

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

Amendment of Pennsylvania Rules of Disciplinary Enforcement 321, 322, 324, 325, 327 and 328; No. 72; Disciplinary Rules; Doc. No. 1

### Order

*Per Curiam:*

And Now, this 26th day of March, 2009, Rules 321, 322, 324, 325, 327 and 328 of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as set forth in Annex A.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication of this Order in the *Pennsylvania Bulletin*.

PATRICIA NICOLA,  
Chief Clerk  
Supreme Court of Pennsylvania

### Annex A

#### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

##### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

##### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter C. DISABILITY AND RELATED MATTERS

##### CONSERVATORS FOR INTERESTS OF CLIENTS

**Rule 321. Appointment of conservator to protect interests of clients of absent attorney.**

(a) Upon application of Disciplinary Counsel or any other interested person **with the written concurrence of Disciplinary Counsel**, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

(1) the attorney maintains or has maintained an office for the practice of law within the judicial district; **and**

(2) **[ [Reserved]. ] any of the following applies:**

(i) the attorney is made the subject of an order under Enforcement Rule 208(f) (relating to emergency interim suspension orders and related matters); **or**

(ii) the president judge of the court of common pleas pursuant to Enforcement Rule 217(g) (relating to formerly admitted attorneys) by order directs Disciplinary Counsel to file an application under this rule **[ , ]**; or

(iii) the attorney **abandons his or her practice, disappears, dies or** is transferred to inactive status because of incapacity or disability **[ , or disappears or dies ]**; and

(3) no partner or other responsible successor to the practice of the attorney is known to exist.

(b) A copy of the application for appointment of a conservator under this rule shall be personally served upon the absent attorney or the personal representative or guardian of the estate of a deceased or incompetent absent attorney. If personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by Enforcement Rule 212 (relating to substituted service).

(c) The president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application. At the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist for appointment of a conservator.

(d) Within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the absent attorney, a copy of the order shall be served upon the absent attorney in the manner prescribed by **[ subdivision ] Subdivision (b)** of this rule.

(e) The conservator or conservators shall be appointed by the president judge, from among members of the bar of this Commonwealth **[ who ], subject to the following:**

**(1) non-disciplinary counsel conservators:**

**[ (1) ] (i) [ are not representing ] shall not represent** any party who is adverse to any known client of the absent attorney; and

**[ (2) ] (ii) shall** have no adverse interest or relationship with the absent attorney or his or her estate.

**Official Note: Nothing in the Rules of Professional Conduct relating to conflict of interest, confidentiality, or any other provision, shall prevent the Office of Disciplinary Counsel from serving as conservator, and from subsequently pursuing an investigation, and disciplinary prosecution of the absent attorney, based upon information gathered during the course of Disciplinary Counsel's service as a conservator.**

(f) The filing by Disciplinary Counsel **or any other interested person** of an application for the appointment of a conservator under these rules shall be deemed for the purposes of any statute of limitations or limitation on time for appeal as the filing in the court of common pleas or other proper court or magisterial district **court** of this Commonwealth on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

(1) the application for appointment of a conservator is granted, and

(2) substitute counsel actually files an appropriate document in a court or magisterial district **court** within 30 days after executing a receipt for the file relating to the matter.

**Official Note:** Under 42 Pa.C.S. § 5503(b) (relating to implementing court rules) the Supreme Court may define by rule the document which when filed constitutes the commencement of a matter for purposes of Chapter 55 of the Judicial Code (relating to limitation of time). Thus the application by Disciplinary Counsel under this rule is an omnibus pleading which stays the running of all statutes of limitations and appeal times pending a 30-day review of the files of the absent attorney.

**(g) The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:**

**(1) the application for appointment of a conservator is denied;**

**(2) the conservator is discharged;**

**(3) the court, tribunal, magisterial district court or other government unit in which a matter is pending orders that the stay be lifted; or**

**(4) 30 days after the court, tribunal, magisterial district court or other government unit in which a matter is pending is notified that substitute counsel has been retained.**

**(h) As used in this rule, the term "government unit" has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).**

#### **Rule 322. Duties of conservator.**

(a) The conservator shall take immediate possession of all files of the absent attorney. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for them or their removal or other facts showing that the files cannot be obtained without the use of the process of the court.

(b) The conservator shall make a written inventory of all files taken into his or her possession.

**(c) [ The conservator shall send written notice to all clients of the absent attorney of the fact of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active. A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator**

**shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files. ]**

**(1) The conservator shall make a reasonable effort to identify all clients of the absent attorney whose files were opened within five (5) years of the appointment of the conservator, regardless of whether the case is active or not, and a reasonable effort to identify all clients whose cases are active, regardless of the age of the file. The conservator shall send all such clients, and former clients, written notice of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The conservator shall, if necessary, send a second written notice to all clients of the absent attorney whose files appear to be active.**

**(2) All clients whose files are identified by the conservator as both inactive and older than five (5) years shall be given notice by publication of the appointment of a conservator, the grounds which required such appointment, and the possible need of the clients to obtain substitute counsel. All such notices shall include the name, address and telephone number of any lawyer referral service or similar agency available to assist in the location of substitute counsel. The specific method of publication shall be approved by the appointing court, as to both the method, and duration, of publication. The conservator shall deliver proofs of publication to the appointing court at the time of filing the application for discharge.**

**(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The conservator shall deliver all such receipts to the appointing court at the time of filing the application for discharge. On approval by the appointing court of the application for discharge, all files remaining in the possession of the conservator shall be destroyed by the conservator in a secure manner which protects the confidentiality of the files.**

(d) Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

(1) Make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship.

(2) Represent such a client in connection with:

(i) any matter identified during the conservatorship; or

(ii) any other matter during or for a period of three years after the conclusion of the conservatorship.

