

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1940]

Promulgation of Rules Relating to Voluntary Mediation in Custody Actions; No. 324; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 28th day of October, 1999, new Rules 1940.1, 1940.2, 1940.3, 1940.4, 1940.5, 1940.6, 1940.7, and 1940.8 of the Pennsylvania Rules of Civil Procedure are promulgated as follows.

This order shall be processed in accordance with Rule of Judicial Administration 103(b) and shall be effective immediately.

VOLUNTARY MEDIATION IN CUSTODY ACTIONS

Explanatory Comment

Introduction

In recent years, the use of mediation as a means for alternative dispute resolution of custody and visitation cases has received widespread attention from legislators, judges, attorneys and mental health professionals. As two noted mediation experts observed: “[c]ourts are ill-equipped to mandate particular visitation schedules and custodial arrangements, the wisdom of which depend on the situations of the parents and children rather than on legal rules.” Nancy G. Rogers & Craig A. McEwen, *Mediation Law Policy Practice* 230 (1989). Many share this frustration with the adversarial system and a growing body of research suggests that mediation may be the more satisfactory and desirable means of conflict resolution in these cases. Mediation offers more flexibility both in terms of the subject matter that may be discussed during mediation and the range of solutions available to the parties. Effective mediation also assists the parties in shaping their own framework for future discussion and resolution of conflicts that arise following separation and divorce.

In 1996, the Pennsylvania legislature amended the Divorce Code, Act No. 20-1996, § 2, codified at 23 Pa.C.S. §§ 3901—3904, to encourage local courts to establish voluntary mediation programs for divorce and custody cases. The following Rules of Civil Procedure are intended to govern custody cases only. They set forth the procedures for referring cases to mediation, minimum mediator qualifications, the duties of the mediator, the procedures for terminating mediation as well as sanctions for non-compliance with these rules. These are all areas in which statewide uniformity of practice and procedure is essential to successful mediation in Pennsylvania. These rules are flexibly designed to encourage the establishment of mediation programs.

Pursuant to 23 Pa.C.S. § 3903, the Supreme Court is directed to monitor and evaluate the overall effectiveness of mediation programs statewide. At present, the Domestic Relations Procedural Rules Committee is working on the development of uniform statewide reporting require-

ments and evaluation forms. Reporting is necessary to assess the overall effectiveness of mediation as an alternative to litigation and it will eventually be required. The current lack of reporting requirements, however, should not be a cause for delay in the establishment of mediation programs or the implementation of statewide mediation rules.

These rules do not address confidentiality and privilege in the context of mediation. Those issues are governed by 42 Pa.C.S. § 5949, and the Committee concluded that to address them further in the rules would confuse rather than clarify any legal issues arising from the statutory language.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1940. VOLUNTARY MEDIATION IN CUSTODY ACTIONS

Rule	
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Rule 1940.1. Applicability of Rules to Mediation.

The rules in this chapter shall apply to all court-established custody mediation programs and to any court-ordered mediation of individual custody cases.

Explanatory Comment—1999

23 Pa.C.S. § 3901 authorizes a court to establish a mediation program for both divorce and custody cases. At the present time, these rules apply only to court-connected mediation of custody cases because most, if not all, court-connected mediation programs that have been established for domestic relations, are limited to mediation of custody disputes. If, in the future, these programs expand to include mediation of divorce issues, these rules will be revised accordingly.

These rules do not apply to private mediation, which may be agreed to by the parties and conducted independent of the custody proceeding. They do apply, however, whenever the court refers a custody case for mediation, regardless of whether the referral is made to a formal program established and operated by the court or to a less formal arrangement between courts and mediators such as a court-approved list of mediators or, in the absence of such a list, to individual mediators appointed by the court to mediate particular cases.

Rule 1940.2. Definitions.

As used in this Chapter, the following terms shall have the following meanings:

“Mediation” is the confidential process by which a neutral mediator assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. The role of the mediator is to assist the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties must be based on the voluntary

decisions of the parties and not the decision of the mediator. The agreement may resolve all or only some of the disputed issues. Parties are required to mediate in good faith, but are not compelled to reach an agreement. While mediation is an alternative means of conflict resolution, it is not a substitute for the benefit of legal advice.

"Memorandum of Understanding" is the written document prepared by a mediator which contains and summarizes the resolution reached by the parties during mediation. A Memorandum of Understanding is primarily for the benefit of the parties and is not legally binding on either party.

"Orientation Session" is the initial process of educating the parties on the mediation process so that they can make an informed choice about continued participation in mediation. This process may be mandated by the court and may be structured to include either group or individual sessions. An orientation session may also include an educational program for parents and children on the process of divorce and separation and the benefits of mediation in resolving custody disputes.

Explanatory Comment—1999

The definitions of "orientation session" and "mediation" follow the legislative distinction between the initial orientation session, which the court may order the parties to attend, and actual mediation of the issues in dispute by the parties, which may be ordered only upon the parties' agreement. See 23 Pa.C.S. § 3901(b). The purpose of the orientation session is to educate the parties on the availability of mediation, the advantages and disadvantages of mediation, and the process of mediation so that the parties can make an informed decision about whether they wish to proceed further with mediation.

The definition of mediation set forth in this rule is not intended to restrict, expand or otherwise modify the statutory definition of mediation in 42 Pa.C.S. § 5949(c) relating to confidentiality. The statutory provision defines mediation for the purpose of determining when confidentiality and privilege attach to communications made or documents submitted during a mediation session.

Rule 1940.3. Order for Orientation Session and Mediation. Selection of Mediator.

(a) Except as provided in (b), the court may order the parties to attend an orientation session at any time upon motion by a party, stipulation of the parties, or the court's own initiative.

(b) The court may not order an orientation session if a party or a child of either party is or has been the subject of domestic violence or child abuse either during the pendency of the action or within 24 months preceding the filing of the action.

Official Note: See also Rule 1940.6(a)(4) requiring termination of mediation when the mediator finds that the proceeding is "inappropriate" for mediation. The mediator has a continuing ethical obligation, consistent with Rule 1940.4(b), during the mediation to screen for abuse and to terminate the mediation in the event he or she determines that the abuse renders the case unsuitable for mediation.

(c) Following the orientation session and with the consent of the parties, the court may refer the parties to mediation. The mediation may address any issues agreed to by the parties unless limited by court order.

Explanatory Comment—1999

Rule 1940.3 describes the circumstances under which a case may be referred to mediation. Consistent with 23 Pa.C.S. § 3901(c)(2), it prohibits the referral of any case involving past or present domestic violence or abuse because of the substantial imbalance of negotiating power that exists between the parties. The parties themselves, however, may always agree to mediation. Although each court may devise its own procedures for screening these cases, screening must occur prior to referral of a case to the orientation session.

Rule 1940.4. Minimum Qualifications of the Mediator.

(a) A mediator must have at least the following qualifications:

(1) a bachelor's degree and practical experience in law, psychiatry, psychology, counseling, family therapy or any comparable behavioral or social science field;

(2) successful completion of basic training in domestic and family violence or child abuse and a divorce and custody mediation program approved by the Academy of Family Mediators, American Bar Association, American Academy of Matrimonial Lawyers, or Administrative Office of Pennsylvania Courts;

(3) mediation professional liability insurance; and

(4) additional mediation training consisting of a minimum of 4 mediated cases totaling 10 hours under the supervision of a mediator who has complied with subdivisions (1) through (3) above and is approved by the court to supervise other mediators.

