adds language relating to circumstances when the client cannot be given notice. In that situation, the representation of that particular client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

The proposed amendment to PA RPC 1.17(h) eliminates language relating to the phrase "single lawyer" and defines "seller" as an "individual lawyer or law firm that sells a law practice or an area of law practice, and includes both the personal representative or estate of a decedent or disabled lawyer and the deceased or disabled lawyer, as appropriate."

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, P. O. Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382), Email address Dboard.comments@pacourts.us on or before January 5, 2016.

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

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.17. Sale of Law Practice.

A lawyer or law firm may, for consideration, sell or purchase a law practice, **or an area of practice**, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law [**in Pennsylvania;], or in the area of practice that has been sold, in Pennsylvania; however, the seller is not prohibited from assisting the buyer or buyers in the orderly transition of active client matters for a reasonable period after the closing without a fee.**

(b) The seller sells the [**practice as an entirety to a single lawyer] entire practice, or the entire area of practice, to one or more lawyers or law firms. [For purposes of this Rule, a practice is sold as an entirety if the purchasing lawyer assumes responsibility for all of the active files except those specified in paragraph (g) of this Rule.]**

(c) [**Actual written notice is given**] The seller gives written notice to each of the seller's clients, which notice must include at a minimum:

(1) notice of the proposed transfer of the client's representation, including the identity and address of the purchasing lawyer;

(2) a statement that the client has the right to representation by the purchasing lawyer under the preexisting fee arrangements;

(3) a statement that the client has the right to retain other counsel or to take possession of the file; and

(4) a statement that the client's consent to the transfer of the representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the pur-

chaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

(e) The agreement of sale shall include a clear statement of the respective responsibilities of the parties to maintain and preserve the records and files of the seller's practice, including client files.

(f) In the case of a sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the selling lawyer, the selling lawyer shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Rule 219(j) thereof.

(g) The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser because of other requirements of the Pennsylvania Rules of Professional Conduct or rules of the Pennsylvania Supreme Court governing the practice of law in Pennsylvania, unless such conflict, requirement or rule can be waived by the client and the client gives informed consent.

(h) For purposes of this Rule[:], **the term "seller" means an individual lawyer or a law firm that sells a law practice or an area of law practice, and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.**

[(1) the term "single lawyer" means an individual lawyer or a law firm that buys a law practice, and

(2) the term "seller" means an individual lawyer or a law firm that sells a law practice and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.

(i) Admission to or withdrawal from a law partnership or professional association, retirement plan or similar arrangement or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.]

Comment:

(1) The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or a law firm ceases to engage in the private practice of law [**in Pennsylvania and another lawyer or firm takes] or ceases to practice in an area of law in Pennsylvania and other lawyers or firms take over the representation of the clients of the seller, the seller, including the personal representative or estate of a deceased or disabled lawyer, may obtain compensation for the reasonable value of the practice similar to withdrawing partners of law firms. See Rules 5.4 and 5.6. [Admission to or retirement from a law partnership or professional association, retirement plans**

and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.]

[*Sale of Entire Practice*] *Termination of Practice by the Seller*

(2) The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the [purchaser] purchasers. The fact that a number of the seller's clients decide not to be represented by the [purchaser] purchasers but take their matters elsewhere, therefore, does not result in a violation of this Rule. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to a judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[*Single Purchaser*]

(3) The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

(4) This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold. For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves this jurisdiction typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[(3)] (5) This Rule requires [a single purchaser] that the seller's entire practice, or an entire area of practice, be sold. The prohibition against [piecemeal sale of a practice] sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee generating matters. The [purchaser is] purchasers are required to undertake all client matters in the practice, or practice area, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of nonwaivable conflicts of interest, other requirements of these Rules or rules of the Supreme Court governing the practice of law in Pennsylvania, the requirement [that there be a single purchaser] is nevertheless satisfied.

Client Confidences[, *Consent and Notice*]

[(4) Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms with respect to which client consent is not required. See Rule 1.6(c)(6) and (7). Providing the purchaser access to the client-specific detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If actual notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed.]

