

JUDICIAL CONDUCT BOARD RULES OF PROCEDURE

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<p>Pennsylvania Code, Title 207</p>

JUDICIAL CONDUCT BOARD

RULES OF PROCEDURE

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General Provisions

Rule 1: Definitions

(A) [FN1] Definitions. When used in these rules, unless the context otherwise requires:

Board means the Judicial Conduct Board.

Board Complaint is the document setting forth the formal charges and filed by the Board to initiate proceedings in the Court of Judicial Discipline.

Board Counsel means any lawyer hired by the Board as staff counsel, including Chief Counsel, or any lawyer appointed as special counsel, to perform those duties as directed by the Board.

Chief Counsel is the lawyer in charge of the screening and investigation of complaints, the prosecution of formal charges, and the performance of other duties as directed by the Board.

Chair means the Chair of the Board or a member authorized to act on the Chair's behalf.

Complaint means a document setting forth information alleging conduct within the jurisdiction of the Judicial Conduct Board pursuant to [Pa. Const. Art. V, § 18](#).

Court means the Court of Judicial Discipline.

Dismissal is a Board determination which terminates a case against a Judicial Officer.

Judicial Officer includes magisterial district judges, judges of the Philadelphia Municipal and Traffic Courts, judges of the Pittsburgh Magistrates Court, judges of the Common Pleas, Commonwealth, and Superior Courts, and Justices of the Supreme Court.

Probable Cause to File Formal Charges means probable cause to believe that conduct by a Judicial Officer has occurred for which a Judicial Officer should be suspended, removed from office, or otherwise disciplined pursuant to [Pa. Const. Art. V, § 18\(d\)\(1\)](#).

Rules of Professional Conduct means rules of professional responsibility for attorneys.

Staff includes employees of the Board and persons retained or appointed by the Board, or individual Board members' employees when engaged in the business of the Board.

Verification is a written statement of fact by the signer, supported by oath or affirmation or made subject to the penalties of [18 Pa.C.S. § 4904](#) relating to unsworn falsification to authorities.

[FN1] So in original; there is no subd. (B).

Order of Jan. 6, 2005

By Order of Jan. 6, 2005, eff. Jan. 29, 2005, the Pennsylvania Supreme Court ordered "that all references in any court rule, court order, court form (including citation), automated statewide court case management system (i.e. PACMS, CPCMS and DJS) or any other legal authority, except as provided for in Act 207 [2004, Nov. 30, P.L. 1618], to 'district justice' shall be deemed a reference to 'magisterial district judge.' "

Judicial Conduct Board Procedure, Rule 1, 42 Pa.C.S.A., PA ST J COND BD P Rule 1

Rule 2: Rules of Construction

(A) As used in these rules, unless the context otherwise requires:

(1) Words in the singular number include the plural, and words in the plural include the singular.

(2) The word "person" shall include corporations, societies, associations, partnerships, and organizations.

(3) "Shall" is mandatory and "may" is permissive.

(4) "Knowingly" includes reckless disregard for the truth or falsity of a statement.

(B) These rules shall be construed to secure just and reliable determinations of probable cause in all matters considered by the Board.

(C) An error or defect of procedure shall not confer any substantive rights on any party.

Adopted March 20, 1995, imd. effective. Amended April 22, 1996, imd. effective.

Rule 3: Scope

(A) These rules shall govern the conduct of all Judicial Conduct Board proceedings.

(B) The Board shall receive and investigate complaints concerning judicial conduct filed by individuals or initiated by the Board, including allegations that a Judicial Officer has violated the Rules of Professional Conduct.

(C) When the Board receives a complaint against a magisterial district judge admitted to the practice of law, the Board shall refer the complaint to the Disciplinary Board of the Supreme Court of Pennsylvania if the Board determines that:

(1) the conduct occurred only in the context of the magisterial district judge's practice of law;

(2) the allegations do not involve any conduct for which the magisterial district judge

would otherwise be subject to discipline as a Judicial Officer pursuant to [Pa. Const. Art. V, § 18\(d\)\(1\)](#); and

(3) the conduct of the magisterial district judge is not likely to result in disbarment or suspension of the right to practice law.

Adopted March 20, 1995, imd. effective. Amended Jan. 6, 2005, effective Jan. 29, 2005.