(b) The mediator shall comply with the ethical standards of the mediator profession as well as those of his or her primary profession and complete at least 20 hours of continuing education every two years in topics related to family mediation.

(c) A post-graduate student enrolled in a state or federally accredited educational institution in the disciplines of law, psychiatry, psychology, counseling, family therapy or any comparable behavioral or social science field may mediate with direct and actual supervision by a qualified mediator.

Explanatory Comment—1999

Mediator qualifications are a key component of any successful mediation program. This rule sets forth the minimum qualifications that a mediator must have in order to participate in court-connected mediation. Local courts may impose additional, more stringent qualifications.

In addition to a bachelor's degree and practical experience, a mediator must have basic training in a program approved by one of the organizations listed in subdivision (a)(2). While these are the organizations which have been recommended by mediators and other trained professionals, the Domestic Relations Procedural Rules Committee and the Administrative Office of Pennsylvania Courts may, from time to time, propose to the Court that additional organizations be added to this list. Subdivision (a)(3) of the rule requires the mediator to have his or her own professional liability insurance. Prior to mediating independently, subdivision (a)(4) of the rule requires that the mediator co-mediate at least four cases under the supervision of a court-connected mediator.

Rule 1940.5. Duties of the Mediator.

(a) As part of the orientation session, the mediator must inform the parties in writing of the following:

- (1) the costs of mediation;

Official Note: Rule 240 sets forth the procedures for obtaining leave to proceed in forma pauperis when the parties do not have the financial resources to pay the costs of litigation. This rule applies to court-connected mediation services as well, so that parties without sufficient resources may file a petition seeking a waiver or reduction of the costs of mediation.

- (2) the process of mediation;
- (3) that the mediator does not represent either or both of the parties;
- (4) the nature and extent of any relationships with the parties and any personal, financial, or other interests that could result in a bias or conflict of interest;
- (5) that mediation is not a substitute for the benefit of independent legal advice; and
- (6) that the parties should obtain legal assistance for drafting any agreement or for reviewing any agreement drafted by the other party.
- (b) When mediating a custody dispute, the mediator shall ensure that the parties consider fully the best interests of the child or children.
- (c) With the consent of the parties, the mediator may meet with the parties' children or invite other persons to participate in the mediation.

Explanatory Comment—1999

Rule 1940.5 sets forth the mediator's responsibilities to the parties. Subdivision (c) permits the participation of third persons with the consent of both parties. Such persons would include attorneys, other family members, mental health professionals or any other person who may be of assistance in resolving the disputed issues.

Rule 1940.6. Termination of Mediation.

(a) Mediation shall terminate upon the earliest of the following circumstances to occur:

- (1) a determination by the mediator that the parties are unable to reach a resolution regarding all of the issues subject to mediation;
- (2) a determination by the mediator that the parties have reached a resolution regarding all of the issues subject to mediation;
- (3) a determination by the mediator that the parties have reached a partial resolution and that further mediation will not resolve the remaining issues subject to mediation; or
- (4) a determination by the mediator that the proceedings are inappropriate for mediation.

(b) If the parties reach a complete or partial resolution, the mediator shall, within 14 days, prepare and transmit to the parties a Memorandum of Understanding. At the request of a party, the mediator shall also transmit a copy of the Memorandum of Understanding to the party's counsel.

(c) If no resolution is reached during mediation, the mediator shall, within 14 days, report this in writing to the court, without further explanation.

Explanatory Comment—1999

This rule sets forth the circumstances for termination of mediation. Subdivision (a)(4) reflects the mediator's continuing ethical obligation, consistent with Rule

1940.4(b), to screen for domestic violence, substance abuse and any other factors, which make the case unsuitable for mediation.

Subdivision (b) requires the mediator to prepare a Memorandum of Understanding, as that term is defined in Rule 1940.2.

Reducing the parties' resolution to a binding and enforceable agreement is accomplished either by the parties' attorneys or, if not represented, the parties themselves, but in no event is the mediator responsible for drafting the parties' agreement. Court approval of the final agreement is not necessary for the purpose of enforcing it to the same extent as a court order.

Rule 1940.7. Mediator Compensation.

Mediators shall be compensated for their services at a rate to be established by each court.

Explanatory Comment—1999

Mediator compensation is necessary to establish and maintain a quality mediation program. Presently, however, the absence of a statewide office for alternative dispute resolution means that each court must develop and secure its own funds for the mediation program. Because the availability of such funds varies significantly from court to court, each court may establish its own rate and method of compensation at this time, provided that the fees are structured so that all parties are assured equal access to mediation services. As Pennsylvania moves in the direction of a unified judicial system, a statewide fee schedule setting forth uniform fee standards may eventually be established for mediation compensation.

Rule 1940.8. Sanctions.

On its own motion or a party's motion, the court may impose sanctions against any party or attorney who fails to comply or causes a party not to comply with these mediation rules. Sanctions may include an award of mediation costs and attorney fees, including those reasonably incurred in pursuing the sanctions.

Official Note: To the extent court orders are employed to direct parties regarding mediation, contempt proceedings may also be instituted to enforce these orders.

[Pa.B. Doc. No. 99-1910. Filed for public inspection November 12, 1999, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Adoption of Adult Probation/Parole Department
Firearms Policy; No. 74 MI 99

Administrative Order No. 10-1999

And Now, this 25th day of October, 1999, it is hereby

Ordered and Decreed, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the Carbon County Court of Common Pleas hereby *Adopts* the Adult Probation/Parole Department Firearms Policy applicable to all members of the Carbon County Adult Probation Department.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

By the Court

JOHN P. LAVELLE,
President Judge

Definitions

Purpose: To establish policy and procedure governing the administration of the Carbon County Adult Probation/Parole Department's firearms program.

Applicability: To the Chief Adult Probation/Parole Officer, the Deputy Chief Adult Probation/Parole Officer and all Adult Probation/Parole Officers.

Definitions: As utilized in this document, the following definitions shall apply:

1. *Arrest:* The physical taking of a person into custody and restraining them until they can be brought before the court to answer the violations alleged against them.
2. *Attack Management:* Shielding, distance and movement.
3. *Attack Potential:* The immediate and simultaneous existence of intent, weapon, delivery system and target.
4. *Center of Mass:* The center of the three largest vital areas available, upper torso, brain and pelvic girdle.
5. *Certification:* The assignment of a certification number to a probation/parole officer after successful completion of a mandatory basic training course from the County Probation and Parole Officers' Firearm Education and Training Commission.
6. *Deadly Force:* As defined in Pennsylvania Crimes Code, 18 P.S. § 501, which states: "Force, which, under circumstances in which it is used, is readily capable of causing death or serious bodily injury."
7. *Defense of Life Rule:* The use of deadly force only in those circumstances in which a person cannot safely disengage and where deadly force is required to stop and render a person incapable of continuing life threatening actions.
8. *Delivery System:* The opportunity to place someone in jeopardy.
9. *Displaying a Firearm:* The clearing from a holster (unholstering) a firearm or brandishing a holstered weapon in a manner in which a reasonable person could perceive a use of force threat.
10. *Excessive Force:* Force which is unreasonable in the performance of an act otherwise lawful; or, force used in

making an arrest in excess of the force reasonably necessary to effect control of a subject.

11. *Firearm:* Any pistol or revolver with a barrel less than twelve inches, any shotgun with a barrel less than twenty-four inches, or any rifle with a barrel less than fifteen inches (See 18 Pa.C.S. § 6102).