(e) The conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in [ subdivisions ] Subdivisions (a) through (c) of this rule. If those duties have not been accomplished, then the conservator shall state what progress has been made in that regard. Thereafter, the conservator shall file a similar written report every [ 30 ] 60 days until discharge.

**(f) In the case of a deceased attorney, the conservator shall notify the executor of the estate of the Disciplinary Board's need to be reimbursed by the estate for the costs and expenses incurred in accordance with Rule 328(b) (relating to compensation and expenses of conservator).**

**Rule 324. Bank and other accounts.**

(a) A conservator shall notify all banks and financial institutions in which the absent attorney maintained either professional or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement or deposit among such bank or financial institution, the absent attorney and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the absent attorney with such bank or financial institution. The appointing court on application may by order direct that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

(b) The conservator shall cause all funds of clients in the custody of the absent attorney to be returned to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the absent attorney.

(c) The conservator may engage the services of a certified public accountant when considered necessary to assist in the bookkeeping and auditing of the financial accounts and records of the absent attorney.

**(1) If the state of the financial accounts and records of the absent attorney, or other relevant circumstances, render a determination as to ownership of purported client funds unreasonable and impractical, the conservator shall petition the appointing court for permission to pay all funds held by the absent attorney in any trust, escrow, or IOLTA account, to the Pennsylvania Lawyers Fund For Client Security. Any petition filed under this subsection shall be served by publication, the specific method and duration of which shall be approved by the appointing court.**

(d) Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the absent attorney, and otherwise to complete the conservatorship and pay its expenses authorized under Enforcement Rule 328 (relating to compensation and expenses of conservator), the conservator shall permit the absent attorney or his or her estate to take full possession of any remaining funds.

**Rule 325. Duration of conservatorship.**

Appointment of a conservator pursuant to these rules shall be for a period of no longer than six months. The appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months. Any order granting such an extension shall include findings of fact in support of the extension. **No additional extensions shall be granted absent a showing of extraordinary circumstances.**

**Rule 327. Liability of conservator.**

A conservator appointed under these rules shall:

(1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that

the conservator shall be bound by the obligation of confidentiality imposed by the [ **Code of Professional Responsibility** ] **Rules of Professional Conduct** with respect to information acquired as conservator.

(2) Have no liability to the clients of the absent attorney except for injury to such clients caused by intentional, wilful, or grossly negligent breach of duties as a conservator.

(3) Be immune to separate suit brought by or on behalf of the absent attorney. Any objections by or on behalf of the absent attorney or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

**Rule 328. Compensation and expenses of conservator.**

(a) A conservator [ **shall normally serve without compensation, but where a conservatorship is expected to be prolonged or require greater effort than normal the appointing court may, with the prior written approval of the Board Chairman, order that the conservator be compensated on an agreed basis. Any such agreement shall be filed with the Office of the Secretary** ] **not associated with the Office of Disciplinary Counsel shall be compensated pursuant to a written agreement between the conservator and the Board Chair. Compensation under such an agreement shall be paid at reasonable intervals, and at an hourly rate identical to that received by court-appointed counsel at the non-court appearance rate in the judicial district where the conservator was appointed. When the conservator believes that extraordinary circumstances justify an enhanced hourly rate, the conservator may apply to the Board Chair for enhanced compensation. Such an application shall be granted only in those situations in which extraordinary circumstances are shown to justify enhanced compensation.**

[ **(b) Upon the completion of a conservatorship, the appointing court, with the prior written approval of the Board Chairman, shall have the power to award compensation or to increase compensation previously agreed to upon application of the conservator and upon demonstration by the conservator that the nature of the conservatorship was extraordinary and that failure to award or increase previously agreed compensation would work a substantial hardship on the conservator. In such event, compensation shall be awarded only to the extent that the efforts of the conservator have exceeded those normally required or reasonably anticipated at the time the original compensation agreement was approved.**

(c) [ **(b) The necessary expenses (including, but not limited to, the fees and expenses of certified public accountant engaged pursuant to Enforcement Rule 324(c) and any compensation of a conservator or any attendant staff shall, if possible, be paid by the absent attorney or his or her estate. [ If not so paid, then upon certification by the president judge of the appointing court and approval by the Board Chairman, the ] Any expenses and any compensation of the conservator that are not reimbursed to the Board shall be paid as a cost of disciplinary administration and enforcement. [ See Enforcement Rule 219(a) (relating**

to periodic assessment of attorneys) ] Payment of any costs incurred by the Board pursuant to this rule that have not been reimbursed to the Board may be made a condition of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

[Pa.B. Doc. No. 09-662. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 3000 ]

#### Amendment of Rules 3111, 3137, 3145 and 3253 Governing; The Effect of Service of the Writ on the Garnishee; Proposed Recommendation No. 238

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 3111, 3137, 3145 and 3253 governing the effect of service of the writ on the garnishee be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than May 22, 2009 to:

Karla M. Shultz, Esquire  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 3000. JUDGMENTS

#### Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

#### Rule 3111. Service of the writ on garnishee; effect.

(a) The writ shall be served by the sheriff upon the garnishee in the manner prescribed by Rule 402(a) except as otherwise provided by Rules 3112 and 3113. The sheriff shall furnish the garnishee with an additional copy of the writ for each defendant. If the garnishee served was not named in the writ he shall be added as a garnishee and return made accordingly.

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee on or before midnight on the service date of

the writ. [ It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service. ]

**Official Note:** For limitations on the power to attach tangible personal property see Rule 3108(a).

See Rule 3111.1 providing that service of the writ does not attach the defendant's funds on deposit in a bank or other financial institution in an account in which funds are deposited electronically on a recurring basis and are identified as funds which upon deposit are exempt from attachment.

