# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### [ 234 PA. CODE CHS. 1 AND 5 ]

### Proposed Amendments of Pa.R.Crim.P. 522 and Proposed Revision to the Comments to Pa.Rs.Crim.P. 150 and 151

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 522 (Detention of Witnesses) and the revision of the Comments to Rules 150 (Bench Warrants) and 151 (Bench Warrant Procedures When Witness is under Age of 18 Years) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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

All communications in reference to the proposal should be received by no later than Friday, May 5, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural Rules Committee*

CHARLES A. EHRLICH,
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

**PART E. Miscellaneous Warrants**

**Rule 150. Bench Warrants.**

* * * * *

(B) As used in this rule, "judicial officer" is limited to the magisterial district judge or common pleas court judge who issued the bench warrant, or the magisterial district judge or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings, or in Philadelphia, trial commissioners **and Philadelphia Municipal Court judges**.

**Comment**

* * * * *

To ensure compliance with the prompt bench warrant hearing requirement, the president judge or the president judge's designee may designate only a magisterial district judge to cover for magisterial district judges or a common pleas court judge to cover for common pleas court judges. *See also* Rule 132 for the temporary assignment of magisterial district judges. In Philadelphia, the current practice of designating trial commissioners **and Philadelphia Municipal Court judges** to conduct bench warrant hearings is acknowledged in paragraph (B).

* * * * *

For the bench warrant procedures in summary cases, see Rules 430(B) and 431(C).

**For procedures for the detention of witnesses, see Rule 522.**

For the arrest warrants that initiate proceedings in court cases, see Chapter 5, Part B(3)(a), Rules 513, 514, 515, 516, 517, and 518. For the arrest warrants that initiate proceedings in summary cases, see Chapter 4, Part D(1), Rules 430(A) and 431(B).

***Official Note*: Adopted December 30, 2005, effective August 1, 2006; Comment revised October 24, 2013, effective January 1, 2014; Comment revised , 2017, effective , 2017.**

*Committee Explanatory Reports*:

Final Report explaining new Rule 150 providing procedures for bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the October 24, 2013 Comment revision adding a cross-reference to new Rule 151 published with the Court's Order at 43 Pa.B. 6655 (November 9, 2013).

**Report explaining the Comment revision regarding procedures for the detention of witnesses pursuant to Rule 522 published for comment at 47 Pa.B. 1732 (March 25, 2017).**

**Rule 151. Bench Warrant Procedures When Witness is Under Age of 18 Years.**

* * * * *

**Comment**

* * * * *

As used in this rule, "minor witness" means a witness who is under the age of 18 years, and "proper judicial officer" means the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee.

**When a witness under the age of 18 years is to be detained pursuant to Rule 522, the procedures in this rule are applicable.**

***Official Note*: Adopted October 24, 2013, effective January 1, 2014; Comment revised , 2017, effective , 2017.**

*Committee Explanatory Reports*:

Final Report explaining the October 24, 2013 adoption of new Rule 151 providing procedures for bench warrants when a witness is under the age of 18 published with the Court's Order at 43 Pa.B. 6655 (November 9, 2013).

**Report explaining the Comment revision regarding procedures for the detention of witnesses pursuant to Rule 522 published for comment at 47 Pa.B. 1732 (March 25, 2017).**

## CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

### PART C. Bail

**Rule 522. Detention of Witnesses.**

* * * * *

(C) Upon application, a court may release a witness from custody with or without bond, or grant other appropriate relief.

**(D) If process has been issued pursuant to paragraph (A) for a material witness who is under the age of 18 years, the procedures provided in Rule 151 shall apply.**

**Comment**

This rule does not permit a witness to be detained prior to the arrest of the defendant, since an arrest might never take place and the witness could be held indefinitely.

* * * * *

***Official Note*: Former Rule 4017, previously Rule 4014, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4017 July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 522. Present Rule 4017 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 522 and amended March 1, 2000, effective April 1, 2001; Comment revised April 28, 2006, effective August 1, 2006; amended , 2017, effective , 2017.**

*Committee Explanatory Reports*:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Final Report explaining the April 28, 2006 revision to the Comment concerning electronic monitoring published with the Court's Order at 36 Pa.B. 2279 (May 13, 2006).

**Report explaining the proposed amendments concerning material witnesses under the age of 18 years published for comment at 47 Pa.B. 1732 (March 25, 2017).**

**REPORT**

***Proposed Amendment of Pa.R.Crim.P. 522***
***Proposed Revision of the Comments to***
***Pa.Rs.Crim.P. 150 and 151***

**Rule 522: Material Witness Under 18 Taken Into Custody**

The Committee was recently posed with the question of what should be done when a material witness who is taken into custody pursuant to Rule 522 is under the age of 18. Rule 522 (Detention of Witnesses) provides procedures for restricting the liberty of a material witness when there is cause to believe the witness will not appear for trial. The rule provides that, upon application of the Commonwealth or defense counsel, a court may set bail for a witness who likely is not to appear to testify. Process may be issued to bring the witness before the court for purposes of demanding bail. Paragraph (B) of the rule provides that, if the witness cannot satisfy the conditions of bail, the witness may be committed to jail but must have the opportunity to post bail at any time.

Rule 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) was developed in 2013 to provide procedures for bench warrants issued to minor witnesses who failed to respond to a subpoena. This was based on Rule of Juvenile Court Procedure 140 (Bench Warrants for Failure to Appear at Hearings) and was intended to address the various issues that arise when a juvenile is taken into custody. Rule 151 includes required notice to the issuing authority and parents or guardians as well as procedures to ensure early judicial review for an under-18 witness who is being held. *See* 43 Pa.B. 6655 (November 9, 2013).

The Committee concluded that the same protections should apply for those under-18 determined to be reluctant material witnesses as is provided for under-18 witnesses who have failed to respond to subpoenas. Therefore, a new paragraph (D) would be added to Rule 522 that would state that the Rule 151 procedures would apply in these circumstances. A revision to the Comment to Rule 151 similarly would state that the procedures in Rule 151 would apply to an under-18 witness being detained pursuant to Rule 522. Additionally, a cross-reference to Rule 522 would be added to the Rule 150 (Bench Warrants) Comment.

During the Committee's discussion, it was noted that the practice in Philadelphia was for bench warrant hearings to be conducted by Philadelphia Municipal Court judges in addition to being held by Philadelphia trial commissioners. This has been clarified by an amendment to paragraph (B) of Rule 150 and by a revision to the Comment.

[Pa.B. Doc. No. 17-501. Filed for public inspection March 24, 2017, 9:00 a.m.]

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# Title 249—PHILADELPHIA RULES

## PHILADELPHIA COUNTY

### Amendment of Philadelphia Civil Rule *1008 regarding Philadelphia Municipal Court Appeals as Supersedeas; Administrative Order No. 01 of 2017

**Order**

*And Now*, this 8th day of March, 2017, the Court notes that the Philadelphia Civil Rules governing appeals from orders issued by the Philadelphia Municipal Court have created confusion, and pending a comprehensive review of said rules and the adoption of necessary amendments, it is hereby *Ordered* and *Decreed* that Philadelphia Civil Rule *1008, is amended as follows. It is further *Ordered* and *Decreed* that the Supplemental Instructions and Affidavits referenced in Philadelphia Civil Rule *1008 are amended as follows.

It is further *Ordered* and *Decreed* that the amendments shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

This Administrative Order is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1. As required by Pa.R.J.A. 103(d), this Administrative Order and the proposed local rule were submitted to the Supreme Court of Pennsylvania Minor Court Rules Committee for review and written notification has been received from the Rules Committee certifying that the proposed local rule is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the attached local rule shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the attached local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at http://courts.phila.gov, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rule shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

*By the Court*

HONORABLE JACQUELINE F. ALLEN,
*Administrative Judge, Trial Division*
*Court of Common Pleas, Philadelphia County*

**Proposed Amendments to Philadelphia Civil Rule *1008**

*Note*: Deleted text is bolded, and bracketed; new text is in caps bolded.

**Philadelphia Civil Rule *1008. Municipal Court Appeals as Supersedeas.**

* * *

(d) *Supersedeas in Appeals of Judgments of Possession of Real Property Pursuant to Residential Leases. Indigent Tenants*.

(1) Residential tenants who seek to appeal from a Municipal Court judgment for possession and who do not have the ability to pay the lesser of three months' rent or the full amount of the Municipal Court judgment for rent shall file with the Office of Judicial Records, as applicable, either a Tenant's Supersedeas Affidavit (Non-Section 8), substantially in the form set forth below **[ as Attachment 1 ]**, or **[ Section 8 ]** Tenant's Supersedeas Affidavit **(SECTION 8)**, substantially in the form set forth below **[ as Attachment 2 ]**.

