

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 1400]

Order Amending Rule 1406: Imposition of Sentence; No. 216; Doc. No. 2

Order

Per Curiam:

Now, this 7th day of November, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published in the *Pennsylvania Bulletin* (Vol. 24 at 4077 *et seq.* and Vol. 25 at 2270 *et seq.*), and in the *Atlantic Reporter* (Second Series Advance Sheets Vols. 643-644 and Vols. 657—658) before adoption, and a *Final Report* to be published with this Order;

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 1406 is amended as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 1997.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1400. SENTENCING

Rule 1406. Imposition of Sentence[: **Computation and Service**].

[(a)] Whenever more than one sentence is imposed at the same time on a defendant, or whenever a sentence is imposed on a defendant who is **[incarcerated]** sentenced for another offense, **[such sentences shall be deemed to run concurrently unless the judge states otherwise.]** the judge shall state whether the sentences shall run concurrently or consecutively.

[(b)] A sentence to imprisonment shall be deemed to commence and shall be computed from the date of commitment for the offense or offenses for which such sentence is imposed, which date shall be specified by the judge. Credit, to be calculated by the clerk of court, shall be given as provided by law for any days spent in custody by the defendant for such offense or offenses prior to the imposition of sentence.]

[(c)] When, at the time sentence is imposed, the defendant is imprisoned under a sentence imposed for any other offense or offenses, the instant sentence which the judge is imposing shall be deemed to commence from the date of imposition thereof unless the judge states that it shall commence from the date of expiration of such other sentence or sentences.]

Official Note: Adopted July 23, 1973, effective 90 days hence; amended March 21, 1975, effective March 31, 1975; amended November 7, 1996, effective January 1, 1997.

Comment

[Statutory authority for credit pursuant to paragraph (b) is found in Act of August 14, 1963, P. L. 841 §1, 19 P. S. § 898.

The 1975 amendment deleted the original second paragraph of this Rule, dealing with the simultaneous imposition of two or more sentences. This matter is now the subject of § 1357 of the Act of December 30, 1974, P. L. 1052, 18 Pa.C.S. § 1357.

For suspension of Acts of Assembly, see Rule 1415(c).]

In 1996, paragraph (a) was amended and paragraph (c) was deleted to eliminate language which created a presumption that certain sentences run concurrently unless the judge states otherwise. Paragraph (a) now requires the judge to state whether sentences run concurrently or consecutively. Paragraph (b) was deleted as unnecessary. The computation of sentences and credit for time served are governed by the Sentencing Code. See 42 Pa.C.S. §§ 9760 and 9761.

Committee Explanatory Reports:

Final Report explaining the November 7, 1996 amendments published with the Court's Order at 26 Pa.B. 5694 (November 23, 1996).

FINAL REPORT

*Amendments to Pa.R.Crim.P. 1406
(Imposition of Sentence)*

On November 7, 1996, effective January 1, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted amendments to Rule 1406 (Imposition of Sentence: Computation and Service) which require that judges state in the sentencing order whether the sentence or sentences imposed run concurrently or consecutively, and eliminate the sentence presumptions created by the present rule.

I. *Summary of Amendments*

(a) Paragraph (a) has been amended:

(1) to eliminate language that creates a presumption that certain sentences run concurrently unless the judge states otherwise; and

(2) to add a requirement that when the sentencing judge is imposing more than one sentence at the same time, or imposing a sentence on a defendant incarcerated for another offense, the judge must state whether the sentences will run concurrently or consecutively.

(b) Paragraph (b) has been deleted because the computation of sentences and credit for time served is a substantive matter and, as such, should be governed by statute and case law. See 42 Pa.C.S. §§ 9760, 9761.

(c) Paragraph (c) has been deleted, because, like the language being deleted from paragraph (a), it creates a presumption on sentencing that should be left to statute and case law.

