

THE COURTS

Title 207—JUDICIAL CONDUCT

PART I. GENERAL

[207 PA. CODE CH. 51]

Rules 13, 14 and 15 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 13, 14, and 15 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to clarify the restrictions on magisterial district judges serving as arbitrators. The Committee is republishing this proposal. The initial publication was 33 Pa.B. 745 (February 8, 2003). The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the *Report*. Additions are shown in bold; deletions are in bold and brackets.

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

Paula Knudsen Burke, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than March 1, 2008.

By the Minor Court Rules Committee:

M. KAY DUBREE,
Chair

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 51. STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES

Rule 13. Incompatible Practices.

[Magisterial district judges and all employees assigned to or appointed by magisterial district judges shall not engage, directly or indirectly, in any activity or act incompatible with the expeditious, proper and impartial discharge of their duties, including, but not limited to, (1) in any activity prohibited by law; (2) in the collection business; or (3) in the acceptance of any premium or fee for any judicial bond. Magisterial district judges shall not exploit their judicial position for financial gain or

for any business or professional advantage. Magisterial district judges shall not receive any fee or emolument for performing the duties of an arbitrator.]

A. A magisterial district judge may not exploit his or her judicial position for financial gain or for business or professional advantage.

B. A magisterial district judge may not act as an arbitrator.

C. A magisterial district judge or an employee assigned to or appointed by a magisterial district judge may not engage in, directly or indirectly, an activity or act incompatible with the expeditious, proper, and impartial discharge of his or her duties, including but not limited to (1) an activity prohibited by law, (2) the collection business, or (3) the acceptance of a premium or fee for a judicial bond.

Official Note: [The next to the last sentence of this rule is derived in part from Canon 5C(1) of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct.]

* * * * *

Rule 8 (A) of the Rules Governing Standards of Conduct of Magisterial District Judges continues to govern the disqualification of magisterial district judges where the interest in or relationship with a licensed racing or licensed gaming entity or related company thereto, or any such applicant therefor, of the magisterial district judge or a family member is at issue.

As to subdivisions B, see Section 3304 of the Judicial Code, 42 Pa.C.S. § 3304. Compare with Canon 5E of the Code of Judicial Conduct.

Adopted, effective Feb. 1, 1973. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; Jan. 6, 2005, effective Jan. 29, 2005; Nov. 1, 2005, imd. effective; Nov. 21, 2005, imd. effective. Note amended June 1, 2006, effective immediately. Amended _____, 2008, effective _____.

Rule 14. Prohibited Practice of Attorney Magisterial District Judges.

[A. Attorneys who are magisterial district judges shall not practice before any magisterial district judge in the Commonwealth, nor shall they act as a lawyer in a proceeding in which they have served as a magisterial district judge or in any other proceeding related thereto. Nor shall they practice criminal law in the county within which their magisterial district is located. An employer, employe, partner or office associate of such magisterial district judges shall not appear or practice before them.

B. Attorneys who are magisterial district judges shall not practice before, or act as an attorney or solicitor for, any county or local municipal, governmental or quasigovernmental agency, board, authority or commission operating within the Commonwealth.

Official Note: Subdivision A of this rule is derived from former Rule 3A and Compliance Exception A(2), American Bar Association Code of Judicial Conduct. Subdivision B is derived from former Rule

3B. This rule contains all the prohibitions upon the practice of law by attorney magisterial district judges that were thought necessary.]

A. In addition to the general prohibitions in Rule 13, the following prohibitions apply to a magisterial district judge who is an attorney. A magisterial district judge who is an attorney may not:

(1) practice law before a magisterial district judge in the Commonwealth;

(2) act as a attorney in a proceeding in which he or she has served as a magisterial district judge or in any other proceeding related thereto;

(3) practice criminal law in the county within which his or her magisterial district is located; or

(4) practice law before, or act as an attorney or solicitor for a county or local municipal, governmental or quasi-governmental agency, board, authority, or commission operating within the Commonwealth.

B. An employer, employee, partner, or office associate of a magisterial district judge who is an attorney may not appear or practice law before the magisterial district judge.

Official Note: The limitation on the practice of law included in subdivision B is intended to affect attorneys who are not necessarily magisterial district judges. Attorney regulation generally is governed only by the Rules of Professional Conduct. Pa. Code Tit. 204, Ch. 81. One specific prohibition is included in this rule, however, because the attorney-magisterial district judge has an independent duty to object if an employer, employee, partner, or office associate appears before the attorney-magisterial district judge.

Adopted, effective Feb. 1, 1973. Amended June 30, 1982, effective 30 days after July 17, 1982; Jan. 6, 2005, effective Jan. 29, 2005; Nov. 21, 2005, imd. effective. Amended _____, 2008, effective _____.

Rule 15. Public Office and Political Activity.

A. Magisterial district judges shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

B. Except as otherwise provided in this rule, [Magisterial] magisterial district judges or a candidate for [such] the office [shall] of magisterial district judge may not:

(1) hold office in a political party or political organization or publicly endorse candidates for political office[.];

(2) engage in partisan political activity, deliver political speeches, make or solicit political contributions (including purchasing tickets for political party dinners or other functions), or attend political or party conventions or gatherings [, except as authorized in subdivision C of this rule]. [Nothing herein shall prevent magisterial] Magisterial district judges or candidates for [such] the offices of magisterial district judge [from making] may make political contributions to a campaign of a member of their immediate family.

C. Magisterial district judges or candidates for [such] the [offices] office of magisterial district judge may

in the year they run for office, attend political or party conventions or gatherings, speak [to such] at the gatherings or conventions on their own behalf, identify themselves as a member of a political party, and contribute to their own campaign, a political party, or political organization (including purchasing tickets for political party dinners or other functions).

D. With respect to their campaign conduct, magisterial district judges or candidates for [such] the office of magisterial district judge [shall]:

(1) shall maintain the dignity appropriate to judicial office, and shall encourage family members [of their family] to adhere to the same standards of political conduct that apply to [them] the magisterial district judge or candidate[.];

(2) shall prohibit public officials or [employees] employees subject to their direction or control from doing for them what they are prohibited from doing under this rule; and except to the extent authorized under subdivision D(4) of this rule [shall] may not allow any other person to do for them what they are prohibited from doing under this rule[.];

(3) may not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent their identity, qualifications, present position, or other fact[.];

Commentary: The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002) concluded that a canon of judicial conduct prohibiting judicial candidates from "announcing their views on disputed legal or political issues" is violative of the First Amendment of the United State Constitution.

(4) may not themselves personally solicit or accept campaign funds, or solicit publicly stated support, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaign and to obtain public statements of support for their candidacy. [Such] The committees are not prohibited from soliciting campaign contributions and public support from lawyers. [Candidates'] The committees may solicit [funds for their] campaign funds no earlier than [thirty (30)] 30 days prior to the first day for filing nominating petitions, and all fundraising activities in connection with [such] the campaign [shall] must terminate no later than the last calendar day of the year in which the election is held. [Candidates] A magisterial district judge or a candidate for the office of magisterial district judge may [should] not use or permit the use of a campaign contribution for the private benefit of themselves or family members [of their family].

