

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 82]

Proposed Amendment to the Pennsylvania Rules for Continuing Legal Education for Emeritus Status License

Notice is hereby given that the Pennsylvania Continuing Legal Education Board is considering a recommendation to the Pennsylvania Supreme Court to amend Rule 105 of the Pennsylvania Rules for Continuing Legal Education (“Pa.R.C.L.E”) regarding a proposed *Emeritus* status lawyer license. Additions to the text of the rule are shown in bold in Annex A.

In August of 2015, the Supreme Court of Pennsylvania requested that the Continuing Legal Education and Disciplinary Boards review proposals from the Pennsylvania, Allegheny County and Philadelphia Bar Associations amend rules for purposes of creating a limited license for attorneys to provide pro bono services to low-income Pennsylvanians. The Boards collaborated to review the proposals and develop a framework for an *Emeritus* license program. The Board’s shared the proposal for the *Emeritus* program with the Bar Associations and collected input. Based on the input received, the Boards updated the proposal and submitted it to the Supreme Court. The Court has asked the Boards to publish the proposed rules for comment.

The proposed amendment acknowledges continuing legal education requirements for lawyers who possess an *Emeritus* status law license (per proposed Rule 403 of the Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”). We note that the Disciplinary Board is issuing a Notice of Proposed Rulemaking on this same date with the same comment deadline.

If approved, the newly proposed *Emeritus* status will create an option for retired lawyers to hold a limited license for the purpose of proving *pro bono* representation through qualified legal service organizations.

Earlier this year, the Legislative Budget and Finance Committee reported that funding sources to civil legal aid have generally been stagnant or have declined since 2011. Additionally, according to the Pennsylvania Legal Aid Network, the 75,000 cases handled or referred annually by PLAN represent only about 20 percent of the need.

Support for legal aid can come in many different forms. This proposed amendment to the Continuing Legal Education rules will create another support mechanism to help those in need by expanding the availability of highly qualified *pro bono* lawyers.

Interested persons are invited to submit written comments regarding the proposed amendments to the Pennsylvania Continuing Legal Education Board no later than August 23, 2017. Comments may be submitted to Penn-

sylvania Judicial Center, 601 Commonwealth Avenue, Suite 3400, P.O. Box 62495, Harrisburg, PA 17106-2495, or via email to kbuggy@pacle.org.

By the Pennsylvania Continuing Legal Education Board Supreme Court of Pennsylvania

DANIEL LEVERING,
Administrator

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 82. CONTINUING LEGAL EDUCATION

Subchapter A. PROFESSIONAL RESPONSIBILITY

Rule 105. Continuing Legal Education Requirement.

* * * * *

(c) Every newly admitted attorney shall attend the Bridge The Gap program, of at least four (4) hours, sponsored by an approved Bridge the Gap CLE provider prior to his or her first compliance deadline.

(d) Lawyers with an Emeritus status license shall be subject to the annual CLE requirement.

Subchapter B. CONTINUING LEGAL EDUCATION BOARD REGULATIONS

Section 1. Definitions.

* * * * *

CLE—Continuing legal education to be provided under the rules and these regulations.

***Emeritus Lawyer*—Any lawyer who assumes Emeritus status with the Attorney Registration Office.**

Inactive Lawyer—Any lawyer placed on inactive status by the Supreme Court of Pennsylvania.

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Section 6. Waivers, Extensions and Deferrals.

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(e) *Non-Resident Active Lawyer*: There shall be a sub-classification of active lawyers available to those lawyers who comply with the following:

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6. Upon return to active status from non-resident active, the lawyer will have twelve (12) months to complete the deferred CLE requirements, not to exceed two (2) times the current annual CLE requirement, in addition to the CLE credits required for the current year.

(f) *Emeritus Lawyer*: Lawyers on Emeritus status shall have no deferred CLE requirement, but must complete the CLE requirement for the period in which Emeritus status is assumed.