II. *Development of Original Proposal*

From its earliest stages, the Committee's development of the amendments to Rule 1406 reflected one underlying principle: the length of sentence which a judge intends to impose on a defendant is a substantive matter governed

by statute and case law, not a procedural matter to be governed by rule. This view is supported by the history of Rule 1406, which reveals that, because the rule was originally intended to restate holdings construing now-repealed statutes, much of the rule's language has been out of date for a long time. See, for example, *Commonwealth v. Pristas*, 295 A.2d 114, 117 (Pa. Super. 1972) (construing 19 P. S. § 894). But see *Commonwealth ex rel. Pitts v. Myers*, 175 A.2d 331 (Pa. Super. 1961) (under 19 P. S. § 894, presumption that sentences run concurrently has no application where sentences imposed by different courts are to be served in separate and distinct institutions). Furthermore, the case law has continued to wrestle with the rule's sentencing presumptions, raising questions about the precedential validity of earlier case law, and the intended scope of present Rule 1406. See *Commonwealth v. Lundberg*, 619 A.2d 1066 (Pa. Super. 1993), citing with approval *Commonwealth v. Pfeiffer*, 579 A.2d 897 (Pa. Super. 1990).

In view of the apparent confusion and the Committee's position that sentencing presumptions should be created by statute or case law, and not by rule, the Committee proposed amendments to Rule 1406 which deleted the sentencing presumptions contained in paragraphs (a) and (c). We also added a requirement that whenever more than one sentence is imposed at the same time on a defendant, or whenever a sentence is imposed on a defendant who is already sentenced for another offense, the judge must state whether the sentences run concurrently or consecutively.

III. Post-publication Additions to Proposal

Our post-publication review of the proposal resulted in further modification of the rule.

A. *Deletion of Paragraph (b)*. Paragraph (b) addressed when a sentence is deemed to "commence," and required the judge to state a "date of commitment." Paragraph (b) also required the clerk of courts to calculate the amount of credit that the defendant is due on a sentence, "as provided by law."

The Committee reexamined this paragraph in view of the realities of sentencing proceedings. Despite the Sentencing Code's requirement that information must be made available to judges on all outstanding charges and sentences in any court, 42 Pa.C.S. § 9737, judges and clerks of court often lack information about a defendant's total sentencing picture at the time of sentencing. Without knowledge of (1) the sentences currently being served; (2) the sentences which have been imposed but have not yet begun to run; and (3) any parole or probation detainers which may come into play, a judge simply cannot make an informed decision about what length of sentence to impose. For the same reason, the judge is incapable of specifying an accurate "date of commitment," and the clerk of courts cannot calculate credit for time served, as paragraph (b) required.

In keeping with the rationale behind the other proposed changes to Rule 1406, the Committee agreed that the computation of sentences and credit for time served are substantive issues which should not be solved by rule. See 42 Pa.C.S. §§ 9760, 9761. This view, in conjunction with our recognition that sentencing computations continue to be highly problematic, led us to reevaluate the efficacy of Rule 1406(b) and to conclude that it should be deleted altogether. As a corollary to this change, we also deleted the references to computation and service in the rule's title.

B. *Clarifying Change to Paragraph (a)*. Paragraph (a) addressed, in part, the circumstance in which "a sentence is imposed on a defendant who is *incarcerated* for another offense. . . ." Because a defendant can be incarcerated on charges without being sentenced, the paragraph has been clarified by substituting the word *sentenced* for the broader term *incarcerated*.

[Pa.B. Doc. No. 96-2002. Filed for public inspection November 22, 1996, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Amendment to Rule of Criminal Procedure 4007*(e)(2)

Order

And Now, this 6th day of November 1996, upon application of the Clerk of Courts of Bucks County, it is hereby Ordered and Decreed that Bucks County Rule of Criminal Procedure 4007*(e)(2) is amended as follows: When the conditions of the bail bond have been performed and the accused has been discharged from all obligations of the bail bond, the Clerk of Courts shall return the amount deposited less the balance to be retained by the Clerk of Courts as an administrator costs, which shall be **[twenty-five (\$25.00) dollars] seventy-five (\$75.00) dollars. If the amount deposited is less than seventy-five (\$75 dollars), the Clerk of Courts shall retain as administrator costs the amount deposited with no balance to be refunded.** The monies retained by the Court shall be considered as earned at the time the bail undertaking is executed. The retention fee withheld by the District Justice of the Peace or by the Clerk of Courts shall be for the use of the County and shall be received and accounted for by the Clerk of Courts. The retention fee withheld by the District Judge of the Peace shall be forwarded immediately to the Clerk of Courts upon receipt.