(2)(a) If the rent has already been paid to the landlord in the month in which the Notice of Appeal is filed, the tenant shall pay into an escrow account with the Office of Judicial Records the monthly rent **[ as it becomes due under the lease for the months subsequent to the filing of the Notice of Appeal ] IN THIRTY (30) DAY INTERVALS FROM THE DATE THE NOTICE OF APPEAL WAS FILED, AND EACH SUCCESSIVE THIRTY (30) DAY PERIOD THEREAFTER**; or

* * *

(3) The Office of Judicial Records shall provide residential tenants who have suffered a judgment for possession with "Supplemental Instructions for Obtaining a Stay of Eviction," substantially in the form set forth below **[ as Attachment 3 ]**.

* * *

(6) If the tenant fails to make monthly rent payments to the Office of Judicial Records as described in paragraph (2), the supersedeas may be terminated by the Office of Judicial Records upon praecipe by the landlord or other party to the action, substantially in the form set forth below **[ as Attachment 4 ]** which is to be filed together with a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record; however, upon implementation of the Civil Electronic Filing System as provided in Philadelphia Civil Rule *205.4, notice of the termination of the supersedeas will be served on the Philadelphia Municipal Court electronically by the Civil Electronic Filing System. The landlord may obtain a writ of possession from the Municipal Court ten (10) days after the supersedeas is terminated by the Office of Judicial Records.

* * *

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION—CIVIL

SUPPLEMENTAL INSTRUCTIONS FOR OBTAINING A STAY OF EVICTION

****IMPORTANT****

PLEASE READ THESE INSTRUCTIONS CAREFULLY!

This document contains important information about your case. Failure to comply with any instructions provided in these materials may cause you to be evicted before your appeal is heard.

FOR TENANTS—SUPERSEDEAS: If you are a tenant and you file a Notice of Appeal, you must pay money into an escrow account to remain in the property until your appeal is decided. This is called a "supersedeas." The supersedeas will suspend the Municipal Court judgment and will prevent your eviction until your case is heard by a Court of Common Pleas judge and a final decision is made on the appeal.

IF YOU FAIL TO PAY YOUR MONTHLY RENT INTO ESCROW IN FULL AND ON TIME, YOU COULD BE EVICTED BEFORE YOUR APPEAL IS HEARD.

Begin by looking at the income limits attached to these instructions.

If your income is below the income limits, complete a Tenant's Supersedeas Affidavit (Non-Section 8) or Ten-

ant's Supersedeas Affidavit (Section 8), then follow the instructions for low-income tenants below. There are several different options available; pick the Option (A, B, or C) that best describes your situation.

If your income is higher than the income limits attached to these instructions, follow the instructions for Option D.

These forms are available on the website of the First Judicial District at http://www.courts.phila.gov/forms.

If you fail to pay into escrow the required monthly amount when it is due, the supersedeas can be terminated upon the filing of a Praecipe Requesting Termination of Supersedeas, and you may be evicted before your appeal is heard.

**FFY 2017 INCOME LIMITS* FOR FILING SUPERSEDEAS AS A LOW INCOME TENANT**

| *Number of Persons in Household* | *Maximum Gross Monthly Income* | *Maximum Gross Yearly Income* |
|---|---|---|
| One | $ 1,005 | $ 12,060 |
| Two | $ 1,354 | $ 16,240 |
| Three | $ 1,702 | $ 20,420 |
| Four | $ 2,050 | $ 24,600 |
| Five | $ 2,398 | $ 28,780 |
| Six | $ 2,747 | $ 32,960 |
| Seven | $ 3,095 | $ 37,140 |
| Eight | $ 3,443 | $ 41,320 |
| For each additional person add | $ 348 | $ 4,180.00 |

* Issued by the Federal Department of Health and Human Services. Will be updated as applicable.

OPTION A. If you are a low-income tenant and there was a money judgment entered against you for nonpayment of rent, and you HAVE NOT paid rent for the month in which the Notice of Appeal is filed, you must:

1. File an In Forma Pauperis petition (a petition for low-income parties) pursuant to Pa.R.C.P. No. 240;

2. Pay one-third of your monthly rent into an escrow account with the Office of Judicial Records at the time the Notice of Appeal is filed;

3. Pay the remaining two-thirds (2/3) of your monthly rent into the escrow account within twenty (20) days of the date the Notice of Appeal was filed; and

4. Pay your monthly rent on an ongoing basis into the escrow account in thirty (30) day intervals from the date the Notice of Appeal was filed until the time of your trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

OPTION B. If you are a low-income tenant, and there was a money judgment against you for non-payment of rent, and you HAVE paid rent for the month in which the Notice of Appeal is filed, you do not have to pay rent at the time you file your Notice of Appeal. You must:

1. File an In Forma Pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;

2. Pay your monthly rent on an ongoing basis into an escrow account with the Office of Judicial Records in thirty (30) day intervals from the date the Notice of Appeal was filed until the time of trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

OPTION C. If you are a low-income tenant, and no money judgment was entered against you for nonpayment of rent, you do not have to pay rent at the time you file your Notice of Appeal. This option is to be used if at the Municipal Court hearing, the judge determined that you owed "zero" or "nothing" in rent. You must:

1. File an In Forma Pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;

2. Pay your monthly rent on an ongoing basis into an escrow account with the Office of Judicial Records in thirty (30) day intervals from the date the Notice of Appeal was filed until the time of your trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

OPTION D. If your income is higher than the income limits on the attached chart, you must:

1. Pay the fee to file a Notice of Appeal;

2. Pay the lesser of three (3) months' rent or the amount of rent awarded to the landlord in the Municipal Court into an escrow account with the Office of Judicial Records' office at the time the Notice of Appeal; and

3. Pay your monthly rent into the escrow account in thirty (30) day intervals from the date the Notice of Appeal was filed until the time of trial. It is important to count the thirty (30) days exactly because the date on your payment will change depending on the number of days in a given month.

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION-CIVIL

| | | |
|---|---|---|
| | : | _____ TERM, 200____ |
| Plaintiff, | : | |
| | : | NO. _____ |
| v. | : | |
| | : | _____ |
| Defendant. | : | Landlord—Tenant Number |

TENANT'S SUPERSEDEAS AFFIDAVIT
(SECTION 8)

I, _____
PRINT NAME AND ADDRESS HERE
_____ ,

have filed a Notice of Appeal from a Municipal Court judgment awarding to my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the actual rent in arrears. My total household income does not exceed the income guidelines set forth in the supplemental instruction for obtaining a stay pending appeal and I have completed an In Forma Pauperis (IFP) petition to verify this.

Check one: ☐ I have paid the rent this month. ☐ I have not paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is $_____ .

I hereby certify that I am a participant in the Section 8 program and I am not subject to a final (i.e. non-appealable) decision of a court or government agency which terminates my right to receive Section 8 assistance based on my failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

_____ _____
DATE SIGNATURE OF APPELLANT

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION-CIVIL

| | | |
|---|---|---|
| | : | _____ TERM, 200____ |
| Plaintiff, | : | |
| | : | NO. _____ |
| v. | : | |
| | : | _____ |
| Defendant. | : | Landlord—Tenant Number |

TENANT'S SUPERSEDEAS AFFIDAVIT
(NON-SECTION 8)

I, _____
PRINT NAME AND ADDRESS HERE
_____ ,

have filed a Notice of Appeal from a Municipal Court judgment awarding to my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the judgment for rent awarded by the Municipal Court. My total household income does not exceed the income guidelines set forth in the supplemental instructions for obtaining a stay pending appeal and I have completed an In Forma Pauperis (IFP) petition to verify this.

Check one: ☐ I have paid the rent this month. ☐ I have not paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is $_____ .

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties in 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ _____
DATE SIGNATURE OF APPELLANT

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION-CIVIL

| | | |
|---|---|---|
| | : | _____ TERM, 200____ |
| Plaintiff, | : | |
| | : | NO. _____ |
| v. | : | |
| | : | _____ |
| Defendant. | : | Landlord—Tenant Number |

PRAECIPE REQUESTING TERMINATION OF SUPERSEDEAS

**TO THE OFFICE OF JUDICIAL RECORDS:**

Please terminate the supersedeas in the within action for failure of the appellant to pay monthly rental as required by Philadelphia Civil Rule *1008 when it became due.

Date: _____ _____

Appellee

Upon confirmation of failure of the appellant to deposit the monthly rent when it became due, the supersedeas is terminated.