(c) Service of the writ upon the garnishee shall also subject the garnishee to the mandate and injunctive orders of the writ restraining the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

(d) Violation of the mandate and injunctive orders of the writ may be punished as a contempt.

#### Rule 3137. Priority of distribution as between competing plaintiffs.

(a) When levies are made against the same personal property under two or more writs of separate plaintiffs, priority of distribution between them of the proceeds of a sheriff's sale thereof shall be determined by the time of delivery of their respective writs to the sheriff for execution.

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the [ date ] time of service of their respective writs upon the garnishee [ as to all property then in the hands of the garnishee or coming into the garnishee's possession up to the time of judgment against the garnishee ].

(c) When tangible personal property is both levied upon and attached under two or more writs of separate plaintiffs, priority of distribution as between the levying and attaching plaintiffs shall be determined by the time of delivery of the writ to the sheriff in the case of levy, and from the date of service of the writ upon the garnishee in the case of attachment.

**Official Note:** Under Rule 3115(a), a levy under any valid writ constitutes a levy by endorsement under every other valid writ then in the sheriff's hands. For limitations on attachment of tangible personal property see Rule 3108(a).

#### Rule 3145. Interrogatories[ ; ]. [ procedure ] Procedure.

(a) The procedure between the plaintiff and the garnishee shall, as far as practicable, be the same as though the interrogatories were a complaint and the answer of the garnishee were an answer in a civil action.

(b) The garnishee in the answer under "new matter" may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which the garnishee could assert against the defendant if sued by the defendant but the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

**Official Note:** Objections to the attachment, other than the defenses of immunity or exemption, must be raised preliminarily. See Rule 3142.

(3) any claim which the garnishee could assert against the plaintiff if sued by the plaintiff.

**(c)(1) Except as provided in subdivision (c)(2), the answer of a garnishee, which is a bank or other financial institution, shall be signed by**

- (i) an attorney at law,**
- (ii) an officer of the bank or other financial institution, or**
- (iii) an employee or authorized agent of the bank or other financial institution with personal knowledge of the subject matter and written authorization from an officer or attorney at law for the bank or other financial institution to sign as its representative.**

**(2) If the answer of a garnishee, which is a bank or other financial institution, includes new matter pursuant to Rule 3145(b)(2) or (3), the answer shall be signed by an attorney at law.**

#### Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS FORMS

##### **Rule 3253. Interrogatories in attachment.**

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

[Caption]

Interrogatories to Garnishee

“To \_\_\_\_\_:  
(Garnishee)

“You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

“1. **[At the time you were served or at any subsequent time ] On the date you were served, did you owe the defendant any money or were you liable to the defendant on any negotiable or other written instrument, or did the defendant claim that you owed the defendant any money or were liable to the defendant for any reason?**

“2. **[At the time you were served or at any subsequent time ] On the date you were served,** was there in your possession, custody or control or in the joint possession, custody or control of yourself and one or more other persons any property of any nature owned solely or in part by the defendant?

“3. **[At the time you were served or at any subsequent time ] On the date you were served,** did you hold legal title to any property of any nature owned solely or in part by the defendant or in which defendant held or claimed any interest?

“4. **[At the time you were served or at any subsequent time ] On the date you were served,** did you hold as fiduciary any property in which the defendant had an interest?

“5. At any time before or **[after ] on the date** you were served, did the defendant transfer or deliver any property to you or to any person or place pursuant to your direction or consent and if so what was the consideration therefor?

“6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to the defendant’s direction or otherwise discharge any claim of the defendant against you?”

7. If you are a bank or other financial institution, **[at the time you were served or at any subsequent time ] on the date you were served,** did the defendant have funds on deposit in an account in which funds are deposited electronically on a recurring basis and which are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law? If so, identify each account and state **the amount of funds in each account,** the reason for the exemption, **[the amount being withheld under each exemption ]** and the entity electronically depositing those funds on a recurring basis.

8. If you are a bank or other financial institution, **[at the time you were served or at any subsequent time ] on the date you were served,** did the defendant have funds on deposit in an account in which the funds on deposit, not including any otherwise exempt funds, did not exceed the amount of the general monetary exemption under 42 Pa.C.S. § 8123? If so, identify each account.

(The plaintiff may set forth additional appropriate interrogatories.)

#### **Explanatory Comment**

The Civil Procedural Rules Committee is proposing the amendment of Rule 3111 governing the effect of service of the writ on the garnishee. Currently, Rule 3111 provides that once served, a writ attaches all property in the possession of the garnishee at the time of service and all property that subsequently comes into the possession of the garnishee until judgment against the garnishee. The proposed amendment would limit the time period of the effectiveness of the attachment to all property in the possession of the garnishee on or before midnight on the service date of the writ.

The Committee is also proposing an amendment to Rule 3145 that designates the persons who may sign an answer to plaintiff’s interrogatories directed to a garnishee that is a bank or other financial institution.

Rules 3137 and 3253 have been amended to conform to the new requirements of Rule 3111.

[Pa.B. Doc. No. 09-663. Filed for public inspection April 10, 2009, 9:00 a.m.]

## **Title 237—JUVENILE RULES**

### **PART I. RULES**

#### **[ 237 PA. CODE CH. 4 ]**

#### **Proposed Amendments to Rule 407**

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 407 be adopted and

prescribed. The proposed modified Rule 407 adds a mandatory written admission colloquy in all cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Friday, May 8, 2009.

By the Juvenile Court  
Procedural Rules Committee:

CYNTHIA K. STOLTZ, Esq.,  
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 4. ADJUDICATORY HEARING

Rule 407. Admissions.

A. Admissions. At any time after a petition is filed, the juvenile may tender an admission to the facts[ , ] and/or the adjudication of delinquency[ , and/or disposition ].

