

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania rescind Rule 13 and amend Rule 14 of the Rules of Conduct for Magisterial District Judges. 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 Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are shown in bold and brackets.

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

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Minor Court Rules Committee
Pennsylvania Judicial Center
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no later than June 28, 2013.

April 10, 2013

BY THE MINOR COURT RULES COMMITTEE:

Mary P. Murray, Chair

Pamela S. Walker
Counsel

REPORT

Proposed Rescission of Rule 13 and Amendment of Rule 14 of the Rules of Conduct for Magisterial District Judges

CLARIFICATION REGARDING LIMITATIONS ON OUTSIDE ACTIVITIES

I. Introduction

The Minor Court Rules Committee (the “Committee”) is proposing the rescission of Rule 13 and the amendment of Rule 14 of the Rules of Conduct for Magisterial District Judges. These rules currently address activities prohibited to all magisterial district judges (Rule 13), as well as practices prohibited by attorney magisterial district judges only (Rule 14). The goal of this change is to combine these rules into one rule encompassing all limitations on magisterial district judges, as well as to modify the existing prohibition on magisterial district judges serving as paid arbitrators.

The issue of limitations on outside activities by magisterial district judges has been under review by the Committee since at least 2002. The issue initially arose as questions to the Committee asking whether or not an attorney magisterial district judge could also serve as an arbitrator, particularly in arbitration cases where the arbitrators’ fees are paid by the parties. There appeared to be conflicting interpretations as to whether the prohibition on “receiving any fee or emolument for performing the duties of an arbitrator”, set forth in Rule 13, applied to attorney magisterial district judges, who were also subject to the additional prohibited practices set forth in Rule 14. After consideration of the inquiry, and review of the relevant rules, statutes, and other authorities, the Committee agreed that amendments to the rules were advisable to clarify that no magisterial district judge, including a judge who was also an attorney, may act as an arbitrator for a fee.

The Committee published its initial proposal in 2003, at 33 Pa.B. 745 (February 8, 2003). After receiving comments from various sources, the Committee reworked the proposal, and subsequently tabled it while other groups attempted to achieve a legislative solution to the question. In the absence of a legislative solution, the Committee republished the proposal at 37 Pa.B. 6902 (December 29, 2007), and received additional valuable input. The Committee submitted a recommendation to the Pennsylvania Supreme Court (“Court”), but was instructed to engage in further review. The resulting proposal that follows is the product of the Committee's ongoing review of the questions initially posed in 2002.

II. Discussion

As reflected in the versions of the rules previously published, the Committee's past approach was an absolute prohibition on magisterial district judges receiving fees or emoluments for performing the duties of an arbitrators. However, upon further reflection, the Committee agreed that there could be less restrictive means of modifying the current rule, restricting paid activity only to cases within certain parameters. Additionally, the Committee decided to propose limitations on activities as a paid mediator in the same situations as paid arbitrators.

III. Proposed Rule Changes

A. Rule 13

The current version of Rule 13, titled "Incompatible Practices", sets forth certain prohibitions applicable to all magisterial district judges. The Committee agreed that rescinding Rule 13 and incorporating its provisions into Rule 14 was the simplest way to ensure that all magisterial district judges, both attorneys and non-attorneys, were following the same guidelines for incompatible practices and prohibitions. The substantive material of Rule 13, with modification, is found in Rule 14. A note was added to Rule 13, directing readers to Rule 14.

B. Rule 14

The current version of Rule 14, titled, "Prohibited Practice of Attorney Magisterial District Judges", sets forth those limitations applicable only to attorney magisterial district judges. As explained above, the Committee's goal in redrafting Rules 13 and 14 was to clarify the limitations on all judges, remove the artificial distinction between attorney and non-attorney judges on the arbitration issue, and lessen restrictions on arbitration practices. Proposed subdivisions A and B are taken from the first two sentences of current Rule 13. Proposed subdivision D is based on current Rule 14A and 14B, while proposed subdivision E is based on the last sentence to current Rule 14A.

Proposed subdivision C is the revised provision addressing magisterial district judges serving as arbitrators or mediators. Specifically, magisterial district judges are not to serve as arbitrators or mediators for a fee or emolument in situations where venue would be proper in the judge's district, or in proceedings in which venue would be proper in the county where the judge's district is located, unless the judge is serving as a neutral arbitrator or in a non-binding arbitration or mediation proceeding. By modifying the existing prohibition on serving as a paid arbitrator, magisterial district judges will be able to participate in this arena in a manner that will not potentially

overlap with parties, attorneys and matters with cases heard in the judge's court or local area.