

THE COURTS

Title 255—LOCAL COURT RULES

LEHIGH COUNTY

Adoption of Local Rules of Civil Procedure 1910.11(a)-1 to 1940.7 for Actions for Support, Actions for Custody and Visitation, Actions for Divorce or Annulment and Voluntary Mediation in Custody/Visitation Disputes; No. 2000-J-15

Order

And Now, this 11th day of July, 2000, *It Is Ordered* that the following rules for actions for support, actions for custody and visitation, actions for divorce and annulment, and voluntary mediation in custody/visitation disputes in the 31st Judicial District composed of Lehigh County be, and the same are, promulgated herewith, to become effective thirty (30) days after publication of the rules in the *Pennsylvania Bulletin*; and that the present Lehigh County Rules of Civil Procedure 1915.1 through 1920.55 are revoked, effective at the same time.

The Court Administrator of Lehigh County is directed to:

1. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Domestic Relations Procedural Rules Committee.
4. File one (1) copy with the Clerk of Courts of the Lehigh County Court of Common Pleas.
5. Forward one (1) copy for publication in the Lehigh County Law Journal.

By the Court:

JAMES KNOLL GARDNER,
President Judge

ACTIONS FOR SUPPORT

Rule 1910.11(a)-1. Attorney Appearances

Each attorney who attends a support conference or hearing on behalf of a party shall enter an appearance for that party in the support action by filing a praecipe for appearance with the domestic relations section. The entry of an appearance shall continue in effect for all aspects of the support action; provided, however, that by specific notation on the praecipe an appearance at or prior to a support conference may be limited to the conference itself.

Note: Any attorney may withdraw his appearance (1) without leave of court by filing a written notice of withdrawal if another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation (See Pa.R.C.P. 1012(b)), or (2) with leave of court by filing a written petition to withdraw pursuant to the procedure set forth in Lehigh County R.C.P. 206.1.

Rule 1910.11(a)-2. Continuances.

A request for continuance of any support matter scheduled to be heard by the court shall be presented to the

judge assigned to hear the matter, or if he/she is unavailable, to the family court motions judge. A request for continuance of any matter scheduled before a domestic relations conference officer shall initially be presented to the director of the domestic relations section for decision. Any party dissatisfied with the decision of the director may appeal his/her decision to the judge assigned to hear such matters.

Rule 1910.11(j). Special Listings.

A party requesting a special listing for a support matter shall file a praecipe for special listing with the domestic relations section on the form provided for this purpose. The domestic relations section shall forward the praecipe to the judge assigned to hear the matter, who shall conduct a telephone conference with counsel and any unrepresented parties and shall enter an appropriate order. The order may include, *inter alia*, an estimate of the length of the hearing, a summary of the issues to be presented, the date after which the hearing shall be scheduled, and instructions regarding discovery.

Rule 1910.25. Special Relief.

Where there is an imminent prospect of the cessation or material interruption of the basic necessities of health, education or welfare, a party may apply for a special order of support prior to the conference with a domestic relations conference officer. Applicants for such relief shall use the application, notice, certificate of service, and response forms available in the domestic relations and court administrator's offices. A copy of the completed application, the notice, and a blank form for responding to the application shall be served by the sheriff or a competent adult upon the defendant in the manner set forth in Pa.R.C.P. 1930.4. The completed application and certificate of service shall be filed with the domestic relations section. The defendant must respond to the application within ten days, after which the application, certificate of service and response, if any, will be docketed to the case file and transmitted by the domestic relations section to a judge for disposition. Any order of support entered pursuant to the application will be effective as of the date the application was filed and will be enforceable by the domestic relations section. Credit will be given for all moneys paid pursuant to such an order.

ACTIONS FOR CUSTODY, VISITATION

Rule 1915.3. Commencement of the Action.

(a) A proposed order, in the form prescribed by Pa.R.C.P. 1915.15(b), shall be attached to the complaint directing the defendant and any other interested parties to appear at the time and place for the purpose specified. The plaintiff shall obtain a date from the child custody office for mediation or conference prior to filing the complaint.

(b) Any party may request mediation or a conference by praecipe where a pleading has been previously filed.

(c) The original and one complete copy of all notices, pleadings and documents shall be filed with the clerk of courts. The clerk shall transmit the copy of such filing to the child custody office.

(d) If the case has been assigned to a judge, the name of the assigned judge shall be stated in the caption.

Rule 1915.4-2. Procedures in Claims for Partial Custody and Visitation.

Any party aggrieved by an order entered by a custody conference/hearing officer in a partial custody or visitation case may file written exceptions with the court administrator's office within ten days of notice of entry of the order. If exceptions are filed by any party, any other party may file exceptions within ten days of the date of service of the original exceptions. Both parties should be present at the scheduled date for argument on the exceptions, since the judge assigned to the matter may wish to hear additional testimony from the parties themselves.