12. *Force:* The impetus of power; physical power of strength, exerted against a person and employed without their consent for the purpose of controlling the person while maintaining a position of advantage.

13. *Handgun:* A revolver or pistol designed to be fired with one hand.

14. *Impairment:* A condition which can affect judgment, reaction time or motor skills as it may affect the ability to handle a firearm safely.

15. *Intent:* The means to place someone in jeopardy.

16. *Magazine:* A receptacle where rounds are stored for use in a pistol.

17. *Peace Officer:* Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to section 311, of the Act of May 27, 1949 (P. L. 1903, No. 568), also known as "The Military Code of 1949". Also, see 18 Pa.C.S. § 501 as applied to probation officers in 61 Pa.C.S. § 309.1.

18. *Pistol:* A semi-automatic handgun.

19. *Preclusion:* Fast assessment to determine if a lower level of force would be inappropriate, ineffective and to disengage is not possible.

20. *Self-Defense:* That action taken to nullify an attack when based on a reasonably founded belief that either death, serious bodily injury or other injury will occur because of the existence of a clear and present danger. Self-defense may be personal or instituted for the protection of another person.

21. *Serious Bodily Injury:* As defined in the Pennsylvania Crimes Code, 18 P.S. § 2301, which states: "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

22. *Target:* A person or thing at which force may be directed or used.

23. *Target Identification:* An empirical verification of a person or thing at which force may be directed or used.

24. *Target Isolation:* The ability to segregate a target from surrounding people or objects.

25. *Use of Force:* As defined by the Pennsylvania Crimes Code, 18 P.S. § 508, Use of Force in Law Enforcement, which states:

"(a) Peace Officer's Use of Force in Making Arrest:

(i) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is

necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

(2) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid."

26. *Use of Force Model:* The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of the Protective Safety System.

27. *Weapon:* Includes handguns and firearms. It also includes any other instruments of offensive or defensive combat use or designated as being capable of causing injury to another person.

28. *Weapon-Carrying Officer:* A county probation/parole officer who is authorized to carry a weapon in connection with performance of the duties of his employment.

Authority and Policy Statement

Authority: This policy statement has been developed pursuant to and in accordance with statutory requirements, local rules established by the Carbon County Adult Probation/Parole Department and through the formal adoption by the Carbon County Court of Common Pleas by administrative court order.

Policy Statement: The Carbon County Adult Probation/Parole Department recognizes that an element of danger does exist in dealing with criminal offenders and will provide adult probation/parole officers with the opportunity to carry a firearm in order to protect themselves from serious bodily injury or deadly force. The consideration in the use of force is for the preservation of life and physical safety of the officer, the public and the offender.

Statutory Authority of Adult Probation Officers

Authority of Probation and Parole Officers: Probation and Parole Officers employed by the Court of Common Pleas enjoy police powers over the offenders under their supervision. Section I of Act 277 of 1963 and amended Act 117 (61 P. S. § 309.1) vests probation officers with such police powers. The Act states:

"Probation Officers heretofore or hereafter appointed by any Court of record of this Commonwealth are hereby declared to be peace officers, and shall have police powers and authority throughout the Commonwealth to arrest with or without warrant, writ, rule of process, any person on probation, intermediate punishment or parole under the supervision of said Court for failing to report as required by the terms of his/her probation, intermediate punishment or parole or for any other violation of his/her probation, intermediate punishment or parole."

Peace Officer: In 1973, with the adoption of the Pennsylvania Crimes Code, a peace officer was defined in 18 P. S. § 501 as:

". . .any person who by virtue of his public office or public employment is vested by law to make arrests for offenses whether that duty extends to all offenses or is limited to specific offenses. . .".

The police powers granted to probation and parole officers are limited. Those powers extend only to persons subject to the jurisdiction of the sentencing common pleas court or as may be granted by another jurisdiction through an Interstate Compact Agreement (61 P. S. § 321 et seq.) or Intercounty Compact Agreement. Therefore, the police power of probation and parole officers differs in scope from that of the police officer.

Arrest Authority: Adult probation/parole officers are empowered to make arrests, however, those powers extend only to offenders under the jurisdiction of the department placed on probation, parole or intermediate punishment (See 61 P. S. § 309.1).

Use of Force Policy

Jurisdiction to Act: The use of any force by adult probation/parole officers will be justified only when the department has jurisdiction. The jurisdiction to act as an authorized adult probation/parole officer is limited to those situations involving offenders under the direct supervision of the department and/or those individuals that are encountered by officers as a direct result of the supervision of the offender.

Purpose of Force: The objective of the use of force by adult probation/parole officers is to establish and maintain lawful control in a timely manner, to minimize the potential for injury to parties directly involved, as well as others. The degree of force authorized is that degree necessary to establish lawful control in a timely manner. This degree of force depends upon the degree of danger or resistance perceived by the officer.

Use of Force Model: The department formally adopts, subscribes and employs The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of The Protective Safety Systems.

Timeliness: Timely means on time and not late. Officers need not wait for injury to occur to themselves or others before taking appropriate action to prevent injury.

Control of the Subject: Control of the subject must be established for the safety of the officer and others in response to perceived danger and when necessary to accomplish duties authorized by law.

Use of Physical Force: Physical force is to be used only in circumstances of justifiable self-protection or the protection of other persons. Adult probation/parole officers should use their discretion in using physical force. When possible, officers should consider withdrawing from the situation and securing assistance. If physical force is used, the officer shall only use the minimum force necessary to control the situation.

Officer Identification: If circumstances permit, the officer must make their identity as a adult probation/parole officer known.

Verbal Warning: Whenever possible, the officer must exercise persuasion, advice and warning before using physical force. If such verbal control would be (or is found to be) ineffective, the officer may use physical force to accomplish a lawful purpose.

Use of Force Considerations: Officers shall consider the following when employing force:

1. Subject's immediate threat to safety.
2. Subject's active resistance or attempt to escape.
3. Severity of the crime involved.
4. An officer's ability to disengage.

5. The circumstances existing at the moment force is used.

6. The tactics employed by an officer that may have caused a use of force decision to become necessary.

Reasonable Control Guidelines: When using force, officers must:

1. Match force to the subject's resistance.
2. Correctly apply techniques and equipment appropriate to that force level.
3. Apply alternative options if tactics fail to establish control.

Use of Excessive Force: The use of excessive force is prohibited by Federal and State laws. Violation of these laws can carry both civil and criminal penalties. Officers will be held accountable for the use of force.

Administration of First Aid: An officer who uses force on an offender and injuries result, the officer shall:

1. Contact the Carbon County Communications Center for assistance from medical personnel and law enforcement personnel.
2. Contact the Chief Adult Probation/Parole Officer or immediate supervisor.
3. Render first aid to the injured subject. Officers must remember that they are responsible for administering first aid treatment to an injured subject.

Use of Force Test: The use of force is based upon determining what force a reasonable officer at the scene would have used under the circumstances (See *Graham v. Conner*, 109 S.Ct. 1865, 1989).

Deadly Force Policy

Serious Bodily Injury: The operational definition of serious bodily injury shall be defined by the Use of Force Model as:

1. An open gash or wound;
2. Major broken bones; and/or
3. Damage to internal organs.

Use of Deadly Force: The use of deadly force by officers shall be strictly limited to defensive situations. If appropriate, officers shall exhaust all other types of force before resorting to the utilization of deadly force.