[DATE/TIME STAMP]

_____

**OFFICE OF JUDICIAL RECORDS**

[Pa.B. Doc. No. 17-502. Filed for public inspection March 24, 2017, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## BEAVER COUNTY

### Local Rules Regarding Custody Actions; No. 10149 of 2017

**Administrative Order**

The following amendments to the Beaver County Local Rules of Civil Procedure are hereby adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is hereby Ordered and Directed that the Local Custody Rules read as follows:

**LR1915A. Custody. (Corresponds to Pa.R.C.P. 1915.3, 1915.4, 1915.4-1, 1915.4-2, 1915.4-3 and 1915.4-4)**

1. *Scheduling the Custody Conference.* When filing a claim for custody or partial custody in a Complaint or a subsequent claim, the moving party shall:

(a) Present the pleading to the Administrative Custody Judge during Motions Court to obtain the Court's signature on the scheduling Order. Immediately thereafter, obtain a date and time for the Conference from the Administrative Custody Judge. The Judge's Chambers will make a copy of the pleading and Order to be forwarded to Juvenile Services Division.

(b) File the original pleading and Order in the Prothonotary's Office.

(c) Serve a clocked copy of the pleading and Order on counsel of record and/or unrepresented parties, with proof of service to be filed in the Prothonotary's Office, and a copy of the proof of service to be provided to the Child Custody Conference Officer at or prior to the time set for the Conference.

(d) When a Petition for Contempt of a Custody Order is filed, the Judge shall schedule the Contempt Petition for a Status Conference or Hearing before the Court, or for a Conciliation Conference before a Conference Officer. If a Petition for Contempt is filed at or about the same time as a Petition for Modification of a Custody Order, the Judge may order the Contempt Petition to be mediated by the Conference Officer at the same time as the Petition for Modification. If the matter is not resolved at the Conciliation Conference, the Court shall schedule a Status Conference or a Hearing on the Contempt matter, or if Exceptions are filed to the Proposed Order of Custody, the Judge may consolidate the Contempt matter with the Pre-Trial Conference and/or Trial scheduled on the Modification Petition.

(e) In order to facilitate compliance with the requirements of the Uniform Child Custody Jurisdiction Enforcement Act, a party shall provide the Court with all known information concerning a Custody proceeding pending in another state which involves the same parties or children.

*Note*: In particular, the Court should be informed of the following: (1) the name and address of the Court in which such case is pending; (2) the caption of such case; (3) the name, address and telephone number of the Judge to whom the case might have been assigned, and (4) any Orders entered in such case. Information provided under this Rule should be submitted in writing and attached to the Complaint/Petition.

(f) All Petitions for Modification of Custody Orders shall have attached thereto, unless excused by the Court for good cause shown, copies of the Petitioner's Certificate of Completion of the mandatory Educational Seminar as required in LR1915A, as well as proof of compliance with all counseling and other services mandated in the Order sought to be modified. If such proof and the Certificate of Completion are not attached, the Court may refuse to entertain the Petition.

2. *Preliminary Objections.* Any party filing Preliminary Objections raising issues of jurisdiction or venue of the Court to act, shall, concurrently with filing the same with the Prothonotary, deliver a true and correct copy of the Preliminary Objections to the Judge assigned to handle Custody matters and to opposing counsel and/or to any party not represented by counsel. The Judge will schedule the matter for Argument on a priority schedule to dispose of the issues as expeditiously as possible.

3. *Conduct of Conciliation Conference Officer.*

(a) The Child Custody Conference Officer will convene a Conciliation Conference, as scheduled by the Court, which Conference shall be attended by the parties and their legal counsel, if any.

(b) Before counsel appears before the Child Custody Conference Officer, counsel must enter his/her Appearance on the record in the Prothonotary's Office, provide notice to all opposing counsel or party(ies) and have proof of entry of Appearance available at the Conference.

(c) Counsel for the parties, or the parties themselves if unrepresented, are to provide true and correct copies of any exhibits to be shown to the Child Custody Conference Officer at the Conference, to counsel for the opposing

party or to the opposing party if unrepresented, at least five (5) days prior to the scheduled Conference. Failure to comply may, at the discretion of the Child Custody Conference Officer, result in the exclusion of the exhibit from consideration, the rescheduling of the Conference to allow the opposing party an opportunity to respond or other action deemed appropriate by the Child Custody Conference Officer, keeping in mind the Officer's need to evaluate the best interest of the child(ren).

(d) The parties, counsel and the Child Custody Conference Officer, as mediator or conciliator, shall make a good-faith effort to resolve the issues and reach agreement on custody and/or partial custody. The Child Custody Conference Officer shall conduct the Conciliation Conference as an informational and conciliatory proceeding rather than confrontational or adversarial.

(e) No scheduled Custody Conference shall be rescheduled by any party or counsel without the prior expressed consent of the opposing party or counsel or Order of Court issued upon a Motion to Continue submitted in accordance with LR208.3(a)(3).

4. *Procedure After Conciliation Conference.*

(a) If the parties reach agreement, the Child Custody Conference Officer shall submit an Agreed Order to the Court bearing the written consents, evidenced by signatures of the parties and their counsel, if any. Neither the parties nor counsel need to appear before the Court for the Court's approval of the Agreed Order.

(b) If, for any reason, the parties do not reach agreement, the Child Custody Conference Officer shall file a written report with the Court within five (5) business days, unless otherwise extended by agreement of counsel, or the parties if unrepresented. The report shall be in a narrative form and shall include the positions of the parties, proposed settlements of the parties, if any, and the recommendation of the Child Custody Conference Officer, together with reasoning for the recommendations and either a Proposed Order or a Temporary Order. Upon receipt and review of the report, the Court shall issue a Proposed Order or a Temporary Order and promptly provide a copy thereof, together with a copy of the Child Custody Conference Officer's report, except for that portion of the report relating to comments from the minor child(ren), to counsel for the parties, or the parties themselves if not represented by counsel.

(c) A Proposed Order shall be entered as a Final Order unless Exceptions thereto are filed by either party within twenty (20) days after the effective date set forth in the Proposed Order. Exceptions may also be filed to a Temporary Order at any time during the existence of the Temporary Order, but the Court will decide whether the Exceptions will be remanded back to the Child Custody Conference Officer for further proceedings and recommendation or set down by the Court for a Pre-Trial Conference as provided for herein. The Court may Order, if circumstances warrant, that should Exceptions be filed, the Proposed Order shall be effective as a Temporary Order pending further Order of Court.

(d) Exceptions to the Proposed Order or Temporary Order must be in writing and should state, with particularity, the portion(s) of the Order objected to. The Exceptions must be filed with the Prothonotary, and copies thereof must be delivered forthwith to the Court Administrator's Office, as well as to all counsel and/or unrepresented parties of record.

(e) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(f) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present, and may result in the imposition of sanctions.

5. *Pre-Trial Conference.*

(a) Upon receipt of the Exceptions by the Court Administrator's Office, the Court will schedule a Pre-Trial Conference to be attended by all counsel and parties, whether represented by counsel or not. A Pre-Trial Conference with the Court will be scheduled in every case and will be waived only with the consent of the Court.

(b) No later than five (5) days prior to the date scheduled for Pre-Trial Conference, each attorney and each party not represented by counsel must file a completed Pre-Trial Information Statement, on or in a form approved by the Court, at the Court Administrator's Office for the presiding Judge, with copies provided to opposing counsel and/or unrepresented parties of record.

(c) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference, will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(d) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Pre-Trial Conference, may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present, and may result in the imposition of sanctions.

**LR1915B. Reduced-Fee Program.**

1. Any individual who is referred under Neighborhood Legal Services Association's Pro Bono or Reduced-Fee Programs to a participating member of the Beaver County Bar Association for representation as a litigant in a Custody Action and who is certified by NLSA to be income eligible under Legal Services regulations, shall be granted leave to proceed In Forma Pauperis. Counsel representing these individuals shall present to the Prothonotary a Praecipe for Permission to Proceed In Forma Pauperis, which shall be endorsed by counsel, and which shall have attached to it a Certificate of Eligibility prepared by NLSA. The Praecipe shall be substantially in the following form:

(CAPTION)

Praecipe to Proceed In Forma Pauperis

To the Prothonotary: Kindly allow {Plaintiff's/Defendant/s Name}, the Plaintiff/Defendant, to proceed In Forma Pauperis.

I, {Attorney's Name}, attorney for the party proceeding In Forma Pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal

services or reduced-fee legal services to the party pursuant to the Reduced-Fee or Pro Bono Referral Programs of Neighborhood Legal Services Association. The party's Certificate of Eligibility prepared by Neighborhood Legal Services Association is attached hereto.

_____
Name of Attorney
Attorney for Plaintiff/Defendant
Address
Telephone Number
Supreme Court ID Number

2. Any participating member of the Beaver County Bar Association who provides representation to a Custody litigant on a Motion for Special Relief or at a Child Custody Conference pursuant to a referral from NLSA's Pro Bono or Reduced-Fee Programs, shall be permitted to enter a Limited Appearance. The Praecipe for Entry of Limited Appearance shall be substantially in the following form:

(CAPTION)

Praecipe for Entry of Limited Appearance

To the Prothonotary: Kindly enter my Limited Appearance for {Plaintiff's/Defendant's Name), the Plaintiff/Defendant, in the above-captioned matter.