(6) Disclosure of confidential information to the extent that the lawyer reasonably believes necessary to effectuate the sale of a law practice or area of a law practice is authorized by Rule 1.6(c)(6). Exchange of some or all of the following information is appropriate: identity of clients of selling lawyer; identity of any adverse parties to clients of selling lawyer; field of practice involved in representing clients of selling lawyer; matter summary: nature of the work done for each client, the status of the matter and a candid description of the issues involved in the matter; financial information: what are the billables and financial arrangements with each client of the selling lawyer; and review of the complete client file. This Rule does not require the client's informed consent to disclose such information in the context of a sale of a law practice or area of a law practice. See Rule 1.6(c)(6).

Notice and Consent

[(5)] (7) Once an agreement is reached between the seller and the purchaser, the client must be given actual written notice of the contemplated sale and file transfer including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 60 days. If actual notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed. The Rule provides the minimum notice to the seller's clients necessary to make the sale effective under the Rules of Professional Conduct. The [person responsible for notice] seller is encouraged to give sufficient information concerning the purchasing law firm or lawyer who will handle the matter so as to provide the client adequate information to make an informed decision concerning ongoing representation by the purchaser. Such information may include without limitation the [buyer's] purchaser's background, education, experience with similar matters, length of practice, and whether the lawyer(s) are currently licensed in Pennsylvania.

[(6)] (8) No single method is provided for the giving of actual written notice to the client under paragraph (c).

It is up to the [**person undertaking to give notice**] seller to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the [**person responsible for giving notice**] seller to make this decision.

[(7) **The party responsible for giving notice is likewise not identified in the Rule. In many cases the seller will undertake to give notice. However, the Rule permits the purchasing lawyer or law firm to fulfill the notice requirement.**

(8)] (9) All of the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[(9)] (10) The sale may not be financed by increases in fees charged to the clients of the practice. This protection is underscored by both paragraph (c)(2) and paragraph (d). Existing agreements between the seller and the client as to the fees and the scope of the work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

Other Applicable Ethical Standards

[(10)] (11) Lawyers participating in the sale of a law practice **or a practice area** are subject to ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure [**client**] **the client's** informed consent for those conflicts which can be waived by the client (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation. See Rules 1.6 and 1.9.

[(11)] (12) If approval of the substitution of the purchasing attorney for the selling attorney is required by the Rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. See Rule 1.16.

Applicability of the Rule

[(12)] (13) This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in the sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[(13)] (14) This Rule does not apply to transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice **or an area of practice.**

[Pa.B. Doc. No. 15-1998. Filed for public inspection November 13, 2015, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 89]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 78

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to modify Rule 89.294 to permit the termination of probation upon the expiration of the fixed period of probation.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

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

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter G. PROBATION

§ 89.294. Termination of Probation.

[(a) *Application for termination of probation. At the expiration of the period of probation ordered, the respondent-attorney may apply to the Board for*

termination of the probation. The application shall be verified by the respondent-attorney, and shall state:

- (1) the date probation was ordered;
 - (2) that the respondent-attorney has complied with all of the terms and conditions of probation;
 - (3) whether or not formal proceedings for discipline are pending against the respondent-attorney; and
 - (4) that the respondent-attorney requests termination of probation.
- (b) *Conditions for granting termination of probation.* The Board shall order the termination of probation if:

- (1) all costs of the proceedings as previously ordered by the Supreme Court or the Board have been paid;
- (2) the respondent-attorney has complied with the terms of probation; and
- (3) no formal proceedings for discipline are pending against the respondent-attorney.]

Probation shall terminate upon the filing of the final quarterly report and upon the expiration of the fixed period of probation, unless:

- (a) the conditions of probation have been violated or have not been met;
- (b) all costs of the proceedings as previously ordered by the Supreme Court or the Board have not been paid; or
- (c) formal proceedings for discipline are pending against the respondent-attorney.

[Pa.B. Doc. No. 15-1999. Filed for public inspection November 13, 2015, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rule 1915.4-4 of the Rules of Civil Procedure; No. 633 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 28th day of October, 2015, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 45 Pa.B. 1606 (April 4, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1915.4-4 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 1, 2016.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.4-4. Pre-Trial Procedures.

A pre-trial conference in an initial custody or modification proceeding shall be scheduled before a judge at the request of a party or sua sponte by the court and the procedure shall be as set forth in this rule. If a party wishes to request a pre-trial conference, the praecipe set forth in subdivision (g) [**below**] shall be filed. The scheduling of a pre-trial conference shall not stay any previously scheduled proceeding unless otherwise ordered by the court.