E. Magisterial district judges shall resign their office when they become candidates either in a party primary or in a general election for a non-judicial office.

Official Note: [This rule is derived from former Rule 15 and from Canon 7 of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct.] This rule prohibits only political activity that is partisan in nature, and consequently there

is no objection to magisterial district judges [**becoming engaged**] **engaging** in political activity of a public service nature, such as [, **for example,**] political activity [**in**] on behalf of measures to improve the law, the legal system, or the administration of justice. **Compare Canon 7 of the Code of Judicial Conduct.**

Nothing in subdivision D is intended to prohibit incidental benefit to a magisterial district judge or a candidate for magisterial district judge from the otherwise legitimate use of campaign contributions.

Adopted, effective Feb. 1, 1973. Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; Nov. 9, 1998, effective Jan. 1, 1999; Nov. 21, 2002, imd. effective; Jan. 6, 2005, effective Jan. 29, 2005; Nov. 21, 2005, imd. effective. **Amended _____, effective _____.**

REPORT

Proposed Amendments to Rules 13, 14, and 15 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Clarification Regarding Restrictions on Magisterial District Judges Serving As Arbitrators

I. Background

The Minor Court Rules Committee ("the Committee") began its review of Rules 13 (relating to incompatible practices), 14 (relating to prohibited practice of attorney-magisterial district judges¹), and 15 (relating to public office and political activity) of the Standards of Conduct of Magisterial District Judges² in response to an inquiry from certain members of the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania ("SCJAP Ethics Committee"). The SCJAP Ethics Committee members reported that they had received a number of inquiries from attorney-magisterial district judges ("MDJs") asking whether or not an attorney-MDJ may serve as an arbitrator, particularly in contractual arbitration cases where the arbitrators' fees are paid by the parties.³ The SCJAP Ethics Committee referred the question to the Committee, suggesting that the interplay among Rules 13, 14, and 15 is causing confusion regarding the ethical restrictions placed on MDJs in general, and attorney-MDJs in particular. After consideration of the inquiry, and review of the relevant rules, statutes, and other authorities, the Committee agreed that amendments to the rules were advisable to provide that no MDJ, including an attorney-MDJ, may act as an arbitrator.

The Committee published its initial proposal in 2003, at 33 Pa.B. 745 (February 8, 2003). After receiving valuable comments from various sources, the Committee made selected revisions and prepared to send the proposal to the Supreme Court of Pennsylvania as a formal recommendation. However, upon the request of the Special Court Judges Association of Pennsylvania ("SCJAP"), the Committee delayed transmitting the recommendation. The SCJAP leadership maintained that they would be able to solve the "attorney-MDJ as arbitrator" quandary through legislative action. However, despite a lengthy

¹ Although the title "district justice" was in use when the Committee began reviewing this topic, this Report will use the current title of "magisterial district judge".

² 207 Pa. Code Ch. 51, Rules 13, 14, and 15.

³ As used in this Report, "contractual arbitration" refers to arbitration agreed to by the parties (e.g., as in many uninsured or underinsured motorist cases) and in which the arbitrators' fees are paid by the parties. "Compulsory arbitration" refers to arbitration governed by Section 7631 of the Judicial Code, 42 Pa.C.S. § 7361, and Pa.R.C.P. Nos. 13-1-1314, in which the arbitrators' fees are paid by the court or county government.

delay, no legislative solution has been achieved. Therefore, in order to revive this proposal, the Committee is republishing for substantive comments that were not previously submitted. Prior submissions have already been considered by the Committee and it is not necessary to resubmit those comments.

II. Discussion

As stated above, the SCJAP Ethics Committee suggested that Rules 13, 14, and 15, when read together, create confusion about what, if any, ethical restrictions are placed on attorney-MDJs' ability to serve as arbitrators. Specifically, Rule 13 states, *inter alia*, that "[m]agisterial district judges shall not receive any fee or emolument for performing the duties of an arbitrator." Rule 14, which applies specifically to restrictions on the practice of attorney-MDJs, does not expressly prohibit attorney-MDJs from serving as arbitrators. Further, the Note to Rule 14 states that "[t]his rule contains all the prohibitions upon the practice of law by attorney magisterial district judges that were thought necessary."⁴ Finally, Rule 15 provides, *inter alia*, that "[m]agisterial district judges shall not hold another office or position of profit in the government of the United States, the Commonwealth, or any political subdivision thereof. . . ." The Committee learned that some magisterial district judges, when reading these provisions together, have interpreted them to mean the following:

1. Because Rule 13 prohibits an MDJ from receiving "any fee or emolument for performing the duties of an arbitrator," but no similar prohibition is expressed in Rule 14, the Rule 13 provision does not apply to an attorney-MDJ acting in his or her capacity as an attorney;
2. Because of the limiting language in the Note to Rule 14, the arbitration prohibition in Rule 13 does not apply to an attorney-MDJ acting in his or her capacity as an attorney.
3. Because Rule 15 prohibits MDJs from holding "another . . . position of profit in the government . . .," an attorney-MDJ may not serve as an arbitrator in a compulsory arbitration program in which fees are paid by a county or other government entity, but may serve as an arbitrator, in his or her capacity as an attorney, in a private contractual arbitration case in which fees are paid by the parties.

The Committee also learned that some attorney-MDJs, relying on the above reading of Rules 13, 14, and 15, have been serving as arbitrators both in compulsory and contractual arbitration cases, particularly uninsured/underinsured motorist arbitrations.

The Committee disagrees with the above interpretation of the rules. The Committee reviewed Rules 13, 14, and 15, as well as Section 3304 of the Judicial Code, 42 Pa.C.S. § 3304(b), entitled "Acting as collection agent or paid arbitrator prohibited." This provision states that, "[n]o judge or magisterial district judge shall receive any fee or emolument for performing the duties of an arbitrator." In addition, the Committee compared the MDJ rules with Canon 5E of the Pennsylvania Code of Judicial Conduct, which states that, "[j]udges should not act as an arbitrator or mediator."

In its analysis of the authorities, the Committee noted that Rule 13 applies to all MDJs, and prohibits all MDJs from receiving a fee or emolument for acting as an arbitrator. Rule 14, the Committee noted, applies specifi-

⁴ The Supreme Court does not adopt the Committee's Notes to the rules.

cally to attorney-MDJs, and lists only certain prohibited practices not specified in the other rules relating to all MDJs. Further, the Committee noted that Section 3304 does not distinguish between attorney and non-attorney MDJs in its prohibition of MDJs receiving "any fee or emolument for performing the duties of an arbitrator." In addition, the Committee noted that neither Section 3304 nor the rules distinguish between compulsory (court) and contractual (private) arbitration cases in their prohibitions.

