

CHAPTER 71. MEMBERS CONDUCT RULES

Sec.	
M.C.R. 1.	Attendance.
M.C.R. 2.	Standards for Judge and Lawyer Members.
M.C.R. 3.	Confidentiality.
M.C.R. 4.	Affiliations.
M.C.R. 5.	Political Activity by Members.
M.C.R. 6.	Financial Disclosures.
M.C.R. 7.	Lawyer-Member Practicing Before a Judge Subject to Judicial Conduct Board Investigation or Complaint.
M.C.R. 8.	Recusal or Disqualification.
M.C.R. 9.	Abstentions Not Permitted.
M.C.R. 10.	Removal of Member from the Board.
M.C.R. 11.	Service of Notice.
M.C.R. 12.	Amendment of Rules.

Source

The provisions of this Chapter 71 adopted August 8, 1995, effective August 8, 1995, 25 Pa.B. 3846, unless otherwise noted.

M.C.R. 1. Attendance.

Decisions of the Board are enhanced by the participation of all members; therefore, members are encouraged to set aside time for each meeting and to participate during the entire meeting.

(1) Prior to the beginning of the calendar year, the Chair shall set a full schedule of meetings. A member shall not be absent for more than 20% of the scheduled meetings, nor shall a member miss three consecutive meetings without just cause. If a member is absent for more than three consecutive meetings, the member shall be requested to show cause as to why the member should not be removed from the Board. The member shall have an opportunity to respond and the procedures of Rule 9 shall apply.

(2) Members shall not participate in regularly scheduled meetings by telephone on more than two occasions per year.

(3) The limitation in section (2), above, can be waived by the Chair and a member shall be permitted to participate by telephone if that member's participation is necessary to establish a quorum for the purpose of conducting Board business.

(4) All members of the Board shall be governed by these Rules of Conduct with respect to their duties as Board members.

M.C.R. 2. Standards for Judge and Lawyer Members.

(1) Judge-members of the Board shall be bound by the Canons of the Code of Judicial Conduct.

(2) Magisterial district judge members of the Board shall be bound by the rules governing Standards of Conduct for Magisterial District Judges.

(3) Lawyer-members of the Board shall be bound by the rules of Professional Conduct.

M.C.R. 3. Confidentiality.

All proceedings before the Board are confidential. Board members and staff must maintain that confidentiality. Each member shall instruct personal staff about the requirement of confidentiality.

M.C.R. 4. Affiliations.

Board members shall report the following to the Board, the appointing authority and the Chief Counsel:

- (1) Change of political party affiliation.
- (2) Non-judicial Board members shall notify the appointing authority if the member assumes a compensated public office or appointment.
- (3) A change in status as resident of the Commonwealth.
- (4) Judicial members shall report a termination or change of a judicial office.
- (5) Lawyer members shall report a change in their status as members of the Bar of the Supreme Court.

M.C.R. 5. Political Activity by Members.

A member of the Board involved in a political campaign shall not make reference to the member's affiliation with the Judicial Conduct Board in any way that may indicate support for the candidate by the Board.

M.C.R. 6. Financial Disclosures.

(1) A Board member should refrain from financial and business dealings that directly or indirectly reflect adversely on the member's impartiality, interfere with the proper performance of Judicial Conduct Board duties, or exploit the person's position as a Judicial Conduct Board member.

(2) Information acquired by a Board member while serving as a Judicial Conduct Board member shall not be used or disclosed in financial dealings or for any other purpose not related to the member's Conduct Board duties.

(3) A member of the Board shall not financially profit as a result of any confidential information submitted to the Board. If a member has any financial interest that could be affected by the disposition of a matter pending before the Board, the member should not participate in its resolution.

(4) The Chief Counsel and professional staff designated by Chief Counsel must file financial disclosure statements in the form filed by members of the judiciary. The forms shall be filed by May 1, of each year, at the Board office.

M.C.R. 7. Lawyer-Member Practicing Before a Judge Subject to Judicial Conduct Board Investigation or Complaint.

(1) When a lawyer-member is appearing before a Judicial Officer for pretrial or trial proceedings and learns the Judicial Officer is the subject of a complaint, or investigation by the Board, the lawyer-member shall refrain from voting at any time on any Board action with regard to the Judicial Officer on that matter. However, because a lawyer-member may have pertinent information concerning the Judicial Officer under scrutiny, the member may participate in discussions before the Board concerning the Judicial Officer.