Justifiable Use of Deadly Force: When the use of deadly force is justified, officers discharging weapons shall not shoot to kill nor shoot to wound, but rather to stop the action by causing the instant incapacitation of the subject. For maximum stopping effectiveness and to minimize the danger to innocent bystanders, officers should shoot at center body mass.

Offensive Posture: Officers shall not utilize deadly force in an offensive posture to effect the apprehension of those persons who commit violations of probation, parole or intermediate punishment, or any other law amounting to summary, misdemeanor or felony offenses, which do not present the threat of death or serious bodily injury. Nothing contained in this policy statement shall preclude the use of deadly force for self-defense, when warranted.

Verbal Warning: When practical, and if the time and opportunity exists in a deadly force situation, officers shall identify themselves as adult probation/parole officers and give some type of warning prior to the use of deadly force.

Requirements for Righteous Deadly Force: Officers shall consider the following:

1. Accurately assessing a subject's imminent potential for attacking in a life-threatening manner (attack potential); the immediate and simultaneous existence of intent, weapon, delivery system and target.

2. Articulating why an officer feared for their life or someone else's when deadly force action was taken.

3. Explaining why a lower level of force was inappropriate, ineffective and disengagement was not possible.

Target Identification and Isolation: Officers shall consider the following factors when making a decision to use deadly force:

1. Officers facing a decision to use deadly force must be aware of any innocent third parties that may be present in or near the line of fire.

2. Officers are prohibited from discharging their firearms when they cannot identify their target and it appears reasonably and likely that an innocent person(s) may be injured, unless the prohibition in discharging the firearm is likely to result in the immediate death or serious bodily injury of the officer or another person.

3. Officers shall establish target identification and target isolation.

Use of Excessive Force: See *Use of Force Policy*.

Administration of First Aid: See *Use of Force Policy*.

Disengagement: Whenever possible, and if the time and opportunity exists, officers shall utilize shielding, distance and movement (attack management) to disengage from a situation before resorting to deadly force.

Warning Shots: Warning shots are strictly prohibited under all circumstances.

Rescue Shots: Officers may use a rescue shot for the purpose of identifying location and/or acquiring appropriate assistance.

Authorization to Carry Firearms

Authorization to Carry a Firearm: All adult probation/parole officers with peace officer status can request authorization to become a weapon-carrying officer.

Requirements to Carry a Firearm: The department shall authorize officers to carry firearms for defensive purposes when the following criteria is met:

1. Successful completion of a criminal background investigation.

2. Successful completion of a psychological examination.

3. Successful completion of the Basic Orientation Academy for Probation/Parole Officers.

4. A written request from the Adult Probation/Parole Officer to the Chief Adult Probation/Parole Officer to carry a firearm.

5. Successful completion of a first aid and CPR course.

6. Successful completion of a defensive tactics and Use of Force course.

7. Successful completion and certification from the County Probation and Parole Officers' Firearm Education and Training Commission.

8. Ability to demonstrate a proficiency in the knowledge, handling, and safety of firearms.

Issuance of Authority to Carry a Firearm: The process of requesting authorization to carry a firearm shall be reviewed by the Chief Adult Probation/Parole Officer who shall consider the following:

1. Demonstrated need to carry a firearm in the performance of their official duties.
2. Physical and emotional condition of the officer.
3. Presence of alcohol-related problems.
4. Signs of emotional instability.
5. Officer under the care of a psychologist or psychiatrist.
6. Current or past disciplinary problems with the officer.
7. Completion of all requirements as outlined in this policy statement.

Final Approval: The Chief Adult Probation/Parole Officer will make the final decision. The refusal of a request for authorization to carry a firearm is not appealable. Unless otherwise instructed, an officer may reapply for authorization every six months.

Officers Not Requesting Authorization To Carry: All officers that were hired prior to the implementation date of this policy statement will have the option to carry a firearm. If an officer decides not to carry a firearm, then he/she must complete the Request Not To Carry a Firearm form and return it to the Chief Adult Probation/Parole Officer. Nothing in this policy statement shall prohibit an officer from requesting authorization to carry at a later time.

Relinquishing Authorization: Once an officer is authorized to carry a firearm, that officer cannot request relinquishment of that authorization. The decision to carry a firearm is a difficult and moral decision that must be considered carefully by the officer before requesting authorization.

Condition of Employment: After the adoption of this policy statement, any new employee will be required to carry a firearm in the performance of their official duties.

Issuance of the Firearm: Once the officer has completed all training and fulfilled all agency requirements, the Chief Adult Probation Officer shall issue a firearm to the officer and execute the firearm issuance form. The care, cleaning and maintenance of the firearm shall be the responsibility of the officer.

Firearms Not To Be Carried Without a License: Since adult parole/probation officers are declared peace officers with police powers to arrest offenders in violation of probation, parole or intermediate punishment, a license to carry a firearm during the performance of their official duties is not required. However, the department recommends that all weapon-carrying officers obtain a license to carry a weapon. The costs of the permit shall be absorbed by the officer.

Also, according to 18 Pa.C.S. § 6106, states, No person shall carry a firearm in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license, except, constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

Firearm Authorization Request

I, _____, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department,

a division of the Court of Common Pleas, Fifty-Sixth Judicial District, do hereby request authorization to carry a firearm in the performance of my duties.

In making the aforementioned request, I acknowledge and certify the following:

1. I am a tenured employee and not on a probationary status.
2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
3. I do not have a problem with drugs or alcohol. I am not presently using any drugs, except as authorized by a medical physician. I have verified with my physician that the medication prescribed will not have any effect on my judgment or impair my ability to carry a firearm in the performance of my duties.
4. I have completed psychological testing and have been approved mentally sound by a licensed psychologist to carry a firearm.
5. I am medically and physically sound to carry out my assigned duties as a probation/parole officer.
6. I have completed classroom instruction on firearms and have successfully passed a written examination (County Probation/Parole Officers' Firearm Education and Training Commission).
7. I have completed range instruction and have qualified in the practical phase of shooting (County Probation/Parole Officers' Firearm Education and Training Commission).
8. I will only use my firearm for defensive purposes only, where retreat is not possible and serious injury or death is imminent.
9. I have successfully completed training in chemical agents and impact weapons and have received certification.
10. I have successfully completed training in control tactics, defensive tactics and Use of Force Instruction and have received certification.

I hereby affirm that the aforementioned information is true. Also, I understand that the falsification of any of the aforementioned information shall result in appropriate disciplinary action.

Signature Adult Probation/Parole Officer

Date

Firearm Certification

Officer's Name: _____

1. Successful completion of criminal background investigation. Yes No
2. Successful completion of psychological evaluation. Yes No
3. Successful completion of basic orientation academy. Yes No
4. Successful completion of first aid and CPR training. Yes No
5. Successful completion of defensive tactics. Yes No

6. Successful completion of OC spray and expandable baton training. Yes No

7. Successful completion of Use of Force training. Yes No

8. Successful completion of County Probation and Parole Officers' Firearm and Education and Training Commission. Yes No

9. Ability to demonstrate proficiency, safety and knowledge in the proper use and handling of a firearm. Yes No

AUTHORIZATION

REQUEST DENIED: REQUEST APPROVED:

Chief Adult Probation/Parole Officer:

I, Ronald S. Kokinda, Chief Adult Probation/Parole Officer hereby approve/deny the within request to carry a firearm in accordance with court and departmental policies and procedures.

