

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 35 AND 65]

Amendments to Business of the Superior Court and Superior Court Internal Operating Proce- dures

Rules of Appellate Procedure, Business of the Superior Court

The Superior Court of Pennsylvania has adopted procedures by which requests that a decision of the Court be published are made. This policy is reflected in the Pennsylvania Rules of Appellate Procedure—Business of the Superior Court, with the adoption of Rule 3519, appearing in 210 Pa. Code Chapter 35.

Superior Court Internal Operating Procedures

The Superior Court of Pennsylvania has adopted procedures by which requests that a decision of the Court be published are made. This policy is reflected in the Superior Court Internal Operating Procedures with the amendments to 210 Pa. Code § 65.37.

These changes become effective July 1, 2000.

MITCH GRUNER,
*Executive Administrator
to the Superior Court of Pennsylvania*

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 35. BUSINESS OF THE SUPERIOR COURT

APPEALS AND ARGUMENT LISTS

Rule 3519. Requests for Publication.

(a) *Briefs of the Parties.* The brief of the appellant or the appellee may include, in addition to those matters enumerated in Rule 2111, a request for the publication of the Superior Court's disposition with respect to the issues on appeal. The request shall be separately and distinctly entitled and shall set forth the reasons why publication as an opinion is being sought. Such reasons may include (1) that the Court of Common Pleas has decided a question of substance not previously determined by the Superior Court or the Supreme Court; (2) the Court of Common Pleas has rendered a decision in conflict with the decision of another Court of Common Pleas on the same question; or (3) the question involves an issue of substantial public importance.

(b) After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge convert the memorandum to a published opinion. In the case of a motion, such request must be filed within 14 days after the entry of the judgment or other order

involved. As before, the decision to publish is solely within the discretion of the panel.

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 65. INTERNAL OPERATING PROCEDURES OF THE SUPERIOR COURT

DECISIONAL PROCEDURES

§ 65.37. Unpublished Memoranda Decisions.

A. An unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding. When an unpublished memorandum is relied upon pursuant to this rule, a copy of the memorandum must be furnished to the other party to the Court.

B. After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge convert the memorandum to a published opinion. In the case of a motion, such request must be filed within 14 days after the entry of judgment or other order involved. As before, the decision to publish is solely within the discretion of the panel.

C. The publication of a decision is within the panel's discretion, however, a decision generally should be published when it:

1. Is by a Court en banc, provided that a majority of the voting members of the panel may vote to refrain from publication and to decide the appeal by memorandum;
2. Establishes a new rule of law;
3. Applies an existing rule of law to facts significantly different than those stated in prior decisions;
4. Modifies or criticizes an existing rule of law;
5. Resolves an apparent conflict of authority;
6. Involves a legal issue of continuing public interest; or
7. Constitutes a significant, non-duplicative contribution to law because it contains;
 - a. An historical review of the law,
 - b. A review of legislative history,
 - c. A review of conflicting decisions among the courts or other jurisdictions.

D. A judgment order, without separate memorandum decision, may be used to decide an appeal where the decision is unanimous and requires minimal explanation because it is mandated by established and unquestioned precedential decision, statute or principle of law or is based on findings of fact which are fully supported by the evidence.

[Pa.B. Doc. No. 00-1155. Filed for public inspection July 7, 2000, 9:00 a.m.]

Title 255—LOCAL COURT RULES

YORK COUNTY

Amendment of Rules 212, 1915.1, 1915.3(b), 1920, 6018, 6031, 6034 and 6300 Et Seq; No. 00MI 00269

Administrative Order

And Now, To Wit, this 7th day of June, 2000, it is *Ordered* that Rule 212, Pre-Trial Conference; Rule 1915.1 Child Custody Actions, Scope; Rule 1915.3(b), Divorce and Annulment of Marriage, Reference to the Conciliator; Rule 1920.1, Divorce and Annulment of Marriage, Definitions, Conformity to Civil Action; Rule 6018, Agency Board; Rule 6031, Procedure in One Judge Matters; Rule 6034, Procedure in Motions Court Matters; and Rule 6300, Et Seq., Cases Eligible for Civil and Family Law Mediation are added, amended, and deleted as follows:

Rule 212, Pre-Trial Conference is modified and amended as set forth in the text filed herewith:

Rule 212. Pre-Trial Conference.