This Appearance is limited to providing representation {on the _____ filed on behalf of this party/at the Custody Conference scheduled in this matter for [date of Conference]}.

_____
Name of Attorney
Attorney for Plaintiff/Defendant
Address
Telephone Number
Supreme Court ID Number

3. Upon completion of the representation under the above-described referral programs, the attorney shall file a Praecipe for Withdrawal of Limited Appearance. This Praecipe shall be filed without leave of Court, and it shall not be required to, but may, contain information about another attorney who may be entering his/her Appearance at the same time. This Praecipe shall direct the Prothonotary to send all future notices directly to the client and shall set forth the client's last-known address. The Praecipe for Withdrawal of Limited Appearance shall be substantially in the following form:

(CAPTION)

Praecipe for Withdrawal of Limited Appearance

To the Prothonotary: Kindly withdraw my Limited Appearance for {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, in the above-captioned matter. Withdrawal of this Limited Appearance is permitted pursuant to Miscellaneous Order No. _____ of _____ . All future notices should be sent directly to {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, at {set forth last-known address for this party}.

_____
Name of Attorney
Attorney for Plaintiff/Defendant
Address
Telephone Number
Supreme Court ID Number

**LR1915C. Educational Seminar Pertaining to Parties to Custody Actions.**

All parties to Custody Actions, where the interests of children under the age of eighteen (18) years are involved, shall, unless excused by the Court, complete a program which we have entitled the Educational Seminar, or such other title as determined by the Administrative Custody Judge, hereafter, "Seminar."

All parties shall register for the first available Seminar after the date the Defendant(s) has/have been served with process. Counsel for the Plaintiff(s) shall require the Plaintiff(s) to register for the Seminar and shall have a copy of the Notice and Registration Form served on the Defendant(s) at the same time as the Complaint. The Notice and Registration Form are available at the Beaver County Law Library and at http://www.beavercountypa.gov/Depts/Courts/LawLib/Pages/default.aspx.

Failure of a party to successfully complete the Seminar will result in sanctions by the Court, including Contempt.

The District Court Administrator is Directed to:

1. file one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts;

2. submit two (2) certified copies of this Administrative Order and a copy on computer diskette or CD-ROM containing the text of the Administrative Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

3. submit one (1) certified copy of this Administrative Order to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

4. publish a copy of this Administrative Order on the Beaver County Court of Common Pleas website, http://www.beavercountypa.gov/Depts/Courts/CCP/Pages/default.aspx, after publication in the *Pennsylvania Bulletin*;

5. keep a copy of this Administrative Order continuously available for public inspection and copying in the Office of the Prothonotary of Beaver County; and

6. keep a copy of this Administrative Order continuously available for public inspection and copying in the Beaver County Law Library.

*By the Court*

RICHARD MANCINI,
*President Judge*

[Pa.B. Doc. No. 17-503. Filed for public inspection March 24, 2017, 9:00 a.m.]

## CRAWFORD COUNTY

### Adoption of Local Orphans' Court Rules; O.C. 2017-17

**Order**

*And Now*, March 6, 2017, the following new local Orphans' Court rules for the Court of Common Pleas of Crawford County, 30th Judicial District of the Commonwealth of Pennsylvania are adopted to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

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

1. File one (1) copy of this order and the local rules with the Administrative Office of Pennsylvania Courts via e-mail to Adminrules@pacourts.us.

2. File two (2) paper copies of this order and the rules and one (1) electronic copy in a Microsoft Word format

only to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of these rules on the Crawford County Court website at www.crawfordcountypa.net and thereafter compile these rules within the complete set of local rules within thirty (30) days after the new local rules become effective.

4. File one (1) copy of the local rules in the Office of the Clerk of Courts of Crawford County and in the Crawford County Law Library for public inspection and copying.

*By the Court*

ANTHONY J. VARDARO,
*President Judge*

## CHAPTER I—PRELIMINARY RULES

### Rule 1.1. Title and Citation.

These rules shall be known as the Crawford County Orphans' Court Rules. They shall be cited as "Cra.O.C.R."

### Rule 1.3. Definitions.

*Legal Periodical*—The *Crawford County Legal Journal* is the legal periodical for the publication of legal notices in Crawford County.

### Rule 1.6. Mediation.

All interested parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all parties as an order or decree of the Court.

The Court may order mediation in a particular matter upon motion of any interested party or sua sponte. In any such order entered the Court shall set forth any specific requirements with regard to mediation.

### Rule 1.7. Attorneys.

*Appearance.* Any attorney representing a party in any proceeding in the Orphan's Court Division shall file a written appearance with the Clerk of the Orphan's Court which shall state the attorney's Pennsylvania Supreme Court Identification Number, fax number, telephone number and an address within the Commonwealth at which papers may be served. Written notice of entry of appearance shall be given forthwith to all parties, or their counsel.

### Rule 1.8. Cover Sheet.

All motions and petitions presented at motion court shall include a completed motion court cover sheet in a form in compliance with Crawford County Local Civil Rule L205.2(b). (See Exhibit L205.2(b) for sample of cover sheet form.)

## CHAPTER II—ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

### Rule 2.6. Filing with the Clerk.

Accounts of personal representatives including statements of proposed distribution shall be filed with the Clerk of Orphans' Court in duplicate. Following confirmation, one copy of the account of personal representatives, with the date of confirmation noted thereon, shall be forwarded to the Register of Wills for indexing and filing with records of the proceeding in the Register's Office for that decedent.

### Rule 2.10. Foreign Heirs and Unknown Distributees.

The report filed consistent with Pa.O.C. RULE 2.10(b) shall include the following:

(a) The nature of the investigation made to locate any distributee(s) in full detail;

(1) If applicable to the determination of any distributees identity, complete family tree in as much detail as possible, supported by any documentary evidence as the petitioner has been able to obtain;

(2) A statement that investigation was made by as many of the following means as available and feasible; questioning of member(s) of the household of the decedent or settlor, and/or friends, neighbors and/or known relatives thereof; officers and members of groups, unions, social or fraternal organizations to which decedent or settlor belonged; contacting employers and/or co-workers; examining church, insurance, school and voter registrations records; Veteran's Administration and Social Security records; naturalization records if not a native born citizen; telephone and electronic media such as internet listings; and such other sources as the circumstances suggest;

(3) If the fiduciary determines that a non-resident distributee shall not be able respond or enjoy the benefit of the interest due thereto, the fiduciary shall indicate in the report the reason for that determination.

(b) The report will be filed in the office of the Clerk of Court when the accounting is filed and notice shall be given to the distributee or where applicable, to the guardian, parent, next of kin or party having custody of the distributee or any other party required by rule or statute.

### Rule 2.11. Appointment of Official Examiners.

The Court may enter an order appointing an examiner or examiners who shall examine the assets held by a fiduciary and make a full written report thereon to the Court showing what assets belong to the estate, how they are registered or otherwise earmarked as the property of the estate to which they belong, and where and how the cash belonging to the estate is kept or deposited.

The Court may, in any order appointing an examiner or examiners, also direct the examiner or examiners to accomplish one or more of the following:

(a) Determine, in the case of a trust, if its purposes are being carried out;

(b) Determine, if the funds and assets in the hands of the fiduciary are being used or applied in accord with any trust instrument, will, applicable statute, regulation or court order;

(c) Make a written report including findings of fact, conclusions of law; and when appropriate, recommendations for consideration of the Court; and

(d) Such other matters as the Court may designate.

Examiners shall be allowed such fees from principal or income, or apportioned between principal and income as may be directed by the Court.

## CHAPTER III—PETITION PRACTICE AND PLEADING

### Rule 3.5. Form. Notice of Motion or Petition.

(a) Before any motion or petition is filed, the moving party shall serve a copy of the motion, petition, request or application, and any proposed order, and a statement of the date and time of the intended presentation to counsel of record and any unrepresented party at least three (3) business days in advance of the presentation. Service may

be accomplished personally, by first class mail or by facsimile transmission. Service shall be made pursuant to Pa.O.C. Rule 3.5.

(b) A document in the following form shall be attached to each contested and uncontested motion or petition and every copy of the same that is filed or served:

NOTICE

You are hereby notified that the attached motion/petition will be presented by me on _____, 20____ .

( ) to the Clerk of Courts.

( ) in Motion's Court at 8:45 o'clock a.m.

CERTIFICATION OF NOTICE AND SERVICE

The undersigned represents that three (3) business days' prior notice and copy of this motion and proposed order have been served by ( ) first class mail ( ) fax, or ( ) hand delivery on the _____ day of _____, 20____ upon all parties or their counsel of record in accordance with Pa.O.C. Rule 3.5.

