

Rule 23. 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.

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____.

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt an entirely new Rule 23 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,

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Supreme Court of Pennsylvania
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no later than May 29, 2009.

(publication date)

BY THE MINOR COURT RULES COMMITTEE:

M. Kay DuBree, Chair

*Pamela S. Walker
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REPORT

Proposed New Rule 23 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 23 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 23. The language of Rule 23 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.