This Amendment shall be effective January 1, 1997.

By the Court

KENNETH G. BIEHN,
President Judge

[Pa.B. Doc. No. 96-1958. Filed for public inspection November 22, 1996, 9:00 a.m.]

MONROE COUNTY

Civil Rules—Custody and Divorce

Order

And Now, November 12th, 1996, the following Custody Rules of Civil Procedure are adopted to be effective thirty days from the date of publication in the *Pennsylvania Bulletin*. All local Custody Rules heretofore adopted are rescinded effective the same date.

The following Divorce Rules of Civil Procedure are amended to include new Local Divorce Rules.

By the Court

RONALD E. VICAN,
President Judge

ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.1. Scope. Definitions.

(a) These rules shall govern all actions for custody, partial custody, and visitation, including original actions, petitions to modify decrees, contempt, habeas corpus proceedings, and registration of foreign decrees. These local rules shall be interpreted as supplementing the Pennsylvania Rules of Civil Procedure governing custody actions set forth at Pa.R.C.P. 1915.1 et seq.

(b)(1) As used in these Rules, unless the context of a Rule indicates otherwise, the definitions of action, custody, home county, legal custody, partial custody, person acting as parent, physical custody, shared custody and visitation shall have the same definition as provided in the Pennsylvania Rules of Civil Procedure 1915.1(b).

(2) The following are additional definitions:

“Custody Conciliator” shall mean an attorney who is duly licensed to practice law in the Commonwealth of Pennsylvania and is appointed by the Court to conduct conciliation conferences.

“Court” shall mean the Court of Common Pleas of Monroe County.

“Conciliation Conference” shall mean a pre-hearing/negotiation session conducted under the auspices of the Court by the custody conciliator.

“Hearing” shall mean a hearing before a judge of the Court of Common Pleas of Monroe County.

“Program” shall mean the mandatory Co-Parent Education Program.

“Provider” shall mean the provider of the Co-Parent Education Program.

Rule 1915.3. Commencement of Action.

(a) All complaints for custody, partial custody, visitation, modification of current orders, and motions for conciliation conferences shall be filed with the Prothonotary and, where not specifically reserved to the Court, shall be turned over to the custody conciliator who shall set the date, time and place for a conciliation conference. The Court shall then enter an Order for service upon the parties and counsel in accordance with Pa.R.C.P. 1930.4.

(b) If a custody claim is asserted in a divorce complaint, when either party desires a conference on the custody issue, he/she may file a Motion with the Prothonotary requesting a date and time for conference in accordance with these rules. This motion shall include the information set forth in Pa.R.C.P. 1915.15(a).

Rule 1915.3a. Custody Conciliation.

(a)(1) Authority of Conciliator—The Court shall appoint an attorney(s) who is duly licensed to practice law in the Commonwealth of Pennsylvania, as an official of the Court who may:

a. Conciliate custody cases filed with the Court which specifically includes meeting with the parties, counsel and the children, if appropriate;

b. Recommend appointment of counsel and/or guardian ad litem for the child(ren);

c. Recommend that home studies and/or other evaluations be conducted of the parties and/or the child(ren);

d. Recommend to the Court that interim or temporary orders be entered in appropriate cases;

e. Prepare agreed recommendations and orders for presentation to the Court.

(2) Scheduling of Conferences—All custody matters not specifically reserved to the Court shall be scheduled for a conference before the custody conciliator. All parties and counsel, if any, shall be present at the conference.

(3) Attendance—All parties shall be present at the conciliation conference. Failure of a party to appear at the conference may provide grounds for the entry of a temporary order. The conference shall commence at the designated time with or without counsel being present.

(4) Record—To facilitate the conciliation process and encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties or anyone in attendance at the conference shall not be admissible as evidence in court. The custody conciliator shall not be a witness for or against any party nor shall there be any testimony taken at the conference. The custody conciliator shall not be subject to subpoena to force testimony regarding information revealed during the conciliation conference.