[Pa.B. Doc. No. 17-1036. Filed for public inspection June 23, 2017, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 83]

Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Creating an Emeritus Status for Pro Bono Legal Representation

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Supreme Court of Pennsylvania that it adopt new Rule 403 of the Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) creating an emeritus status for attorneys who retire from the practice of law and seek to provide pro bono services to legal aid organizations, as set forth in Annex A.

By way of background, in August 2015, the Supreme Court of Pennsylvania requested that the Disciplinary Board and the Continuing Legal Education Board (“the Boards”) review a proposal of the Pennsylvania, Allegheny County and Philadelphia Bar Associations to amend the rules to permit retired and inactive attorneys to provide pro bono services to low-income Pennsylvanians. Between August 2015 and August 2016, the Boards met separately and jointly to analyze the proposal and materials provided by the bar associations, to determine how best to construct an emeritus program, and to develop a framework of rules. In August 2016, the Boards sent an emeritus program proposal to the bar associations and requested input. Following revisions to the proposal based on this input, in December 2016, the Boards sent the proposal to the Supreme Court. By letter dated December 30, 2016, the Court asked the Boards to publish proposed rules for comment.

Emeritus programs create a pool of qualified volunteer attorneys to provide services to those in need. Emeritus attorneys perform valuable roles in the community by bolstering legal aid and other nonprofit programs to help close the gap between the need for and the availability of free legal services. Currently, thirty-eight jurisdictions have emeritus programs in place. A review of these programs reveals that there is a great degree of variability in how states design their rules. The Boards’ primary goal in establishing an emeritus program in Pennsylvania is to balance encouraging pro bono work with protecting citizens of the Commonwealth.

Proposed Pa.R.D.E. 403 creates an emeritus status for pro bono legal representation. The proposed rule addresses qualifications, application procedure, transfer to emeritus status, limitation on practice, eligible legal aid organizations, renewal of emeritus status and continuing legal education requirements.

In order to transfer to emeritus status pursuant to proposed section (a), an attorney must be on retired status. In devising the specifics of the emeritus rule, the Boards are mindful that the original, national focus for this type of program was to address shortfalls in legal services to the poor by tapping into the services of senior attorneys no longer practicing law to perform pro bono work.¹ This focus, in conjunction with the Boards’ responsibility to protect the public, the courts, and the integrity of the legal profession, informed the Boards’ decision to limit the scope of the proposed emeritus program to retired attorneys.² The Boards are cognizant that this

limitation reduces the pool of candidates; however, unlike other states, the Boards are not proposing age or length of practice restrictions,³ so that a retired attorney, regardless of age or number of years practicing prior to retirement, is eligible to pursue emeritus status.

The application requirements are set forth in proposed section (b). Proposed subsections (1), (2), and (3) request various pieces of personal information about the attorney, a list of all courts outside of the Commonwealth and jurisdictions in which the attorney has been licensed, along with the current status thereof, and prior discipline in other jurisdictions.

The retired attorney must complete twelve hours of continuing legal education within one year prior to the application date as a prerequisite to transferring to emeritus status, pursuant to proposed subsection (b)(4). Although the Boards recognize that the continuing legal education prerequisite may present a disincentive to participation, emeritus attorneys will be practicing law similar to active status attorneys; therefore, the Boards concluded that this prerequisite is necessary to ensure the competence of emeritus attorneys, some of whom may have been on retired status for a number of years and thus, not required to maintain knowledge of the law. We further note that this is a reduction of the continuing legal education prerequisite of thirty-six hours required for attorney reinstatement to active status from other statuses. *See*, Disciplinary Board Rule § 89.279(a); 47 Pa.B. 311 (Jan. 21, 2017).

The emeritus applicant must verify that he or she is authorized solely to provide pro bono services, is not permitted to handle client funds, and is not permitted to ask for or receive compensation, pursuant to proposed subsections (b)(5), (6), and (7).