The Committee concluded, therefore, that the rules and statute prohibit an MDJ, attorney or non-attorney, from receiving a fee or emolument for performing the duties of an arbitrator. The Committee disagreed with the analysis described above that would construe Rule 13 as not applying to an attorney-MDJ in his or her capacity as an attorney, and would create an artificial distinction between compulsory and contractual arbitration cases.

Having concluded that no MDJ may receive a fee or emolument for performing the duties of an arbitrator regardless of the nature of the arbitration and the payer of the arbitrators' fees, the Committee next considered if the rules should retain the existing restriction and be amended to merely clarify the nature of the restriction, or if the rules should be amended to more closely mirror Canon 5E and fully prohibit MDJs from acting as arbitrators. After considerable discussion, the Committee concluded that the distinction between compensated and uncompensated service seemed immaterial, and that the rules should reflect an absolute prohibition on an MDJ acting as an arbitrator.

The Committee believes there is no inherent impropriety in an attorney-MDJ, in his or her capacity as an attorney, acting as an arbitrator in a contractual arbitration case. The Committee feels compelled to recommend these rule changes, however, because of what it believes to be the clear language of Section 3304 which prohibits all MDJs from receiving payment for any arbitration services, and because of the reported confusion cases by the interplay among current Rules 13, 14 and 15.

Accordingly, the Committee proposes that Rules 13, 14, and 15 be amended to more closely mirror Canon 5E and to provide that no MDJ may act as an arbitrator.

III. Proposed Rule Changes

A. Rule 13

The Committee proposes that Rule 13 be divided into three subdivisions to enhance readability. The three subdivisions would contain the existing provisions of the rule with only minor editorial changes to conform with modern drafting style. Subdivision B would contain the new provision prohibiting an MDJ from acting as an arbitrator. Finally, the existing Note to the rule would be deleted and replaced with a revised Note that cross-references Canon 5E of the Code of Judicial Conduct and Section 3304 of the Judicial Code.

B. Rule 14

The Committee proposes that Rule 14 also be restructured to enhance readability. Under the Committee proposal, the two existing subdivisions would remain, but the specific provisions restricting the practice of law by an attorney-MDJ would be consolidated and tabulated in subdivision A. Very significantly, the introductory sentence in subdivision A would be amended to read, "[i]n addition to the general prohibitions in Rule 13, the following prohibitions apply to a magisterial district judge who is an attorney." This is intended to clarify that the provisions of Rule 13, including the arbitration provision, apply to all MDJs, including attorney-MDJs. In addition,

the restrictions on lawyers who are associated with the attorney-MDJ from appearing before him or her would be moved to subdivision B. Finally, the Committee proposes minor editorial changes to conform with modern drafting style. The Committee proposes that the existing Note to the rule be deleted entirely.

C. Rule 15

The Committee does not propose any substantive changes to Rule 15 in connection with the arbitration issue. In its review of the rule, however, the Committee identified the need for, and thus proposes, extensive editorial changes to enhance readability and conform with modern drafting style. In addition, the Committee proposes an addition to the Note to clarify that nothing in the rule is intended to prohibit incidental benefit to an MDJ or candidate for the office of MDJ from the otherwise legitimate use of campaign funds, such as the food consumed while attending a political party dinner or other function.

[Pa.B. Doc. No. 07-2398. Filed for public inspection December 28, 2007, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 500]

Amendment of the Note to Rule 506 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Note to Rule 506 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to create a reference to wage garnishment. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the *Report*. Additions are shown in bold.

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

Paula Knudsen Burke, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175
or e-mail to: minorrules@pacourts.us

no later than March 1, 2008.

By the Minor Court Rules Committee:

KAY DUBREE,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE
RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 506. Service of Complaint.

* * * * *

B. The copy shall be served at least five days before the hearing.

Official Note: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed. **In actions where wage garnishment may be sought under Pa.R.C.P. 3311, the plaintiff may authorize the sheriff or constable to make personal service upon a tenant/defendant. If a tenant/defendant is not present at the property the sheriff or constable is authorized to post the complaint so that the underlying landlord-tenant action may proceed. The plaintiff may authorize the sheriff or constable to make additional attempts to effectuate personal service upon the tenant/defendant so the plaintiff can later prove such service if attempting to garnish wages under Pa.R.C.P. 3311. Additional service attempts by the sheriff or constable may result in additional fees.**

REPORT

**Proposed Amendment to the Note to Rule 506 of the
Rules of Conduct, Office Standards and Civil
Procedure for Magisterial District Judges****Change to the Note:
Reference to Wage Garnishment**

I. Introduction

The Committee began reviewing Pa.R.C.P.M.D.J. No. 506 in March 2007 following an inquiry from a magisterial district judge. The judge was concerned that Pa.R.C.P. No. 3311 requires personal service upon a defendant in the original action if wage attachment is to be sought at a later time. However, Pa.R.C.P.M.D.J. No. 506 does not make any reference to this restriction in the Rules of Civil Procedure.

II. Proposed Change to the Note to Rule 506

The Committee seeks to amend the Note to M.D.J. Rule 506 to specify that if wage attachment is to be sought at a later time, personal service must be effectuated. The additional language of the Note would provide concrete examples of how this personal service would play out in a landlord-tenant case. For instance, the new language would specify that if a defendant is not present at the rental unit to be personally served, the property may be posted for the underlying landlord-tenant action to proceed, but the sheriff/constable would need to return to personally serve the defendant prior to the hearing in order to satisfy Pa.R.C.P. No. 3311.

The new Note language references Pa.R.C.P. No. 3311 twice, to underscore that section's relevance and direct litigants to review the section. Pa.R.C.P. No. 3311 requires a plaintiff judgment creditor/landlord to certify, *inter alia*, "... that the defendant appeared or filed papers in the action or that the complaint was served by

handing a copy to the defendant." See Pa.R.C.P. No. 3311, Certification by Judgment Creditor—Landlord Form, No. 8(b).

Finally, the Note highlights that more than one service attempt by the sheriff/constable could result in additional fees.

[Pa.B. Doc. No. 07-2399. Filed for public inspection December 28, 2007, 9:00 a.m.]

Title 249—PHILADELPHIA
RULES

PHILADELPHIA COUNTY

Adult Probation/Parole Officers Firearms Policy;
Trial Division-Criminal Section; No. CP-51-AD-
0000001-2007

Administrative Order

And Now, on this 13th day of December, 2007, with the approval of the Administrative Governing Board and as authorized by the County Probation and Parole Officers' Firearm Education and Training Law, 61 P. S. § 332.1 et seq., *It Is Hereby Ordered, Adjudged and Decreed* that the Chief Adult Probation Officer of Philadelphia County is, from time to time, authorized to designate, with the approval of the Administrative Judge of the Trial Division, specific Adult Probation and Parole Officers who have received all applicable training required by the First Judicial District of Pennsylvania, as "Weapon-carrying officers" who are permitted to carry weapons in connection with the performance of the duties of their employment provided that they qualify for Firearm Education and Training as provided in 61 P. S. § 332.7, successfully complete the mandatory training, and receive the required certification from the *County Probation and Parole Officers' Firearm Education and Training Commission*.