(a) When an action is at issue, any party thereto, who desires to proceed to trial shall list the action for a pre-trial conference by filing a Praecipe requesting a pre-trial conference and noting whether the proposed trial is a jury or non-jury trial.

(b) All actions listed for a pre-trial conference shall be placed by the District Court Administrator on a pre-trial conference list and assigned by him, under the direction of the President Judge, to a judge for a Pre-trial conference. The pre-trial conference shall be scheduled after the issuance of an Order Preliminary to Pre-Trial conference and compliance therewith.

Rule 1915.1, Scope is modified and amended as set forth in the text filed herewith:

CHILD CUSTODY ACTIONS

Rule 1915.1. Scope.

The rules set forth in this section shall govern and practice and procedure in all actions for custody, partial custody and visitation of minor children, including Habeas Corpus proceedings and claims for custody, partial custody or visitation asserted in an action of divorce or support. These local rules shall be viewed as supplementing the Pennsylvania Rules of Civil Procedure governing custody as set forth in Pa. R. C. P. 1915.1 et seq.

Matters raised by petition, or motion prior to trial, which require consideration by the Court, and which are not otherwise provided for in these rules, shall proceed as set forth in Local Rules 6030 et seq.

Rule 1915.3 (b) is amended as set forth in the text filed herewith:

CHILD CUSTODY ACTIONS

Rule 1915.3 (b). Reference to the Conciliator.

Administrative Fee. The conciliator shall be compensated at the rate of \$125.00 for each conference actually conducted.

The remainder of Rule 1915.3 (b) 5. remains the same.

Rule 1920.1, Definitions, Conformity to Civil Action is modified and amended as set forth in the text filed herewith:

DIVORCE AND ANNULMENT OF MARRIAGE

Rule 1920.1. Definitions Conformity to Civil Action.

Matters raised by petition or motion prior to trial, which require consideration by the Court, and which are not otherwise provided for in these rules, shall proceed as set forth in Local Rules 6030 et seq.

Rule 6018. Agency Board is modified and amended as set forth in the text filed herewith:

Rule 6018. Agency Board.

(a) *Petition for review.* Appellant shall serve upon the government agency, together with the Petition for Review as set forth in Rule 6017, a notice shall state that a true and complete copy of the entire record of the proceedings before the government agency which is the subject matter of the appeal, including any transcript of testimony in existence and available to the government agency, must be certified and filed by the government agency with the Prothonotary within the time period required under the applicable law, or if no such time period has been established, within twenty (20) days of receipt of such notice. Rule 6018(a) shall not apply to zoning appeals, as the same are governed by Section 101 of the Pennsylvania Municipalities Planning Code, 53 P. S. Section 11001-A.

(b) *Failure to file record.* In the event any political subdivision or municipal or other local authority, of the officers or agency of any political subdivision or local authority, whose decision, adjudication or order is the subject of an appeal to the Court, fails to certify or file with the Prothonotary the record of the hearing held by such agency in the subject action within the time period required under the applicable law, and where the procedures for compliance therewith are not otherwise provided for in such applicable law, any party to the appeal may forthwith petition the Court for relief. In response to such petition or on its own motion, the Court may remand the proceedings to the local agency for the purpose of making a full and complete record or completing the transcription and filing the certification of the record to the Prothonotary, as the case may be, within a stated period of time, or for further disposition in accordance with the order of the Court. Provided, however, that no appeal brought before the Court pursuant to Sections 10916.1 or 10913.3 of the Pennsylvania Municipalities Planning Code shall be remanded for further hearings before any such local agency. In its order in final disposition of the appeal, the Court shall assess against such local agency or such other party as the Court shall determine, the costs and reasonable expenses and attorney's fees incurred as a result of any such remand.

Note: The term "local agency" is used pursuant to the definitions contained in 2 Pa.C.S.A. Sections 101 et seq. The last sentence of Rule 6018(b) is primarily intended as a remedy for cases where the record is simply not timely filed by the local agency, and may include appropriate interest and delay damages where applicable.