1) Requirements. Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court[ , at a minimum, shall ask questions to elicit the following information:

- a) Does the juvenile understand the nature of the allegations to which he or she is admitting?
- b) Is there a factual basis for the admission?
- c) Does the juvenile understand that he or she has the right to a hearing before the judge?
- d) Does the juvenile understand that he or she is presumed innocent until found delinquent?
- e) Is the juvenile aware of the dispositions that could be imposed?
- f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
- g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?
- h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
- i) Has the juvenile had the opportunity to speak with a guardian about his or her decision? ] shall

ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile pursuant to paragraph (C).

2) Agreements. If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) Court action. If the court accepts the tender, the court [ shall ] may enter an order incorporating any agreement. If the court does not accept the [ tender ] agreement, the case shall proceed as if no tender had been made.

4) Limitations on withdrawals. An admission cannot be withdrawn after the court enters the dispositional order.

B. Incriminating statements. An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

C. Written admission colloquy. If a juvenile is tendering an admission, the colloquy shall be as follows:

In re : \_\_\_\_\_ JD \_\_\_\_\_  
 (Juvenile) :  
 : Delinquent Act(s): \_\_\_\_\_  
 : \_\_\_\_\_  
 : \_\_\_\_\_  
 : \_\_\_\_\_

ADMISSION

You are before this court because you are admitting to some or all of the delinquent act(s) which have been petitioned against you. Answer all of the questions on this form. If you do not understand any question or the explanation given to you on this form, ask your attorney or the Judge to explain it to you.

I intend to admit to: (include grading of offenses)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

General information:

- 1) What is your full legal name? \_\_\_\_\_
- 2) Are you known by any other name, nickname, or alias? \_\_\_\_\_  
 If yes, please state: \_\_\_\_\_
- 3) How old are you today? \_\_\_\_\_
- 4) What grade have you completed in school? \_\_\_\_\_
- 5) Can you read, write, and understand the English language well enough to understand this form? \_\_\_\_\_

a) Did your attorney read this colloquy to you and explain its contents? \_\_\_\_\_

b) If you do not read well enough to understand this form, have you been provided with an interpreter or an attorney who speaks your native tongue? \_\_\_\_\_

\_\_\_\_\_ Initials (page 1 of 4)

**Voluntary admission:**

6) Are you currently a patient in a mental hospital or institution, or being treated for a mental illness? \_\_\_\_\_

If yes, where? \_\_\_\_\_

7) Are you under the influence of any drugs (prescription or illegal) and/or alcohol that would impair your ability to make an informed decision? \_\_\_\_\_

If yes, specify type of drugs and/or alcohol: \_\_\_\_\_

8) Is this admission voluntary? \_\_\_\_\_

a. Has anyone coerced, threatened, or forced you to sign this admission? \_\_\_\_\_

b. Have you been promised something in exchange for this admission? \_\_\_\_\_

**Understanding the admission:**

9) Has your attorney explained to you that your conduct is defined as the delinquent act(s) to which you are admitting? \_\_\_\_\_

10) By admitting to the delinquent act(s), do you understand that you are giving up the following rights?

a. You are presumed innocent until the Commonwealth proves you have committed the delinquent act(s) beyond a reasonable doubt. \_\_\_\_\_

b. You have the right to have a judge hear the testimony of witnesses, examine the evidence, and determine whether you have committed the delinquent act(s). \_\_\_\_\_

c. You have the right to remain silent and your silence can not be held against you. \_\_\_\_\_

d. You have the right to confront and cross-examine all Commonwealth witnesses. \_\_\_\_\_

e. You can, but are not obligated to, present witnesses or evidence as a defense to the delinquent act(s). \_\_\_\_\_

f. You may present any motions to the court. \_\_\_\_\_

11) Do you understand that before you can be adjudicated delinquent the court must find that you committed the delinquent act(s) and that you are also in need of "treatment, rehabilitation, and supervision?" \_\_\_\_\_

\_\_\_\_\_ Initials (page 2 of 4)

**Possible consequences:**

12) Do you understand that if you are adjudicated delinquent, the court may place you in a juvenile facility or on probation until your 21st birthday? \_\_\_\_\_

13) Are you aware that if you are admitting to \_\_\_\_\_

that your driving privileges will be suspended? \_\_\_\_\_  
(cross off or write n/a if this question is not applicable in this case).

14) Do you understand that the record of this admission can be used against you in any future proceeding in adult or juvenile court when appropriate and can result in a longer sentence in adult court? \_\_\_\_\_

15) Do you understand that certain information for some offenses is available to the public and when you apply for college or a job, your potential

college or employer may be able to see your juvenile record? \_\_\_\_\_

**Admission agreements:**

16) Are you aware that the court is not bound to any agreement between you, your attorney, and the District Attorney? \_\_\_\_\_

**Appeals:**

17) The appeal for an admission is limited to three grounds:

a) Your admission was not knowing, intelligent, and voluntary;

b) The court did not have jurisdiction to accept your admission; or

c) The court's disposition is beyond the maximum penalty authorized by law.

By admitting to the delinquent act(s), do you understand that you are giving up the right to appeal your case to a higher court, except on these three grounds? \_\_\_\_\_

**Attorney's Representation & Guardian's Knowledge**

18) Are you satisfied with the representation of your attorney? \_\_\_\_\_

19) Has your attorney explained to you the meaning of the terms in this document? \_\_\_\_\_

20) Have you spoken with your parent or guardian about your decision to admit to the delinquent act(s)? \_\_\_\_\_

Does your parent or guardian agree with your admission? \_\_\_\_\_

\_\_\_\_\_ Initials (page 3 of 4)

I affirm that I have read the above document in its entirety. I understand its full meaning and I am still admitting to the offenses specified. Also, my admission is knowingly, intelligently, and voluntarily made. I further affirm that my signature and initials on each page of this document are true and correct.