This Administrative Order is issued in accordance with the County Probation and Parole Officers' Firearm Education and Training Law, 61 P. S. § 332.1 et seq., and the April 11, 1986, Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1 and will become effective immediately. The original Administrative Order will be filed with Active Criminal Records and the Prothonotary as an Administrative Order issued by the Administrative Judge of the Trial Division of the Court of Common Pleas of Philadelphia County and copies will be submitted to the Administrative Office of Pennsylvania Courts and the Legislative Reference Bureau. Copies of the Administrative Order will also be submitted to *American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library*, and the law library for the First Judicial District. The Administrative Order will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

By the Court

D. WEBSTER KEOGH,
Administrative Judge Trial Division

[Pa.B. Doc. No. 07-2400. Filed for public inspection December 28, 2007, 9:00 a.m.]

PHILADELPHIA COUNTY

In Re: Rescission, Adoption and Amendment of Philadelphia Civil Rules *201, *205.2(a), *205.4, *208.3(b), *210, *1018, *1021, *1028(c), *1303(g), *2039.1, *2039.2 and *2206; President Judge General Court Regulation No. 2007-02

Order

And Now, this 13th day of December, 2007, the Board of Judges of Philadelphia County, having voted at the Board of Judges' meeting held on November 15, 2007 to rescind, adopt or amend Philadelphia Civil Rules *201, *205.2(a), *205.4, *208.3(b), *210, *1018, *1021, *1028(c), *1303(g), *2039.1, *2039.2 and *2206 as attached, *Hereby Order* that Philadelphia Civil Rules *201, *205.2(a), *205.4, *208.3(b), *210, *1018, *1021, *1028(c), *1303(g), *2039.1, *2039.2 and *2206 are rescinded, adopted or amended as attached: Deletions are in ~~strike through text~~; additions are in **bold, underlined** text.

The effective date of the rescission, adoption or amendment of each rule is set forth in each rule.

This General Court Regulation is issued, and the attached rules are promulgated, as required by Pa.R.C.P. Nos. 239 and 239.8. The original General Court Regulation and rules shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, shall be published in the *Pennsylvania Bulletin*, and copies shall be submitted to the Administrative Office of Pennsylvania Courts and the Civil Procedural Rules Committee. As required by Pa.R.C.P. No. 239.8, Philadelphia Civil Rules *205.2(a), *208.3(b), *210, and *1028(c) shall be published on the Pennsylvania Judiciary's Web Application Portal: <http://ujportal.pacourts.us/Rules/RulesSelection.aspx>. Copies of the General Court Regulation and rules shall also be submitted to American Lawyer Media, *The Legal Inteligencer*; Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and posted on the website of the First Judicial District of Pennsylvania: <http://courts.phila.gov>.

By the Court

HONORABLE C. DARNELL JONES, II,
President Judge

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
CIVIL DIVISION RULES**

RULE *201. STIPULATIONS.

(A) Judicial approval of stipulations of counsel is not required except for stipulations relating to the following matters:

- (1) The settlement, discontinuance and ending of an action as to less than all defendants;
- (2) The return of money deposited with the Court;
- (3) The transfer of an action to another Court or jurisdiction;
- (4) Late joinder of additional defendants; and
- (5) Waiver of the requirements of a local rule.

(B) Stipulations not requiring judicial approval shall be filed with the Prothonotary. Service shall be made by the filing party upon all counsel and unrepresented parties.

(C) Stipulations requiring Court approval in cases not assigned to the Non Jury Program, the Arbitration Program or the Arbitration Appeal Program shall be presented for approval to the Judicial Team Leader for that Program to which the case has been assigned. Stipulations requiring Court approval in the Non Jury, Arbitration or the Arbitration Appeal Programs shall be presented for approval to the Motion Court Judge. All Stipulations requiring Court approval shall be filed with the Prothonotary (~~Second Filing Unit~~), and it will be the responsibility of that Unit to forward the Stipulation **and will be assigned** to the appropriate Judge for approval. ~~All such Stipulations shall be accompanied by stamped addressed 9 1/2" X 4 1/2" size envelopes for each attorney of record and unrepresented party.~~

*Note: The amendments to this rule are made in contemplation of implementation of Electronic Filing as authorized by Pa.R.C.P. No. 205.4 and Philadelphia Civil Rule *205.4; the amendments will thus become effective on the implementation date announced by the Administrative Judge of the Trial Division as provided in Philadelphia Civil Rule *205.4(a)(1)(ii). Until that date, the parties must continue to include with their legal papers the required addressed stamped envelopes. The Court will not accept the pleadings or legal papers without the required envelopes.*

Adopted by the Board of Judges on November 15, 2007; effective on the date established in Philadelphia Civil Rule *205.4(a)(1)(ii).

~~RULE *205.2(a). PLEADINGS~~

Note: Rule rescinded. Subject matter contained in Philadelphia Civil Rule *205.2(a)(5) and (6) is adopted as Philadelphia Civil Rule *1018. Subject matter contained in Philadelphia Civil Rule *205.2(a)(8) is adopted as Philadelphia Civil Rule *1021. All other provisions contained in this rule are covered by Pennsylvania Rules of Civil Procedure and are thus unnecessary.

~~No pleading or other legal paper that complies with the Pennsylvania Rules of Civil Procedure shall be refused for filing by the Prothonotary. All papers filed with the Prothonotary shall conform to the following requirements:~~

~~(1) Pleadings, opinions, briefs and other papers and records which are to be filed with the Prothonotary shall be prepared on letter size (approximately 8 1/2" X 11") paper of customary weight and quality.~~

~~(2) The margin on all papers shall be not less than 3/4" on the left side of the page and 1/4" on the right side of the page and the material shall be double spaced.~~

~~(3) The first paper filed by, or on behalf of, a party in a case shall have endorsed thereon an address in the Commonwealth and, as authorized by Pa.R.C.P. No. 205.4(g)(2), an electronic mail address at which all papers and notices thereafter may be served upon the party or counsel.~~

~~(4) The first page shall contain a 3" space from the top of the page for all stampings, filing notices, waivers and demands for a jury trial and notations. Beginning at the left hand margin 3" from the top of the page, the attorney name, electronic mail address, attorney identification number, firm name, address, and telephone number shall appear in that order. To the right of the attorney's address, the client's name shall appear. The size of lettering shall not be less than ten points.~~

~~(5) The case caption shall appear below the attorney address at the left-hand margin of the page with the proper Court term and number appearing to the right-hand margin.~~

~~(6) The complaint or other original filing shall contain in the caption the addresses, including zip codes, of all parties.~~

~~(7) Whenever any right, claim or defense is asserted to be founded upon a specific statute of this or another jurisdiction or upon an ordinance, governmental regulation or rule of Court, the first pleading in which such right, claim or defense is asserted shall cite, for the information of the Court, the statute, ordinance, regulation or rule to be relied upon.~~

~~(8) Whenever money damages in a sum certain are claimed, the pleading shall state the precise amount, and the date or dates from which any interest thereon is claimed.~~

~~(9) In actions in which book accounts may be offered in evidence, if a copy thereof is attached to any pleading, it shall not be necessary to produce the books at the trial, unless a responsive pleading shall allege that the account or copy is incorrect, stating particulars, or that the books are not books of original entry and shall demand the production of the books at the trial; otherwise, the copy shall be admitted as evidence without further proof.~~

~~(10) Pleadings amended before trial shall be executed, verified and filed in their amended form. If amendments to pleadings are required to be attached to any brief or other document, they shall be set forth as amended to date.~~

~~Adopted June 24, 2004, effective July 26, 2004.~~

~~***Rescinded by the Board of Judges on November 15, 2007; effective January 7, 2008.***~~

RULE *205.4. ELECTRONIC FILING OF LEGAL PAPERS FILED IN THE CIVIL TRIAL DIVISION.