Proposed subsection (b)(8) requires the attorney, at the time of application, to pay a registration fee of \$35, an amount less than the current \$225 for active attorneys and \$100 for inactive attorneys. The Boards concluded that a *de minimus* fee is necessary in light of the administrative duties involved with registration of emeritus attorneys. At least sixteen jurisdictions require emeritus attorneys to pay a full or reduced attorney registration fee.⁴

Once the application is approved and the attorney is transferred to emeritus status, the attorney will be eligible to provide pro bono services only through an eligible legal aid organization. The vast majority of jurisdictions have similar requirements.⁵ Proposed sections (c) and (d) address transfer to emeritus status and limitation of practice. An “eligible legal aid organization” is defined in proposed section (e) as a not-for-profit organization that provides legal services.

Thereafter, pursuant to proposed section (f), in order to commence working for a legal aid organization, the emeritus attorney is required to submit an eligible legal aid organization form to the Secretary of the Disciplinary Board for approval of each organization for which the attorney expects to perform pro bono services. An emeritus attorney is able to volunteer with multiple legal aid organizations, as long as the attorney files the legal aid

³ http://www.americanbar.org/content/dam/aba/administrative/law_aging/Emeritus_Rules_Chart.authcheckdam.pdf

⁴ http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_emeritus2016.authcheckdam.pdf

⁵ Of the thirty-eight jurisdictions that have emeritus programs, more than thirty require that the emeritus attorney’s services be performed through a certified or organized legal services program. *See*, http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_emeritus2016.authcheckdam.pdf

¹ http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_emeritus2016.authcheckdam.pdf

² Of the thirty-eight jurisdictions that have emeritus rules, six restrict such programs to retired attorneys. *See*, http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_emeritus2016.authcheckdam.pdf

forms. Among other pieces of information, the form requests a description of the legal services performed by the organization and the nature of the duties expected to be performed by the emeritus attorney. The supervising attorney of the organization must verify that the organization has malpractice insurance to cover the emeritus attorney and that the organization will provide training and support to the emeritus attorney. These criteria help to ensure the protection of the public.

An emeritus attorney may renew the status on an annual basis between January 1 and January 31 of each year. Proposed subsection (g)(2) sets forth the procedure for renewal. Subsection (g)(3) informs emeritus attorneys that failure to file the annual fee form and pay the annual fee by January 31 shall result in the emeritus attorney's transfer to retired status. There will be no assessment of late fees for failure to renew at the designated time. A transfer back to retired status will require the attorney to begin the emeritus process anew if emeritus status is desired.

Proposed section (h) informs emeritus attorneys that they are subject to annual continuing legal education requirements, pursuant to the Pennsylvania Rules of Continuing Legal Education. We note that the Continuing Legal Education Board is issuing its own Notice of Proposed Rulemaking on this same date with the same deadline for comments.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382), Email address Dboard.comments@pacourts.us on or before August 24, 2017.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JULIA FRANKSTON-MORRIS, Esq.,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter D. MISCELLANEOUS PROVISIONS

Rule 403. Emeritus Status.

(a) *Qualifications.* An attorney admitted in Pennsylvania who is registered as retired and who seeks to provide pro bono services under this rule shall transfer to emeritus status by complying with the requirements listed below.

(b) *Application Procedure.* Prior to the representation described in (d), an attorney shall complete and submit to the Attorney Registration Office an Application for Emeritus Status which shall include the following:

(1) The name, attorney identification number, telephone number, current email and residence address of the attorney, the latter of which shall be an actual street address, a rural route box number, or a post office box

number. Upon an attorney's written request submitted to the Attorney Registration Office and for good cause shown, the contact information will be nonpublic information and will not be published on the Board's website or otherwise disclosed;

(2) A list of all courts (except courts of this Commonwealth) and jurisdictions in which the attorney has been licensed to practice law with the current status thereof;

(3) Prior disciplinary record in other jurisdictions;

(4) The list of approved Continuing Legal Education courses that the attorney has completed during the 12 month period immediately preceding the submission of the Application for Emeritus Status, totaling no fewer than 12 credit hours, 10 of which shall be in the substantive area of law and 2 of which shall be in ethics;

(5) Verification that the attorney is authorized solely to provide pro bono services to eligible legal aid organizations;

(6) Verification that the attorney is not permitted to handle client funds;

(7) Verification that the attorney will neither ask for nor receive compensation of any kind for the legal services authorized under this rule;

(8) A registration fee of \$35.00.

