

Rule 1922. Counsel fees.

(A) Purpose.

The purpose of this rule is to establish standards and procedures under which the Court Administrator shall determine whether a judge may be reimbursed for the expense of attorney's fees incurred in connection with a criminal matter or a disciplinary matter.

[(A)] (B) Criminal matters.

(1) Mandatory requirements. A judge may be reimbursed for legal fees paid in the defense of a criminal action only if the following criteria are met:

Official Note

See *Yurgosky v. Commonwealth of Pa., Administrative Office of Pa. Courts*, 554 Pa. 533, 722 A.2d 631 (1998).

[(1)] (a) Notice must be given to the Administrative Office of Pennsylvania Courts within a reasonable time after the charges are filed.

[(2)] (b) The criminal charges must arise directly from the judge's performance of his or her official duties.

[(3)] (c) The judge must be acquitted of the crimes charged or the charges must have been dismissed or *nolle prossed*.

Official Note

Reimbursement of counsel fees is not permitted in cases resolved through participation in pre-trial diversionary programs, through negotiated pleas, or by participation in Accelerated Rehabilitative Disposition (ARD) programs. See *Yurgosky*, 554 Pa. at 545 n.15, 722 A.2d at 637 n.15.

[(4)] (d) The legal expenses must be reasonable and necessary.

(2) Decision of the Court Administrator.

(a) Standard. If the mandatory requirements prescribed by paragraph (1) have been met, a request for reimbursement of attorney's fees may be approved only if the Court Administrator determines that the judge's conduct giving rise to the criminal

charges did not prejudice the proper administration of justice or bring the judicial office into disrepute.

Note

This is the same standard prescribed by Pa. Const. art. V, § 18(d)(1), for determining whether a judge may be subject to discipline.

(b) Factors to be considered. In making his or her determination under subparagraph (a), the Court Administrator shall consider the following:

(I) Whether the criminal charges made against the judge had a reasonable basis in law and fact.

(II) The quantity and quality of the evidence supporting the criminal charges made against the judge.

(III) Whether the conduct giving rise to the criminal charges might properly subject the judge to discipline under Pa. Const. art. V, § 18(d)(1), irrespective of whether the judge's conduct prejudiced the proper administration of justice or brought the judicial office into disrepute.

(IV) Whether other criminal or disciplinary charges have been or are reasonably anticipated to be commenced against the judge arising out of the same conduct involved in the criminal matter and, if so, the nature and disposition of those proceedings.

(c) Procedural requirements.

(I) Under no circumstances shall the Court Administrator act upon a request for reimbursement of counsel fees incurred by a judge in a criminal matter until he or she has determined that all possible criminal and disciplinary issues related to the matters involved in the criminal case have been finally concluded in all fora having proper jurisdiction over the judge and a full evaluation of any such additional criminal or disciplinary matter has been made.

(II) A judge who seeks reimbursement of attorney's fees in a criminal matter shall be required to waive confidentiality so that the Judicial Conduct Board and other proper authorities are able to share with the Court Administrator all information relating to actual or potential disciplinary action against the judge. If the judge does not waive confidentiality, the Court Administrator shall deny the judge's request for reimbursement.

(III) In determining under this part whether a judge should be reimbursed attorney's fees incurred in the successful defense against criminal charges, the Court Administrator may rely upon the same information that was available to the Judicial Conduct Board and other proper authority and may consider the evaluation of that information and its determination by the Judicial Conduct Board or other proper authority, as well as any determination made by the Court of Judicial Discipline or other tribunal.

[(B)] (C) *Disciplinary matters.*

(1) Mandatory requirements. A judge may be reimbursed for legal fees paid in the defense of a judicial disciplinary matter only if the following criteria are met:

[(1)] (a) Notice must be given to the Administrative Office of Pennsylvania Courts within a reasonable time after the charges are filed.

[(2)] (b) The allegations of judicial misconduct must arise directly from the judge's performance of his or her official duties.

[(3)] (c) The judge must be acquitted of the misconduct charges, or the charges must have been dismissed or *nolle prossed*.

Official Note

This does not include any rehabilitative or other diversionary programs, or resolution through a “letter of counsel.”

[(4)] (d) The legal expenses must be reasonable and necessary.

(2) Decision of the Court Administrator.

(a) Standard. If the mandatory requirements prescribed by paragraph (1) have been met, a request for reimbursement of attorney’s fees may be approved only if the Court Administrator determines that the judge’s conduct giving rise to the disciplinary matter did not prejudice the proper administration of justice or bring the judicial office into disrepute.

Note

This is the same standard prescribed by Pa. Const. art. V, § 18(d)(1), for determining whether a judge may be subject to discipline.

(b) Factors to be considered. In making his or her determination under subparagraph (a), the Court Administrator shall consider the following:

(I) Whether the disciplinary charges made against the judge had a reasonable basis in law and fact.

(II) The quantity and quality of the evidence supporting the disciplinary charges made against the judge.

(III) Whether the conduct giving rise to the disciplinary matter might properly subject the judge to discipline under Pa. Const. art. V, § 18(d)(1), irrespective of whether the judge’s conduct prejudiced the proper administration of justice or brought the judicial office into disrepute.

(IV) Whether criminal or other disciplinary charges have been or are reasonably anticipated to be commenced against the judge arising out of the same

conduct involved in the disciplinary matter and, if so, the nature and disposition of those proceedings.

(c) Procedural requirements.

(I) Under no circumstances shall the Court Administrator act upon a request for reimbursement of counsel fees incurred by a judge in a disciplinary matter until he or she has determined that all possible criminal and disciplinary issues have been finally concluded in all fora having jurisdiction over the judge and a full evaluation of all such criminal or disciplinary matters has been made.

(II) A judge who seeks reimbursement of attorney's fees shall be required to waive confidentiality so that the Judicial Conduct Board and other proper authorities are able to share with the Court Administrator all information relating to actual or potential disciplinary action against the judge. If the judge does not waive confidentiality, the Court Administrator shall deny the judge's request for reimbursement.

(III) In determining under this part whether a judge should be reimbursed attorney's fees incurred in the successful defense against disciplinary charges, the Court Administrator may rely upon the same information that was available to the Judicial Conduct Board and other proper authorities and may consider the evaluation of that information by the Judicial Conduct Board or other proper authority, as well as any determination made by the Court of Judicial Discipline or other tribunal.

[(C)] (D) Subject to review and approval by the Supreme Court, [The] the Court Administrator shall establish and periodically revise a maximum hourly rate for counsel fee reimbursement and shall develop policies necessary to implement the provisions of this Rule.

[(D)] (E) If a claim for reimbursement is denied in whole or in part, a judge shall have the right to be heard by a hearing examiner designated by the Court Administrator. The hearing examiner shall issue findings of fact and conclusions of law. **Findings of fact**

by the hearing examiner shall be made based on the standard of preponderance of the evidence. Appeals from the decision of a hearing examiner shall be as provided by law.

Official Note

See *Yurgosky*, 554 Pa. at 546, 722 A.2d at 637; 42 Pa.C.S. § 763(a)(1).

Comment

In disciplinary matters, judges should contact the Administrative Office of Pennsylvania Courts before retaining counsel if a Notice of Full Investigation by the Judicial Conduct Board has not been issued.