INFORMATION FOR COURT ADMINISTRATOR

A. Is this an original filing in this case?

_____ Yes _____ No

B. Has any Judge heard this matter previously?

_____ Yes _____ No

C. If yes, name of Judge who presided over previous matter:

_____ Vardaro _____ Spataro

_____ Stevens _____ other/Name

D. Estimated Court time required for this matter.

_____ Minutes _____ Hours _____ Days

E. Is this motion/petition opposed by another party?

_____ Yes _____ No _____ Unknown

UNCONTESTED MOTION CERTIFICATION

The undersigned represents that:

_____ 1. All parties or counsel have consented.

_____ 2. Consents of all parties or counsel are attached.

_____ 3. The Petition seeks only a return hearing or argument date and no other relief.

Opposing Counsel: _____ (if opposing party is unrepresented, list his/her current address and telephone): _____ (Telephone) _____

I HEREBY CERTIFY ALL OF THE ABOVE STATEMENTS ARE TRUE AND CORRECT

By _____

Attorney for: _____

(c). *Suggested Order.* Every motion, request and application shall have attached thereto a suggested order granting the relief that is requested by the moving party.

(d). *Service of Order Entered.* All orders entered by the Court after the presentation of a motion, petition, request or application shall be served upon all opposing parties or their counsel by the moving party within three (3) business days after the entry of the order by the Court. Service of a conformed order is sufficient. As a courtesy, the Clerk of Courts may furnish a copy of the actual order at a later date, but the responsibility of the moving party to effectuate service is not relieved hereby.

**Explanatory Comment**

This local rule is intended to allow parties to bring before the court uncomplicated or uncontested matters. The court will not conduct argument or hold an evidentiary hearing at motions court on matters that are contested. In those cases an order will be entered directing the court administrator to schedule argument and/or an evidentiary hearing and the responding party will have twenty (20) days to respond consistent with the uniform notice period established by the Pennsylvania Orphans' Court Rules.

## CHAPTER VII—RULES RELATING TO PRE-HEARING PROCEDURE

### Rule 7.1. Depositions, Discovery, Production of Documents and Perpetuation of Testimony.

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court consistent with the following:

(1) Leave to take depositions and/or discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.

(2) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.

## CHAPTER IX—AUDITORS AND MASTERS

### Rule 9.1.

An auditor or master appointed pursuant to 20 Pa.C.S. § 751 shall give notice of scheduled hearing in writing at least twenty (20) days prior to the hearing.

### Rule 9.6. Notice of Filing Report.

An auditor or master filing a report or an intention to file a report shall provide notice of the same to all parties or counsel for represented parties in writing by sending first class mail no later than the day the report is filed.

### Rule 9.7. Confirmation of Report.

Any interested party shall have the right to file exceptions to the auditor's report or to a master's report within twenty (20) days after the date notice of the filing of the report is received by that party.

If no exceptions are filed within twenty (20) days after the service thereof, the Court may enter a decree confirming the auditor's report or approving the master's report and adopting its recommendations unless the time to file exceptions has been extended by the Court.

If exceptions are filed the matter shall go on the argument list as provided for in the Crawford County Civil Rules of Court and after disposition of any exceptions the Court will enter a confirmation either consistent with the report or with such modifications as the Court may deem appropriate after consideration of the exceptions.

### Rule 10.2. Proceedings before the Register of Wills.

(a) Discovery before the Register of Wills, upon application to the Register by an interested party, shall be limited to the following: depositions, request for production of documents, request for admissions, subpoenas.

(b) Objections to the discovery before the Register of Wills shall be addressed to, and decided by, the Register of Wills or the Deputy Register or solicitor presiding over the hearing.

(c) Requests for additional discovery beyond this rule shall be made to a Judge of the Orphans Court Division by petition with proper notice.

[Pa.B. Doc. No. 17-504. Filed for public inspection March 24, 2017, 9:00 a.m.]

## LUZERNE COUNTY

### Adoption of New Rules of Judicial Administration Governing Court Reporting and Transcripts; Local Rules of Civil Procedure 4007 and 4008; No 1978 of 2017

**Order**

*And Now*, this 22nd day of February, 2017, the Luzerne County Court of Common Pleas adopts the following local rules governing court reporting and transcripts, Luzerne County Rules of Civil Procedure 4007 and 4008, respectively, for the 11th Judicial District of the Commonwealth of Pennsylvania:

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

1) File one (1) copy of these Rules with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.

2) File two (2) certified paper copies and one (1) electronic copy in a Microsoft Word format only to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Publish these Rules on the Luzerne County Court website at www.luzernecountycourts.com.

4) File one (1) copy shall be kept continuously available for public inspection and copying in the Office of Judicial Services and Records of Luzerne County and the Wilkes-Barre Law and Library Association.

5) File one (1) electronic copy of these Rules in Microsoft Word format only to law.library@luzerne county.org for publication in the *Luzerne Legal Register*.

Said Local Rules of Judicial Administration shall be effective in the 11th Judicial District of the Commonwealth of Pennsylvania thirty (30) days after publication in the *Pennsylvania Bulletin* and upon publication on the Luzerne County website.

*By the Court*

RICHARD M. HUGHES, III,
*President Judge*

**Luz.Co.R.Civ.P. Rule 4007; Court Reporting and Transcripts**

**Rule 4007. Requests for Transcripts.**

a) All requests for transcripts shall be submitted on a form provided by the District Court Administrator which will include current rates charged for transcripts and be available at all filing offices and on the Court's website. A party completing a Request for Transcript Form shall obtain a total estimated cost from the Court Reporter with the information to be contained in the request.

b) For an ordinary transcript, the party requesting a full or partial transcript shall file the original request with the Office of Judicial Records (Prothonotary, Clerk of Courts or Register of Wills).

The requesting party shall promptly serve time-stamped copies of the request upon:

1) The Presiding Judge;

2) The District Court Administrator;

3) The Court Reporter/s assigned to the proceeding; and,

4) All other counsel or self-represented parties in the proceeding.

c) Daily, expedited or same day transcripts require prior approval of the Presiding Judge.

d) When a request for transcript is made:

1) The requesting party ordering the transcript shall make payment in the amount of 95% of the estimated total cost of the transcript as a non-refundable deposit payment.

Deposit checks are to be made payable to the County of Luzerne and shall be delivered to the District Court Administrator or his designee.

2) Upon receipt of the 95% deposit, the Court Reporter/s assigned to the proceeding shall be directed by the District Court Administrator or his designee to prepare the transcript.

3) The Court Reporter/s shall notify the ordering party and the District Court Administrator or his designee upon completion of the transcript and shall indicate a balance due.

4) Checks for the final balance are to be made payable to the County of Luzerne and shall be delivered to the District Court Administrator or his designee.

Upon payment of the balance owed, the Court Reporter/s shall obtain the signature of the Presiding Judge on the original transcript and shall deliver the original transcript to the appropriate filing office. After the original transcript has been filed of record with the appropriate filing office, copies shall be delivered to the parties in the appropriate format. No person or other entity shall obtain, reproduce, distribute or copy any transcript or portion thereof except in accordance with this rule.

**Luz.Co.R.Civ.P. Rule 4008; Costs Payable**

**Rule 4008. Costs payable by Requesting Party other than the Commonwealth or subdivision thereof.**

a) *Costs Payable*

1) *Electronic Format.* The costs payable by the initial ordering party for a transcript delivered via electronic format shall be:

i. For an ordinary transcript, $2.50 per page

ii. For an expedited transcript, $3.50 per page

iii. For a daily transcript, $4.50 per page

iv. For same-day delivery, $6.50 per page

v. For a realtime feed, $1.00 per page

2) *Paper Format.* The costs payable by the initial ordering party for a transcript delivered via paper format shall be:

i. For an ordinary transcript, $2.75 per page

ii. For an expedited transcript, $3.75 per page

iii. For a daily transcript, $4.75 per page

iv. For same-day delivery, $6.75 per page

b) *Economic Hardship*

1) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be waived for a litigant who has been permitted by the court to proceed in forma pauperis or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

2) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be reduced by one-half for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year.

3) Transcript costs for ordinary transcripts in matters that are not subject to an appeal, where the transcript is not necessary to advance the litigation, may be waived at the court's discretion for parties who qualify for economic hardship under subdivision (B)(1) or (B)(2) and upon good cause shown.

4) The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Rule 240(h) of the Pennsylvania Rules of Civil Procedure. Such application should be prepared in the form of a Petition to Waive All or a Portion of the Transcript Costs and submitted with the request for transcript.

c) *Assignment and allocation of transcripts costs*

1) *Assignment of costs.* The requesting party, or party required by general rule to file a transcript, shall be responsible for the cost of the transcript. Costs shall not be assessed against any party for transcripts prepared at the initiation of the court.