(a)(1) Authorization for Electronic Filing.

(i) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties may electronically file all legal papers and exhibits with the Prothonotary.

(ii) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties shall electronically file all legal papers and exhibits with the Prothonotary.

Note: Electronic Filing will be implemented in 2008; however, the exact date is not known at this time. The Administrative Judge of the Trial Division will announce the implementation dates of discretionary and mandatory electronic filing by order issued as required by Pa.R.C.P. No. 239.

(b)(1) Authorized Electronic Format of Legal Papers Electronically Filed. All legal papers shall be filed in a *portable document format ("pdf")*. As authorized by Pa.R.C.P. No. 205.4 (b)(1), in the event any legal paper or exhibit is submitted to the Prothonotary in a hard-copy format, the Prothonotary shall convert and maintain such legal paper or exhibit to a *portable document format*, and the Prothonotary shall return the hard-copy legal paper or exhibit to the filing party for retention as required by Pa.R.C.P. No. 205.4(b)(5).

(c)(2) Website. Access to the Website.

(i) Website. All legal papers shall be filed electronically through the Civil Trial Division's Electronic Filing System ("Electronic Filing System") which shall be accessible through the website of the First Judicial District of Pennsylvania, <http://courts.phila.gov>, or at such other website as may be designated from time to time.

(ii) Access to the Website. To obtain access to the Electronic Filing System, counsel and any unrepresented party must apply for and receive a User Name, Password, and Personal Identification Number ("PIN").

(d) Payment of Filing Fees.

(1) The Prothonotary will accept for payment of all filing fees cash, checks and the following credit and debit cards: American Express, Discover, MasterCard, and Visa.

(2) The Prothonotary will not accept advance deposit on account of future filing fees due to the difficulty in monitoring and accounting for such advance deposits.

(3) **Electronic Filing Fees and Costs.** As authorized by Act 81 of 2006, the Prothonotary shall collect an electronic filing fee for each legal paper or exhibit filed as established by the Prothonotary with the approval of the President Judge of the Court of Common Pleas. In addition to such electronic filing fee, commencing on date provided in subsection (a)(1)(ii), the Prothonotary is authorized to charge the sum of \$1.00 per page for each page of a legal paper or exhibit which is filed in a hard copy format and which must be converted by the Prothonotary to a *portable document format*. All fees collected pursuant to this rule shall be set aside by the Prothonotary and remitted monthly to the First Judicial District's Procurement Unit. All such fees and costs collected will be used for the implementation and maintenance of the electronic filing system and additional development, enhancements and training.

(f) Local Procedures. As authorized by Pa.R.C.P. No. 205.4 (f), the following administrative procedures are adopted:

(1) Signatures on Pleadings, Verifications, Documents and Other Legal Papers. The electronic filing of legal papers utilizing the issued User Name, Password and PIN issued as provided by this rule and Pa.R.C.P. No. 205.4, constitutes the party's signature on electronic documents as provided by Pa.R.C.P. No. 1023.1 and, if the filing party is an attorney, constitutes a certification of authorization to file it as provided in Pa.R.C.P. No. 205.1. Additionally, the following provisions apply:

(i) **Filing Party.** The legal paper must include a signature block, and the name of the filer under whose User Name, Password and PIN the legal paper is submitted must be preceded by a "/s/" and typed in the space where the signature would otherwise appear.

(ii) **Client Verifications and Documents Executed by Clients or Other Persons.** The Verification required by Pa.R.C.P. Nos. 206.1 and 1024 and the signature page(s) of any document or legal paper executed by any party other than the filing party must be scanned and attached to the electronic filing in a *portable document format* at the time the legal paper is submitted.

(iii) Documents requiring signatures of more than one party must be scanned and attached to the electronic filing in a *portable document format* at the time the legal paper is submitted.

Note: This subsection is designed to address issues which may arise regarding signatures on legal papers and

documents. A filer's use of the User Name, Password and PIN issued through the EFS is the filer's "electronic signature." However, often, legal papers require that verifications be executed by non-filers and deficiencies in content and execution could be subject to preliminary objections. Moreover, many legal papers or documents require multiple signatures. In order to avoid prejudicial delay, this section requires that the filing party scan such legal papers, documents or signature pages and attach them to the electronic filing at the time of submission.

(2) Upon receipt of the legal paper, the Prothonotary shall provide the filing party with an acknowledgment, which includes the date and time the legal paper was received by the Electronic Filing System.

(3) After review of the legal paper, the Prothonotary shall provide the filing party with e-mail notification, or notification on the Electronic Filing System, that the legal paper has been accepted for filing ("filed") or not accepted or refused for filing.

(4) If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by the Electronic Filing System; provided, however, that if a legal paper is submitted without the requisite filing fee, the legal paper shall be deemed to have been accepted for filing as of the date payment was received. The Prothonotary is authorized to refuse for filing a legal paper submitted without the requisite payment. If the pleading or legal paper is accepted for filing, it will be electronically served as authorized by Pa.R.C.P. No. 205.4(g)(1)(ii) and service shall be effectuated as provided in Pa.R.C.P. No. 205.4(g)(2)(ii).

Note: As required by Pa.R.C.P. No. 205.4(c)(1), access to the Electronic Filing System shall be available at all times, except for required maintenance. However, legal papers can only be reviewed during normal court hours. Therefore, parties are cautioned to file required legal papers in advance of any filing deadline to enable timely correction and re-submission in the event a legal paper is not accepted or is refused for filing. The Prothonotary may refuse for filing any legal paper submitted without the required filing fees as provided by 42 Pa.C.S. § 1725(c)(2)(xix), or, at the Prothonotary's discretion, may authorize the filer to submit the required filing fees within a stated time period after which the Prothonotary may refuse the legal paper for filing if payment is not received.

(5) If a legal paper is refused for filing, the Prothonotary shall specify the reason. Subject to the provisions of subsection Rule 205.4 (e)(1)(i), a legal paper refused for filing shall be deemed as not having been filed.

(6) Neither the Court nor the Prothonotary are required to maintain a hard copy of any legal paper or exhibit, notice, or order filed or maintained electronically under this rule.