Signature and Date: _____

Request Not to Carry a Firearm

I, _____, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department, a division of the Court of Common Pleas, Fifty-Sixth Judicial District, composed of Carbon County, do hereby exercise my option not to carry a firearm in the performance of my duties, at this time.

I acknowledge that if circumstances do change, that I may request authorization to carry a firearm during the performance of my official duties.

In making the aforementioned request, I acknowledge and certify the following:

- 1. I am a tenured employee and not on a probationary status.
- 2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
- 3. I have been offered the opportunity to attend the Basic Firearms' Academy and to carry a firearm during the performance of my official duties, but declined.
- 4. I have been hired prior to the implementation of the Carbon County Adult Probation/Parole Department's firearm program and am exercising my option not to carry a firearm.
- 5. Even though I will not carry a firearm during the performance of my official duties, I fully understand that I must perform the same duties and responsibilities as an adult probation/parole officer who carries a firearm.

I hereby affirm that the aforementioned information is true. Also, I understand that the falsification of any of the aforementioned information shall result in appropriate disciplinary action.

Adult Probation/Parole Officer Date

Chief Adult Probation/Parole Officer Date

CARBON COUNTY ADULT PROBATION/PAROLE OFFICE

ISSUANCE OF FIREARM

I acknowledge receipt of the agency issued firearm. By signing below, I further acknowledge that I have received appropriate training in the use of the firearm and accept full responsibility for the safe and proper handling of the firearm.

I will comply with all policies and procedures adopted by the Carbon County Court of Common Pleas and the Carbon County Adult Probation/Parole Office.

I understand that I may have my authorization to carry a firearm, during the performance of my duties, temporarily suspended as outlined in this policy statement and that when requested by the Chief Adult Probation/Parole Officer must relinquish my firearm.

Manufacturer	Model	Caliber	Serial Number

ACKNOWLEDGMENT

Adult Probation/Parole Officer Date

Chief Adult Probation/Parole Officer Date

Conditions for Carrying a Firearm

Conditions for Carrying Firearms: All weapon-carrying officers shall carry their firearm concealed and under the following circumstances:

- 1. During an arrest situation.
- 2. During a search and seizure situation.
- 3. While conducting field contacts, including after-hour investigations by assigned on-call personnel.
- 4. Range qualification and related training, including practice shooting.
- 5. To and from employment.

Office and Courthouse Setting: While in the office, all weapon-carrying officers shall secure their firearm in designated areas within the adult probation office. Officers shall be prohibited from carrying their firearm while in the office, unless entering or exiting the building to conduct field work.

Courthouse Setting: While in the Courthouse or Courthouse Annex Building, all weapon-carrying officers shall secure their firearm in designated areas within the adult probation office. Officers shall be prohibited from carrying their firearm in the courthouse or courthouse annex building, unless entering or exiting the building to conduct field work.

Concealment of Firearm: Firearms are to be carried in a concealed manner on the officer, under an article of clothing. The following exception will apply:

- 1. When participating in an arrest situation, the officer may position the weapon in an unconcealed manner to enhance accessibility.

Displaying a Firearm

Displaying a Firearm: Firearms shall not be displayed or drawn for any other reason than described below:

- 1. During an arrest situation.
- 2. Justifiable self-protection or the protection of others

3. When the officer perceives an immediate threat of death or serious bodily injury, which may include an attacking animal.

4. Cleaning the firearm, storage and inspection.

5. Range qualification or practice shooting.

6. Storage at a correctional facility, courthouse or other secure facility.

Handling of Firearms

Handling of a Firearm: The continued authorization to carry a firearm will depend on the following:

1. The officer's compliance with agency policy and procedure.

2. The officer's ability to handle the firearm in a safe manner.

3. The officer's ability to conduct themselves in a safe and proper manner while in possession of the firearm.

4. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearms unless circumstances create strong reasonable belief that it may be necessary to lawfully use the weapon.

5. In those situations, the officer shall exercise a reasonable standard of care with the drawn weapon. Reasonable care includes: pointing the muzzle in a safe direction; keeping the trigger finger outside the trigger guard; and under no circumstances shall a weapon capable of double action be cocked for single action use.

6. The use or handling of a firearm by an officer, on or off-duty, in a careless or imprudent manner or the unjustified endangering of human life by a firearm in violation of this policy statement is strictly forbidden and shall result in a disciplinary investigation and may result in the revocation of authorization to carry a firearm.

7. The department does not authorize or recognize the carrying of a agency issued firearm during off-duty hours.

Firearm Safety Considerations: The following regulations apply to all firearms and situations, whether on or off the range, at home or conducting probation/parole activities:

1. Always consider all firearms to be loaded.

2. Never point the muzzle of the firearm across anything which you are unwilling to shoot.

3. Keep your finger outside the trigger guard until you are ready to shoot.

4. Be certain of your target, target identification and target isolation.

5. When you take a gun from its holster or storage for any other purpose than necessary use, unload it and check to see that it is unloaded three times.

6. A gun is not a toy, do not play with it.

7. Do not use or possess a firearm when drinking or using other substances that alter perception or disposition.

8. Resist the temptation to show off your firearm.

9. Do not loan your firearm to anyone else.

10. When passing a pistol to another individual, make sure the weapon is unloaded, magazine removed, action open, handing it gun grip first.

Storage of Firearms and Ammunition

Storing the Firearm: All weapon-carrying officers shall store their firearm as follows:

1. *In the Field:* When performing field work, firearms are to be concealed on the officer.

2. *In an Automobile:* Firearms shall not be left in a vehicle, trunk, glove compartment, briefcase or other areas of storage, except under the following circumstances.

a. When the officer is entering an institution in which a firearms locker is not available.

b. When the officer must appear in court in which the courthouse does not allow entrance of an armed officer and there is no firearms locker available.

c. Should circumstances arise requiring the emergency or brief storage of a weapon, the containment area must be stationary, locked and be inaccessible to all except the officer.

3. *In the Office:* For purposes of office security and safety, officers are not permitted to carry their firearm in the office, unless entering and exiting to conduct field work. When weapon-carrying officers are assigned to the office for duty days, the firearm must be stored in the security locker unloaded, with the key being secured by the officer. Under no circumstances are firearms to be stored in desks or any other location in the office. Also, firearms are not to be left in the office overnight.

4. *In the Courthouse/Annex Building:* For purposes of courthouse security and safety, officers shall secure their firearm in the designated area within the adult probation office unloaded. Officers shall be prohibited from carrying their firearm in the courthouse or annex building, unless entering or exiting the building to conduct field work.

5. *Correctional Facilities/Other Courthouses:* When officers enter correctional facilities, other courthouses or any other secure facility, the officer shall secure their weapon in accordance with the facility's regulations.

6. *At Home:* See *Home Safety* provision.

7. *Interstate Travel:* When traveling outside the Commonwealth of Pennsylvania, officers are not permitted to carry their firearm into the neighboring state.

8. *In a Public Rest Room:* The officer shall remove his/her duty belt with the firearm in the holster and place the duty belt around the officer's neck. This procedure will ensure that the officer's equipment will not be stolen or forgotten.

Storage of Ammunition: When in the office, the firearm will be unloaded and the ammunition secured separately from the firearm in the security locker, accessible only to authorized personnel. When at home, the ammunition shall be removed from the firearm and stored in a separate location.

Unattended Firearm: Under no circumstances shall the officer leave his duty weapon unattended while in the office, field, home or any other unsecured locations.