CHAPTER 2

Business of the Board

Rule 4: Meetings; Officers

(A) The Board shall meet periodically as determined by the Board. Meetings other than periodic meetings may be called by the Chair on the Chair's own motion, and shall be called by the Chair upon the written request of five members of the Board.

(B) At the first meeting of each calendar year, the Board shall elect a member to serve as Chair, a member to serve as Vice-Chair, and a member to serve as Secretary. The Vice-Chair shall perform the duties of the Chair whenever the Chair is absent or unable to act.

(C) The Chair may appoint a Board member, who shall be a judge or lawyer, to rule on all evidentiary issues and objections.

Adopted March 20, 1995, imd. effective.

Rule 5: Board Counsel

(A) The Board shall appoint an attorney to serve as Chief Counsel, who shall not engage in the practice of law except as authorized by the Board, and who shall not serve in a judicial capacity.

(B) Chief Counsel shall investigate and present to the Board any matters within the Board's jurisdiction and shall perform other duties as the Board may direct.

(C) The Board may hire staff counsel and appoint special counsel to perform duties as the Board may direct.

Adopted March 20, 1995, imd. effective.

Rule 6: Seal

(A) The Board shall have a seal.

(B) The seal shall contain the words "Judicial Conduct Board of Pennsylvania" on the

upper circle and the word "1993" on the lower area circling arms similar to those appearing on the state seal.

(C) Chief Counsel shall retain the seal and affix it to appropriate documents.

Adopted March 20, 1995, imd. effective.

Rule 7: Panels

(A) The Chair may appoint a Panel to take testimony and to summarize that testimony in a report to the Board.

(B) A Panel shall consist of at least three members of the Board, one of whom shall be a lawyer and one of whom shall be a non-lawyer elector.

Adopted March 20, 1995, imd. effective.

Rule 8: Rule-Making Procedures

(A) Modification Procedures.

(1) The rules may only be amended or rescinded, or new rules adopted, by the affirmative vote of a majority of the members of the Board.

(2) Notice of any Board action on these rules shall be given to all members of the Board at least 30 days before the meeting at which such action will be taken, unless the time period is shortened by unanimous vote of the Board.

(B) Publication of Proposed Changes.

(1) Except as provided in paragraph (B)(2), any proposed change to these rules shall be forwarded to the *Pennsylvania Bulletin* for publication with a notice requesting comment.

(2) A proposed rule change may be promulgated without publication where exigent circumstances require the immediate adoption of the proposal or where the proposed change is of a typographical or perfunctory nature.

(C) Adoption. These rules and any subsequent changes to them shall be available for public inspection upon adoption and shall be forwarded to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Adopted March 20, 1995, imd. effective.

Rule 9: Quorum

A quorum is a majority of the members of the Board.

Adopted March 20, 1995, imd. effective.

Rule 10: Disqualification

No member of the Board shall participate in a proceeding in which the member is a complainant, the subject of the complaint, a party, or a material witness.

Adopted March 20, 1995, imd. effective.

Rule 11: Voting

(A) The affirmative vote of a majority of the members of the Board eligible to vote shall be required for the dismissal of a complaint or the filing of formal charges with the Court of Judicial Discipline.

(B) Except as provided in paragraph (A), Board decisions concerning all other actions and business of the Board shall be made by the affirmative vote of a majority of the Board members present at the meeting where the vote is taken.

(C) The affirmative vote of a majority of the members of the Board shall be required to change the Rules of Procedure.

Adopted March 20, 1995, imd. effective.

Rule 12: Records

(A) The Board shall keep a record of all proceedings concerning a Judicial Officer.

(B) Chief Counsel shall be the official custodian of Board records and shall maintain them in accordance with retention policies adopted by the Board.

Adopted March 20, 1995, imd. effective.

CHAPTER 3

Interim Suspension; Special Note to Supreme Court Or Court of Judicial Discipline

Rule 13: Interim Suspension

(A) The Board may direct Chief Counsel to file with the Court a motion for the interim suspension of a Judicial Officer, with or without pay, following the filing of a Board Complaint or when an indictment or information charging the Judicial Officer with a felony has been filed.

(B) The motion for interim suspension shall be promptly served upon the Judicial Officer and the matter shall proceed as provided in the rules of procedure governing the Court of Judicial Discipline.