Note: This rule is adopted as required by Pa.R.C.P. No. 239.9.

The provisions which govern the Electronic Filing of Mental Health Applications and Petitions are set forth in Philadelphia Civil Rule 7109.1, which was adopted on November 16, 2001 and which became effective on January 1, 2002.

Adopted by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *208.3(b). MOTIONS CONSIDERED AFTER RESPONSE PERIOD. BRIEFS.

(1) Applicability. This rule governs the filing of all motions except the following:

(A) All matters specifically excepted in Pa.R.C.P. 208.1(b).

(B) Assignment to an individual judge. (See Philadelphia Civil Rule *215).

(C) Advancement on the trial list. (See Philadelphia Civil Rule *215).

(D) Arbitration applications. (See Philadelphia Civil Rule 1303.1.)

(E) Motion for approval of settlements where a minor or incapacitated person have an interest. (See Philadelphia Civil Rule*2039.1.)

(F) Motion for allowance in minors' cases. (See Philadelphia Civil Rule *2039.2.)

(G) Motion for approval of settlements in wrongful death cases. (See Philadelphia Civil Rule *2206.)

(H) Motion for Extraordinary Relief (See Trial Division General Court Regulation No. 95-1).

(2) Non-Discovery Motions

(A) Filing Requirements. All motions other than discovery motions shall be filed with the Prothonotary and the requisite fee paid, and shall thereafter be immediately submitted to the Motion Clerk. All Motions shall be accompanied by the following items in the following order:

(i) A completed Petition/Motion Cover Sheet as provided in Phila.Civ.R. *205.2(b)(2);

(ii) A proposed order, which shall contain no reference to the attorney proposing same;

(iii) A brief or memorandum of law as required by Phila.Civ.R. *210;

~~(iv) Stamped, addressed 9 1/2" X 4 1/4" size envelopes for each attorney of record and unrepresented parties.~~

(B) Control Number. Response Date. Other than as provided in Phila.Civ.R. *208.3(a) and except for Summary Judgment Motions (which have a thirty (30) day response period, all Motions have a twenty (20) day response period. Upon filing, the Motion Clerk shall enter on the Cover Sheet a unique Control Number which must be used on all Responses, and shall enter the 'Response Date' on or before which all Responses must be filed by any party.

(C) Service Requirements. The moving party shall immediately serve conformed copies of all documents filed with the Motion Clerk on all counsel of record and unrepresented parties, as required by Pa.R.C.P. 440.

(D) Response Requirements. Any party opposing the motion, shall file the following documents with the Motion Court on or before the Response Date:

(i) A completed Cover Sheet as set forth in Phila.Civ.R. *205.2(b)(2);

(ii) A proposed order, which shall contain no reference to the attorney proposing same;

(iii) The Response to the motion; and

(iv) A brief or memorandum of law as provided in Phila.Civ.R. *210.

(E) Attachments. All Motions shall include copies of all documents or items necessary or relevant to the disposition of the issues. This shall include the complaint, answer, and reply to new matter. All such documents or items shall be included or attached and marked as exhibits separately. The Court may decide any matter

against a party who fails to attach to the filing those items sufficient to enable the Court to determine the matter.

(F) Disputed Issues of Fact. Disputed issues of fact shall be determined as the Court may provide pursuant to Pa.R.C.P. 208.4(b).

(G) Deadline for Filing Arbitration Motions. Motions shall not be accepted by the Motion Clerk in cases where an arbitration hearing is scheduled to be held within forty-five (45) days.

*Note: The amendments to this rule are made in contemplation of implementation of Electronic Filing as authorized by Pa.R.C.P. No. 205.4 and Philadelphia Civil Rule *205.4; the amendments will thus become effective on the implementation date announced by the Administrative Judge of the Trial Division as provided in Philadelphia Civil Rule *205.4(a)(1)(ii). Until that date, the parties must continue to include with their legal papers the required addressed stamped envelopes. The Court will not accept the pleadings or legal papers without the required envelopes.*

Adopted by the Board of Judges on November 15, 2007; effective on the date established in Philadelphia Civil Rule *205.4(a)(1)(ii).

RULE *210. BRIEF.

Except for Motions for Extraordinary Relief, all Petitions and Motions shall be accompanied by a brief or memorandum of law. Briefs or memoranda of law shall be typewritten, printed or otherwise duplicated ~~(the size of lettering shall not be less than ten points)~~, and endorsed with the name of the case, the court term and number, and the name, address, and electronic mail address of the attorney or the party if not represented by an attorney. Briefs and memoranda of law shall contain concise and summary statements, separately and distinctly titled, of the following items in the order listed:

1. Matter before the Court: State the particular pleading (motion, petition, objection, exception, application, etc.) before the court for disposition, and the particular relief requested therein.

2. Statement of question(s) involved: State the issue(s) in question form containing factual context sufficient to present the precise matter to be decided by the Court, each susceptible of a yes or no answer, each followed by the answer desired or advocated.

3. Facts: State the operative facts.

4. Argument: State the reason(s) why the court should answer the questions involved as proposed, including citation of the authorities relied on. An authority shall not be cited for general reference but in all cases shall be immediately preceded or followed by its relevant holding or particular proposition for which it stands.

5. Relief: State the specific action(s) requested of the court.

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *1018. CAPTION.

(a) The case caption shall appear below the attorney address at the left-hand margin of the page with the proper Court Term and Number appearing to the right-hand margin.

(b) The complaint or other original filing shall contain in the Caption the addresses, including the electronic mail address, and zip codes, of all parties.

Source: Former Philadelphia Civil Rule *205.2(a)(5) and (6). The reference to the inclusion of an electronic mail address has been added.

Adopted by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *1021. CLAIM FOR RELIEF. AMOUNT IN CONTROVERSY. SUM CERTAIN.

Whenever money damages in a sum certain are claimed, the pleading shall state the precise amount, and the date or dates from which any interest thereon is claimed.

Source: Former Philadelphia Civil Rule *205.2(a)(8).

Adopted by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *1028(c). PRELIMINARY OBJECTIONS

(1) All preliminary objections shall be filed with the Prothonotary, as provided in Pa.R.C.P. 1028, ~~and must be served on all other parties.~~ **together with:**

(a) a Brief or Memorandum of Law, as set forth in Phila.Civ.R. *210;

(b) copies of all items necessary or relevant to the disposition of the preliminary objections. This shall include the complaint, answer, and reply to new matter. All such items shall be included or attached and marked as exhibits separately. The Court may decide preliminary objections against a party who fails to attach to the filing those items necessary to enable the Court to determine the preliminary objections; and

(c) a proposed order, which shall contain no reference to the attorney proposing same.