(c) *Transfer to Emeritus Status.* Upon review of the completed form and verification of the information, the application shall be approved the Attorney Registration Office and the attorney's status as retired shall be changed to emeritus.

(d) *Limitation of Practice.* An emeritus attorney is authorized solely to provide pro bono legal services under the auspices of an eligible legal aid organization and without charge or an expectation of fee by the attorney.

(e) *Eligible Legal Aid Organization.* An "eligible legal aid organization" for the purposes of this rule is a not-for-profit organization that provides legal services.

(f) *Approval of Eligible Legal Aid Organization.* Prior to the commencement of services described in (d), the emeritus attorney shall submit an Eligible Legal Aid Organization Form to the Secretary of the Board for approval. The emeritus attorney shall submit a separate form for each eligible legal aid organization for which the attorney expects to perform pro bono services. The form shall include the following:

(1) The name and address of the Eligible Legal Aid Organization and the name of the supervising attorney;

(2) A description of the legal services performed by the organization and the nature of the duties expected to be performed by the emeritus attorney;

(3) Verification of the existence and extent of the malpractice insurance that will cover the emeritus attorney;

(4) Verification that the organization will provide training and support to the emeritus attorney.

(g) *Renewal of Emeritus Status.* An emeritus attorney who is registered to provide services under this rule may renew the status on an annual basis.

(1) On or before January 1 of each year, the Attorney Registration Office shall transmit to all emeritus attorneys a notice to register by January 31.

(2) On or before January 31 of each year, emeritus attorneys who seek to renew the status shall pay an annual fee of \$35.00 and shall file with the Attorney Registration Office a form prescribed by the Office which shall include the following:

(i) The name, attorney identification number, telephone number, current email and residence address of the attorney, the latter of which shall be an actual street address, a rural route box number, or a post office box number. Upon an attorney's written request submitted to the Attorney Registration Office and for good cause shown, the contact information provided by the attorney will be nonpublic information and will not be published on the Board's website or otherwise disclosed;

(ii) A list of all courts (except courts of this Commonwealth) and jurisdictions in which the attorney has been licensed to practice law, with the current status thereof;

(iii) Prior disciplinary record in other jurisdictions;

(iv) Verification that the attorney is authorized solely to provide pro bono services to eligible legal aid organizations;

(v) Verification that the attorney is not permitted to handle client funds;

(vi) Verification that the attorney will neither ask for nor receive compensation of any kind for the legal services authorized under this rule;

(3) Failure to file the annual fee form and pay the annual fee by January 31 shall result in the transfer to retired status.

(h) *Continuing Legal Education Requirements.* An emeritus attorney shall be subject to the annual CLE requirement. See Pa.R.C.L.E. 105(d).

[Pa.B. Doc. No. 17-1037. Filed for public inspection June 23, 2017, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Regarding Approval and Termination of Eligible Institutions

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Supreme Court of Pennsylvania that it adopt amendments to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 221, governing the approval and termination of eligible institutions as depositories for trust accounts, as set forth in Annex A.

Pursuant to Pa.R.D.E. 221(h), a financial institution will be approved as an eligible institution for attorney trust accounts, which includes IOLTA trust accounts, if it is in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct ("RPC") and regulations of the IOLTA Board ("IOLTA"), and files with the Disciplinary Board an agreement to report to the Pennsylvania Lawyers Fund for Client Security Board ("Fund") whenever an attorney's trust account has insufficient funds. A failure on the part of an eligible institution to make the

report required in paragraph (h) may be cause for termination of the approval, pursuant to Pa.R.D.E. 221(k).

A financial institution must be in compliance with IOLTA regulations in order to be approved as an eligible institution; however, once approved, a failure to comply with such regulations does not result in consequences to the eligible institution. The only cause for termination under Rule 221(k) is for failing to make the report to the Fund of any dishonored payments.