\_\_\_\_\_  
JUVENILE

\_\_\_\_\_  
PARENT OR GUARDIAN (if present)

\_\_\_\_\_  
DATE

I, \_\_\_\_\_, Esq., Attorney for \_\_\_\_\_ state that I have advised my client of the meaning of this document; that it is my belief that my client comprehends and understands what is set forth above; that I am prepared to try this case; and that the juvenile understands what he/she is doing by entering an admission.

\_\_\_\_\_  
ATTORNEY FOR JUVENILE

\_\_\_\_\_ Initials (page 4 of 4)

**Comment**

Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. [Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the

**juvenile's completion and understanding of the form and the juvenile's agreement with the statements made. ]**

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the [ **tender** ] **agreement**, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

**Pursuant to paragraph (C), the attorney is to review this colloquy with the juvenile prior to entering the courtroom. The court is to ensure that the juvenile has voluntarily and knowingly made this admission by asking questions to ascertain the ability of the juvenile to comprehend this document and to enter into an admission.**

**If a guardian does not sign the admission colloquy, the court may still move forward and accept the admission. The signature of the guardian is only one factor that the court is to consider when determining whether the admission is made voluntarily and knowingly.**

**This admission colloquy is downloadable from the Court's web page at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>.**

**Official Note:** Rule 407 adopted April 1, 2005, effective October 1, 2005.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

**EXPLANATORY REPORT**

After debating whether the Rules should standardize a written admission colloquy or provide guidelines for the court to follow, the Committee decided that a mandatory standardized admission colloquy was necessary.

The Committee initially drafted a Rule that included a list of questions that the court must ask to elicit specific information from the juvenile in ascertaining whether the admission was made voluntarily and knowingly. In reviewing admission colloquies from several judicial districts, the Committee found that important information regarding the case and the juvenile's ability to comprehend the admission were omitted from the form. These areas of omission were also not being addressed by the court on the record.

In some judicial districts, juveniles are tendering admissions utilizing a written admission colloquy. The judge is asking a few questions concerning the colloquy and then entering the colloquy into the record. In other judicial districts, the juvenile is tendering an admission through an oral colloquy by the judge asking some basic questions on the record.

The Committee found that in both practices, several key issues are being excluded from the colloquy; therefore the court does not have all the facts to make an informed decision as compelled by the "made voluntarily and knowingly" requirement of the Rule.

To alleviate these concerns of the Committee and to enforce the necessity of a voluntary and knowing waiver of the right to an adjudicatory hearing, a mandatory admission colloquy has been included as part of the Admissions Rule.

This colloquy must not substitute questioning by the court to determine whether the admission is made voluntarily and knowingly. Pursuant to paragraph (A)(1), the court must ensure that the juvenile's attorney has reviewed the admission colloquy with the juvenile and that the admission is made voluntarily and knowingly.

To comply with this requirement, the court is required to review the admission. In paragraph (C), the admission colloquy is divided into eight specific areas. The areas include: 1) general information; 2) voluntary admission; 3) understanding the admission; 4) possible consequences; 5) admission agreements; 6) appeals; 7) attorney's representation and guardian's knowledge; and 8) the signature lines for the juvenile, guardian, and attorney acknowledging the contents and their understanding of the admission.

The court must review each area to determine if the admission is made voluntarily and knowingly. The court should weigh all the factors together. If the court is not satisfied with any part of the admission, the court must reject the admission and proceed to an adjudicatory hearing. If the court proceeds to an adjudicatory hearing, any incriminating statements may not be used against the juvenile. See paragraph (B).

If the court is satisfied with the following requirements discussed *infra*, the court may accept the admission and proceed to ruling on the offenses pursuant to Rule 408 and an adjudication of delinquency pursuant to Rule 409.

Under the first requirement, the court must determine who is the juvenile, the age of the juvenile, the juvenile's grade in school, and whether the juvenile reads, writes, and understands the English language well enough to comprehend the form.

If the juvenile does not read well enough to understand the colloquy, the attorney must read and explain this colloquy in terms that the juvenile understands. If English is not the primary language of the juvenile, an interpreter or attorney that speaks the juvenile's primary language must be provided. When possible, the admission colloquy can be transcribed into the juvenile's native language.

The second requirement compels the court to determine whether there is anything inhibiting the juvenile from making a voluntary admission. If the juvenile has a mental disability, is under the influence of drugs or alcohol that impairs his or her ability to make an informed decision, or has been coerced, threatened, forced, or promised something in exchange for the admission, the court is to prohibit the admission.

Under the third requirement, the court must ascertain if the juvenile understands the admission and all the rights that the juvenile is waiving when admitting to the delinquent acts.

Pursuant to the fourth requirement, the court must determine if the juvenile understands the possible consequences of admitting to the delinquent acts.

The fifth requirement explains that the court is not bound to any agreements made with the Commonwealth and the juvenile fully understands that the court can decide against any agreement.

The sixth requirement sets forth that when an appeal is taken, it is limited to three grounds.

The court must determine if the juvenile is satisfied with his or her representation and whether the guardian knows and agrees with the juvenile's decision. Whether



the guardian knows of the admission or is in agreement with the admission is only one factor the court must consider when determining whether the admission is made voluntarily and knowingly.

Finally, the juvenile, guardian, and attorney should sign the form. If the guardian does not sign the form, the admission colloquy can still be accepted by the court. In those instances, "refused to sign" or "not present" should be filled in on the guardian's signature line to notify the court.

[Pa.B. Doc. No. 09-664. Filed for public inspection April 10, 2009, 9:00 a.m.]

PART I. RULES  
[ 237 PA. CODE CH. 16 ]  
Proposed Amendments to Rule 1604

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 1604 be adopted and prescribed. New Rule 1604 provides the procedures for submission of reports pursuant to the 42 Pa.C.S. § 6336.1(b). This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Monday, April 27, 2009.

