

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Establishment of an Interest on Lawyer Trust Accounts Program; No. 252; Doc. No. 3

Amendatory Order

Per Curiam:

And Now, this 29th day of August, 1996, Rule 221(a) of the Order of this Court entered on July 17, 1996, is amended to read as follows.

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. Mandatory overdraft notification.

(a) For purposes of this rule, a fiduciary account of an attorney is:

(1) an IOLTA Account as defined in Rule 1.15(d)(3) of the Pennsylvania Rules of Professional Conduct; or

(2) any other account maintained in a financial institution in which or with respect to which an attorney holds funds:

(i) of a client;

(ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee or an express trust, guardian or conservator; or

(iii) as an escrow agent or other fiduciary, having been so selected as a result of a client-attorney relationship.

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[Pa.B. Doc. No. 96-1568. Filed for public inspection September 20, 1996, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ERIE COUNTY

Revision and Restatement of the Rules of Civil Procedure; Court Order 1996

Order

And Now this 22 day of August, 1996, the following revisions and additions to the Rules designated as the

Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, are hereby approved, adopted and promulgated as the Rules of this Court. These Rule changes, revisions and deletions shall become effective thirty days after the publication of the same in the *Pennsylvania Bulletin*, and they shall apply to all actions pending at that time.

JOHN A. BOZZA,
President Judge

Rule 212.1. Pre-Trial Procedure.

* * * * *

(h) Trial List and Continuances

1. After the deadline for recertification has passed, in cases where a certification has been filed, the Court Administrator, in coordination with the Administrative Judge of the Civil Division, shall list the case for trial and serve written notice thereof on all counsel of record and unrepresented parties.

2. When a case is listed for trial, it shall not be continued except for just cause. Except in the case of exigent circumstances, all subsequent motions for continuance must be made at least ten (10) days before the start of the next trial term for jury cases or at least ten (10) days before the start of the trial in non-jury cases. All motions for continuance must include the reasons for the request and must be presented to the Court through the Civil Court Administrator's Office.

3. Motions for continuance which are being made with the agreement of all counsel must be signed by all counsel or their designates.

[Caption]

PRAECIPE FOR SETTLEMENT CONFERENCE

TO THE PROTHONOTARY:

Pursuant to Erie L.R. [C.P.] 212.1(b) a settlement conference may now be scheduled.

Name of Attorney
Attorney for _____

Rule 225. [Summing Up] Addressing the Jury.

(a) Opening addresses may be made by all parties or groups of parties at the commencement of the trial in the order of their appearing in the pleadings.

(b) After the close of the testimony, each party or group of parties shall have the right of final address or argument. The party or group of parties **not** having the burden of proof shall address the jury first, and the party or group of parties [, normally the defendant or additional parties, not] having the burden of proof, shall have the right of final address in the order of their appearing in the pleadings. [The party or parties having the burden shall then have the right of rebuttal to the arguments advanced by the other party or parties.] In cases of groups or parties not having identical interest, except interest arising from one injury, the Court, when requested, shall allow separate addresses for each interest.

(c) The opening and closing addresses of counsel shall be recorded by the Court stenographer.

Rule 227.3. Transcript of Testimony.

[(a)] Any party filing objections to the moving party's request for transcription shall present such objections to the trial Judge for prompt scheduling of argument on the objection.

Rule 248. Modification of Time.

[(a)] To be effective, any written agreement of the parties extending or shortening the time prescribed by a pre-trial order for the doing of any act, must be in stipulation form, signed by all counsel and unrepresented parties, and filed of record with a copy going to the Office of the Court Administrator—Civil Division.

COURT MATTERS**Rule 302. Argument Lists and Arguments.**

(a) All motions and petitions requiring decisions and other matters not within the scope of Erie L. R. 212.1 and 313 shall be listed for argument by any party filing a praecipe in substantially the form contained herein and brief with the Prothonotary on or before the date designated by the Court for the closing of the argument list for a particular month.