Home Safety

Firearm at Home: All weapon-carrying officers will be required to take their firearm home. Under no circumstances shall the weapon be stored in the office overnight.

Home Safety: It is essential that the officer assigned to carry a firearm instruct their family members in the proper use and handling of the firearm. It should be made perfectly clear that the firearm is not to be handled

by anyone other than the officer or a mature adult. The officer is responsible to educate his family members on the safety and proper handling of the firearm. All firearms should be kept out of the reach of children and immature or irresponsible adults and stored in a secure area. Older children may be given gun instruction with the extent of the training being dependent on the child's maturity and judgment of the parents.

Storage at Home: Immediately upon entering the residence, the firearm should be unloaded, the magazine removed and the firearm and equipment stored in a secure area. Officers are encouraged to store the ammunition, magazines and the firearm in different locations. The firearm must not be left unattended and accessible while in the residence. It shall be the responsibility of the officer to ensure that the firearm is properly secured in a locked cabinet or drawer. The firearm should be kept beyond the reach of small children.

Loaded Firearm: Firearms shall not remain loaded while in the residence. The officer shall immediately unload the weapon when they enter the residence and all ammunition should be kept in a safe location away from the weapon.

Trigger Guards: As a suggestion, a trigger guard lock will secure the firearm from accidental discharge. The key to the trigger guard should be kept on the officer's person at all times.

Unattended Weapon at Home: The officer shall not leave his duty weapon unattended while in their residence. The firearm must be secured at all times.

Discharge of Firearms

Discharge of a Firearm: The discharge of a firearm is permitted only when an officer reasonably believes that he/she or another person is at risk for serious bodily injury or death and that the deadly force employed by the officer is reasonable and necessary and not excessive by comparison to the type of resistance offered by the offender.

Unholstering: See *Handling of Firearms* provisions.

A Discharged Weapon: Any unholstering, discharge or firing of a weapon, other than in a training program, qualification or off-duty practice, must be reported immediately to a supervisor by the officer who discharged the weapon.

Involved Officer(s) Responsibilities: Any time an officer is engaged in an incident which involves the discharge of a firearm, whether by an agency officer or another person, the following procedure shall be followed:

1. Immediately following the incident, secure the scene and make every effort to preserve potentially pertinent evidence.
2. Contact the Carbon County Communications Center for the police department that has jurisdiction and medical personnel, if injuries resulted to any persons at the scene.
3. Notify the Chief Adult Probation/Parole Officer or his designee, if unavailable.

Written Incident Report: The officer must file a written incident report immediately after the discharge to their immediate supervisor. The officer shall provide the exact location and time of the incident; a detailed description of the incident; names and addresses of witnesses; reasons for discharging the weapon; names of any investigating police officers; and any other information that may be necessary in understanding and investigating the inci-

dent. However, if a police investigation has been initiated, the officer(s) involved with the incident will not need to file a written report at this time. A copy of the police report will be obtained by the Chief Adult Probation/Parole Officer.

Surrendering the Weapon: The officer shall surrender the weapon involved to their immediate supervisor or a requesting police officer involved in the investigation. The officer's weapon shall be confiscated and temporarily suspended until the investigation is completed.

Incidents and Allegations: It is the responsibility of the officer carrying a firearm to report immediately to a supervisor any incidents or situations that may result in allegations being made or complaints filed regarding the use or displaying of a firearm. Other staff who observe an unusual situation involving a firearm must verbally report to an immediate supervisor. A written report may be requested by the Chief Adult Probation/Parole Officer.

Departmental Investigation: The Chief Adult Probation Officer shall receive prompt notification of the incident so that an investigation can be initiated to verify the factual basis surrounding the situation.

Shooting At Moving Vehicles

Shooting at Moving Vehicle Guidelines: Officers shall not discharge a firearm at or from a moving vehicle except under the following circumstances:

1. As a last resort measure of self-defense when the subject is using deadly force by means of other than the vehicle.
2. As a last resort measure of self-defense when a vehicle is being driven in a manner deliberately intended to kill or injure an officer or other party.

Limitations and Consequences Shooting at a Moving Vehicle: In deciding to shoot at a moving vehicle, officers must take into account the following limitations and consequences:

1. The difficulty of hitting a moving target.
2. The possibility of ricochets striking unintended targets.
3. Population densities.
4. The difficulty in penetrating the automobile body and/or steel belted radial tires.
5. The inability to stop a vehicle's momentum even when the target actor is hit.
6. The possibility of damage or injury which might result from causing the vehicle to go out of control.

Damaged, Lost or Stolen Firearms

Damaged Firearm: Any officer who suspects that his/her issued firearm is damaged shall immediately notify the Chief Adult Probation/Parole Officer. A potentially damaged firearm shall not be carried. The firearm shall be secured and sent to a certified armorer for repairs. During this time, the officer will not carry a firearm until the firearm can be repaired.

Lost or Stolen Firearm: The loss or theft of a firearm shall be immediately reported to the Chief Adult Probation/Parole Officer. This report must be made within twenty-four (24) hours of occurrence, either by telephone or in person. The initial notification will be followed immediately by a written report describing the circumstances surrounding the loss or theft of the firearm. The employee must take immediate and reasonable action to recover the firearm and obtain all information available

to aid in the investigation and recovery of the firearm. Employees must seek assistance from the appropriate law enforcement agency as soon as possible.

Security and Accountability: Officers are directly responsible for the safety and security of authorized firearms. Officers may be required to reimburse the County for the costs of lost, stolen or damaged firearms if:

1. An official investigation establishes that the officer is negligent or otherwise at fault,
2. It is administratively decided that reimbursement is to be made.

Disciplinary Action: Failure to safeguard or otherwise secure firearms may result in disciplinary action. Furthermore, the officer's authorization to carry may be suspended and he/she referred for appropriate levels of training.

Requirement to Notify the Department of Physical and Pharmacological Conditions Affecting the Ability to a Carry Firearm

Impairment: It shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor of any physical or pharmacological conditions causing physical and/or emotional impairment.

Prescriptive Medication: In those instances when an officer is prescribed a medication for an illness or medical condition, it shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor. When an officer believes and/or medical personnel indicate that a medication may affect judgment and/or reaction time, authorization to carry a firearm shall be suspended. Authorization shall be reinstated upon the cessation of the medication and its effects or with a physician's ruling that the medication's potential contraindications would be aversive to handling a firearm safely and proficiently.

Temporary Suspension of Authorization to Carry

Incidents and Allegations: See *Discharge of Firearms.*

Departmental Investigation: See *Discharge of Firearms.*

Temporary Suspension of Authorization to Carry: If circumstances arise where an officer's ability to properly handle a firearm is called into question, the Chief Adult Probation/Parole Officer has the duty and authority to immediately remove the officer's agency issued firearm in an effort to provide for the safety of the officer, as well as that of the community. Reasons for a temporary suspension may include, but are not limited to the following:

1. Physical limitation or injury
2. Mental, emotional, or behavioral impairment
3. Allegations of misconduct, negligence, or carelessness
4. Induced impairment due to drugs (illicit or legal), and/or alcohol
5. Unsafe situational tactics
6. Violation of agency policy or procedure
7. Actions which may indicate a staff member's judgment is impaired
8. Violation of the Protection From Abuse Act, 35 P. S. § 10181, as amended, when the Court directs that all weapons be forfeited.