Adopted March 20, 1995, imd. effective.

Rule 14: Special Notice to the Supreme Court or the Court of Judicial Discipline

(A) Whenever the Board becomes aware of an indictment or information charging a felony against a Judicial Officer, the Board may file appropriate notice with the Court of Judicial Discipline.

(B) Whenever the Board becomes aware of information related to a Judicial Officer which may, as provided by law, require or permit the exercise of the Supreme Court's inherent power over the unified judicial system, the Board may file appropriate notice with the Supreme Court.

Adopted March 20, 1995, imd. effective.

CHAPTER 4

Limitations on Board Action; Exceptions

Rule 15: Time Limitations

Except where the Board determines otherwise for good cause, the Board shall not consider complaints arising from acts or omissions occurring more than four years prior to the date of the complaint, provided, however, that when the last episode of an alleged pattern of recurring judicial misconduct arises within the four-year period, the Board may consider all prior acts or omissions related to such an alleged pattern of conduct.

Adopted March 20, 1995, imd. effective.

Rule 16: Use of Allegations from Dismissed Complaints

(A) *Rescinded February 5, 2007, immediately effective.*

(B) If, within two years of a Board dismissal, additional complaints are filed alleging similar conduct, the Board may direct that the original allegations be reinvestigated.

(C) At any time after a Board dismissal, if it becomes known that the Judicial Officer knowingly made a material misrepresentation of fact, or knowingly concealed evidence or otherwise obstructed a Board investigation, the Board may direct that the allegations in the complaint be reinvestigated.

Adopted March 20, 1995, imd. effective.

CHAPTER 5

Confidentiality; Privilege

Rule 17: Confidentiality

Except as provided in Rule 18, all information and proceedings relating to a complaint and records of the Board's deliberations shall be confidential.

Adopted March 20, 1995, imd. effective.

Rule 18: Disclosure

(A) Waiver.

(1) A Judicial Officer who is the subject of a complaint made pursuant to these rules may request in writing that the matter be made public, or may waive confidentiality for a particular purpose specified in writing.

(2) Upon receipt of a written request or waiver pursuant to paragraph (A)(1) or (B), the Board may make those disclosures it deems appropriate.

(B) Upon a determination by the Chair that independent of any action by the Board, the fact that an investigation by the Board is in progress has become a matter of public record, the Board may, at the written request of the Judicial Officer, issue a statement:

(1) to confirm that the investigation is in progress;

(2) to clarify the procedural aspects of the proceedings;

(3) to explain the rights of the subject of the investigation to a fair hearing without prejudice; or

(4) to provide the Judicial Officer's response to the complaint.

(C) Information related to violations of criminal laws may be disclosed to the

appropriate governmental agency.

(D) Information related to violations of rules of professional conduct may be disclosed to the appropriate agency.

(E) If the Board dismisses a complaint about which information has been made public pursuant to paragraph (B), the Board may issue a statement that the matter has been dismissed.

(F) At the request of the Judicial Officer, in the discretion of the Chair, the Board may provide relevant information to:

(1) authorized governmental agencies investigating the qualifications of judicial candidates;

(2) the Court of Judicial Discipline or the Supreme Court;

(3) other jurisdictions investigating qualifications for admission to practice; or

(4) law enforcement agencies investigating qualifications for government employment.

(G) Review. If the Chair makes a determination pursuant to paragraph (B) not to disclose information, that determination shall be reviewed by the Board at the request of the Judicial Officer.

(H) Work Product. Board Counsel's work product and the investigative files shall not be disclosed unless disclosure is required by these rules.

Adopted March 20, 1995, imd. effective.

Rule 19: Privilege and Immunity

(A) Members of the Board, Board Counsel, and Staff shall be absolutely immune from suit for all conduct in the course of their official duties.

(B) All communications to the Board, a Panel, or Board Counsel, relating to conduct for which a Judicial Officer could be suspended, removed from office, or otherwise disciplined pursuant to [Pa. Const. Art. V, § 18\(d\)\(1\)](#), and all testimony given in a proceeding conducted pursuant to these rules, shall be absolutely privileged, and the person making the communication or giving the testimony shall be immune from suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 17 (Confidentiality).