*By the Juvenile Court  
Procedural Rules Committee:*

CYNTHIA K. STOLTZ, Esq.,  
*Chair*

**Annex A**  
**TITLE 237. JUVENILE RULES**  
**PART I. RULES**  
**Subpart B. DEPENDENCY MATTERS**  
**CHAPTER 16. POST-DISPOSITIONAL  
PROCEDURES**

**PART A. SUMMONS [ AND ], NOTICE, AND  
REPORTS**

Rule	
1600.	Summons for the Permanency Hearing.
1601.	Permanency Hearing Notice.
<b>1604.</b>	<b>Submission of Reports.</b>
	<b>PART B. PERMANENCY HEARING</b>
1607.	Regular Scheduling of Permanency Hearing.
1608.	Permanency Hearing.
1609.	Court Order of Permanency Hearing Determinations.
1613.	Termination of Court Supervision.
1616.	Post-Dispositional Procedures; Appeals (Reserved).

**PART A. SUMMONS [ AND ], NOTICE, AND  
REPORTS**

*(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)*

**Rule 1604. Submission of Reports.**

**A. Generally.**

1) A foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court.

**2) The report shall be submitted to the court designee at least seven days prior to the permanency hearing.**

**B. Designation by President Judge.** The President Judge of each judicial district shall designate a person, who is not a party to the proceeding, to receive these reports.

**C. Duties of the County Agency.** The county agency shall inform the foster parent, preadoptive parent, or relative providing care for a child of:

**1) the right to submit a report;**

**2) the name and address of the court designee who shall receive the reports; and**

**3) the requirement to submit the report at least seven days prior to the permanency hearing.**

**D. Duties of Designee.** Within one business day of receiving the report, the court designee shall:

**1) file a copy of the report with the clerk of courts; and**

**2) distribute copies to the judge, attorneys, parties, and if appointed, the court-appointed special advocate.**

**E. Examination of Report.** Pursuant to Rule 1608(D), the court shall examine this report and consider its contents as it would consider any other evidence in the case.

**Comment**

Pursuant to paragraph(A)(1), a foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court. The Department of Public Welfare has designed a form to be used in submitting a report pursuant to this paragraph. See 42 Pa.C.S. § 6336.1(b)(3).

Pursuant to paragraph(A)(2), the report is to be submitted at least seven days prior to the hearing to ensure timely notice and distribution of the report pursuant to paragraph (D).

Pursuant to paragraph (B), the President Judge of each judicial district is to designate a person to receive these reports. This person may not be a party to the proceeding, such as the guardian ad litem or a county agency representative.

Pursuant to paragraph (C), the county agency is to provide the form designed by the Department of Public Welfare to the foster parent, preadoptive parent, or relative providing care for the child. See 42 Pa.C.S. § 6336.1(b).

See also 42 Pa.C.S. § 6341(d).

**PART B. PERMANENCY HEARING****Rule 1608. Permanency Hearing.**

A. *Purpose of hearing.* For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and
- 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Court's findings.* At the permanency hearing, the court shall [ **making** ] **make** findings consistent with 42 Pa.C.S. § 6351(f).

C. *Recording.* The permanency hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

D. *Evidence.*

1) Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court; **and**

2) **If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.**

E. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

**Comment**

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa. Super. 507, 674 A.2d 702 (1996) quoting *In re Quick*, 384 Pa. Super. 412, 559 A.2d 42 (1989).

To the extent practicable, the judge or master that presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral wel-

fare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

**Official Note:** Rule 1608 adopted August, 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1608 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**EXPLANATORY REPORT**

The new Rule 1604 provides for the procedures when submitting a report pursuant to 42 Pa.C.S. § 6336.1(b).

Act 109 of 2008 amended § 6336.1(b) of the Juvenile Act by creating a right for a foster parent, preadoptive parent, or relative providing care for a child to submit a report concerning the child's adjustment, progress, and condition to the court.

Paragraph (A) provides for this right and sets time limits for submitting the report to the court.

It is imperative that the court, attorneys, parties, and court-appointed special advocates have time to review this report prior to the proceeding. Therefore, pursuant to paragraph (A)(1), this report must be submitted at least seven days prior to the hearing. In addition, pursuant to paragraph (D), the court designee has one business day to file the report with the clerk of courts and distribute copies to the court, attorneys, parties, and court-appointed special advocates.

Paragraph (B) provides that the President Judge must designate a person to receive these reports on behalf of the court. This rule also provides that this designee may not be a party to the proceeding. The Committee anticipated that the court could designate the county agency to perform this function. The Committee concluded that there is an inherent conflict of interest for the county agency to receive these reports.

In many instances, the report will not agree or suggest the same outcome as the recommendation of the county agency. The Committee felt that a party should not be the recipient of any document on the court's behalf. The legislature went even further than the Committee's conclusions by suggesting retaliatory action by the county agency could be a concern. See 42 Pa.C.S. § 6336.1.

Pursuant to paragraph (C), the county agency must inform the foster parent, preadoptive parent, or relative

providing care for the child of: 1) the right to submit the report; 2) the name and address of the court designee who must receive the reports; and 3) the requirement to submit the report at least seven days prior to the permanency hearing.

The Department of Public Welfare has designed a form to be used by the foster parent, preadoptive parent, or relative providing care for the child in submitting the report. The county agency must provide the form to the foster parent, preadoptive parent, or relative providing care for the child.

Pursuant to paragraph (E), the court must examine this report and consider its contents as it considers any other evidence for the permanency hearing. The Committee discussed that the court uses hearsay evidence at dispositional, review, and permanency hearings but weighs the evidence according to its source and reliability. The Rules of Evidence frequently do not apply in many types of hearings. See Comment to Pa.R.E. Rule 101.