2) *Allocation of costs.* When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties or as may be directed by the Court.

d) *Copies of transcript*

1) A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

i. $0.75 per page bound, paper format; and,

ii. $0.50 per page electronic copy.

e) *Additional Costs*

1) A trial judge may impose a reasonable surcharge in cases such as mass tort, asbestos, medical malpractice or other unusually complex litigation, where there is a need for court reporters to significantly expand their dictionary. Such surcharges and the amount are at the discretion of the trial judge.

[Pa.B. Doc. No. 17-505. Filed for public inspection March 24, 2017, 9:00 a.m.]

## MONROE COUNTY

### Amendment of Local Rules of Civil Procedure; 5 AD 2017

**Order Pursuant to Pa.R.J.A. 103(d)**

*And Now*, this 6th day of March, 2017, it is *Ordered* that the following Rule of the Court of Common Pleas of the 43rd Judicial District of Pennsylvania, Monroe County, is rescinded to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Local Rule of Civil Procedure 250C. Costs of Transcript/ Deposits of Fee for Transcript.

It Is Further Ordered that the District Court Administrator shall:

1. File one copy of this local rule with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.

2. File two paper copies and one electronic copy of this local rule in a Microsoft Word format only on a CD-ROM to the Legislative Reference Bureau for publication in *Pennsylvania Bulletin*.

3. Provide one copy of this local rule to the Monroe County Law Library.

4. Keep such local rule changes, as well as all local civil rules, continuously available for public inspection and copying in the Office of the Prothonotary of Monroe County. Upon request and payment of reasonable cost of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

5. Arrange to have the local rule changes published on the Monroe County Bar Association website at www.monroebar.org.

6. Arrange to have the local rule changes, as well as all local rules, published on the 43rd Judicial District website at www.monroepacourts.us.

*By the Court*

MARGHERITA PATTI-WORTHINGTON,
*President Judge*

**Amendments to Monroe County Local Rules**

**Monroe County Local Rule 250C. Costs of Transcript/Deposits of Fee for Transcript.**—rescinded, effective _____

[Pa.B. Doc. No. 17-506. Filed for public inspection March 24, 2017, 9:00 a.m.]

# JUDICIAL CONDUCT BOARD

## Statement of Policy Regarding Disqualification Based on Campaign Contributions Under Rule 2.11(A)(4)

The Judicial Conduct Board adopted a Statement of Policy Regarding Disqualification Based on Campaign Contributions Under Rule 2.11(A)(4), effective March 6, 2017.

**Judicial Conduct Board Statement of Policy Regarding Disqualification Based on Campaign Contributions Under Rule 2.11(A)(4)**

The Code of Judicial Conduct (Code) and the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) were adopted by the Supreme Court in 2014. With the 2017 judicial election cycle approaching, the Board thought it appropriate to provide guidance on the topic of campaign contributions and the issue of disqualification as addressed in Rule 2.11(A)(4) of the Code and Rules. Many judicial officers at all levels of Pennsylvania's judiciary have asked questions relating to

the operation of this rule and how the Board will interpret and enforce it. For these reasons, the Board has adopted this "Statement of Policy" which sets forth the Board's tentative intention with respect to how it will interpret and enforce this rule in the future. While the Board seeks to provide guidance with the issuance of this Statement of Policy, it is noted that it does not have the force and effect of law and is binding on neither the members of the judiciary nor the Board.[1]

*Executive Summary*

• When faced with a question of recusal or disqualification under Rule 2.11(A)(4), the nature of the inquiry is an objective one involving the public perception of large contributions and their effect on the judge's ability to be impartial. If the amount of a contribution to a judicial candidate's campaign raises a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the contributor, disqualification is required.

• The focus of any inquiry under Rule 2.11(A)(4) is the contributions received by the campaign of the judge whose ability to preside is questioned.

• There is no amount specified in Rule 2.11(A)(4) over which disqualification is required.

• Regardless of proportional relationship to other contributions or the total amount raised, large contributions will raise reasonable concerns about the judge's fairness based on the size alone and will trigger the assessment required under Rule 2.11(a)(4) and the Board will look unfavorably upon a judge's strained views of the public perception of such large contributions.

• Disqualification under Rule 2.11(A)(4) is subject to informed waiver by the parties and their attorneys.

• A contribution of several thousand dollars will almost always require an analysis of whether disqualification is warranted; but such analysis may be avoided if the contribution is disclosed and the parties and their attorneys waive disqualification.

• Judges are not required to review their campaign finance reports to determine if they are disqualified, but that may be the prudent practice as judges may not remain purposely ignorant of campaign contributions in order to avoid compliance with Rule 2.11(A)(4).

• While there is no specific look-back period in Rule 2.11(A)(4), the effect of contributions will generally dissipate over time. The larger the contribution, the longer it will take to dissipate.

• Disqualification is not required under Rule 2.11(A)(4) simply because the amount of a contribution exceeds the amount that must be reported as a gift on the judge's statement of financial interests.

• Contributions from several lawyers from the same law firm must be aggregated when conducting the assessment required by Rule 2.11(A)(4).

*General Principles and Observations*

Rule 2.11, relating to disqualification, provides, in pertinent part:

> (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:
>
> * * * * *
>
> (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.

Code of Judicial Conduct, Canon 2, Rule 2.11(A)(4); Rules Governing Standards of Conduct of Magisterial District Judges, Canon 2, Rule 2.11(A)(4).

As drafted, the overriding emphasis of the rule is the appearance that the amount of a campaign contribution might raise a concern about the judge's impartiality. That this is the preeminent concern of the rule is evidenced by the fact that the word "impartiality" or "impartial" appears three times in the rule. As used in the Code and Rules, *"impartial" or "impartiality" means* "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." Code of Judicial Conduct, Terminology, Impartial, impartiality, impartially; Rules Governing Standards of Conduct of Magisterial District Judges, Terminology, Impartial, impartiality, impartially.

The rule starts with the imperative that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Legal commentators have suggested that a simple application of this principle would dictate the proper result in most cases of disqualification occasioned by campaign contributions, noting that whether "impartiality 'might reasonably be questioned'. . .turn[s] on whether [a judge's] participation would create the appearance of partiality in the mind of a reasonable, fully informed, objective observer." Geyh, Alfini, Lubet and Shaman, *Judicial Conduct and Ethics (Fifth Ed.)*, § 4.16 Campaign Contributions, 4-73 (LexisNexis 2013).

The directive that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned is then followed by a non-exhaustive list of "circumstances" requiring disqualification, including the circumstance listed in subsection (A)(4) where "[t]he judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has

[1] This Statement of Policy addresses contributions made to judges' campaign committees and not contributions to political action committees (PACs) that contribute to judges' campaign committees. Regarding contributions to PACs and their relationship to this Rule, the reader is directed to Comment [6] following Rule 2.11 which provides:

> Rule 2.11(A)(4) represents a first inroad into complex issues associated with the financing of judicial campaigns in the scheme prescribed by the Pennsylvania Constitution, per which judicial officers are elected by the citizenry. See Pa. Const. art. V, § 13. For example, the rule presently does not address a number of circumstances which have arisen in the context of public judicial elections, including the involvement of political action committees ("PACs"). Under the direction of an independent board of directors, such entities may aggregate then distribute individual contributions among judicial campaigns, political campaigns, their own operating expenses, and other expenditures. There is no attempt, under the present rule, to require disqualification on account of individual contributions made to a PAC, so long as the organization does not serve as the alter-ego of a specific donor or donors. Rulemaking, in this regard, would require further study and deliberation in order to appropriately balance all respective interests involved. Thus, the Court has reserved any treatment to a later time.
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> Code, Canon 2, Rule 2.11, Comment [6]; Rules, Canon 2, Rule 2.11, Comment [6].

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." This specific example where disqualification is required necessitates the judge's attention to campaign contributions from parties, their lawyers and their law firms of which the judge learns or has knowledge and a determination of whether the size of the contribution "would raise a reasonable concern about the fairness or impartiality of the judge's consideration of" a case involving the contributing party, lawyer or law firm. Like the introductory language discussed above, this language emphasizes the objective nature of the inquiry, namely: does the contribution raise a reasonable concern about the judge's impartiality? In making this determination, the rule says that the judge "should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial."