Period of Temporary Suspension: The Chief Adult Probation/Parole Officer shall conduct an investigation

into the allegation of improper handling of a firearm. Within thirty (30) days of the alleged allegation, a decision shall be made to:

1. Remove authorization
2. Continue temporary suspension
3. Return firearm

Continued Temporary Suspension: If after thirty (30) days, the Chief Adult Probation/Parole Officer has not completed the investigation, then the temporary suspension may be extended for an additional thirty (30) days.

Removal of Authorization: After completion of the investigation, the Chief Adult Probation/Parole Officer may remove authorization from the officer until he/she can demonstrate an ability to properly handle the firearm in a safe manner and/or has completed training necessary to demonstrate the safe and proper handling of a firearm. This administrative decision is not considered disciplinary action and is for the safety of the officer and the community.

Appeal of Decision: The decision of the Chief Adult Probation/Parole Officer shall be final.

Allegations Involving the Chief Adult Probation/Parole Officer: When any allegations are lodged against the Chief Adult Probation/Parole Officer for violations of this firearm policy, then the Deputy Chief Adult Probation/Parole Officer shall remove the firearm from the Chief and conduct an investigation into the allegation in accordance with this policy statement.

Performance of Official Duties During Suspension: An officer whose authorization to carry a firearm has been suspended shall continue to perform their official duties and functions as an adult probation/parole officer with no interruption in services.

Reinstatement Process: An officer who had authorization removed may reapply for reinstatement every six months.

Firearms Training Requirements

Basic Firearms Academy: All officers carrying firearms must attend the initial firearms training course offered by the County Probation and Parole Officers' Firearm Education and Training Commission (See 61 Pa.C.S. § 332.1 through 61 Pa.C.S. § 332.9). The training course shall consist of a period of classroom instruction and range qualification.

Requalification: All officers who receive certification by the Commission, must requalify annually and during the time period established by the Commission. The department shall make arrangements with neighboring counties, who have a certified Commission firearms' instructor, to conduct requalification training.

Failure to Qualify at the Initial Training: If an officer fails to qualify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer.

Failure to Requalify: If an officer fails to requalify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer. Failure to requalify will result in the temporary suspension of authorization to carry a firearm. When an officer fails to requalify, then he/she must attend the initial firearms academy.

Failure to Qualify By New Employee: An officer hired after the adoption of this policy statement and fails to qualify/requalify as set forth in this policy statement, will be offered additional training. Failure to qualify thereafter will result in a departmental inquiry as to the reasons an officer failed to qualify. A recommendation will be made to the court concerning the employment status of the officer.

Independent Firearms Practice: Officers authorized to carry a firearm may practice with their issued firearm on the employees own time. The practice must occur only at a firing range, public or private. The department will only issue 200 rounds of practice ammunition to an officer attending the initial firearms training academy. All other practice ammunition must be purchased by the officer.

Training Ammunition: The department shall issue the appropriate number of rounds required for initial qualification and requalification. Approved training ammunition is new, factory-loaded, 124 grain, 9mm rounds. The department will only issue ammunition to the officer for two attempts at qualification. Any other authorized attempts to qualify will require the officer to purchase the ammunition approved by the department.

Familiarization Training: All adult probation/parole officers will be required to complete a firearms familiarization course.

Authorized Equipment

Authorized Firearm: The department shall issue a Glock Model 26 (9 mm) pistol to each officer authorized to carry a firearm. Personal firearms are prohibited.

Authorized Duty Ammunition: The department shall issue thirty (30) rounds of duty ammunition, which is new, factory-loaded, 124 grain hydra-shok, jacketed hollow point. Any other ammunition is prohibited.

Holsters: The department shall issue a DeSantis Thumb Break Scabbard for each officer authorized to carry a firearm. All other holsters are prohibited. The holster shall be worn on the officer's duty belt, on the officer's strong side. Cross-draw positioning of a firearm is prohibited.

Magazines and Extensions: Each weapon-carrying officer will be issued two additional ten round magazines fitted with grip extensions.

Double Magazine Pouches: Each weapon-carrying officer will be issued a nylon double magazine pouch.

Modifications to Equipment: All equipment issued by the department is standard and under no circumstances will any modifications be permitted. Officers altering or modifying their equipment will be subject to disciplinary action, including suspension of authorization to carry a firearm.

Cleaning and Maintenance of Firearms

Cleaning of Firearms: Weapon-carrying officers are responsible for the cleaning and lubrication of their issued firearm after each use, whenever the handgun has been subjected to moisture or dirt and every three months. Cleaning kits will be available in the department and the officer must keep a record of when the handgun was cleaned. Since the department has no designated areas for cleaning, officers will be expected to clean their firearm at home. Failure to maintain proper maintenance and cleaning of the firearm may result in the temporary suspension of authorization to carry.

Safety Considerations: Before cleaning your firearm, make absolutely sure that it is unloaded. All ammunition

should be stored away from the cleaning area, with the gun's action open during the cleaning process.

Damaged Firearms: See *Damaged, Lost or Stolen Firearms* provisions.

Inspection: On an annual basis, the department shall forward all firearms to a certified Glock armorer for inspection.

[Pa.B. Doc. No. 99-1911. Filed for public inspection November 12, 1999, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Criminal Action Rule 39-300; Miscellaneous Doc. Volume 2, Page 138

Order of Court

Now, August 24, 1999, Criminal Action Rule No. 39-300 for the Court of Common Pleas of the 39th Judicial District of Pennsylvania is hereby amended, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*, to read as follows:

Rule 39-300. Business of the Court.

(1) With respect to the Franklin County Branch, criminal cases shall be listed for trial as follows:

(A) On the Monday of the week preceding each criminal trial term, each defendant who is free on bond and whose case is listed for that term of court, shall appear, with their attorney, for a preliminary call of the court list at which time the court will entertain motions, pleas, and any other appropriate matters. Defendants whose cases are not disposed of on that date will be required to appear for jury selection on the first day of the trial term.

(B) On the Tuesday of the week preceding each criminal trial term, all incarcerated defendants shall be transported to and appear in court for purposes of conducting the preliminary call of the trial list as outlined in paragraph (A).

(C) All defendants, at the time of mandatory arraignment or waiver thereof, will be notified in writing of their obligation to appear as set forth in paragraphs (A) and (B). Failure to appear shall result in the issuance of a bench warrant for the arrest and detention of the defendant.

(D) In the event either of the court appearances required in Paragraphs (A) or (B) falls on a recognized holiday, the Court Administrator shall designate the date on which the defendant shall appear. The defendant shall be notified of said date as set forth in Paragraph (C).

(2) With respect to the Fulton County Branch, criminal cases shall be listed for trial as follows:

(A) On the Tuesday of the week preceding each criminal trial term, each defendant whose case is listed for that term of court, shall appear, with their attorney, for a preliminary call of the court list at which time the court will entertain motions, pleas, and any other appropriate matters. Defendants whose cases are not disposed of on that date will be required to appear for jury selection on the first day of the trial term.

(B) All defendants, at the time of mandatory arraignment or waiver thereof, will be notified in writing of their obligation to appear as set forth in paragraph (2) (A).

Failure to appear shall result in the issuance of a bench warrant for the arrest and detention of the defendant.

(C) In the event the court appearance required in Paragraph (2)(A) falls on a recognized holiday or date when there is no miscellaneous court scheduled in the Fulton County Branch, the defendant shall be required to appear for the preliminary call on the Tuesday of the second week before the criminal trial term and the defendant shall be notified of said date as set forth in paragraph (2)(B).