IOLTA seeks modifications to the Enforcement Rules to enhance its authority over eligible institutions. By way of background, IOLTA has implemented a financial institution compliance program to monitor adherence to the interest rate comparability and account reporting requirements outlined in RPC 1.15(o) and the implementing IOLTA regulations at 204 Pa. Code §§ 81-101—81.113. IOLTA has advised the Disciplinary Board ("Board") that when institutions withhold interest remittances and account reports for significant periods, IOLTA works with the institutions to resolve such issues. IOLTA reports that in many of these cases, the eligible institutions take prompt steps to resolve back interest amounts or problems with account reports; however, in some cases these issues require extensive and prolonged negotiation. IOLTA has advised the Board that its lack of enforcement power under the rules has hampered its ability to swiftly resolve these issues with eligible institutions, as there are no consequences for the institutions' noncompliance with IOLTA regulations. According to IOLTA, the lengthy delays that occur during the negotiation process with recalcitrant institutions impact IOLTA's ability to: forecast revenue available for legal aid grants; answer questions from attorneys regarding account activity; and, provide information requested by Office of Disciplinary Counsel.

Two amendments are proposed in order to give IOLTA heightened power to address situations where eligible institutions fail to comply with IOLTA regulations. Paragraph (h) adds new language which would require eligible institutions to commit to complying with the Fund and IOLTA responsibilities in the form submitted to the Disciplinary Board, in contrast to the current requirement that the form only contain responsibilities to the Fund. This language more clearly defines the institution's obligations at the inception of participation in the IOLTA program.

Proposed language in paragraph (k) provides that failure by the institution to comply with IOLTA regulations is a basis for termination of the eligible institution's approval by the Court. Again, the intent of the proposed language is to clearly set forth the consequences for an eligible institution's failure to meet its obligations to the Fund and to IOLTA.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3382), Email address Dboard.comments@pacourts.us on or before July 31, 2017.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JULIA FRANKSTON-MORRIS, Esq.,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

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(h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board and shall file with the Disciplinary Board an agreement [(in a form provided by the Board)] in a form approved by the Board to comply with IOLTA Regulations governing approved Eligible Institutions and to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

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(k) A failure on the part of an Eligible Institution to make a report to the Lawyers Fund for Client Security Board called for by this rule or to comply with IOLTA Regulations governing approved Eligible Institutions may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.

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[Pa.B. Doc. No. 17-1038. Filed for public inspection June 23, 2017, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IX]

Order Approving the Revision of the Comment to Rule of Evidence 902; No. 741 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 12th day of June, 2017, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 46 Pa.B. 3793 (July 16, 2016):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Pennsylvania Rule of Evidence 902 is revised in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 1, 2017.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 902. Evidence That is Self-Authenticating.

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Comment

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Pa.R.E. 902(1), (2), (3) and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3) and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law. These paragraphs are consistent with Pennsylvania statutory law. See, e.g. 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

The admission of a self-authenticating record of a prior conviction also requires sufficient evidence, either direct or circumstantial, to prove that the subject of the record is the same person for whom the record is offered in a proceeding. See, e.g., Commonwealth v. Boyd, 344 A.2d 864 (Pa. 1975).

Pa.R.E. 902(5), (6) and (7) are identical to F.R.E. 902(5), (6) and (7). There are no corresponding statutory provisions in Pennsylvania; however, 45 Pa.C.S. § 506 (judicial notice of the contents of the Pennsylvania Code and the Pennsylvania Bulletin) is similar to Pa.R.E. 902(5).

Pa.R.E. 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. See Sheaffer v. Baeringer, [346 Pa. 32,] 29 A.2d 697 (Pa. 1943); Williamson v. Barrett, [147 Pa. Super. 460,] 24 A.2d 546 (Pa. Super. 1942); 21 P.S. §§ 291.1—291.13 (Uniform Acknowledgement Act); [57 P.S. §§ 147—169 (Notary Public Law)] 57 Pa.C.S. §§ 301—331 (Revised Uniform Law on Notarial Acts). An acknowledged document is a type of official record and the treatment of acknowledged documents is consistent with Pa.R.E. 902(1), (2), (3), and (4).