The focus of the inquiry required by this rule is the contributions received by the campaign or made in support of the judge whose ability to preside is questioned. The amount of direct contributions to or indirect expenditures in support of all of the candidates for a particular judgeship is not a factor in the determination of whether a contribution raises a reasonable concern about the fairness or impartiality of a judge's consideration of a case involving a contributor. As originally drafted, the provision that would become Rule 2.11(A)(4) required inquiry into "direct or indirect contribution(s) in relation to an election in which the judge is a candidate." The drafters of this provision suggested that a judge who was faced with a disqualification decision based on campaign contributions should consider, among other factors, "[t]he level of support or contributions given, directly or indirectly by a litigant in relation both to aggregate support (direct and indirect) for the individual judge's campaign (or opponent) and to the total amount spent by all candidates for that judgeship." Report of the Ad Hoc Committee on the Revisions to the Code of Judicial Conduct, Canon 2, Rule 2.11, Comment [7], p. 26. However, the original language was revised to its current form which directs the inquiry into "direct or indirect contribution(s) to the judge's campaign." Code of Judicial Conduct, Canon 2, Rule 2.11(A)(4); Rules Governing Standards of Conduct of Magisterial District Judges, Canon 2, Rule 2.11(A)(4). This substitution obviates the need for an examination into all the money contributed to or expended on behalf of or in opposition to all of the candidates who stood for election when the judge whose participation is under consideration was elected. The inquiry is simply: does the amount of the direct and indirect contributions to the judge's campaign raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the contributor who is either a party, the party's lawyer, or the law firm of the party's lawyer? If the answer is "yes," the judge is disqualified and may not sit on the case absent an informed waiver. *See* Code of Judicial Conduct, Canon 2, Rule 2.11(C); Rules Governing Standards of Conduct of Magisterial District Judges, Canon 2, Rule 2.11(C).

The timing of contributions and requests for disqualification have also been the subject of questions. Some have asked if there is a look-back period for campaign contributions. Different from Rule 2.13 which prohibits the appointment of a lawyer by a judge if the judge either knows or learns that the lawyer, or the lawyer's spouse or domestic partner, has contributed as a major donor to the judge's election campaign within the prior two years before the appointment, Rule 2.11(A)(4) omits any temporal limitation. *Compare* Code of Judicial Conduct, Canon 2, Rule 2.11(A)(4); Rules Governing Standards of Conduct of Magisterial District Judges, Canon 2, Rule 2.11(A)(4), *with* Code of Judicial Conduct, Canon 2, Rule 2.13(B); Rules Governing Standards of Conduct of Magisterial District Judges, Canon 2, Rule 2.13(B). However, the drafters of Rule 2.11(A)(4) suggested that "[t]he timing of the support or contributions in relation to the case for which recusal or disqualification is sought" is among the factors to consider when addressing questions under this rule. Report of the Ad Hoc Committee on the Revisions to the Code of Judicial Conduct, Canon 2, Rule 2.11, Comment [7], p. 27. Accordingly, for most campaign contributions or independent expenditures, the effects of such contribution or expenditures on a judge's impartiality, just like a judge's prior association with a law firm or governmental entity whose lawyers appear before the judge, must be presumed to dissipate over time.

However, there could be a contribution or expenditure, either directly to a judicial candidate's committee or indirectly for the benefit of the candidate, which is so large and disproportionate to the amount of money otherwise raised by the judge's campaign or the total amount of money raised and spent in the election, that any taint would never truly dissipate. This situation is exemplified by the facts of *Caperton v. Massey Coal Company*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). There, the Court found that due process required recusal where the CEO of a coal company which was involved in an appeal of an adverse $50 million verdict, spent $3 million in what would be considered indirect contributions for the benefit of a candidate for the West Virginia Supreme Court where the appeal was pending. In such a case, the judge should never sit in judgment on a case involving that supporter or his company, in the absence of an informed waiver by the parties and their counsel as provided in Rule 2.11(C).

Finally, it must be noted that, in adopting Rule 2.11(A)(4), the Supreme Court rejected the suggestion of the Model Code of Judicial Conduct that the rule establish a definite amount over which disqualification would be required. The Model Code suggests the following language: "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: . . . The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate contributions to the judge's campaign in an amount that is greater than $[insert amount] for an individual or $[insert amount] for an entity." Relying on this suggestion, the Pennsylvania Bar Association Task Force on the Code of Judicial Conduct proposed the following rule to the Supreme Court: "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: . . . The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous two years made aggregate contributions in support of or in opposition to the judge's campaign in an amount that is greater than $2,500 from an individual or $5,000 for an entity or organization." Pennsylvania Bar Association, *Report of the Task Force on the Code of Judicial Conduct*, Canon 2, Rule 2.11(A)(4), 19 (2013). The Court rejected this lan-

guage in favor of the language found in the current version of Rule 2.11(A)(4) quoted above.

In light of this history, while the Board has the responsibility to interpret and apply the provisions of the Code in the first instance and in the absence of any definitive decisions of the Court of Judicial Discipline or the Supreme Court, it is not at liberty to adopt an interpretation that would establish a fixed amount which, if exceeded, would require disqualification. While such a rule would be easier to apply (and would be the easiest with which judges could comply), the Supreme Court eschewed any such fixed rule, so the Board must try to establish standards by which to apply the rule as adopted.

*Interpretation and Application*

Like all of the rules found in the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges, Rule 2.11(A)(4) must be given a reasonable interpretation. This premise is dictated by the Code and Rules themselves. As explained in the Preambles to both sets of rules,

> [t]he 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.
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> 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.

Code of Judicial Conduct, Preamble [5] and [6]; Rules Governing Standards of Conduct of Magisterial District Judges, Preamble [5] and [6]. By adopting these guidelines, the Board hopes to apply Rule 2.11(A)(4) consistently through a reasonable application of its text.

1. *Amount of Contribution Requiring Disqualification*

As noted above, there is no fixed amount for contributions that will automatically require a judge's disqualification. Nevertheless, there are guidelines which judge's may follow and which will focus any inquiry by the Board when faced with a campaign contribution/disqualification issue.

When a judge knows or learns that a party or the party's lawyer or law firm has contributed to the judge's campaign, the judge must make a reasonable effort to determine the amount of the contribution or contributions (as where both a party and the party's lawyer have made contributions). The judge must also determine if other members of the party's law firm or its political action committee have made contributions.

Once the amount of the contribution or contributions is known, the judge must determine if the total amount would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the contributor, giving due consideration to the public perception regarding the contribution and the effect on the judge's ability to be fair and impartial. In assessing the "public perception" of the amount of the contribution, the judge should consider the amount of the contribution(s) in relation to the total amount of contributions received by the judge in the election cycle in which the contribution(s) at issue was made and decide if the amount was in line with other amounts contributed by others during the same election cycle. In some instances, the amount will be recognizably large and so disproportionate from other contributions that the size alone will raise a reasonable concern about the judge's fairness and impartiality in presiding over the matter.

In making this assessment, among the factors that the judge should consider are the office being sought when the contribution was made. For example, a judge elected as a magisterial district judge in a rural area of the Commonwealth would not be expected to raise the same amount as a judge elected to and serving on one of the Commonwealth's appellate courts. Contributions of $2,000 might be commonplace for appellate court candidates but highly unusual in common pleas and magisterial district court campaigns. Contributions of $1,000 might not be unusual in campaigns for common pleas candidates. Smaller contributions in the several hundred-dollar range might be the norm in contested races for magisterial district judge. The differences in the races would most likely result in a different public perception relating to the size of contributions, it being reasonably understood that a statewide appellate court campaign would attract larger contributions than a race for magisterial district judge. Generally, the Board will view contributions beyond these amounts as triggering the rule's obligations. Such contributions in the Board's view will require an analysis under the rule by the judge and may require disqualification.

In determining the objective "public perception" of the amount of the contribution, the Board will apply a reasonable person standard and will not be guided by what some might consider reasonable by those regularly involved in political campaigns. A judge's strained view of the public perception of a sizable contribution when faced with a disqualification issue will not be considered favorably by the Board. In the Board's view, regardless of the office held by the judge, a contribution of several thousand dollars will almost always require an analysis of whether disqualification is warranted because of the public perception resulting from such a large contributions and its effect on the judge's ability to be fair and impartial. Under Rule 2.11(C), discussed below, such analysis may be avoided if the contribution is disclosed and the parties and their attorneys waive disqualification.

2. *Judge's Knowledge of Contributions*

Judges are not necessarily required to review their campaign finance reports from the years in which they were elected, reelected or retained in order to determine if they are disqualified from sitting on cases. Like all candidates for elective office, judicial candidates and their campaign committees are required to file periodic campaign finance reports throughout their campaigns and after the election. Those reports are available to the public, including to lawyers and litigants. The obligation to disqualify is based on what the judge "knows or learns." What a judge "knows" according to the Code and Rules is "[a]ctual knowledge of the fact in question." Code of Judicial Conduct, Terminology; Rules Governing Standards of Conduct of Magisterial District Judges, Terminology. The Code and Rules further provide, however, that "[a] person's knowledge may be inferred from the circumstances." *Id*.

Many judges do not know the identities of the people who contributed to their campaigns or the amounts contributed, having left that responsibility to their campaign committees. While judges may seek to insulate themselves in this regard in order to maintain the appearance of impartiality, they are ultimately responsible for the actions of their committees, including compliance with the Code or Rules and the applicable campaign finance laws. *See* Canon 4, Rule 4.4(A) and Comment [2]. The Code and Rules encourage judges to instruct their committees "to be especially cautious in connection with. . .contributions [from lawyers and others who might appear before a successful candidate], so that they do not create grounds for disqualification or recusal if the candidate is elected to judicial office. See Rule 2.11." *See* Canon 4, Rule 4.4, Comment [3].