(C) For purposes of this rule, the Staff of the Board shall be deemed to include those persons examining, or participating in the treatment or counseling of, a Judicial Officer pursuant to these rules, and/or conservators and sobriety, financial, or practice monitors appointed pursuant to the Rules of Professional Conduct or the Rules of Disciplinary Enforcement.

Adopted March 20, 1995, imd. effective.

CHAPTER 6

Counsel; Service

Rule 20: Entry of Appearance of Counsel

(A) Counsel for a Judicial Officer shall file an entry of appearance with Chief Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number.

Adopted March 20, 1995, imd. effective.

Rule 21: Service

(A) Under these rules, service of notice or any other document shall be accomplished by:

(1) personal delivery, or

(2) any process providing restricted delivery to and returned receipt from the named addressee.

(B) Whenever counsel enters an appearance pursuant to Rule 20, service shall be made on counsel, and may be made by first class mail.

(C) In appropriate circumstances, the Chair may authorize any other method of service reasonably designed to accomplish service, including service to a Judicial Officer's last known address.

Adopted March 20, 1995, imd. effective.

Testimony; Depositions; Subpoenas

Rule 22: Testimony

(A) All testimony presented to the Board shall be taken under oath or affirmation administered by any member of the Board, by Chief Counsel, or by any other person authorized by law.

(B) A contemporaneous verbatim record of all testimony shall be made and preserved.

(C) The Board may permit testimony to be submitted by affidavit.

Adopted March 20, 1995, imd. effective.

Rule 23: Depositions: Preservation of Testimony

Upon request of the Judicial Officer or Board Counsel, after notice to the opposing party, the Chair may permit the deposition of any witness who may be unavailable to testify at any proceeding. The deposed testimony shall be taken and preserved pursuant to Rule 22(A) and (B).

Adopted March 20, 1995, imd. effective.

Rule 24: Subpoenas

(A) The Board, by its Chair, the Chair's designee, or Chief Counsel, may issue subpoenas to compel the testimony under oath of witnesses, including the Judicial Officer who is the subject of a complaint, and to compel the production of relevant documents, books, accounts, and other records.

(B) Content.

(1) The subpoena shall indicate on its face that it is issued in connection with a confidential proceeding of the Judicial Conduct Board.

(2) The subpoena shall give notice that it shall not be a breach of confidentiality for a subpoenaed person to consult with an attorney or to provide notice as required by law.

(3) The subpoena shall order the witness to appear before person or persons named at a specified date, time, and place, and to bring any items described.

(C) Service. A subpoena shall be served in person or by any process providing restricted delivery to and returned receipt from the named addressee.

(D) Challenges. Any challenge to the validity of a subpoena shall be decided by a member or members of the Board appointed by the Chair.

(E) Enforcement. The Board, by its Chair or the Chair's designee, may enforce a subpoena by initiating proceedings in the Commonwealth Court pursuant to [42 Pa.C.S. § 761\(a\)\(2\)](#).

Adopted March 20, 1995, imd. effective.

CHAPTER 8

Complaints; Screening; Preliminary Board Action

Rule 25: Complaint Preparation

(A) When the Board receives information that a Judicial Officer may be subject to sanction pursuant to [Pa. Const. Art. V, § 18](#), the Board shall refer the matter to Chief Counsel.

(1) When the Board receives information from a named individual, Board Counsel shall obtain a written, verified complaint from each individual containing:

- (a) the allegations upon which the complaint is based;
- (b) the complainant's name and address;
- (c) the name of the Judicial Officer against whom the complaint is made;
- (d) if applicable, the name of the court and the term and/or number of the proceedings during which the complaint arose;
- (e) the name and address of the complainant's lawyer, if any.

(2) When the Board receives information from any other source, if Chief Counsel concludes that the matter should be investigated, Chief Counsel shall prepare a written complaint and notify the Board at its next periodic meeting.

Adopted March 20, 1995, imd. effective.

Rule 26: Screening

(A) Board Counsel may conduct interviews and examine evidence to determine whether grounds exist to believe the allegations in the information received.

(B) Jurisdiction. Prior to submitting a complaint for preliminary Board review, Chief Counsel shall determine whether the subject of the allegations is within the jurisdiction of the Board.

(1) If Chief Counsel determines that the person against whom a complaint has been filed is not within the jurisdiction of the Board, Chief Counsel shall notify the complainant, and refer the complainant to the agency having jurisdiction, where appropriate.