Rule 6031(a)(1)(v) is deleted in its entirety and replaced with the following while Rule 6031(a)(1)(vi) is simply deleted:

Rule 6031. Procedure in One-Judge Matters.

(a) Matters other than motions for post-trial relief.

(1) Filing and Service of briefs.

(v) Unless the time for filing and serving briefs has been extended by the Court for cause shown, where briefs

have not been timely filed and served as required by this rule, the Court may, upon request of a party:

1. Deny the relief requested by dismissing the motion without prejudice, where the moving party has failed to comply;
2. Deny the relief requested upon the merits where the moving party has failed to comply;
3. Grant the relief requested upon the merits, where the responding party has failed to comply;
4. Permit oral argument, but only by the complying party, and thereafter issue a decision upon the merits;
5. Grant such other relief or impose such other sanctions, as the Court shall deem proper.

Rule 6034 is amended as set forth in the text filed herewith:

Rule 6034. Procedure in Motions' Court Matters.

(b) *Notice Requirements.* Counsel and unrepresented parties must notify opposing counsel or unrepresented parties of their intention to present a motion or petition to the motions judge three full business days in advance of the specific business session at which it will be presented. Counsel and unrepresented parties must also provide opposing counsel or unrepresented parties with a copy of the motion or petition to be presented three full business days in advance of the specific business session at which it will be presented. For purposes of this rule only, service on opposing counsel or unrepresented parties by facsimile transmission shall constitute appropriate service. Service by facsimile transmission later than 12:00 p.m. shall be deemed service as of 9:00 a.m. the next full business day. The motions judge must receive a copy of any motion or petition at least twenty-four hours in advance of the business session at which it will be presented.

(k) *Content of Motion.* All motions to be disposed of by the motions Judge, either in motions Court or in chambers shall include:

A brief statement of all prior determinations of the Court;

A brief statement of all pending matters before the Court;

A brief statement of all related cases pending in any Court.

Rules 6300, 6301, 6302, and 6303 are deleted in their entirety and replaced with the following:

Rule 6300. Cases Eligible for Civil and Family Law Mediation.

(a) *Civil Cases.* Civil cases which shall be eligible for mediation shall be those civil cases filed with the York County Court of Common Pleas which, if not settled, would be heard and decided by a Board of Arbitrators, a jury, or a Judge, and which do not involve issues of divorce, equitable distribution, alimony or alimony pendente lite, support or custody.

(b) *Family Law Cases.* Family law cases which shall be eligible for mediation shall be those Family Law cases filed with the York County Court of Common Pleas which, if not settled, would be heard and decided by a Judge or Master, and which involve equitable distribution, alimony, alimony pendente lite, counsel fees, costs, expenses and such other related issues as the parties and mediator

agree. Pursuant to these rules, no request for mediation shall be filed until ninety (90) days after the filing of the divorce complaint.

Any case where either party is or has been a subject of domestic violence or child abuse at any time during the pendency of an action under this section or within twenty-four (24) months preceding the filing of an action under this section shall not be eligible for mediation under this section.

Rule 6301. Selection of Mediators.

(a) The York County Bar Association shall present to the President Judge a list of attorneys authorized to practice before the York County Court of Common Pleas who have agreed to serve as mediators for cases eligible for mediation under Rule 6300(a). The President Judge may strike names from the list and, within ten (10) business days from the receipt of the list, shall forward the final list of mediators to the Civil Motions Court Judge and the York County Bar Association. The list of proposed mediators shall be presented to the President Judge by the York County Bar Association annually, but not later than the tenth business day in January.

(b) The York County Bar Association Family Law Section shall present to the Administrative Judge of the Family Division a list of attorneys authorized to practice before the York County Court of Common Pleas who have agreed to serve as mediators for cases eligible for mediation under Rule 6300(b). The Administrative Judge of the Family Division may strike the names from the list and, within ten (10) business days from the receipt of the list, shall forward the final list of mediators to the York County Bar Association. The list of proposed mediators shall be presented to the Administrative judge of the Family Division by the York County Bar Association annually, not later than the tenth business day in January.