(a) The praecipe may be filed at any time after a custody conciliation or conference with a conference officer unless a pre-trial conference has already been scheduled or held. The pre-trial conference may be scheduled at any time, but must be scheduled at least 30 days prior to trial.

(b) Not later than five days prior to the pre-trial conference, each party shall [**serve a pre-trial statement**] **file a pre-trial statement with the prothonotary's office and serve a copy** upon the court and the other party or counsel of record. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) the name and address of each expert whom the party intends to call at trial as a witness;

(2) the name and address of each witness the party intends to call at trial [,] **and the relationship of that witness to the party [and a statement by the party or the party's counsel that he or she has communicated with each listed witness; and]**. **Inclusion of a witness on the pre-trial statement constitutes an affirmation that the party's counsel or the self-represented party has communicated with the witness about the substance of the witness's testimony prior to the filing of the pre-trial statement; and**

(3) a proposed order setting forth the custody schedule requested by the party.

In addition to the above items included in the pre-trial statement, any reports of experts and other proposed exhibits shall be included as part of the pre-trial statement served upon the other party or opposing counsel, but not included with the pre-trial statement served upon the court.

(c) If a party fails to file a pre-trial statement or otherwise comply with the requirements of subdivision (b), the court may make an appropriate order under [**Rule**] **Pa.R.C.P. No. 4019(c)(2) and (4) governing sanctions.**

(d) Unless otherwise ordered by the court, the parties may amend their pre-trial statements at any time, but not later than seven days before trial.

(e) At the pre-trial conference, the following shall be considered:

- (1) issues for resolution by the court;
- (2) unresolved discovery matters;
- (3) any agreements of the parties;
- (4) issues relating to expert witnesses;
- (5) settlement and/or mediation of the case;
- (6) such other matters as may aid in the disposition of the case; and
- (7) if a trial date has not been scheduled, it shall be scheduled at the pre-trial conference.

(f) The court shall enter an order following the **pre-trial** conference detailing the agreements made by the parties as to any of the matters considered, limiting the issues for trial to those not disposed of by agreement and setting forth the schedule for further action in the case. Such order shall control the subsequent course of the action unless modified at trial to prevent manifest injustice.

(g) The praecipe for pre-trial conference shall be substantially in the following form:

(Caption)

PRAECIPE FOR PRE-TRIAL CONFERENCE

To the Prothonotary:

Please schedule a pre-trial conference in the above-captioned custody matter pursuant to Pa.R.C.P. No. 1915.4-4.

The parties' initial in-person contact with the court (conference with a conference officer or judge, conciliation or mediation) occurred on _____.

Plaintiff/Defendant/Attorney for Plaintiff/Defendant

[Explanatory Comment—2013

The Domestic Relations Procedural Rules Committee has become aware that there is a wide disparity in pre-trial procedures in custody cases among the various jurisdictions. As the committee strives to recommend best practices, this new rule establishes uniform pre-trial procedures in custody cases when requested by either party. The goal is to reduce custody litigation by encouraging early preparation and court intervention for purposes of expedited resolutions. The rule is based upon the pre-trial procedures in divorce cases as set forth in Rule 1920.33. Nothing in this rule shall affect the First Judicial District's practice of conducting a pre-trial conference upon the filing of a motion for a protracted or semi-protracted trial.]

EXPLANATORY COMMENT

In 2013, the Domestic Relations Procedural Rules Committee (the "Committee") recognized there was a wide disparity in pre-trial procedures in custody cases among the various judicial districts. By adopting this rule, the Supreme Court established uniform state-wide pre-trial procedures in custody cases. With an eye toward reducing custody litigation, the rule encourages early preparation and court involvement for purposes of expedited resolutions. The rule was based upon the pre-trial procedures in divorce cases as set forth in Pa.R.C.P. No. 1920.33(b). The rule does not affect, however, the First Judicial District's

practice of conducting a pre-trial conference upon the filing of a motion for a protracted or semi-protracted trial.

In 2015, the Committee expressed concern the rule as previously adopted by the Supreme Court allowed for an interpretation contrary to the intent of the rule. The Committee proposed and the Court adopted an amendment to the rule to clarify the rule's mandate as it relates to witnesses. As a goal of any pre-trial conference is to settle the case, in whole or in part, the Committee believed a best practice in reaching that goal is having a thorough knowledge of the case, including the substance of anticipated witness testimony. As amended, the rule plainly states that counsel or a self-represented party is required to discuss with the witness their testimony prior to including the witness on the pre-trial statement.