Rule 1915.4-3. Procedures in Claims for Primary Physical or Shared Physical Custody.

(a) In actions for primary or shared custody, the custody conference/hearing officer shall schedule a conference within thirty days after referral from the mediator or, in the absence of mediation, within thirty days after service of the pleading commencing the action or seeking modification of an existing order.

(b) Conferences shall be conducted informally by the custody conference/hearing officer. The parties and their counsel shall attend. Child(ren) shall not attend unless directed to do so by the custody conference/hearing officer acting at the request of either party or sua sponte. Counsel and unrepresented parties shall be prepared to present testimony of the parties and offers of proof for any other witnesses who would be called at a full hearing.

(c) If an agreement is not reached at the conference, the custody conference/hearing officer shall prepare a recommended order for the court including, where appropriate, agreements, stipulations, interim relief pending a hearing, and such other matters as the custody conference/hearing officer deems relevant, along with a memorandum setting forth the reasons for such recommendations and a summary of the information presented at the conference.

(d) If all parties agree, the recommended order may include provisions for examination and evaluation by experts of the parties and/or the subject child(ren), including home studies and psychological evaluations, as provided by Pa.R.C.P. 1915.8. In the event the custody conference/hearing officer deems an examination or evaluation by experts of the parties and/or the subject child(ren), including home studies and psychological evaluations, to be appropriate, and has not obtained the agreement of all parties for the same, then the custody conference/hearing officer shall prepare a memorandum with proposed order setting forth such recommendation addressed to the judge assigned to hear the matter or, if none, to the administrative judge of the family division. Any party seeking such an examination or evaluation by experts may present a motion to the judge assigned to the case or, if none, to the family court motions judge.

(e) Any party aggrieved by the interim order may, within ten days of the mailing of such order and memorandum, seek interim relief by filing written exceptions with the court administrator's office. Both parties should be present at the scheduled hearing date for argument on the exceptions, since the judge assigned to hear the matter may wish to hear additional testimony from the parties themselves. This proceeding will not replace a full hearing before a judge on custody issues.

(f) The custody conference/hearing officer shall certify the case for trial before a judge.

Rule 1915.4-4. Relocation Rules.**(a) GENERAL**

(1) A "relocation" is a change in the principal residence of the child(ren) for more than thirty days that significantly impairs the ability of the non-relocating party to exercise his/her custodial or visitation rights.

(i) Any interstate move is automatically deemed to be a relocation.

(ii) An intrastate move may be a relocation for which a notice of relocation must be filed if the principal residence of the child(ren) is moved outside of Lehigh County. Whether a move is a relocation shall be decided by the court.

(2) "Principal residence of a child" means:

(i) The location designated by a court to be the primary residence of the child;

(ii) In the absence of a court order, the location at which the parties have expressly agreed the child will primarily reside; or

(iii) In the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child's parents or parent, or a person acting as parent, for at least six consecutive months and, in the case of a child less than six months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period. In the case of joint physical custody, the location at which the child lived with either parent for at least six consecutive months preceding the time involved shall be considered the principal residence of the child, for purposes of this rule.

(3) This rule applies to any proposed relocation.

(4) No relocation shall occur unless:

(i) Each parent or person acting as parent, and every individual who has custody or visitation rights to the child pursuant to a court order, consents in writing to the proposed relocation; or

(ii) No objection is filed after proper notice is filed and served; or

(iii) The court approves the proposed relocation.

(b) NOTICE

(1) The party proposing the relocation shall provide written notice to every person specified in paragraph (4)(i) above, in accordance with Pa.R.C.P. 1930.4 (relating to service of original process in domestic relations matters).

(2) Notice shall be given no later than:

(i) the sixtieth day before the date of the proposed relocation; or

(ii) the tenth day after the date that the individual knows of the relocation, if:

(aa) the individual did not know and could not reasonably have known of the relocation in sufficient time to comply with the sixty-day notice; and

(bb) it is not reasonably possible to delay the date of relocation so as to comply with the sixty-day notice.

(3) The following information, if available, must be included with the notice of the proposed relocation:

(i) The address of the intended new residence.

(ii) The mailing address, if not the same as the address of the intended new residence.

(iii) The home telephone number of the intended new residence.

(iv) The name of the new school district and school.

(v) The date of the proposed relocation.

(vi) A proposal for a revised custody or visitation schedule, including transportation arrangements.

(vii) The reasons for the proposed relocation.

(viii) The names of all persons who will be residing at the intended new residence.

(ix) Any other information which the party proposing the relocation deems appropriate.

(x) A warning to the non-relocating party that if the non-relocating party does not file with the clerk of courts an objection to the proposed relocation within thirty days after receipt of the notice, that party may be foreclosed from objecting to the relocation.

(4) If any of the information set forth in paragraph (3) is not known when the notice is sent but is later made known to the party proposing the relocation, then that party shall promptly inform every individual who received notice under this subsection.