(2) If a lawyer-member is assigned to a Judicial Officer against whom the Board has filed formal charges, the member must seek the Judicial Officer's recusal, and, if recusal is refused, the member shall refrain from voting on matters involving those charges that may come before the Board.

M.C.R. 8. Recusal or Disqualification.

(1) General Rule. A member of the Board shall withdraw from participating in a matter or proceeding where there is a substantial showing that the member cannot participate in a fair and reasonable manner, including but not limited to instances where the member:

(a) has a fixed bias or prejudice for or against the Judicial Officer, or personal knowledge of disputed evidentiary facts relating to the matter or proceeding;

(b) is a lawyer, and served as a lawyer in connection with any events relating to the matter or proceeding which is the subject of the complaint, or a lawyer with whom the member practices or previously practiced law served during such association as a lawyer concerning the matter, or the member or such lawyer has been a material witness concerning it;

(c) or the spouse of the member or the member's child has a financial interest in any events relating to the matter or proceeding, individually or as a fiduciary;

(d) has instituted the charges or is in any manner involved in a case which may be a subject of the charges before the Board or involve a person who is related to the member within the ninth degree by consanguinity or within the fifth degree by affinity.

(2) No member of the Board shall participate in a proceeding in which the member is a complainant, the subject of the complaint, a party, or a material witness.

M.C.R. 9. Abstentions Not Permitted.

A member qualified to vote at a meeting of the Board must vote in favor of or in opposition to each motion brought to a vote during that meeting, unless grounds exist for that member's recusal pursuant to Rule 8.

M.C.R. 10. Removal of Member from the Board.

(1) Within ten days after it is learned that a member of the Board has breached the confidentiality of the Board or violated any other provisions of these rules, written charges against such member shall be prepared and signed by Chief Counsel and filed with the Board. Within five days after receipt of charges, the Board shall determine, by majority vote of the remaining members, whether there is probable cause for removal. If the determination is in the affirmative, a written statement specifying the charges in detail shall be forwarded to the accused member within five days by certified mail. Within ten days after receipt of the statement of charges, the member shall notify the Board in writing whether a hearing is desired on the charges. The failure of the member to notify the Board of his desire to have a hearing within such period of time shall be deemed a waiver of the right to a hearing. If the hearing has been waived, the Board shall proceed, within ten days after such waiver, by a vote of eight members of the Board, to determine whether the member shall be removed.

(2) Upon receipt of a request for a hearing, the Board shall schedule a hearing, to be held at the Board offices, within twenty days after receipt of the request therefor, and shall immediately notify in writing the member of the time and place thereof.

(3) The Board shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Each hearing shall be conducted by the Chairman of the Board. The member shall have a reasonable opportunity to defend and testify on his or her own behalf. The member shall also have the right to be represented by counsel, to subpoena witnesses and to cross-examine witnesses. All testimony taken shall be under oath which the Chairman of the panel is hereby authorized to administer. A record of the proceedings shall be made and a copy of the transcript of the hearing shall, upon written request, be furnished without charge to the member involved.

(4) At the conclusion of the hearing a vote shall be taken. Removal shall become effective immediately where a vote of eight members indicates that the accused member has engaged in conduct justifying removal.

(5) All proceedings involving the removal of a member shall remain confidential. If a member is removed, the fact of removal shall become public and the authority appointing that member shall be notified a vacancy exists.

M.C.R. 11. Service of Notice.

(1) Under these rules, service of notice or any other document shall be accomplished by:

- (a) personal delivery, or
- (b) any process providing restricted delivery to and returned receipt from the named addressee.

(2) Whenever counsel enters an appearance pursuant to Rule 10, service shall be made on counsel and may be made by first class mail.

(3) In appropriate circumstances, the Chair may authorize any other method of service reasonably designed to accomplish service, including service to a Judicial Officer's last known address.

M.C.R. 12. Amendment of Rules.

(1) The rules may only be amended or rescinded, or new rules adopted, by the affirmative vote of a majority of the members of the Board.

(2) Notice of any Board action on these rules shall be given to all members of the Board at least 30 days before the meeting at which such action will be taken, unless the time period is shortened by unanimous vote of the Board.

(3) Upon adoption, these rules and any amendments shall be available for public inspection and shall be forwarded to:

(a) The Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and

(b) West Publishing Company for publication in the *Pennsylvania Reporter*.

[Next page is 101-1.]

71-6

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