Unlike Pa.R.C.P. No. 1920.33(b), the rule does not require inclusion of a summary of the witness's testimony in the pre-trial statement; but rather, an affirmation by counsel or self-represented party that there was actual communication with each witness about the witness's testimony. With the additional information from witnesses, counsel, self-represented parties and the trial court can better engage in more fruitful settlement discussions at the pre-trial conference.

[Pa.B. Doc. No. 15-2000. Filed for public inspection November 13, 2015, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Administrative Search Warrants—Right of Entry— Residential and Commercial Properties; Joint General Court Regulation No. 2015-01

The Philadelphia Code authorizes code officials (i.e., "The Commissioner of Licenses and Inspections [as well as the Fire Commissioner in Fire Code matters] or his or her duly authorized representative charged with the administration and enforcement of such codes") to enter any building or structure, subject to reasonable limitations, when there is reasonable cause to believe that a code violation exists or a dangerous condition is present which may cause serious harm to the public. See Title 4 of the Philadelphia Code, Section A-106 and Section A-401.2(2).

The Philadelphia Home Rule Charter also authorizes similar access. Section 5-1004 of the Home Rule Charter provides as follows:

Subject to the limitations of the Constitutions of the United States and of the Commonwealth of Pennsylvania, any officer or employee of the Department of Licenses and Inspections, in the performance of his duties, may at any reasonable hour, without hindrance, enter, examine and inspect all vessels, vehicles, premises, grounds, structures, buildings, and underground passages of every sort, including their contents and occupancies, and may likewise examine, inspect and test any substance, article, equipment or other property.

The United States Supreme Court and this Commonwealth's appellate courts have had occasion to address the constitutional limitations imposed on city inspectors

and code officials. See eg. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541 (1967); *Commonwealth v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); and *Warrington Township v. Powell*, 796 A.2d 1061 (Pa. Cmwlth. 2002).

In light of the important private and public rights involved and the concomitant necessary restrictions, the intent of this Joint General Court Regulation is to set forth the process to be followed in seeking administrative search warrants to enter and search residential and commercial premises while safeguarding the property rights of the property owners and lessees as well as other legal restrictions.

1. *General Statement.* Generally, a search warrant is not needed to inspect or search commercial premises which are open to the general public. However, the search of residential premises and commercial premises or sections within commercial premises which are not open to the public are presumptively unreasonable if conducted without an administrative search warrant, as provided herein. Moreover, an administrative search warrant to enter or inspect should be sought whenever the property owner, occupant, or possessor refuses entry, even if such administrative search warrant is not legally required.

2. *Residential Property.* Unless the property owner, occupant, possessor, or other authorized agent consents to the entry, inspection or search of a residential premises before the premises are entered, inspected or searched, an administrative warrant shall be obtained as provided in Section 5. Provided, however, that entry, inspection or searches may be conducted due to exigent circumstances, which may include a fire or abandoned lot or property (as defined).

3. *Commercial Property open to the public.* An administrative search warrant is not required to enter, inspect or search a commercial property open to the general public.

4. *Commercial Property not open to the public.* Unless the property owner, occupant, possessor, or other authorized agent consents to the entry, inspection or search of a commercial property not open to the public, an administrative warrant shall be obtained as provided in Section 5. Provided, however, that entry, inspection or searches may be conducted due to exigent circumstances, which may include a fire or abandoned lot or property (as defined).

5. *Application for Administrative Search Warrant and Authorization.* The following process shall be followed in seeking an Administrative Search Warrant.

a. *Affiant.* The Commissioner of Licenses and Inspections or any other authorized code officer may file an Application for Administrative Search Warrant and Authorization. The name of the Affiant, identification number, Agency name, address and telephone number shall be set forth in the Application.

b. *Property to be entered, inspected or searched.* The property to be entered, inspected or searched must be identified and described in as much detail as possible. The description shall include the street address as well as the specific area within the property if necessary.

c. *Property owner, occupant or possessor.* The property owner, occupant, or possessor as disclosed in available property records or other registrations (such as rental agent or business owner) shall be identified.

d. *Reason for entry, inspection or search.* The specific factual and legal reasons for entry, inspection or search

must be set forth in as much detail as possible, and any alleged statutory violation or ordinance violation must be identified. In the event a Code Enforcement violation or other legal proceedings are pending, the case number must be provided.

