

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 100]

In Re: Adoption of Rule 114 of the Rules Governing Standards of Conduct of Magisterial District Judges; Magisterial No. 263

Order

Per Curiam:

And Now, this 18th day of February, 2010, upon the recommendation of the Minor Court Rules Committee, the proposal having been published for public comment before adoption at Volume 39, *Pennsylvania Bulletin*, page 1856 (April 11, 2009) and a *Final Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 114 of the Rules Governing Standards of Conduct of Magisterial District Judges is adopted as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective March 20, 2010.

PATRICIA NICOLA,
Chief Clerk,
Supreme Court of Pennsylvania

Annex A

TITLE 246. MINOR COURTS CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF MAGISTERIAL DISTRICT JUDGES

Rule 114. Reliance on Advisory Opinions. (NEW)

The Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania and the Ethics Committee of the Pennsylvania Conference of State Trial Judges are designated as the approved bodies 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. It is anticipated that ethical concerns directed to the Pennsylvania Conference of State Trial Judges would be limited to matters more appropriately before that body, for example, campaigning for election to the court of common pleas or an appellate court.

Adopted February 18, 2010, effective March 20, 2010.

FINAL REPORT

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

ADVISORY OPINIONS FOR ETHICAL INQUIRIES

On February 18, 2010, effective March 20, 2010, upon recommendation of the Minor Court Rules Committee¹, the Supreme Court of Pennsylvania approved new Rule 114 of the Rules Governing Standards of Conduct of Magisterial District Judges.

I. Background

In 2008, the Minor Court Rules Committee ("the Committee") was approached by a newly elected magisterial district judge who sought 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 to magisterial district judges. 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 authorized the Association to provide such opinions. Instead, the Judicial Conduct Board Rules of Procedure had a reference to the Association's ability to render such opinions. In order to provide more clarity to magisterial district judges and judges of the Traffic Court of the City of Philadelphia, the Committee recommended a new Rule 114 to specify directly in the Rules of Conduct that the Association, as well as the Ethics Committee of the Pennsylvania Conference of State Trial Judges², 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 of 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 Rules 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. See J.C.B.R.P. 29. However, the Committee thought it was unlikely that

¹ Minor Court Rules Committee Recommendation 2-2009.

² It is anticipated that inquiries directed to the Ethics Committee of the Pennsylvania Conference of State Trial Judges would be limited to matters before that body, such as campaigning for election to the court of common pleas or an appellate court.

magisterial district judges or traffic court judges would look in the Judicial Conduct Board Rules of Procedure for guidance.

III. *Approved Rule Changes*

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

[Pa.B. Doc. No. 10-387. Filed for public inspection March 5, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

**In Re: Promulgation of Local Rules 202 and 507;
No. 1793 S 1989; No. 10-6 MD 2010**

Order

And Now, this 4th day of February 2010, Dauphin County Local Rules of Criminal Procedure 202 and 507 are promulgated as follows:

Rule 202. Approval of Search Warrant Applications by Attorney for the Commonwealth.

The District Attorney of Dauphin County, having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants in the following circumstances:

Any search warrant application arising out of an investigation of any of the following offenses:

- (1) Criminal Homicide in violation of 18 Pa.C.S.A. Section 2501;
- (2) Murder in any degree in violation of 18 Pa.C.S.A. Section 2502;
- (3) Voluntary Manslaughter in violation of 18 Pa.C.S.A. Section 2503;
- (4) Involuntary Manslaughter in violation of 18 Pa.C.S.A. Section 2504;
- (5) Causing or aiding suicide in violation of 18 Pa.C.S.A. Section 2505;
- (6) Drug delivery resulting in death in violation of 18 Pa.C.S.A. Section 2506;
- (7) Criminal Homicide of unborn child in violation of 18 Pa.C.S.A. Section 2603;
- (8) Murder in any degree of unborn child in violation of 18 Pa.C.S.A. Section 2604;
- (9) Voluntary Manslaughter of unborn child in violation of 18 Pa.C.S.A. Section 2605;
- (10) Aggravated Assault of unborn child in violation of 18 Pa.C.S.A. Section 2606;
- (11) Homicide by vehicle in violation of 75 Pa.C.S.A. Section 3732; and
- (12) Homicide by vehicle while driving under influence in violation of 75 Pa.C.S.A. Section 3735.

(13) Aggravated Assault by vehicle while driving under influence in violation of 75 Pa.C.S.A. Section 3735.1;

(14) Rape in violation of 18 Pa.C.S.A. Section 3121;

(15) Statutory Sexual Assault in violation of 18 Pa.C.S.A. Section 3122.1;

(16) Involuntary Deviate Sexual Intercourse in violation of 18 Pa.C.S.A. Section 3123;

(17) Sexual Assault in violation of 18 Pa.C.S.A. Section 3124.1;

(18) Institutional Sexual Assault in violation of 18 Pa.C.S.A. Section 3124.2;

(19) Aggravated Indecent Assault in violation of 18 Pa.C.S.A. Section 3125;

shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

Rule 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.

The District Attorney of Dauphin County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging

- (1) Criminal Homicide in violation of 18 Pa.C.S.A. Section 2501;
- (2) Murder in any degree in violation of 18 Pa.C.S.A. Section 2502;
- (3) Voluntary Manslaughter in violation of 18 Pa.C.S.A. Section 2503;
- (4) Involuntary Manslaughter in violation of 18 Pa.C.S.A. Section 2504;
- (5) Causing or aiding suicide in violation of 18 Pa.C.S.A. Section 2505;
- (6) Drug delivery resulting in death in violation of 18 Pa.C.S.A. Section 2506;
- (7) Criminal Homicide of unborn child in violation of 18 Pa.C.S.A. Section 2603;
- (8) Murder in any degree of unborn child in violation of 18 Pa.C.S.A. Section 2604;
- (9) Voluntary Manslaughter of unborn child in violation of 18 Pa.C.S.A. Section 2605;
- (10) Aggravated Assault of unborn child in violation of 18 Pa.C.S.A. Section 2606;
- (11) Homicide by Vehicle in violation of 75 Pa.C.S.A. Section 3732; and
- (12) Homicide by Vehicle While Driving Under the Influence in violation of 75 Pa.C.S.A. Section 3735.
- (13) Aggravated Assault by vehicle While Driving Under the Influence in violation of 75 Pa.C.S.A. Section 3735.1;
- (14) Rape in violation of 18 Pa.C.S.A. Section 3121;
- (15) Statutory Sexual Assault in violation of 18 Pa.C.S.A. Section 3122.1;
- (16) Involuntary Deviate Sexual Intercourse in violation of 18 Pa.C.S.A. Section 3123;
- (17) Sexual Assault in violation of 18 Pa.C.S.A. Section 3124.1;
- (18) Institutional Sexual Assault in violation of 18 Pa.C.S.A. Section 3124.2;

(19) Aggravated Indecent Assault in violation of 18 Pa.C.S.A. Section 3125; and

(20) Any offense arising out of an incident for which the District Attorney of Dauphin County has given written notice to the investigating agency of his intent to review any charges brought in connection with that incident prior to filing.

shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an attorney for the Commonwealth prior to filing.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 10-388. Filed for public inspection March 5, 2010, 9:00 a.m.]