[Pa.B. Doc. No. 09-665. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

[ 246 PA. CODE CH. 100 ]

#### Reliance on Advisory Opinions Rule 114

The Minor Court Rules Committee (Committee) is planning to recommend that the Supreme Court of Pennsylvania adopt an entirely new Rule 114 of the Rules of Conduct for Magisterial District Judges to specify what entity is responsible for providing advisory ethical opinions. 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 Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

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

Pamela S. Walker, 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: [minorcourt.rules@pacourts.us](mailto:minorcourt.rules@pacourts.us)

no later than May 29, 2009.

By the Minor Court Rules Committee:

M. KAY DUBREE,  
Chair

### Annex A

#### TITLE 246. MINOR COURTS CIVIL RULES CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICERS OF MAGISTERIAL DISTRICT JUDGES

##### Rule 114. Reliance on Advisory Opinions. (NEW)

The Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania is designated as the approved body to render advisory opinions regarding ethical concerns involving magisterial district judges and judges of the Traffic Court of the City of Philadelphia. Although such opinions are not per se binding upon the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, actions taken in reliance upon these opinions shall be taken into account in determining whether discipline should be recommended or imposed.

**Official Note:** See Judicial Conduct Board Rules of Procedure No. 29, "Reliance on Advisory Opinions," which directs judicial officers to either the Ethics Committee of the Pennsylvania Conference of State Trial Judges or the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania. *Compare with* "Reliance on Advisory Opinions" within the Code of Judicial Conduct.

Adopted and effective \_\_\_\_\_, 20\_\_\_\_.

#### REPORT

##### *Proposed New Rule 114 of the Rules Governing Standards of Conduct of Magisterial District Judges*

##### ADVISORY OPINIONS FOR ETHICAL INQUIRIES

##### I. Background

In 2008, the Minor Court Rules Committee ("the Committee") was approached by a newly-elected magisterial district judge who was seeking advice about one of the Rules Governing Standards of Conduct of Magisterial District Judges ("Rules of Conduct"). This inquiry initiated a discussion among the Committee members about what entity should be providing "advisory opinions" on the Rules of Conduct. The Committee was aware that the Ethics and Professionalism Committee of the Special Court Judges' Association of Pennsylvania ("the Association") had historically provided such opinions. However, neither the Rules of Conduct nor the Code of Judicial Conduct specifically authorize the Association to provide such opinions. Instead, there is a reference to the Association's ability to render such opinions in the Judicial Conduct Board Rules of Procedure. In order to provide more clarity to magisterial district judges, the Committee is recommending an entirely new Rule 114 to specify directly in the Rules of Conduct that the Association is responsible for providing advisory opinions.

##### II. Discussion

The Committee reviewed the section entitled "Reliance on Advisory Opinions," which appears at the end of the Code of Judicial Conduct. This section, unlike the Canons, is unnumbered. The "Reliance on Advisory Opinions" section directs all "judges, justices and other judicial officers" to contact the Ethics Committee of the Pennsylvania Conference of State Trial Judges regarding ethical concerns. However, two sections before the "Reliance" section, another unnumbered section, entitled "Compliance with the Code of Judicial Conduct" states: "This Code shall not apply to magisterial district judges and judges of the Traffic Court of the City of Philadelphia." In the note to this section, it refers magisterial district

judges and traffic court judges to the Rules Governing Standards of Conduct for Magisterial District Judges.

Based upon the above, a magisterial district judge or traffic court judge attempting to obtain information about advisory opinions would be directed from the Code of Judicial Conduct to the Rules Governing Standards of Conduct for Magisterial District Judges. Unfortunately, no rule in the Standards of Conduct contains any reference to advisory opinions. Instead, there is a reference to the Association's ability to render such opinions in the Judicial Conduct Board Rules of Procedure. However, the Committee thought it was unlikely that magisterial district judges or traffic court judges would look in the Judicial Conduct Board Rules of Procedure for guidance.

### III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes a new Rule 114. The language of Rule 114 will substantially track the language of the "Reliance on Advisory Opinions" section of the Code of Judicial Conduct. The note will refer readers to the Code of Judicial Conduct for comparison. In addition, the note will direct judges to J.C.B.R.P. 29.

[Pa.B. Doc. No. 09-666. Filed for public inspection April 10, 2009, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### CARBON COUNTY

#### Appointment of District Court Administrator as Officer of the Court for Receipt of Reports Concerning Dependent Children in Carbon County pursuant to 42 Pa.C.S. § 6336.1; No. CP-13-AD-0000004-2009

##### Administrative Order No. 7-2009

*And Now*, this 26th day of March, 2009, pursuant to 42 Pa.C.S.A. § 6336.1, it is hereby *Ordered* and *Decreed*, that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the District Court Administrator be and is hereby *Appointed* Officer of the Court to receive any and all reports submitted to the Court prior to any permanency hearings. The District Court Administrator and/or Assistant Court Administrators *Shall Be Responsible* for the dissemination of reports to the Court, counsel for the child or other parties, to the guardian *ad litem*, to the parties, if unrepresented, and to the court-appointed special advocate, if appointed pursuant to 42 Pa.C.S.A. § 6342.

*It Is Further Ordered and Decreed* that said reports *Shall Be Directed* to the District Court Administrator, Carbon County Courthouse, P. O. Box 131, Jim Thorpe, Pennsylvania 18229.

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

1. File one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies, one (1) computer diskette and a copy of the written notification received from

the Juvenile Court Procedural Rules Committee with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Forward one (1) copy for publication in the *Carbon County Law Journal*.

4. Forward one (1) copy to the Carbon County Law Library.

5. Keep continuously available for public inspection copies of the Order in the Clerk of Courts' Office and the Office of Children and Youth.