(b) Preliminary objections not raising an issue of fact, a motion for judgment on the pleadings, motions for summary judgment, discovery motions and any motion not within the scope of subsection (c) and (d) below shall be placed upon the argument list within twenty (20) days of the filing of said motion by the moving party filing a praecipe for the argument list which must be accompanied by the moving party's brief. Pursuant to [**Local Rule**] **Erie L. R. 303(b)**, upon application to the Court for good cause shown or upon written stipulation of all parties filed with the Court the moving party may be granted an extension for filing his praecipe and brief for such period as specified in the extension order or stipulation. If the briefs of either the moving party or responding party are not timely filed within the period above stated, unless the time shall be extended by the Court or by stipulation, the Court may then, or at any time subsequent thereto:

(1) Dismiss the motion, exceptions or other matter where the moving party has failed to comply, or

(2) Grant the requested relief where the responding party has failed to comply and where the requested relief is supported by law, or

(3) Prohibit the noncomplying party from participating in oral argument although all parties will be given notice of oral argument and shall be permitted to be present at oral argument and/or impose such other legally appropriate sanction upon a noncomplying party as the Court shall deem proper including the award of reasonable costs and attorney's fees incurred as a result of the noncompliance.

(c) All motions or petitions requiring transcription of a trial record or the production and transmittal of the record from a determination which is subject to judicial review by this Court, shall be placed upon the argument listed by the moving party filing his praecipe for the argument list and brief within twenty (20) days of the filing of the transcript or record with the Prothonotary.

(d) All other motions or petitions including petitions to open a judgment shall be disposed of pursuant to Pa.R.C.P. 209 and Erie L.R. 209 and Erie L.R. 313, as appropriate.

(e) The responding party(ies) must then file its brief within twenty (20) days after receipt of the moving party's brief.

(f) There shall be oral argument on any motion or petition on the monthly list unless the parties to such action stipulate in writing by praecipe failed with the Court that oral argument is not necessary. Such stipulation eliminating oral argument shall be filed with the Prothonotary and a copy filed with the Court Administrator's Office by the date designated each month for the close of the argument list.

Notice of each argument for which a timely demand is made, shall be given to each attorney of record or unrepresented party by United States mail.

Rule 440. Service of Legal Papers Other Than Original Process.

(a) Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule To Show Cause which grants no relief, opposing counsel and unrepresented parties must be given two (2) full business days' notice by personal delivery or facsimile transmission to each party or their counsel's office, or five (5) full business days' notice if by mail. The notice must give the date and time when the motion or petition will be presented to the Court and must accompany a copy of the proposed motion and order. The motion or petition must contain a certificate signed by counsel verifying that proper notice was given under this Rule.

(b) The Certificate of Notice shall be in the following form:

CERTIFICATE OF NOTICE

I certify that on (Date of Notice) I gave notice to all counsel of record and unrepresented parties, by first class mail or hand delivery, of my intention to present the within Petition/Motion to the Court on (Date of Presentation).

(Name of Counsel)

(c) The Court will not enter an order on a petition or motion without the Certificate of Notice being attached unless special cause be shown to the Court.

OFFICIAL RULES COMMITTEE COMMENT:

The intention of this Rule is to provide opposing counsel or parties with two (2) full business days' notice from the date of fax or personal delivery, and five (5) full business days' notice from the date of deposit in the U. S. mail. For example, if a motion is to be presented on Thursday at 9 a.m., the notice of intent to present the motion must be delivered or faxed before 9:00 a.m. on the preceding Tuesday. If notice is given by mail, it must be postmarked no later than the Wednesday [**or**] of the preceding week.

As amended 6/13/95

Rule 442. Service in District Justice Appeals.

In appeals from judgements of District Justices in Civil Matters as governed by Rules 1001 et seq. of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, the appellant in a District Justice proceeding, in lieu of service and proof of service pursuant to Rule 1005A and 1005B, may at appellant's option file with the notice of appeal a stamped envelope pre-addressed to the appellee at appellee's address as listed on the complaint form filed in the office of the District Justice or as otherwise appearing in the records of that

office, or the attorney of record, if any, of the appellee, and a stamped envelope pre-addressed to the District Justice in whose office the judgement was rendered. Copies of the notice of appeal and, if any, Rule pursuant to Rule 1004B of the District Justice Rules shall thereupon be mailed by the Prothonotary or Clerk by first class mail with such service and any return being noted on the Court's docket.

NOTE: [**Local Rule**] **Erie L. R. 442** implements the option authorized by Rule 1005C of the Rules of Conduct, Office Standards and Civil Procedure for District Justices as added March 27, 1992, effective June 25, 1992.

Rule 500. Accounting.

[**(a)**] When in any action a judgment has been entered directing the defendant to account to the plaintiff, the defendant shall, within thirty (30) days (unless the Court shall for cause shown allow a longer time), state the account and file the statement thereof in the Office of the Prothonotary giving notice and copy of account forthwith to the plaintiff, or his attorney, that this has been done. Within thirty (30) days after such notification the plaintiff, if dissatisfied with the statement of account filed by the defendant, shall file exceptions thereto and move for the appointment of an auditor to hear and report upon questions of fact and law raised by the exceptions. The auditor and all parties shall thereafter follow [**Local Rule**] **Erie L. R. 500**.