(2) If Chief Counsel determines that the Board has jurisdiction, Chief Counsel shall submit the complaint for preliminary Board review.

Adopted March 20, 1995, imd. effective.

Rule 27: Recommendation of Counsel

When Chief Counsel submits a complaint for preliminary Board review, Chief Counsel shall report on the results of any preliminary inquiry, and recommend that the Board take one of the following actions:

(A) dismiss the complaint;

(B) proceed with a full investigation; or

(C) defer action during the pendency of a criminal matter, if appropriate.

Adopted March 20, 1995, imd. effective.

Rule 28: Preliminary Board Review and Action

After reviewing the complaint, Chief Counsel's recommendation, and the results of any preliminary inquiry, the Board shall take one or more of the following actions:

(A) dismiss the complaint;

(B) request Chief Counsel to conduct additional preliminary inquiries;

(C) direct Chief Counsel to proceed with a full investigation;

(D) defer further action during the pendency of a criminal matter, if appropriate; or

(E) refer the matter to another agency.

The Board's decision shall be in writing and made part of the record.

Adopted March 20, 1995, imd. effective.

Rule 29: Reliance On Advisory Opinions

Action taken by a Judicial Officer in reliance on and pursuant to a written advisory opinion by the Ethics Committee of the Pennsylvania Conference of State Trial Judges, or by the Ethics and Professionalism Committee of the Special Court Judges

Association of Pennsylvania, as long as that opinion was issued before the conduct occurred, shall be considered by the Board in making a determination under these rules, but such advisory opinions shall not be binding on the Board.

Adopted March 20, 1995, imd. effective.

Rule 30: Notice of Board Action

(A) Notice of Dismissals or Referrals.

(1) If the Board dismisses a complaint or refers the matter to another agency, the Board may notify the complainant.

(2) If the Judicial Officer has become aware of the complaint and notifies the Board, or if the matter has become public information, the Board may notify the Judicial Officer of the dismissal or the referral to another agency.

(B) Notice to Judicial Officer of Investigation.

(1) Promptly after a Board decision to proceed with a full investigation, the Board shall notify the Judicial Officer that an investigation by the Board will be conducted.

(2) The notice shall contain:

(a) the specific allegations under investigation;

(b) the specific provisions of the Constitution, statute, or disciplinary code which the Board has determined may have been violated, including but not limited to, the Code of Judicial Conduct, the Rules of Professional Conduct, and the Rules Governing Standards of Conduct of Magisterial District Judges;

(c) the Judicial Officer's right to provide a written response or other information within 20 days of the receipt of the notice;

(d) the fact that the ongoing investigation may reveal facts concerning the allegations that could change the violations charged;

(e) that the Board may consider, in making its final determination, any unjustified failure of the Judicial Officer to appear or testify if directed; and

(f) at the discretion of the Board, the identity of the complainant.

Adopted March 20, 1995, imd. effective. Amended Jan. 6, 2005, effective Jan. 29, 2005.

Order of Jan. 6, 2005

By Order of Jan. 6, 2005, eff. Jan. 29, 2005, the Pennsylvania Supreme Court ordered "that all references in any court rule, court order, court form (including citation), automated statewide court case management system (i.e. PACMS, CPCMS and DJS) or any other legal authority, except as provided for in Act 207 [2004, Nov. 30, P.L. 1618], to 'district justice' shall be deemed a reference to 'magisterial district judge.' "

**CHAPTER 9
[RESERVED]**

Disposition; Continuances

Rule 31

*Adopted March 20, 1995, imd. effective. Amended April 22, 1996, imd. effective;
Rescinded February 5, 2007, imd. effective*

CHAPTER 10

**Special Procedures for Cases
Involving Mental or Physical Disability**

Rule 32: Appointment of Counsel

In any case in which the allegations involve a Judicial Officer's mental disability, the Board may petition the Court to appoint a lawyer to represent the Judicial Officer if the Judicial Officer is without representation.

Adopted March 20, 1995, imd. effective.

Rule 33: Examinations

The Board may require a physical, psychiatric, or psychological examination of the Judicial Officer, and may appoint one or more professionals to make an examination and prepare a report, a copy of which shall be given to the Judicial Officer. The Judicial Officer's unjustified failure to submit to a physical, psychiatric, or psychological examination required by the Board may be considered as evidence of physical or mental disability.