Judges may not remain purposely ignorant of campaign contributions in order to avoid compliance with Rule 2.11(A)(4). They are required to sign the campaign finance reports listing all of the contributions to their campaign committees and the Board will presume that they know the amounts reported on them when confronted with claims arising under this rule. A judge's professed ignorance of a contribution from a party, the party's lawyer, or the lawyer's firm will not absolve the judge of potential liability for an infraction of this rule, particularly where the contribution or sum of the contributions is in an amount that would clearly trigger the evaluation demanded by the rule. While there is no fixed amount that triggers this obligation, judges should consider the public perception when making this determination. If the amount is large by any standard, the judge must act.

Judges should keep in mind that different from a request for recusal that may be waived if not raised in a timely fashion, issues that arise under the Code and Rules are not subject to strict pleading rules. Even in the absence of a motion to recuse, if a judge sits on a case in which one of the parties or one of the lawyers or law firms involved gave a contribution in an amount that warranted analysis under this rule and that information is brought to the Board's attention after the fact, the judge may face a disciplinary inquiry and possible disciplinary action for not having conducted the proper analysis under the rule and for not having disqualified from the case. The issue at that stage is not the resolution of the case, but the public perception created by the judge sitting on the case at all because of the size of the contribution.

The Comment to Rule 2.11 explains that "[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." Canon 2, Rule 2.11, Comment [5]. Such a disclosure obligation would arise if the judge knows of a contribution "in an amount that would raise a reasonable concern." Any large contribution would raise a reasonable concern and, while the judge is not necessarily required to review his or her campaign finance reports from the years in which he or she was elected, reelected or retained in order to determine if he or she is disqualified from sitting on a case, that may be the better and more prudent practice. The Board will look favorably upon those situations where judges made appropriate disclosures even though the judges ultimately decided that disqualification was not required.

Of course, a party or a party's lawyer may access the judge's campaign finance reports and discover that the party's opponent or the opponent's lawyer or law firm contributed to the judge during the judge's election, reelection or retention campaign. If that information is brought to the judge's attention in a motion for recusal or disqualification or otherwise, the judge must then assess the situation because the judge has "learned" that the lawyer, law firm or party was a contributor. The judge would then be obliged to conduct the analysis discussed above.

A different situation presents itself in relation to contributions made to a sitting judge standing for retention or reelection or election to a higher court. As noted above, campaign contributions are reported periodically during the campaign and after its conclusion. If a judge's committee receives a contribution from a lawyer, law firm or litigant in a proceeding before the judge at a time before the filing of the campaign finance report on which the contribution is required to be listed, the judge may have a disclosure obligation and failure to do so could result in disciplinary action.

3. *Look-back Period*

As noted above, different from Rule 2.13 relating to administrative appointments which establishes a two-year period after a judge's campaign during which a judge is generally prohibited from appointing a lawyer to a position if the lawyer, the lawyer's spouse or domestic partner, has contributed as a major donor to the judge's election campaign, Rule 2.11(A)(4) contains no specific time period. However, it is clear that the drafters of Rule 2.11 intended a limited look-back period when a judge is required to determine if he or she is disqualified because of a campaign contribution.

In enforcing this rule, the Board will presume that the effect of a contribution on a judge's impartiality will dissipate over time. However, since the alternative language proposed by the PBA Task Force would have included a two-year look-back period and that language was rejected by the Supreme Court in favor of the current verbiage in Rule 2.11(A)(4), it would be inappropriate for the Board to adopt a strict time limit. Generally speaking, however, the Board will expect judges to conduct the analysis required by this rule whenever a campaign contribution-related disqualification issue is raised in any proceeding within two years of the end of the election in which the campaign contribution was made. In examining complaints under this rule, the Board will look to the amounts of the contributions and the timing of the contributions in relation to when the matter comes before the judge.

The size of the contribution will play a role in any determination under this rule. The larger the contribution, the longer the period in which the judge will be required to consider the issue of disqualification under this rule. Concomitantly, the smaller the contribution, the shorter the period. Some contributions could be so large that the effect of the contribution on public perception will never dissipate and the judge should never sit on that contributor's cases absent an informed waiver under Rule 2.11(C).

4. *Contributions in Excess of "Gift" Reporting Requirement*

Rule 2.11(A)(4) clearly states that there is a rebuttable presumption that disqualification or recusal is not required if the amount of a contribution is less than the amount that a judge has to report as a gift on the judge's annual Statement of Financial Interests. For 2016, that amount is $250. This presumption does not equate to an

obligation to recuse or disqualify any time the judge knows or learns of a contribution that exceeded the amount triggering the reporting requirement. Nor does it necessarily impose any obligation on the part of the judge to disclose all contributions that exceed that amount or to conduct the analysis required by the rule.

That 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," as explained in the Comment to Rule 2.11, does not necessarily require that the judge disclose every contribution in excess of the gift amount. Such an obligation arises only if the information might "reasonably" give rise to a motion for recusal or disqualification. In assessing whether or not disclosure or disqualification is required for a contribution of more than the gift amount requires a determination of whether the size of the contribution "would raise a reasonable concern about the fairness or impartiality of the judge's consideration of" a case involving the contributor. As explained above, this is an objective inquiry into whether the contribution raises a reasonable concern about the judge's impartiality considering the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. Disqualification is only mandated when the amount of the contribution raises "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." As is explained below, disqualification may be avoided by informed waiver by the parties and their attorneys.

Of course, if the judge's campaign committee only raised a small amount of money, a contribution in an amount less than or equal to the amount that must be reported on a Statement of Financial Interests as a gift might require closer examination by the judge. Like all rules of general application, the particular circumstances might change the equation and the result.

5. *Contributions by Several Lawyers from the Same Law Firm*

Rule 2.11(A)(4) clearly applies to contributions by the individual lawyer representing the party in court and those by the lawyers in the firm with which the lawyer is affiliated. It is possible that a judge might "know" of contributions by the lawyers in a law firm (even if the judge did not know the specific amounts), if the law firm hosted a fund-raising event for the judge during the judge's candidacy. On the other hand, the judge could "learn" of such law firm-related contributions if a party or lawyer raised the issue in a motion. In either of those circumstances, the judge would have to assess the situation under the standards set forth above, considering the amounts of the contributions from all of the lawyers in the firm.[2] If the firm has multiple offices, the judge will have to determine the contributions from lawyers from all of the firm's offices. This results from the language of Rule 2.11(A)(4) itself and the definition of "aggregate" contained in the "Terminology" section of the New Code and Rules. To the extent possible, the judge must try to determine the total contributions from all of the lawyers in the firm of the lawyer at the time that the issue of disqualification arises. This review must include direct contributions to the judge's campaign committee (including "in-kind" contributions) and indirect contributions where the contribution is not to the judge's campaign committee, but is made with the understanding that it will be used to support the judge's election (which could include money expended to defeat the judge's opponent). In cases involving protracted litigation, the issue of disqualification based on campaign contributions to the judge may arise whenever a new lawyer enters an appearance in the case or whenever a lawyer for a party changes firms.

6. *Waivers*

Any disqualification under Rule 2.11(A)(4) is subject to a waiver. Rule 2.11(C) provides:

> 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.

Canon 2, Rule 2.11(C). The rule is virtually identical for magisterial district judges, except for the last sentence which states: "The agreement, in writing and signed by all parties and their lawyers, shall be attached to the record copy of the complaint form."

As noted previously, the Comment to Rule 2.11 explains that "[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," and the Board will look favorably upon those situations where judges have made appropriate disclosures even though the judges ultimately decided that disqualification was not required. In addressing possible waivers under this provisions, judges must be careful to not to ambush litigants and their lawyers. The judge should make the proper disclosure as soon as the judge becomes aware of a possible problem and must then afford the parties and their lawyers sufficient time, without involvement by the judge or court personnel, to reasonably consider the situation and decide if waiver is appropriate. For judges covered by the Code of Judicial Conduct, any agreement to waive the disqualification must be incorporated into the record of the proceeding. This may be accomplished by stating the agreement on the stenographic or other official record and having the parties and their lawyers express their assent. For those judges bound by the Rules Governing Standards of Conduct of Magisterial District Judges, since theirs are not courts of record, the agreement must be reduced to a writing signed by all the parties and their lawyers and attached to the record copy of the complaint form. If properly done before any court, such a record will ward off any future appellate challenge and will insulate the judge from disciplinary action for an alleged violation of Rule 2.11.

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[2] As noted in footnote 1, above, this Statement of Policy addresses contributions made to judges' campaign committees and not contributions to political action committees (PACs) that contribute to judges' campaign committees.