*By the Court*

ROGER N. NANOVIC,  
*President Judge*

[Pa.B. Doc. No. 09-667. Filed for public inspection April 10, 2009, 9:00 a.m.]

### FAYETTE COUNTY

#### Booking Center Processing Fee; Criminal Division; No. 1 AD 2009

[Correction]

Errors appeared in a Fayette County local court order which appeared at 39 Pa.B. 1199 (March 7, 2009).

The correct version appears as follows, with ellipses referring to the existing text of the rule:

##### Administrative Order

\* \* \* \* \*

9. The RBC shall also serve as a processing center for all parties required to be registered and processed under the provisions of 42 Pa.C.S.A. § 9791, et.seq., commonly known as "Megan's Law," pursuant to 42 Pa.C.S.A. § 9795.2(d), if determined by the Pennsylvania State Police to be an "approved registration site" pursuant to 42 Pa.C.S.A. § 9799.1.

CONRAD B. CAPUZZI,  
*President Judge*

NOTE: Administrative Order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 09-404. Filed for public inspection March 6, 2009, 9:00 a.m.]

### MONROE COUNTY

#### Amendment to Local Rule of Civil Procedure 206.8(b)

##### Order

*And Now*, this 17th day of March, 2009, Monroe County Rule of Civil Procedure 206.8(b) is hereby amended as indicated in attachment (amendments noted in boldface) and become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The Court Administrator is directed to:

1. file seven (7) certified copies of the within Order and amended local rule with the Administrative Office of Pennsylvania Courts;
2. forward two (2) certified copies and a disk containing text of the amended local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. forward one (1) certified copy to the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania;

4. forward one (1) copy to the *Monroe County Legal Reporter* for publication.

Copies shall be kept continuously available for public inspection in the Office of the Monroe County Prothonotary, the Office of the Court Administrator and the Monroe County Law Library.

*By the Court*

RONALD E. VICAN,  
*President Judge*

**Rule 206.8(b). Petition for Appointment of School Police.**

(1) *Definitions:*

(i) "Applicant"—means the Board of School Directors of the school district requesting appointment of school police officers.

(ii) "School Police Officers"—includes any person who is hired by the school district for the purpose of enforcing good order in school buildings, on school buses and on school grounds located within the school district; including protecting the students and controlling large crowds at extra curricular student activities and events. (Definition derived from The Public School Code of 1949, as amended, 24 P. S. § 7-778(c).)

(iii) "Solicitor"—legal counsel for the school district.

(iv) "Appointee"—the person or persons to be employed by the Applicant as a school police officer.

(2) *Application for School Police:*

(i) An Applicant or the Solicitor on behalf of Applicant (hereafter "Applicant/Solicitor"), seeking appointment of school police officers pursuant to the Public School Code of 1949, as amended, 24 P. S. § 7-778 (hereafter "The School Code"), shall file an original and one copy of a Petition for Appointment of School Police with the Prothonotary.

(ii) Applicant must comply with all requirements set forth in The School Code and the Petition shall contain the following information:

(a) The name, address, social security number, date of birth, and dates of Act 34 clearance and the FBI investigation clearance for the Appointee(s) to be employed as a school police officer.

(b) The fingerprints of the Appointee(s).

(c) A report issued by the Federal Bureau of Investigation, United States Department of Justice, Investigation Division ("FBI") indicating that the Appointee(s) has no arrest record.

(d) A copy of the Request for Criminal History Record Check issued by the Pennsylvania State Police (PSP) indicating that the Appointee(s) has no arrest record.

(e) A statement by the Applicant representing that Appointee(s) is of good character and repute.

(f) A statement by the Applicant that the Appointee(s) has not resided outside the Commonwealth of Pennsylvania in any other jurisdiction since the FBI and PSP issued the reports verifying that the Appointee(s) does not have a criminal record.

(iii) The Prothonotary shall forward a copy of the Petition to the Court Administrator.

(3) *Hearing on Petition:*

(i) Applicant/Solicitor shall submit to the Court a proposed order for hearing in the form set forth below in sub-paragraph (F).

(ii) The Court shall schedule a hearing to consider Applicant's Petition, at which time the Solicitor shall appear and report his/her recommendation.

(4) *Notice of Hearing:*

(i) Applicant/Solicitor shall ensure that notice of the hearing date is published once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing;

(ii) Applicant/Solicitor shall file an Affidavit of Publication, together with proofs of advertising, with the *Prothonotary*.

(5) Failure to comply with any provision of this rule may constitute sufficient grounds for the Court to dismiss the Petition and deny Applicant's request to appoint the Appointee(s) as school police officers.

(6) *Forms:* Order for Hearing

**Form—Order for Hearing—Petition for Appointment of School Police Officer**

**COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY-THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA**

IN RE: : NO. \_ MISC. 2\_  
:  
PETITION FOR APPOINTMENT :  
OF SCHOOL POLICE :  
OFFICER(S) FOR THE :  
{Insert Name of School District} :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the within Petition for Appointment of School Police Officer(s) for the [Name of School District] and upon motion of \_\_\_\_\_, Solicitor for Applicant, a hearing is fixed on the application for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., in Courtroom No. \_\_\_\_\_, Monroe County Courthouse, Stroudsburg, Pennsylvania.

Applicant or Solicitor attorney shall publish Notice of the Hearing once a week for two consecutive weeks in the *Monroe Legal Reporter* and in one newspaper of general circulation published in Monroe County, the last advertisement to appear not less than three (3) days prior to the scheduled hearing; and shall file an Affidavit of Publication, together with proofs of advertising, with the *Prothonotary*.

By the Court:

\_\_\_\_\_  
J.

cc: (Applicant/Solicitor)  
District Attorney's Office

[Pa.B. Doc. No. 09-668. Filed for public inspection April 10, 2009, 9:00 a.m.]