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Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017; amended June 12, 2017, effective November 1, 2017.

Committee Explanatory Reports:

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Final Report explaining the November 9, 2016 addition of paragraph (13) published with the Court's Order at 46 Pa.B. 7438 (November 26, 2016).

Final Report explaining the June 12, 2017 amendment of the Comment published with the Court's Order at 47 Pa.B. 3491 (June 24, 2017).

FINAL REPORT¹

Revision of Comment to Pa.R.E. 902

On June 12, 2017, effective November 1, 2017, upon recommendation of the Committee on Rules of Evidence,

¹ The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

the Court ordered the revision of the Comment to Pa.R.E. 902. The purpose of this revision is to alert readers that certain self-authenticating records may also require proof of identification. Under the Rules of Evidence, certificates evidencing a prior criminal record are self-authenticating under Pa.R.E. 902(4). *See also* 42 Pa.C.S. § 5328, 42 Pa.C.S. § 6103, and 75 Pa.C.S. § 6501. However, self-authenticating certificates fulfill only part of the requirement for proving a prior criminal conviction. Under case law, the proponent has the burden of proving: 1) a prior conviction is authentic (*i.e.*, with a self-authenticating certificate); and 2) the person against whom it is sought to be admitted is the same person reflected on the certificate. *Commonwealth v. Boyd*, 344 A.2d 864 (Pa. 1975).

[Pa.B. Doc. No. 17-1039. Filed for public inspection June 23, 2017, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Rules of Judicial Administration *101, *4007 and *4008; President Judge General Court Regulation No. 2017-02

Order

And Now, this 14th day of June, 2017, as required by Pa.R.J.A. 4009, *It Is Hereby Ordered and Decried* that Philadelphia Local Rules of Judicial Administration *101 Title and Citation of Rules, Philadelphia Rule of Judicial Administration *4007 Request for Transcripts, and Philadelphia Rule of Judicial Administration *4008 Transcript Costs are promulgated as follows effective with transcripts ordered on and after July 1, 2017.

This General Court Regulation is issued in accordance with Pa.R.J.A. 103 and shall be filed with the following rules with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for General Court Regulation issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this General Court Regulation and rules shall be distributed to the Legislative Reference Bureau, together with a copy on a computer diskette, for publication in the *Pennsylvania Bulletin*. A copy of this order and rules shall be provided to the Supreme Court's Committee on Court Reporting and Transcripts. As required by Pa.R.J.A. 103(d)(6) one certified copy of this General Court Regulation and rules shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://www.courts.phila.gov>, and shall be incorporated in the compiled set of Philadelphia local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the General Court Regulation shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE SHEILA WOODS-SKIPPER,
President Judge, Court of Common Pleas

PHILADELPHIA RULES OF JUDICIAL ADMINISTRATION

Rule *101. Title and Citation of Rules.

These Rules shall be known as the Philadelphia County Rules of Judicial Administration and may be cited as "Phila. R.J.A."

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COURT REPORTER RULES

Rule *4007. Requests for Transcripts.

(A) Requests for transcripts must be submitted through the electronic Transcript Ordering System ("TOS") accessible through the website of the First Judicial District of Pennsylvania at www.courts.phila.gov. A standard Request for Transcript form may be utilized by Requestors who cannot access the Transcript Ordering System. The Request for Transcript form is available on the Court's website at www.courts.phila.gov/forms and must be emailed to transcripts@courts.phila.gov.

(B) *Cases on Appeal*. As provided in Pa.R.A.P. 1922(b), unless an order authorizing diminution of transcription has been issued by the trial court in a civil case or pursuant to Pa.R.Crim.P. 115 in a criminal case, the court reporter or transcriptionist shall transcribe the entire proceedings.