~~(2) Pursuant to As provided in Pa.R.C.P. No. 1028(c)(1) a , any party may file an amended pleading as of course within twenty (20) days after service of the preliminary objections. Upon the timely filing of the an amended pleading, the preliminary objections are deemed moot and the Prothonotary shall administratively mark the preliminary objections and the Motion to Determine the Preliminary Objections, if filed as required by subsection (c) hereunder, shall be administratively marked "moot" on the docket of the case.~~

~~(3) Within thirty (30) days after filing Preliminary Objections with the Prothonotary, provided an amended pleading has not been filed, the objecting party shall file a Motion to Determine the Preliminary Objections, together with the following:~~

~~(a) a copy of the preliminary objections;~~

~~(b) a Brief or Memorandum of Law, as set forth in Phila.Civ.R. *210; and~~

~~(c) copies of all items necessary or relevant to the disposition of the preliminary objections. This shall include the complaint, answer, and reply to new matter. All such items shall be included or attached and marked as exhibits separately. The Court may decide preliminary objections against a party who fails to attach to the filing those items sufficient to enable the Court to determine the preliminary objections.~~

~~(4) In the event that the Motion to Determine the Preliminary Objections is not filed with Motion Court within thirty (30) days after filing with the Prothonotary, the party against whom the objections are asserted may~~

file with the Motion Court a praecipe, and a proposed order, requesting that the objections be overruled.

(5) ~~(3)~~ An answer to preliminary objections (as opposed to a Response to the Motion to Determine Preliminary Objections) is required (within twenty (20) days after service of the preliminary objections) only to preliminary objections raising an issue under Pa.R.C.P. 1028(a)(1), (5) ~~and~~, (6), ~~(7) or (8)~~, provided a notice to plead is attached to the preliminary objections. An answer need not be filed to preliminary objections raising an issue under Pa.R.C.P. 1028(a)(2), (3) and (4).

(4) An answer to preliminary objections, if filed, shall be filed together with:

(a) a Brief or Memorandum of Law, as set forth in Phila.Civ.R. *210;

(b) copies of all items necessary or relevant to the disposition of the preliminary objections. This shall include the complaint, answer, and reply to new matter. All such items shall be included or attached and marked as exhibits separately. The Court may decide preliminary objections against a party who fails to attach to the filing those items necessary to enable the Court to determine the preliminary objections; and

(c) a proposed order, which shall contain no reference to the attorney proposing same.

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *1303. SCHEDULING OF ARBITRATION HEARINGS. RELISTINGS. CONSOLIDATIONS.

* * *

(g) Transfer from Arbitration to ~~Major List~~ to another Program. A case filed as an Arbitration case may **only be transferred to another Program, and listed for trial in accordance with management procedures established pursuant to Philadelphia Civil Rule *215, as follows:**

(1) upon the filing of a Counterclaim which seeks monetary damages in excess of the arbitration limits; or

Note: Robert Half International Inc. v. Marlton Technologies, Inc., 2006 Pa. Super 145; 902 A.2d 519 (2006) requires that upon the filing of a counterclaim seeking monetary damages in excess of the arbitration limits, the case be transferred from the Compulsory Arbitration Program.

The transfer will be made automatically upon the filing of a counterclaim which seeks monetary damages in excess of the arbitration limits.

It is suggested that the counterclaimant make the Prothonotary aware that the case previously assigned to the Arbitration Program must be transferred to another Program due to the amount of the monetary damages sought in the counterclaim. Upon implementation of electronic filing, the Electronic Filing System will contain the necessary functionality to effectuate the transfer.

(2) certified as a major case only with Court approval. A Motion for Approval upon the filing of a Motion to Transfer from the Compulsory Arbitration Program to another Program and the entry of an order trans-

ferring such case to another Program, subject to the payment of the applicable fee, if any. Day Forward must be filed with the Prothonotary. The Motion for Approval to Transfer will not be granted if it is made immediately before the Arbitration Hearing date and it appears that the requisite pleadings have not been filed.

* * *

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *2039.1. MOTIONS FOR APPROVAL OF SETTLEMENTS WHERE A MINOR OR INCOMPETENT HAS AN INTEREST

(A) Filing of Record and Approval as to Form. Motions for settlement of a case in which a minor or incompetent has an interest shall be served on all parties of record ~~and filed with the Prothonotary and taken to the Clerk of the Motion Court for approval as to form.~~ Said motions are not subject to any further filing requirements of the Motion Court under Philadelphia Civil Rule *208.3(b)(3).

(B) Which Judge to Rule on Motion. When a minor's or incompetent's settlement has been obtained before a Settlement Conference of a Trial Judge, that Judge shall have exclusive jurisdiction to approve the reasonableness of the amount of such settlement. The Trial or Settlement Judge shall also make an initial determination of the distribution of the settlement proceeds within 30 days after the filing of a formal Motion. After such determination, the Motion shall be forwarded to the Orphans' Court Division for final approval and signature, and the same shall be ruled on within 30 days. In all other cases, the reasonableness of the amount of settlement and Motion for Distribution will be adjudicated by the Administrative Judge of the Trial Division or his or her designee within 30 days of the date the same is filed.

(C) Appointment of Guardian Ad Litem. In any case where a minor or incompetent has an interest and whenever the Administrative Judge or his or her designee or the Settlement or Trial Judge believes it necessary that the minor or incompetent be represented separately, a guardian ad litem shall be appointed to represent the minor's or incompetent's interest, who shall be a member of the Bar. A guardian ad litem shall be appointed if required by the circumstances irrespective of whether a guardian of the estate has been appointed. The guardian may be the same for both purposes, but need not be.

(D) Contents of Motion. The motion shall:

(1) Set forth the factual circumstances of the case;

(2) State the reasons why the settlement is a reasonable one; and

(3) Be accompanied by the following:

(a) A proposed order of distribution;

(b) A written report of a physician setting forth the present condition of the minor or incompetent;

(c) A statement under oath by a parent or, if there is a guardian, the guardian certifying (1) the present physical or mental condition of the minor or incompetent, and (2) approval of the proposed settlement and distribution thereof;

(d) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion;

(e) If there is to be an allocation between parents and children or among children, the amounts allocated to each party and specific reasons for such allocation;

(f) In the event that the minor is 16 years of age or over, his or her written approval of the proposed settlement and distribution thereof.

(g) In the event that a guardian ad litem has been appointed, a statement of the professional opinion of the guardian ad litem as to the reasonableness of the proposed allocation, and the basis for such opinion. The guardian ad litem shall give specific reasons for his or her approval or disapproval of any suggested allocation of the proceeds.

(E) Release of Defendant. After Court approval of the gross amount of the settlement, but before approval of the Motion for Distribution, the plaintiff may sign a release to discharge the settling defendant and may issue an Order to Settle, Discontinue and End to the settling party. If Plaintiff releases and discharges a defendant pursuant to this subsection, defendant's draft or check is to be made payable to all plaintiffs and to counsel for plaintiff(s), to be deposited into a separate insured, interest bearing escrow account pending an order of distribution from the Court. This subsection is intended to preclude issues regarding distribution from preventing timely and prompt tender of settlement proceeds.