(5) Conciliation Procedure—The conciliator shall ascertain the issues in the action through review of the pleadings, discussion with counsel, the parties and the children, where necessary, in an attempt to narrow the issues and negotiate a consent agreement or stipulation. If the parties reach an agreement, it will be forwarded to the Court as a recommendation and proposed order for approval by the Court.

At the conclusion of a conference where the case remains contested on some or all of the issues, the conciliator shall prepare a recommendation for an interim order which shall be forwarded to the Court for approval.

Upon completion of all home studies and any other expert evaluations ordered, any party may petition the Court for a full evidentiary hearing. Every hearing will be preceded by a conciliation conference before the custody conciliator.

Rule 1915.15. Form of Complaint.

(a)(1) In addition to the information required by Pa.R.C.P. 1915.15, each complaint shall contain the following averments:

a. Plaintiff has been advised of the requirement to attend the Co-Parent Education Program and of the program description set forth following Local Rule 1930.

b. Defendant will be provided, along with the complaint, a copy of the Order requiring attendance at the Co-Parent Education Program set forth herein, a copy of an application for registration for the program and the program description set forth following Local Rule 1930.

(2) An affidavit of service for applicable actions shall include a statement that the Order requiring attendance, registration form and Program description were served with the applicable pleading.

(3) Counsel for the moving party must inform the moving party of his/her obligation to attend the Program in accordance with these rules. Further, Counsel must provide the moving party with the registration form and the Program description. The moving party, if unrepresented, must obtain the registration form and

Program description in the Prothonotary's Office, Monroe County Courthouse, Stroudsburg, Pennsylvania. The moving party must apply for the Program within fifteen (15) days after filing the complaint or pleading and must complete the Program within sixty (60) days of the filing of the applicable pleading. The responding party must make application within fifteen (15) days after he or she is served with the complaint or pleading and must complete the Program within sixty (60) days of the date of the Order directing him/her to attend.

(4) Any party who resides more than sixty (60) miles from Stroudsburg may contact the provider to make other arrangements to satisfy the attendance requirements.

(5) After a party completes the Program, the provider shall forward to the Prothonotary a Certificate of Completion, setting forth the name of the attendee and the docket number of the case, which certificate shall be filed of record.

(6) No final custody hearing shall be held, order granted or divorce decree entered where there are children under the age of eighteen (18) until all parties have attended and completed the Program. This requirement may be waived by the Court upon petition filed for good cause shown. Refusal of the non-moving party to attend the Program shall be considered good cause by the Court.

(b) The order to be attached at the front of the complaint or motion for conciliation conference shall be in substantially the following form:

(Caption)

ORDER OF COURT

You, _____, (defendant respondent), have been sued in court to (OBTAIN) (MODIFY) custody, partial custody or visitation of the child(ren): _____ (Names and Ages) _____.

AND NOW, upon consideration of the attached Complaint (Motion), it is hereby ordered that the parties and their respective counsel appear before _____, Custody Conciliator, on the _____ day of _____, 19____, in the Conciliation Room, second floor, Monroe County Courthouse at _____ (a.m./p.m.) for a conciliation conference. At such conference an effort will be made to resolve the issues in dispute; or, if this cannot be accomplished, to define and narrow the issues to be heard by the Court and to enter into an Interim Order. Failure to appear at the conference may provide grounds for the entry of a Temporary Order.

You are further ordered to bring with you the following minor child(ren): _____

NOTE: Children under the age of eight (8) need not attend.

If you fail to appear as ordered or to bring with you the minor child(ren), an Order for custody may be entered against you by the Court or the Court may issue a warrant for your arrest.

ALL PARTIES ARE FURTHER ORDERED to attend a program entitled the Co-Parent Education Program and to bring with you to the conference the Certificate of Completion you will receive at the program. You must register for the program using the registration form attached within fifteen (15) days of the date that you receive this Order. Further, you must attend and complete the program within sixty (60) days from the date of this Order.

FAILURE TO ATTEND AND COMPLETE THE PROGRAM IN ACCORDANCE WITH THE INSTRUCTIONS ATTACHED TO THIS ORDER WILL BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN THE FINDING OF CONTEMPT AND THE IMPOSITION OF SANCTIONS BY THE COURT.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET HELP.