Further ordered that the Court Administrator shall immediately take action to have seven certified copies of this amendment filed with the Administrative Office of Pennsylvania Courts, one certified copy filed with the Commonwealth Criminal Procedural Rules Committee, and two certified copies distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and otherwise to comply with the requirements of Pa.R.Crim.P. No. 6(c).

By the Court

JOHN R. WALKER,
President Judge

[Pa.B. Doc. No. 99-1912. Filed for public inspection November 12, 1999, 9:00 a.m.]

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MONTGOMERY COUNTY
Custody Mediation Orientation Program

Order

And Now, this 18th day of October, 1999, the Court approves and adopts the following Montgomery County Local Rules of Civil Procedure Governing Custody Mediation Orientation Program. These Rules shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Domestic Relations Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

JOSEPH A. SMYTH,
President Judge

Rule *1940.3. Order for Orientation Session and Mediation. Selection of Mediator.

(a) Except as provided in (c) below, in an action for custody, partial custody or visitation where an agreement is not reached and reduced to writing by the conclusion of the Custody Conciliation Conference, the parties shall attend a two-hour custody mediation orientation session.

(b) An orientation session is an initial meeting between parties, and a mediator pursuant to Local Rule 1940.4 below, to educate the parties concerning the mediation process so that an informed choice can be made about continued participation in that process. The mediation is

confidential at the point, if any, that mediation commences during, or after, the initial orientation session.

(c) An orientation session shall not be mandated if a party or a party's child is or has been the subject of abuse either during the pendency of the action or within 24 months preceding the filing of the action.

Rule *1940.4. Minimum Qualifications to be a Mediator Under Local Rule 1940.3.

(a) A mediator must meet, at a minimum, the following requirements:

(1) hold a post-graduate level degree in law, or a mental health field such as psychiatry, psychology, counseling or family therapy;

(2) have successfully completed basic training in a divorce and custody mediation program approved by the Academy of Family Mediators or equivalent program, such as a program approved by the Academy of Matrimonial Lawyers, or its substantial equivalent;

(3) certify that Mediator Professional Liability Insurance is maintained;

(4) participation in a program offered by the Family Law Section of the Montgomery Bar Association involving substantive law training, training concerning our local child custody procedures, and training concerning the local custody mediation orientation program, including reporting obligations;

(5) continued compliance with the ethical standards and any continuing educational requirements of the Academy of Family Mediators, the Academy of Matrimonial Lawyers or their substantial equivalents.

(b) The Court shall have the authority, upon cause shown, to decertify any Montgomery County custody mediator who has not complied with the foregoing local rule.

Rule *1940.5. Duties of the Mediator.

(a) At the orientation session, the mediator must inform the parties in writing of the following:

(1) the costs of mediation;

(2) the process of mediation;

(3) that the mediator does not represent either or both of the parties;

(4) the nature and extent of any relationships with the parties and any personal, financial or other interests that could result in a bias or conflict of interest;

(5) that mediation is not a substitute for the benefit of independent legal advice; and

(6) that the parties should obtain legal assistance for drafting or reviewing any agreement.

(b) When proceeding from the orientation to mediating a custody dispute, the mediator shall ensure that the parties consider fully the best interests of the children.

(c) With the consent of the parties, the mediator may meet with the parties' children or invite other persons to participate in the mediation.

Rule *1940.6. Termination of Mediation.

(a) Mediation, if undertaken after the initial orientation session, shall terminate upon the earliest of the following:

(1) the complete agreement of the parties;

(2) a partial agreement of the parties and a determination by the mediator that further mediation will not resolve the remaining issues;

(3) a determination by the mediator that the parties are unable to reach an agreement through mediation or that the proceeding is inappropriate for mediation; or

(4) a refusal of one of the parties to continue with the mediation.

(b) If the parties reach a complete or partial agreement, the mediator shall promptly prepare and transmit to the parties and their attorneys, if any, a non binding Memorandum of Understanding setting forth the terms of the parties' agreement. In no event shall any agreement, whether reflected in the Memorandum of Understanding or otherwise, be binding on the parties unless and until it is subsequently incorporated into a writing signed by the parties.

(c) The mediator may mediate subsequent disputes between the parties, but shall not act as attorney, counselor, or psychotherapist for any party either during or after the mediation of a custody action, or in any matter which was the subject of mediation.

(d) The mediator is prohibited from asking the parties to sign any Memorandum of Understanding or agreement. No mediator drafted Memorandum of Understanding or agreement shall be submitted to the Court in any proceeding.

Rule *1940.7. Confidentiality of Mediation Subsequent to Initial Orientation Session.

(a) All mediation communications and mediation documents, as those terms are defined in 42 P. S. § 5949 of the Judicial Code, are privileged, not subject to discovery and inadmissible as evidence in any proceeding; and

(b) No party, mediator or other person who participates, may be called as a witness, or otherwise compelled to reveal any matter disclosed in mediation undertaken, if any, during or subsequent to the initial orientation session.

Rule *1940.8. Mediator Compensation.

Mediators shall be compensated for their orientation services at a rate to be established by the Court. Unless otherwise ordered, the rate established for the custody mediation orientation session shall be divided between the parties. The costs of the orientation session may be waived by the Court for any party qualifying to proceed *in forma pauperis*.

Rule *1940.9. Sanctions.

On its own motion or the motion of a party, the Court may impose sanctions against any party or attorney who fails to comply or causes a party not to comply with these mediation rules. Sanctions may include an award of mediation costs and attorneys fees, including those incurred in the filing and presentation of the motion for sanctions, as well as a finding of Contempt. A hearing on a Custody Complaint or Petition shall not be delayed, however, by a party's refusal or failure in attending the mediation orientation sessions.

Rule *1940.10. Evaluation of Custody Mediation Orientation Program.

(a) The Court shall require mediators and Court personnel to evaluate the mediation orientation program at least semi-annually.

(b) The President Judge shall appoint an Advisory Panel to the program to oversee and implement the program consistent with local Court rules, including, but not limited to, implementing and monitoring the program consistent with Paragraph (a) above.

Rule *1940.11. Certificate of Compliance.

A certificate of compliance shall be filed by the mediator with the Prothonotary's Office, confirming compliance. Such certificate shall reflect only that such party or parties have complied with these local rules, but shall in no event detail that such compliance was comprised of attendance or disqualification, so as to ensure that confidentiality is not violated consistent with Local Rule 1940.7.

Rule *1940.12. Available List of Mediators

The Court shall maintain and make available to all parties and counsel in the Prothonotary's Office and the Custody Conciliator's Office a list of custody mediators who have satisfied the requirements described more fully in Local Rule 1940.4. Such list shall include, at a minimum, the names, addresses and the schedule of fees for mediation services to be provided subsequent to the initial custody mediation orientation session.

[Pa.B. Doc. No. 99-1913. Filed for public inspection November 12, 1999, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that M. Abraham Ahmad, having been disbarred on consent from the practice of law in the State of Maryland, the Supreme Court of Pennsylvania issued an Order dated November 1, 1999 disbaring M. Abraham Ahmad from the practice of law in this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 99-1914. Filed for public inspection November 12, 1999, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Marc D'Arienzo, having been suspended from the practice of law in the State of New Jersey for a period of three months, the Supreme Court of Pennsylvania issued an Order dated November 1, 1999 suspending Marc D'Arienzo from the practice of law in this Commonwealth for a period of three months. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 99-1915. Filed for public inspection November 12, 1999, 9:00 a.m.]