Rule 1018.1. Notice to Defend. Form.

[**(e) (1)**] **With respect to the notice to defend form required by Pa.R.C.P. 1018 the [In]** Erie County the organization [**to be named**] shall be:

Lawyers Referral Service
302 West Ninth Street
Erie, PA 16502-1427
814/459-4411
Mon—Fri
8:30 a.m.—3:00 p.m.

ACTION TO QUIET TITLE

Rule 1066. Form of Judgment or Order.

(a) Unless otherwise ordered by the Court, notice is not required.

(b) Any order entered under Pa.R.C.P. **1066(b)(1)** shall include a description of the property.

As amended 6/13/95

Rule 1307. Award Docketing. Notice. Lien. Judgment. Molding the Award.

[**(a) (1)**] When the Certificate, report and award, if any, are filed with the Prothonotary the Prothonotary or his deputy shall certify the Arbitrator's fees for payment under the procedure followed as to other debts of the County.

[APPEALS FROM DECISIONS OF HEALTH CARE SERVICES MALPRACTICE ARBITRATION PANELS]

[Rule 1806. Form of Notice of Appeal. Demand for Jury Trial. Waiver.

In the event that an action is transferred from Arbitration Panels for Health Care to the Court of Common Pleas of Erie County, any party to the action, may, within twenty (20) days of the date of service of Notice of docketing in the Court of

Common Pleas, or not later than twenty (20) days after service of the last permissible pleading, file a written demand for a jury trial.]

[Rule 1807. Venue.

In the event that an action is transferred from Arbitration Panels for Health Care to the Court of Common Pleas of Erie County, preliminary objections as to venue in Erie County may be filed not later than twenty (20) days after the date of service of notice of docketing in the Court of Common Pleas.]

ACTIONS FOR SUPPORT

Rule 1910.4. Commencement of Action. Fee.

[**(e)**] **(a)** The Support Intake Officer may aid any person requesting help in the preparation and filing with the Court of a complaint for support.

[**(d)**] **(b)** All support pleadings must be filed with the Support docketing Office and copies provided to the Support Counseling Office.

[**(e)**] **(c)** In all actions in which spousal support, alimony pendente lite and temporary counsel fees are pending, upon motion and order, hearing on all matters may be heard concurrently by the Court.

Rule 1910.5. Complaint. Order of Court.

[**(d)**] The order directing the parties to appear shall include the following language: "Failure of either party to appear at the support counseling conference, or to appear without the required financial information, may subject that party to sanctions which may include attorney's fees and any other relief the Court so directs."

Rule 1910.7. No Pleading by Defendant Required. Question of Jurisdiction or Venue or Statute of Limitations in Paternity.

[**(e)**] If defendant raises a question of jurisdiction or venue, or in paternity cases the defense of statute limitations, those issues shall be raised by filing a motion to dismiss. Said motion shall be presented in Motion Court to the Judge of the Family Division, at which time a date and time for argument on the motion shall be scheduled.

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

[**(l)**] **(a)** No temporary order regarding spousal support shall be entered if one party raises the issue of spousal entitlement.

[**(m)**] **(b)** The support office shall issue the conference summary and recommendation within forty-eight (48) hours of the support conference.

[**(n)**] **(c)** If no agreement is reached at the support conference, the hearing de [**nova**] **novi** shall be scheduled at that time. The hearing de [**nova**] **novi** shall be held no later than thirty (30) days from the date of the support office conference.

[**(o)**] **(d)** If a temporary order is entered pursuant to Pa.R.C.P. 1910.11(f), that temporary order shall automatically expire on the thirtieth (30th) day after the support conference.

[**(p)**] **(e)** A demand for a hearing de [**nova**] **novi** pursuant to Pa.R.C.P. 1910.11(h) shall set forth with specificity the issues to be raised before the Court at the

de [**nova**] **novo** hearing. However, such demand shall not impair the right to a de [**nova**] **novo** hearing on all issues.

[**(q)**] **(f)** If no demand for a de [**nova**] **novo** hearing is filed within ten (10) days of the date of the summary and recommendation, the temporary order and support office summary and recommendation shall be made a final order of Court and the trial de [**nova**] **novo** canceled.

[**(r)**] **(g)** Any party may file a responsive pleading within five (5) days from receipt of the demand for the de [**nova**] **novo** hearing.

Rule 1910.19. Support Order. Modification. Termination.

