

FINAL REPORT

Proposed New Rule 23 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 23 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 23 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,

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.

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 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 23. The language of Rule 23 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.