MONROE COUNTY COMMISSIONERS
ADMINISTRATIVE CENTER
2 QUAKER PLAZA
STROUDSBURG, PA 18360
(717) 420-3400

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Monroe County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least seventy-two (72) hours prior to any hearing or business before the Court. You must attend the scheduled conference of hearing.

BY THE COURT:

Date: _____ J.

Rule 1920. Actions in Divorce or Annulment.

Rule 1920.1. Form of Complaint.

(1) In addition to the information required by Pa.R.C.P. 1920.12, each complaint in Divorce shall contain one of the following averments:

A. Plaintiff avers that there are no children of the parties under the age of eighteen (18).

B. Plaintiff avers that there are children of the parties under the age of eighteen (18), namely: (list names, ages and dates of birth).

(2) Any affidavit of service for applicable actions shall include a statement that the Order requiring attendance at the Program, a registration form, and a Program Description as set forth following Local Rule 1930 were served with the applicable pleading.

(3) At such time as a party completes the Program, the Provider shall file with the Prothonotary a Certificate of Completion, setting forth the name of the party and the docket number of the case, which certificate shall be filed of record.

(4) Each Divorce Complaint shall contain the following second cover sheet:

(Caption)

ORDER

You are ORDERED to attend a program entitled the Co-Parent Education Program. You must register for the program using the registration form attached within fifteen (15) days of the date that you receive this Order. Further, you must attend and complete the program within sixty (60) days from the date of this Order.

FAILURE TO ATTEND AND COMPLETE THE PROGRAM IN ACCORDANCE WITH THE INSTRUCTIONS ATTACHED TO THIS ORDER WILL BE BROUGHT TO

THE ATTENTION OF THE COURT AND MAY RESULT IN THE FINDING OF CONTEMPT AND THE IMPOSITION OF SANCTIONS BY THE COURT.

No final hearing shall be held, order entered or divorce decree granted where there are children under the age of eighteen (18) until all parties have attended the Program.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET HELP.

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The Court of Common Pleas of Monroe County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least seventy-two (72) hours prior to any hearing or business before the Court. You must attend the scheduled conference of hearing.

BY THE COURT

Date: _____ J.

Rule 1930. Mandatory Co-Parent Education Program.

(1) In all divorce and custody proceedings filed on or after January 1, 1997, and in such other cases as the Court may direct, where the interests of children under the age of eighteen (18) are involved, the parties shall attend and complete a four hour program entitled "Co-Parent Education Program," referred to in these local rules as "Program." See Program description following this Rule.

(2) In all custody proceedings filed on or after January 1, 1997, each complaint or motion shall contain a cover sheet in accordance with Local Rule 1915.15.

(3) In all divorce proceedings filed on or after January 1, 1997, where the parties have minor child(ren), each complaint shall contain a second cover sheet in accordance with Local Rule 1920.1(4).

(4) The parties shall register for the Program using the registration form that will be served with the pleading and within the time allotted by the Order. The Custody Conciliator will establish the date and time for the Custody Conciliation Conference.

(5) The moving party shall serve with the applicable pleading, a copy of the Program registration form and description. The moving party shall also file an affidavit of service setting forth that these items have been served together with the applicable pleading.

(6) In both custody and divorce proceedings, every party shall attend the Program within sixty (60) days from the date of the Order requiring attendance. Any request for an extension of time to complete attendance shall be made to the Provider.

(7) The fee for the Program is \$25.00 per party and must be submitted with the registration form. Payment shall be made by certified check, money order or cash. NOTE: No personal checks will be accepted.

(8) No hearing or conference shall be held, order entered or divorce decree granted until all parties have attended and completed the Program, unless the requirement is waived by the Court for good cause shown. Refusal of the non-moving party to attend the Program shall be considered good cause by the Court.

(9) Failure to comply with the Order may result in the dismissal of the action, striking of pleadings, or other appropriate action, including sanctions for contempt.

(10) Copies of this Rule, Program registration form and Program description shall be available in the Prothonotary's Office of the Court of Common Pleas of Monroe County.

[Pa.B. Doc. No. 96-1959. Filed for public inspection November 22, 1996, 9:00 a.m.]