[**(e)**] A petition seeking to modify or terminate a support order may be prepared by the Support Intake Office. A petition under this Rule shall be filed in the Support Docketing Office and a copy shall be filed with the Support Counseling Office.

ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by (c) of the state rule, an action shall be commenced by filing a verified complaint substantially in the form provided by Pa.R.C.P. 1915.15(a). The original complaint shall be filed with the Office of the Prothonotary and a confirmed copy shall be filed with the Custody Counselor's Office.

(1) In addition to the requirements set forth in Pa.R.C.P. 1915.15(a), all complaints for custody, partial custody, visitation or for modification of an existing order shall specifically set forth allegations of jurisdiction and factual allegations of a prima facie case to justify the relief sought.

(2) All actions for modification of an existing order shall specifically set forth factual allegations of a substantial change of circumstances.

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Pa.R.C.P. 1915.15(b).

(1) Plaintiff, or plaintiff's counsel, shall obtain a date and time for a custody conference from the Custody Counselor's Office.

(2) The verified complaint and attached order shall then be presented to the Judge of the Family Division or the Judge's designee for signature. The complaint may be presented ex parte only if plaintiff is seeking neither temporary custody nor a change in the custodial arrangement pending the counseling session or upon a showing of an emergency situation. Otherwise, the defendant must be given proper advance notice as set forth in the UCCJA, 42 Pa.C.S.A. §§ 5345 and 5346 and [**Local Rule 304***] **Erie L. R. 440**.

[**(e)**] **

(d) In addition to the requirements set forth in Pa.R.C.P. 1915.15(a), all complaints for custody, partial custody, visitation or for modification of an existing order shall specifically set forth allegations of jurisdiction and factual allegations of a prima facie case to justify the relief sought.

(e) All actions for modification of an existing order shall specifically set forth factual allegations of a substantial change of circumstances.

[**(f)**] **(c)** Before filing the complaint with the Prothonotary's Office, bring the original and four copies of the complaint and the completed Information Sheet—Children Cope With Divorce seminar (Form 1)—to the Office of Custody Conciliation ("OCC"). The OCC will process your complaint and include the following attachments:

(1) The Order of Court (Form 2) which conforms to Pa.R.C.P. 1915.15 and bears the Judge's signature which includes the date of the Intake Conference and dates when both parents are scheduled to attend the Children Cope With Divorce seminar.

(2) The Children Cope With Divorce brochure and registration form. This brochure briefly describes the program. (Both parties are required to mail in the registration form with their fee.)

(3) The Instructions for the Children Cope With Divorce program.

[**(g)**] **(d)** After the OCC processes the complaint, they will keep a copy of the petition for their files and return the original and the three remaining copies to the petitioner. The original complaint and the Information Sheet should be filed in the Prothonotary's Office with the filing fee. The Prothonotary's Office will give the petition a docket number and certify the remaining copies.

[**(h)**] **(e)** The defendant must be served with the complaint following procedures in Pa.R.C.P. 400 et seq.

[* **Bar Association note—Reference to Rule 304 should be eliminated. Now see Local Rule 440.**

** **Due to a typographical error, the subparagraphs were mis-lettered by omitting (e).**]

As amended 6/13/95

Rule 1915.8. Physical and Mental Examination of Parties.

[**(e)**] In the event that exceptions are filed to the Custody Counselor's recommendations and the order entered pursuant thereto, then any written report of any examining physician or psychologist or both of a child or party shall be delivered to the attorneys of record, or to the parties if there are no attorneys of record, prior to the date of the status conference as prescribed by [**Local Rule**] **Erie L. R. 1915.20**.

Rule 1915.12. Civil Contempt for Disobedience of Custody Order. Petition. Service. Order.

[**(e)**] The petition shall be served upon the respondent by personal service or regular mail. Personal service shall include all proper methods of service of process in civil actions at law under Pa.R.C.P. 400, et seq. No answer to the petition shall be required. If service is by mail, the hearing on the petition shall not be held sooner than seven (7) days after mailing of the petition unless the Court, for cause shown, orders an earlier hearing. If the respondent fails to appear, the Court shall continue the hearing and may order personal service of the petition and notice of a new hearing date by the Sheriff or may issue a bench warrant for production of the respondent in Court and not for imprisonment.

Rule 1915.17. Office of Custody Conciliation.

(a) The Court of Common Pleas of Erie County, Pennsylvania hereby establishes the office of Custody Conciliation.