(F) Counsel Fees. The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that such fees must be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Under normal circumstances, a counsel fee in the amount of one-third of the net fund recovered shall be considered reasonable, subject to the approval of the Court. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as Blue Cross/Blue Shield.

(G) Personal Appearances. The approving Judge, to whom the Motion is submitted, may, at his or her discretion, require the personal appearance of the minor or incompetent, guardians, the guardian ad litem, physicians, or any other relevant party, as well as the production of any other evidence deemed necessary for adjudication of the Motion.

(H) Appointment of Guardian of the Estate.

(1) Pursuant to Pa.R.C.P. 2039(b)(1), all amounts over \$10,000 may not be paid to the parents as natural guardian of the Estate.

(2) Amounts under \$350,000 may be placed in restricted accounts pursuant to Pa.R.C.P. 2039(b)(2).

(3) In all cases where the net proceeds, after costs and attorney's fees, to be paid on behalf of a minor under the age of 15 or on behalf of an incompetent is in excess of \$350,000 (exclusive of proceeds to be paid in the future under a structure), the Trial Division shall order that such proceeds be paid to a guardian of the minor's or incompetent's estate.

(a) It shall be the responsibility of counsel for the minor or incompetent to timely apply to the Orphans' Court Division for the appointment of such guardian.

(b) The Administrative Judge of the Trial Division or his or her designee may, upon motion, allow net proceeds in excess of \$350,000 to be placed in restricted or blocked accounts.

(I) Notice to Court and Proof of Deposit. Within 30 days of distribution of the settlement proceeds for minor or incompetent, counsel shall provide a copy of any order

requiring the deposit of funds into a restricted or blocked account to the Orphans' Court, if it approved the allocation; or otherwise to the Administrative Judge of the Trial Division, or his or her designee. Counsel for the minor or incompetent shall submit proof of such deposit in the form of an affidavit of counsel and a photocopy of the restricted certificate of deposit or bank book.

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *2039.2. MOTIONS FOR ALLOWANCE

(A) Motions for Allowance in those cases where a guardian has been appointed by the Orphans' Court Division shall be filed directly with such Division.

(B) All other Motions for Allowance, irrespective of which Judge approved the original settlement, shall ~~initially~~ be filed with the Prothonotary ~~and taken to the Clerk of the Motion Court~~. All such motions shall be decided by the Motion Court Judge, except where the original Judge has retained jurisdiction of the case. Said motions are not subject to any further filing requirements of the Motion Court under Philadelphia Civil Rule *208.3(b)(3).

(C) The motion shall include:

(1) The facts and circumstances surrounding the origination of the minor's fund;

(2) A chronological statement of all prior requests for allowance, including the reasons therefor, the amounts thereof, and the disposition;

(3) The age of the minor at the time the fund was created and the minor's present age;

(4) The original amount of the minor's fund and the present balance of same; and

(5) The circumstances and reasons supporting the request for allowance.

(D) All motions shall be accompanied by:

(1) A proposed Order;

(2) A copy of the Original Motion for Compromise and the Order of Distribution;

(3) Copies of all prior requests for allowances and the Orders with respect to same;

(4) Substantiating documentation to support the proposed request; and

(5) A consent filed by the movant.

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

RULE *2206. MOTIONS FOR APPROVAL OF SETTLEMENTS IN WRONGFUL DEATH OR SURVIVAL ACTIONS

(A) When Required. Court approval of settlements shall be required in all survival actions and in those wrongful death actions in which a minor or incompetent has an interest.

(B) Filing of Record and Approval as to Form. Motions for Approval of Settlement shall be served on all heirs of the estate, wrongful death beneficiaries, and any others having a possible interest, and filed with the Prothonotary ~~and taken to the Clerk of the Motion Court for approval as to form~~. Said motions are not subject to any further filing requirements of the Motion Court under Philadelphia Civil Rule *208.3(b)(3).

(C) Which Judge to Rule on Motion. When a settlement has been obtained before a Settlement Conference or a Trial Judge, that Judge shall make an initial determination of the allocation of the settlement proceeds within 30 days after the filing of a formal Motion. After such determination, the Motion shall be forwarded to the Orphans' Court Division for final approval and signature within 30 days. In all other cases, such Motion will be determined by the Administrative Judge of the Trial Division or his or her designee within 30 days.

(D) Contents of Motion. The motion shall:

- (1) Set forth the circumstances of the case;
- (2) State the reasons as to why the settlement is a proper one; and
- (3) Be accompanied by the following:
 - (a) A proposed order approving the settlement and allocation between wrongful death and survival;
 - (b) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion;
 - (c) A statement setting forth the proposed allocation between wrongful death and survival actions and the amount proposed to be allocated to each beneficiary;
 - (d) A statement clearly identifying those parties believed to be beneficiaries under each of the actions, attaching a copy of the will of the decedent, if any.
 - (e) A statement setting forth the following:
 - (i) the time between the injury and death;
 - (ii) whether or not the decedent was conscious, and the circumstances prior to his or her death;
 - (iii) the amount of the medical and funeral bills;
 - (iv) the amount of the decedent's wage loss;
 - (v) the age, employment and any other circumstances of any potential beneficiaries under the Wrongful Death Act.
 - (f) A certification of service of notice and a copy of the motion to all parties with a possible interest, together with a list of those persons notified.

(E) Release of Defendant. After Court approval of the gross amount of the settlement, but before approval of the Motion for Distribution, the plaintiffs may sign a release to discharge the settling defendant and may issue an Order to Settle, Discontinue and End to the settling party. If Plaintiff releases and discharges a defendant pursuant to this subsection, defendant's draft or check is to be made payable to all plaintiffs and to counsel for

plaintiff(s), to be deposited into a separate insured, interest-bearing escrow account pending an order of distribution from the Court. This subsection is intended to preclude issues regarding distribution from preventing timely and prompt tender of settlement proceeds.

Amended by the Board of Judges on November 15, 2007; effective January 7, 2008.

[Pa.B. Doc. No. 07-2401. Filed for public inspection December 28, 2007, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Appointment of C. Theodore Fritsch as Administrative Judge of the Orphans Court Division of the Court of Common Pleas of Bucks County; Administrative Order No. 51

And Now, this 30th day of November, 2007, in compliance with the provisions of 42 Pa.C.S. Section 953, Judge C. Theodore Fritsch is hereby appointed to be Administrative Judge of the Orphans Court Division of this Court. This appointment is to be effective immediately, and shall continue until further order of this Court.

By the Court

DAVID W. HECKLER,
President Judge

[Pa.B. Doc. No. 07-2402. Filed for public inspection December 28, 2007, 9:00 a.m.]

LEHIGH COUNTY

Clerk of Courts; Civil and Criminal Divisions—New Office Hours for 2008

Effective January 2, 2008, the office hours for the Lehigh County Clerk of Courts' Office, Civil and Criminal Divisions, will change to Monday to Friday 8 a.m. to 4 p.m.

ALAN M. BLACK,
President Judge

[Pa.B. Doc. No. 07-2403. Filed for public inspection December 28, 2007, 9:00 a.m.]