Adopted March 20, 1995, imd. effective.

Rule 34: Disposition

(A) If the Board finds probable cause to file a Board Complaint alleging mental or physical disability, the Board shall promptly notify the Judicial Officer and provide the Judicial Officer with an opportunity to resign from judicial office or, when appropriate, to enter a rehabilitation program acceptable to the Board prior to the filing of the Board Complaint.

(B) When a Judicial Officer enters a rehabilitation program pursuant to paragraph

(C), the Board may defer filing a Board Complaint for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer:

- (1) actively participates in the rehabilitation program;
- (2) consents in writing to the release of information and records relating to his or her participation in the program; and
- (3) when determined necessary by the Board, agrees to a voluntary suspension of some or all of the Judicial Officer's duties.

(C) When a rehabilitation program is completed to the Board's satisfaction, the Board may:

- (1) dismiss the complaint; or
- (2) continue the matter pending a reevaluation after a period of judicial service specified by the Board.

Adopted March 20, 1995, imd. effective.

Rule 35: Intervention

(A) During the course of an investigation, upon the good faith belief that the alleged misconduct was caused by mental illness, drug dependency, addiction to alcohol, or temporary mental infirmity, the Board shall take one or more of the following actions:

- (1) request that the judicial officer resign from office;
- (2) request that the judicial officer seek appropriate treatment;
- (3) request that the judicial officer take a leave of absence from his or her judicial office until such time that the Board and the judicial officer agree that it is appropriate for the judicial officer to return to office;
- (4) upon application of the judicial officer, the Board may approve an appropriate treatment program.

(B) *Rescinded February 5, 2007, immediately effective.*

(C) *Rescinded February 5, 2007, immediately effective*

Adopted April 20, 1998, imd. effective.

CHAPTER 11

Special Procedures for Cases Involving

Substance Abuse

The Judicial Conduct Board recognizes that the judiciary, like the general population, includes individuals impaired by substance abuse¹. Because judges exercise a unique public trust, the Judicial Conduct Board, in devising its rehabilitative diversion procedure, desires to encourage affected members of the judiciary to seek help at the earliest possible moment so as to ensure maximum protection to the public against misconduct resulting from their impairment. The Board seeks to achieve this objective through a realistic plan to mitigate the harmful consequences of substance abuse to the judiciary and the public. The primary function of this Policy is the rehabilitation of the judge; a secondary modality is the prompt disposition of substance abuse related complaints, obviating costly and time consuming investigations, hearings and related proceedings.

JUDICIAL CONDUCT BOARD POLICY

The Judicial Conduct Board regards substance abuse as an illness and will regard misconduct caused by such an illness as mitigated by that fact, provided that the impaired judge obtains appropriate treatment for his/her problem. The Board encourages President Judges and administrative agencies to accommodate rehabilitation by any impaired judicial officer, provided that the President Judge and appropriate administrative agency have been made aware of the judge's condition and the accommodations sought by the judge do not impose an undue hardship on the court or agency.

This Policy is not intended to provide that substance abuse problems are an excuse for deficiencies in performance or behavior. Judges with substance abuse problems will be held to the same standards as other similarly situated individuals.

The Judicial Conduct Board is committed to preserving the independence and integrity of the judiciary and assisting the recovery of judges suffering from substance abuse. It is the purpose of this Policy to encourage those judges who desire to seek help to do so at an early stage before their functioning or the judiciary itself is compromised.

The impairment of any judge's performance due to substance abuse may have an adverse impact on the court's functioning. For this reason, it is important for a judge with a substance abuse problem to seek help as early as possible.

IN THE WORKPLACE

Possession or consumption of alcohol or other mood-changing chemicals while on court property or while performing judicial services constitutes misconduct on the part of a judge. Reporting to or remaining at the workplace under the influence of alcohol or other mood-altering drugs, is likewise regarded as misconduct. This prohibition does not apply to limited alcohol consumption at meals off of the court premises.

¹ The following terms referenced shall be defined as follows:

- *substance abuse* – repeated excessive use of alcohol or other drugs which continues to cause serious adverse consequences in one's life.
- *alcoholism and other chemical dependency* – a pattern of chronic, harmful and compulsive substance abuse characterized by denial and impaired control over the use of the substance.