(c) **Mediation Training Requirements:**

(1) Attorneys selected by the Bar Association and approved by the President Judge as mediators for cases submitted under Rule 6300(a) shall be certified as professional mediators, or shall have at least four (4) hours of mediation training. Attorneys who are not certified mediators must attend a one (1) hour training or review course pertaining to mediation at least annually.

(2) Persons selected as mediators for cases submitted under Rule 6300(b) must have fulfilled the requirements of a general member of the Academy of Family Mediators (which includes at least forty (40) hours of approved training in Family Law Mediation), or have received thirty (30) hours of Custody Mediation Training approved by the York County Family Court Division, plus be a practicing Family Law Attorney.

(d) No person shall serve as a mediator in a case where the mediator or any member of his or her firm:

- (1) Previously or currently represents one or more parties (or their insurers, if applicable to the case); or
- (2) Is personally acquainted with or related to one or more of the parties; or
- (3) Has personal knowledge or familiarity with the case; or
- (4) Has been or may be called as a witness in the case.

Rule 6302. Motion for Mediation.

(a) An attorney for any party, or any unrepresented party, in any civil case or family law case eligible for

mediation may file a motion and proposed order for mediation of the case. Any Judge involved in any motion, petition, trial or other proceeding in a civil case or family law case eligible for mediation may issue an order directing that the case be mediated.

(b) A motion for mediation may be made at any stage in the proceedings, so long as the case is pending in the Court of Common Pleas of York County. The motion for mediation shall not affect or delay other proceedings in the case. For Family Law cases, no request for mediation shall be filed until ninety days after the filing of the Divorce complaint.

(c) The motion for mediation of cases submitted under Rule 6300(a) shall be presented to the Civil Motions Court Judge in chambers for his or her signature for an order for mediation.

(d) The motion for mediation of cases submitted under Rule 6300(b) shall be presented to the Family Law Judge in chambers for his or her signature for an order for mediation.

(e) The motion shall contain the following information:

(1) The Caption of the Case;

(2) The names, addresses and telephone numbers of each attorney and unrepresented party in the case; in the case of the attorneys, the motion shall identify the party represented by the attorney;

(3) If the parties have agreed upon a mediator from the list of mediators approved by the Court, the motion shall identify the mediator;

(4) A request for referral of the case to a mediator;

(5) In Family law cases, an averment that no party or child subject to these proceedings is or has been a subject of domestic violence or child abuse at any time during the pendency of this action or within twenty-four months (24) preceding the filing of this action;

(6) An averment that the opposing parties consent to the mediation, or if consent is not given, that all opposing parties have been given three full business days notice of the presentation of the motion.

(f) Upon receipt of the signed order from the Court, the moving party shall file motion and order with the Prothonotary and serve the motion and order in accordance with the applicable rules for service of motions, and the moving party shall serve the motion and order upon the assigned mediator.

(g) The first motion for mediation by a party shall not require the consent of opposing counsel or opposing parties. Second and subsequent motions for mediation shall be presented at current business except when all parties concur with the motion.

(h) Upon receipt of a motion for mediation, the Court shall assign a mediator to the case, unless the parties have agreed upon a mediator.

Rule 6303. Mediation Conference.

(a) All mediation conferences shall be scheduled by the mediator. The conferences shall be scheduled to last two (2) hours.

(b) In Family Law cases, mediators shall screen each party in advance of the mediation, using the Tolman Screening Model and shall not conduct mediation in those cases where the mediator determines, in his or her sole discretion, that mediation is not appropriate due to domestic violence, substance abuse, mental illness or

other reasons under the Tolman Screening Model. The mediator shall notify the parties that he or she has determined that the case is not appropriate for mediation but shall not specify the reason for the rejection.

(c) All parties shall attend the mediation conference. Counsel may attend upon request of the mediator, or upon request of a party, provided advance notice to the mediator and all other parties have been given. If a party is insured for the claim which is the subject of the mediation, a representative of insurer and counsel shall attend the mediation conference and shall have full settlement authority.