e. *Reasonable Cause.* The affiant shall set forth with specificity the factual reasons which necessitate the entry, inspection or search, such as a violation of a city building, fire or other code with an adverse effect on the public health, safety or welfare. The affiant shall include a statement as to whether the property at issue was previously inspected and if so, the date of such inspection and shall attach any documentation or other description of the results of such inspection.

f. *Review by City Solicitor.* The affiant shall submit the Application to the Assistant City Solicitor(s) designated by the City of Philadelphia to review such Applications for review and for approval to file such Application with the appropriate judicial officer.

g. *The Application is to be brought to the designated Judicial Officer.* The affiant shall bring any Application approved by the designated Assistant City Solicitor to the judicial officer designated from time to time by the Administrative Judge of the Trial Division, Court of Common Pleas and/or by the President Judge of Philadelphia Municipal Court, as appropriate.

h. *Oath to be administered by Judicial Officer.* The judicial officer shall administer the requisite oath to the affiant and shall determine whether reasonable cause exists for the issuance of an Administrative Search Warrant based on the information contained within the Application or provided therewith.

i. *Issuance of Administrative Warrant.* If the issuing authority determines that reasonable cause exists for the issuance of an Administrative Search Warrant, the Warrant shall be issued. The judicial officer shall set forth the timing of the service of the Administrative Search Warrant as well as to the return of the Administrative Search Warrant and shall sign and seal the warrant and return it to the affiant. The Warrant shall be returnable to the Judicial Officer upon service. The original Application, Warrant and attachments shall be forwarded to the Office of Judicial Records and a copy of the Application and all attached documentation shall be retained by the judicial officer.

6. *Reasonable cause to issue Administrative Search Warrants.* Justification for the issuance of an Administrative Search Warrant does not rise to the level of criminal "probable cause." As the United States Supreme Court noted in *See*, supra, an "agency's particular demand for access will of course be measured, in terms of probable cause to issue a warrant, against a flexible standard of *reasonableness* that takes into account the public need for effective enforcement the particular regulation involved." *See*, 387 U.S. at 545. (Emphasis supplied). This Joint General Court Regulation thus references such standard as "reasonable cause" to highlight the applicable legal standard, while cognizant of the fact that some appellate cases may use the term "probable cause" while noting, as the United States Supreme Court did in *See*, that the administrative search warrant standard does not rise to the level of a criminal search warrant.

The original Joint General Court Regulation shall be filed with the Office of Judicial Records in dockets maintained for General Court Regulations issued by the Administrative Judge of the Court of Common Pleas and

the President Judge of the Philadelphia Municipal Court, and one certified copy shall be submitted to the Administrative Office of Pennsylvania Courts. Two certified copies of the Joint General Court Regulation and an electronic copy on a computer diskette shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, shall be published in *The Legal Intelligencer*, and shall be posted on the First Judicial District's website at <http://courts.phila.gov>. Copies of this General Court Regulation and shall also be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District. This

General Court Regulation shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

HONORABLE MARSHA H. NEIFIELD,
*President Judge
Philadelphia Municipal Court
Philadelphia County*

HONORABLE KEVIN M. DOUGHERTY,
*Administrative Judge, Trial Division
Court of Common Pleas
Chair, Administrative Governing Board*