As used in the Policy and Chapter 11 of the Rules of Procedure of the Judicial Conduct Board, the term substance abuse shall include alcoholism and other chemical dependency as well as substance abuse.

VIOLATIONS OF CRIMINAL STATUTES

The sale, manufacture, delivery, distribution, possession, processing, packaging, or otherwise trafficking, of controlled substances is a crime under the Drug, Device and Cosmetic Act of April 14, 1972, P.L. 233 No. 64 (35 Pa.C.S.A. § 780-101 et seq.) and any judicial officer found guilty of such conduct shall be ineligible for the diversionary treatment described in this policy. Any judicial officer convicted of Driving Under the Influence of alcohol or any controlled substance as defined in the Vehicle Code Act of 1976, June 17, P.L. 162 No. 81 § 1, as amended (75 Pa.C.S.A. § 3731) or granted Accelerated Rehabilitation Disposition ("ARD") on a charge, will be subject to discipline for such misconduct but such Judicial Officer may seek mitigation of any otherwise applicable sanctions so long as he/she cooperates in an approved treatment program described in this policy.

QUALIFIED TREATMENT PROGRAM

For the purpose of the Board's diversion program, a Qualified Treatment Program shall be one which is approved by both the Administrative Office of Pennsylvania Courts (AOPC) and this Board.

Rule 36: Petition for Rehabilitative Diversion

(A) When the Board finds probable cause to investigate a Complaint alleging misconduct involving substance abuse, the Board may notify the Judicial Officer of its investigation and provide the Judicial Officer with an opportunity to petition the Board for permission to enter a rehabilitative diversion program acceptable to the Board prior to the filing of formal charges with the Court of Judicial Discipline.

(B) Such petition shall be filed with the Board promptly. Absent Board approval, a petition shall not be considered if filed after the Judicial Officer's response to the Board's Notice of Full Investigation (see Rules of Procedure of the Judicial Conduct Board outlined in Rule 30B).

(C) The petition for rehabilitative diversion shall contain

(1) the Judicial Officer's verified statement that he/she desires to participate in a qualified treatment program;

(2) a release giving Board Counsel access of all information and records bearing on the rehabilitative program, including information concerning the applicant's past substance abuse and treatment, as well as the proposed rehabilitative program;

(3) a stipulation as to facts which are agreed to by the Judicial Officer and Board Counsel relevant to the formal charges; and agreement of the admissibility of such stipulation in any future proceeding before the Court of Judicial Discipline;

(4) a waiver by the Judicial Officer of the right to file pre-trial motions based on grounds then known to the applicant unless specifically modified as exceptions to the waiver; and

(5) the Judicial Officer's consent to submit to testing for drug or alcohol consumption

during any probationary period later imposed.

Adopted March 21, 2003, effective March 22, 2003.

Rule 37: Evaluations

(A) When any Judicial Officer under investigation applies for diversion under Rule 36 on the ground of his or her substance abuse, the Board may require the applicant to submit to such medical evaluations as it deems necessary. The Board shall appoint one or more healthcare professionals to examine the applicant and report their findings to the Board. A copy of any such report will be shared with the applicant. Failure to submit to examination will be considered by the Board in its disposition of any pending complaint.

(B) All expenses incurred for such evaluations and reports shall be assessed against the Judicial Officer and shall be his or her sole responsibility.

Adopted March 21, 2003, effective March 22, 2003.

Rule 38: Diversion Procedure

(A) When a Judicial Officer enters a rehabilitation diversion program pursuant to this Chapter, the Board may defer filing formal charges with the Court of Judicial Discipline for a reasonable period of time to permit the completion of the program, provided that the Judicial Officer consents in writing to the release of treatment information and records relating to his or her participation in the program.

(B) When a Judicial Officer satisfactorily completes an approved inpatient rehabilitation program, the Board shall continue the matter for a twelve (12) month probationary period, which may be conditioned on the Officer's continued participation in a recommended recovery program.

(C) *Rescinded February 5, 2007, immediately effective.*

(D) If the Board determines that the applicant Judicial Officer has abandoned the recovery program, or has violated the terms in any substantial way, the Board may direct the filing of charges before the Court of Judicial Discipline, or take such other action as may be appropriate in the circumstances

Adopted March 21, 2003, effective March 22, 2003.