(d) Prior to the mediation conference, the Prothonotary shall permit the mediator to receive the file for the case for review and for reference during the mediation conference. The mediator shall return the file to the Prothonotary no later than the third business day following the mediation conference.

(e) The mediator may request the parties to submit a list of issues and a brief summary of the parties' position on each issue.

(f) At the time of the mediation conference, the mediator shall begin the conference by explaining the conference procedure. Counsel and/or the parties shall be prepared to discuss all of the issues pertaining to the case.

(g) All discussions during the mediation conference shall be deemed to be for settlement purposes only and no statement by any party or counsel or by the mediator may be used as an admission or as evidence or otherwise in any proceeding in the case. All mediation communications and mediation documents shall be privileged to the extent provided by 42 Pa.C.S.A. § 5949. The mediator shall not be called as a witness in any proceeding in the case where the subject of the mediator's testimony would reveal anything pertaining to the matters discussed or addressed in the mediation conference.

Rule 6304. Duties and Compensation of the Mediator.

(a) Within ten (10) days of service of the order for mediation, the mediator shall contact each of the parties to the dispute and shall schedule the date of mediation. The date of the mediation shall be not less than twenty (20) days nor more than sixty (60) days from the date of the order. If a scheduling conflict arises, it is the responsibility of counsel or unrepresented party with the scheduling conflict to contact the mediator and all opposing counsel or parties to reschedule the mediation.

(b) At least five (5) business days prior to the scheduled date of the mediation, each party shall pay to the mediator the sum of \$150.00 as the mediator's fee for the scheduling and attendance at the mediation conference. Parties authorized to proceed in forma pauperis shall be exempt from payment of this fee, and the mediator will not be paid for this portion of the mediation.

(c) At the conclusion of the mediation conference, the mediator shall file a report with the Prothonotary, setting forth the caption of the case, the identity of counsel, and the identity of any unrepresented parties. The report shall further indicate the date on which a mediation conference was held, or the date on which the mediation was scheduled but at which one or more parties failed to participate. This report shall be filed for the purpose of establishing compliance or lack of compliance with the Court order pertaining to mediation.

(d) At the conclusion of the mediation conference, if appropriate, the mediator shall prepare a Memorandum of Understanding, summarizing any agreements reached by the parties, and shall provide copies of the memorandum to the parties and their counsel of record. The parties and their counsel shall be responsible for converting the Memorandum of Understanding into a contract, stipulation, or proposed order, and for taking the steps necessary to implement such documents and agreements.

Rule 6305. Sanctions for Failing to Participate in Mediation.

(a) In the event that any party has been ordered to participate in mediation pursuant to these rules and fails to cooperate in the scheduling of a time for mediation conference, or fails to attend the scheduled mediation conference, or fails to pay the mediator pursuant to the requirements of Rule 6304(b), such party shall be subject to the following sanctions:

(1) Payment of \$150.00 to the mediator as reimbursement for the mediator's time in attempting to schedule and attend the mediation conference, except where the party has paid the mediator's fee;

(2) Payment of reasonable attorney's fees and costs incurred by other parties to the mediation during the mediation process.

(b) The Court shall have the authority to impose alternative sanctions in the event it can be established that the party failing to cooperate with the mediation did so due to events beyond the party's control, or that the party's conduct was otherwise justified.

(c) The sanctions permitted by this rule shall be in addition to and not in lieu of other sanctions or penalties which may be imposed by the Court pursuant to law or rule of court.

It Is Further Ordered that in accordance with Pa.R.C.P. 239 the District Court Administrator shall;

(a) File 7 certified copies hereof with the Administrative Office of Pennsylvania Courts.

(b) Distribute 2 certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(c) File 1 certified copy hereof with the Civil Procedural Rules Committee established by the Supreme Court of the Commonwealth of Pennsylvania.

(d) File 1 certified copy hereof with the Domestic Relations Committee established by the Supreme Court of the Commonwealth of Pennsylvania.

(e) Cause a copy hereof to be published one time in the *York Legal Record* at the expense of the County of York.

(f) Supervise the distribution thereof to all Judges and all members of the Bar of this Court.

By the Court

JOHN C. UHLER,
President Judge

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