APPLICATION DATE	Commonwealth of Pennsylvania CITY AND COUNTY OF PHILADELPHIA	WARRANT CONTROL NO.				
DOCKET NO.	Application for Administrative Search Warrant and Authorization	ISSUED TO DISTRICT/UNIT				
<table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;"><i>NAME AND AFFIANT</i></td> <td style="width:30%; border: none;"><i>IDENTIFICATION NO.</i></td> <td style="width:30%; border: none;"><i>AGENCY - DISTRICT/UNIT - ADDRESS</i></td> <td style="width:10%; border: none;"><i>PHONE NUMBER</i></td> </tr> </table>			<i>NAME AND AFFIANT</i>	<i>IDENTIFICATION NO.</i>	<i>AGENCY - DISTRICT/UNIT - ADDRESS</i>	<i>PHONE NUMBER</i>
<i>NAME AND AFFIANT</i>	<i>IDENTIFICATION NO.</i>	<i>AGENCY - DISTRICT/UNIT - ADDRESS</i>	<i>PHONE NUMBER</i>			
STREET ADDRESS OF PROPERTY TO BE ENTERED/INSPECTED/SEARCHED/ITEMS TO BE SEIZED		BRT/OPA #				
DESCRIPTION OF PROPERTY TO BE ENTERED/INSPECTED/SEARCHED/ITEMS TO BE SEIZED. PROVIDE APARTMENT OR SUITE NUMBER IF APPROPRIATE. <i>(Be specific):</i>						
NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PROPERTY <i>(If proper name is unknown, give alias and/or description):</i>						
VIOLATION OF STATUTE OR ORDINANCE. <i>(Describe conduct or specify statute):</i>		PROVIDE CODE VIOLATION COMPLAINT NO. IF ISSUED				
REASONABLE CAUSE AFFIDAVIT						
REASONABLE CAUSE BELIEF TO ENTER AND/OR SEARCH THE SAID PROPERTY IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:						
<input type="checkbox"/> _____ ADDITIONAL PAGES ARE ATTACHED I verify that the statements contained herein are true and correct to the best of my knowledge, information and belief. I understand that these statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities. Date: _____						
		_____ <i>SIGNATURE OF AFFIANT</i>				
APPROVED BY CITY SOLICITOR						
_____ <i>NAME OF ASSISTANT CITY SOLICITOR</i>	_____ <i>SIGNATURE OF ASSISTANT CITY SOLICITOR</i>	_____ <i>DATE</i>				
_____ <i>FILE NUMBER</i>						
The below named Affiant, being duly sworn (or affirmed) before the Issuing Authority according to law, deposes and says that the above property has not been recently inspected, may be in violation of the Philadelphia Code, and that reasonable cause exists for the issuance of an Administrative Search Warrant to enter the property and to inspect and/or search same as described above.						
_____ <i>NAME AND AFFIANT</i>	_____ <i>SIGNATURE OF AFFIANT</i>	_____ <i>AGENCY - DISTRICT/UNIT - ADDRESS</i>				
_____ <i>DATE</i>						
TO BE COMPLETED BY THE ISSUING AUTHORITY						
SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20 _____						
_____ <i>SIGNATURE OF ISSUING AUTHORITY</i>	_____ <i>TITLE</i>	_____ <i>OFFICE ADDRESS</i>				
_____ <i>SEAL</i>						
ADMINISTRATIVE SEARCH WARRANT						
TO AFFIANT/CODE ENFORCEMENT OFFICIAL: upon consideration of the facts which have been sworn to or affirmed before me I have found reasonable cause to enter the above property as requested and I do authorize you to inspect and search the above described property.						
<input type="checkbox"/> This Warrant shall be served as soon as practicable and shall be served only between the hours of 6AM to 10PM but in no event later than _____ <input type="checkbox"/> This Warrant shall be served as soon as practicable and may be served any time during the day or night but in no event later than _____ <input type="checkbox"/> This Warrant shall be returnable to Judicial Officer _____						
Issued under my hand this _____ day of _____, 20____, at _____ .M o'clock. <i>(Issue time must be stated)</i>						
_____ <i>Signature of Issuing Authority</i>	_____ <i>Title (Court of Common Pleas Judge, Municipal Court Judge, Other)</i>	_____ <i>Date Commission Expires</i>				

[Pa.B. Doc. No. 15-2001. Filed for public inspection November 13, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989;
1508 MD 2015

Order

And Now, this 29th day of October 2015, Dauphin County Local Rule of Criminal Procedure 114 is promulgated as follows:

Rule 114. Orders.

If a proposed order or alternative orders are attached to any motion, petition or answers or responses thereto, the proposed order shall contain a distribution legend. The distribution legend shall include the name(s) and mailing address(es), telephone number(s), facsimile number(s) and e-mail address(es), if any, of all attorneys and/or self-represented parties to be served with a copy of the order. The distribution legend shall also list Court Administration, the Sheriff's Office and any other entity that should receive a copy of the order.

These amendments shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 15-2002. Filed for public inspection November 13, 2015, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Richard David Favata a/k/a R. David Favata having been suspended from the practice of law in the State of Delaware for a period of six months and one day by Order of the Supreme Court of Delaware decided July 27, 2015, the Supreme Court of Pennsylvania issued an Order on November 2, 2015 suspending Richard David Favata a/k/a R. David Favata (# 52056) from the practice of law in this Commonwealth for a period of six months and one day, to take effect on December 2, 2015. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 15-2003. Filed for public inspection November 13, 2015, 9:00 a.m.]