(C) The party requesting the transcript shall serve a copy of the Request on:

- (1) the court reporter;
- (2) the judge presiding over the matter; and

(3) all counsel who have entered an appearance in the case and on any unrepresented party(ies).

(D) The court reporter, transcriptionist or other staff designated by the District Court Administrator shall provide an estimate of the cost of the transcript, and the requestor must make a non-refundable, partial payment of 95% of the estimated cost before the court reporter or transcriptionist will begin transcribing the proceeding.

(E) The time within which the transcript must be delivered begins to run upon the First Judicial District's receipt of the requestor's partial payment.

(F) When the transcript has been completed, it shall be filed in the Court Reporting System ("CRS"), shall be made available to the judge presiding over the matter, and shall be delivered to the requestor upon the payment of any balance owed.

(G) The delivery date of the transcript shall be the date the transcript is filed in the Court Reporting System.

(H) All requests by a litigant for the waiver or reduction of the transcript cost due to economic hardship, as provided in Pa.R.J.A. 4007(E), shall be accompanied by proof that the litigant meets the requirements set forth in Pa.R.J.A. 4008 and Phila.R.J.A. 4008(D). Such request shall be supported by an affidavit substantially in the form required by Pa.R.C.P. No. 240(h), which is available through the TOS and on the Court's website at: www.courts.phila.gov/forms. Requests for the waiver or reduction of the transcript cost due to economic hardship are limited to the requested transcript and shall be reviewed and determined as may be provided by the District Court Administrator from time to time. A litigant who wishes to proceed in forma pauperis for the duration of the case must file a Petition to Proceed in Forma Pauperis in accordance with established rules of court.

Rule *4008. Transcript Costs.*(A) Transcript Costs.*

The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for transcripts in an electronic or paper format shall be as follows:

- (1) for an ordinary transcript, \$3.00 per page;
- (2) for an expedited transcript, \$4.50 per page;
- (3) for a daily transcript, \$6.00 per page;
- (4) for same-day delivery, \$9.00 per page;
- (5) for real-time, \$11.00 per page;
- (6) for real time streaming (to outside locations), full day, \$250.00; and
- (7) in ASCII format, or with Word Index: add \$25 for each.
- (8) Rough drafts will not be provided.

(B) Copies of Transcripts.

The costs payable for a copy of transcripts in an electronic or paper format shall be as follows

- (1) for an ordinary transcript, \$2.00 per page;
- (2) for an expedited transcript, \$3.00 per page;
- (3) for a daily transcript, \$4.00 per page; and
- (4) for same-day delivery, \$6.00 per page.

(C) Transcript Costs Payable by the Commonwealth or a Subdivision Thereof.

The transcript costs payable by the Commonwealth or a subdivision thereof, including but not limited to the District Attorney, the Pennsylvania Attorney General, the City of Philadelphia's Law Department, court-appointed counsel, and the Defender Association of Philadelphia shall be two (\$2.00) dollars per page for ordinary delivery.

(D) Economic Hardship Standards.

(1) In matters under appeal or where the transcript is necessary to advance the litigation:

(a) transcript costs for ordinary transcripts shall be waived for a litigant who has been permitted by the court to proceed in forma pauperis; who is represented by court appointed counsel; who is represented by Legal Aid services which certify that the client meets financial eligibility; or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) guidelines for the current year. See Pa.R.J.A. 4008(B)(1).

(b) transcript costs for ordinary transcripts shall be reduced by one-half for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year. See Pa.R.J.A. 4008(B)(2).

(2) In matters not under appeal, where the transcript is not necessary to advance the litigation: the requesting party must file a Petition for Waiver of Transcript Costs and must demonstrate reasonable need before the court shall waive or reduce the cost of obtaining the transcript.

(E) Payment Options. Payments may be made with approved credit and debit cards, checks or money orders made payable to the "First Judicial District of Pennsylvania-Transcripts," or as otherwise provided by the District Court Administrator from time to time. A convenience fee shall be charged for electronic payments to off-set merchant charges incurred by the First Judicial District. No cash payments will be accepted. Direct payments to court reporters and transcriptions are not permitted.

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