(b) The OCC shall assist the parties in formulating custody and visitation arrangements and resolving disputes between the parties in all actions for custody, partial custody and visitation commenced pursuant to Pa.R.C.P. 1915.3 and [**Local Rule**] **Erie L. R.** 1915.3.

As amended 6/13/95

Rule 1920.51. Hearing by the Court. Appointment of Master. Notice of Hearing.

* * * * *

(g) (3) The Master shall receive compensation for a minimum of four hours for each day of a scheduled hearing that is not [**cancelled in accordance with 1920.51(j).**] **either: (a) Continued in accordance with Erie L. R. 1920.51(e); or (b) Cancelled with notice to the Master in writing at least fourteen days prior to the scheduled hearing date for the reason either that the case has been resolved or withdrawn.**

ACTIONS FOR WRONGFUL DEATH**Rule 2205. Notice to Persons Entitled to Damages.**

[**(a)**] The notice shall in all cases be served personally or by registered mail upon each person entitled by law to recover damages in the action, unless the plaintiff shall file an affidavit that the identity or whereabouts of any such person is unknown to him, after diligent search, in which case the plaintiff shall cause the notice to be advertised once in the newspaper of general circulation published in Erie County, and once in the *Erie County Legal Journal*. Affidavit of service of notice shall be filed.

Rule 2206. Settlement, Compromise, Discontinuance and Judgment.

(a)(1) All petitions for the compromise, discontinuance or settlement of wrongful death claims in which a minor or incompetent has an interest shall be submitted for approval to the Judge of the Orphans' Court Division.

[**(e)***] **(b)(1)** The petition and Order approving the petition in pending actions shall be filed with the Prothonotary and certified copies of the same shall be filed with the Register of Wills in the name of the minor or incompetent.

[**(e)***] **(c)(2)** The petition and Order approving the petition where there is no pending action shall be filed with the Register of wills in the name of the minor or incompetent.

[* As printed in original]

ENFORCEMENT OF MONEY JUDGEMENTS FOR THE PAYMENT OF MONEY**Rule 3136. Distribution of Proceeds.**

(a) [(1)] Upon filing the proposed schedule of distribution, the Sheriff shall immediately mail a copy of the proposed schedule of distribution including a copy of the

list of liens, clearly indicating thereon the date on which the proposed schedule of distribution was filed, to all parties and lien creditors, as well as to any persons in interest as set forth in the Pa.R.C.P. No. 3129.1(b) Affidavit.

[**(e)***] **(b) [(1)]** The Sheriff shall include with the copy of the proposed schedule of distribution transmitted to the Prothonotary a copy of the list of liens and a copy of the certificate or guaranty required by Rule 3136(c).

[* As printed in original]

[Pa.B. Doc. No. 96-1569. Filed for public inspection September 20, 1996, 9:00 a.m.]

WAYNE COUNTY**Adoption of Local Rules 6.12A and 6.12B; No. 62-O.C.D.-1996; No. 63-O.C.D.-1996****Order**

And Now, to wit, this 13th day of August, 1996, pursuant to Pa.R.J.A. 103(c), it is hereby *Ordered* that Local Rule 6.12B is adopted.

Local Rule 6.12B. Pursuant to Pa.O.C. Rule 6.12(f), the Register of Wills on a monthly basis, shall transmit a list to the Clerk of the Orphans' Court identifying delinquent personal representatives or counsel. Thereafter, the Clerk of the Orphans' Court shall assign an Orphans' Court Docket Number to the list and transmit it to the Court. The Court will then schedule the required hearing.

Order

And Now, to wit, this 13th day of August, 1996, pursuant to Pa.R.J.A. 103(c), it is hereby *Ordered* that Local Rule 6.12A is adopted.

By the Court

ROBERT J. CONWAY,
President Judge

Local Rule 6.12A. Any personal representative or counsel, filing a report of completed administration pursuant to Pa.O.C. Rule 6.12 with the Register of Wills, shall attach to that report copies of receipts, releases, joinders, formal accounts, and informal accounts (including family settlement agreements).

Any personal representative or counsel, that opposes the requirement of attaching such copies to the report, in lieu of attaching these copies, shall attach to the report a petition requesting an in camera hearing.

The Register of Wills shall transmit a copy of the report and petition to the Clerk of the Orphans' Court. The Clerk of the Orphans' Court shall assign an Orphans' Court Docket Number to the report and petition and transmit them to the Court. Thereafter, the Court will schedule a prompt in camera hearing. The Court, upon good cause shown, may dispense with this requirement.

[Pa.B. Doc. No. 96-1570. Filed for public inspection September 20, 1996, 9:00 a.m.]