(5) A copy of the notice shall be filed with the clerk of courts along with proof of service.

(c) **OBJECTION TO PROPOSED RELOCATION**

(1) An objection to the proposed relocation shall be filed with the clerk of courts within thirty days of service of the relocation notice. A copy of the objection shall be served on the party proposing the relocation, and a copy shall be delivered to the child custody office. The party objecting to relocation may seek a temporary or permanent order to prevent the relocation by filing a petition for special relief pending litigation.

(2) Absent exigent circumstances, it is the policy of the court that no relocation shall occur within the thirty-day period for filing an objection.

(3) Confirmation of relocation. If no objection to the proposed relocation is timely filed with the clerk of courts, the party proposing the relocation may file the following with the clerk of courts prior to the relocation:

(i) an affidavit stating that the party provided notice to every individual entitled to notice, that the time to file an objection to the proposed relocation has passed, and that no individual entitled to receive notice has filed an objection to the proposed relocation;

(ii) a petition to confirm the relocation and modify any existing custody or visitation order in accordance with the revised custody/visitation schedule proposed in the notice; and

(iii) a proposed order containing the information required in subsection (b)(3)(i) to (vi) inclusive.

(d) **CUSTODY CONFERENCE AND HEARING**

(1) If a timely objection has been filed to the proposed relocation, the custody conference/hearing officer shall promptly schedule an expedited conference with the parties and their counsel. Mediation shall not be required in cases of relocation.

(2) If an agreement is not reached at the conference, the custody conference/hearing officer shall certify the matter for hearing before a judge. The court administra-

tor's office shall then immediately schedule an expedited hearing on the proposed relocation before the judge assigned to hear the matter.

(3) If exigent circumstances exist, a petition for special relief may be filed for a preliminary hearing before the court on the relocation.

(4) If the court approves the proposed relocation, it shall:

(i) modify any existing custody or visitation order; or

(ii) establish the terms and conditions of a custody or visitation order.

(5) Psychological evaluations shall be performed only if:

(i) The parties agree to the evaluations; or

(ii) Evaluations are ordered by the court on motion or for legal cause shown.

Rule 1915.4-5. Continuances.

A request for continuance of any custody matter scheduled to be heard by the court shall be presented to the judge assigned to hear the matter, or if he/she is unavailable, to the family court motions judge. A request for continuance of any matter scheduled before the custody conference/hearing officer shall initially be presented to this officer for decision. Any party dissatisfied with the decision of this officer may appeal the decision to the judge assigned to hear the matter, or if he/she is unavailable or if no judge has been assigned, to the family court motions judge.

Rule 1915.4-6. Attorney Appearances.

Each attorney who attends a custody conference or hearing on behalf of a party shall enter an appearance for that party in the custody action by filing a praecipe for appearance with the clerk of courts. The entry of an appearance shall continue in effect for all aspects of the custody action; provided, however, that by specific notation on the praecipe an appearance at or prior to a custody conference may be limited to the conference itself.

NOTE: Any attorney may withdraw his appearance

(1) without leave of court by filing a written notice of withdrawal if another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation (See Pa.R.C.P. 1012(b)), or (2) with leave of court by filing a written petition to withdraw pursuant to the procedure set forth in Leh.R.C.P. 206.1.

Rule 1915.5. Jurisdiction and Venue. Responsive Pleadings.

(a) A party must raise the questions of personal jurisdiction or venue by preliminary objections filed within twenty days of service of the pleading to which objection is made or at the time of conference, whichever first occurs, pursuant to Pa.R.C.P. 1915.5 and Leh.R.C.P. 1028. Failure to raise such questions shall constitute a waiver of any underlying rights related to personal jurisdiction and/or venue.

(b) Any issues of jurisdiction arising under the Uniform Child Custody Jurisdiction Act, 42 Pa.C.S. § 5341 et seq., shall be raised by presenting an appropriate petition to the judge assigned to hear the matter, or if none, to the family court motions judge.

Rule 1915.8. Disclosure of Expert Evaluations of Persons and Residences in Custody, Partial Custody or Visitation Actions.

(a) A party to a custody, partial custody or visitation action shall not disclose the contents of an expert report

prepared pursuant to Pa.R.C.P. 1915.8, including home study evaluations, and physical, mental, drug and/or alcohol evaluations, to anyone except his/her attorney, another party, or an expert consultant. Disclosure to an unauthorized person, including the child who is the subject of the action, may result in sanctions. An attorney who provides such a report to a party whom he represents, or the custody conference/hearing officer who provides such a report to an unrepresented party, shall advise the party in writing of the limits on disclosure imposed by this rule.

(b) All home study evaluations and physical, mental, drug and/or alcohol evaluations filed with the court shall be sealed by the clerk of courts, and shall be unsealed only by an order of court.

Rule 1915.11. Appointment of Attorney for Child.

(a) A party's request for appointment of an attorney for the child(ren) shall be made initially to the custody conference/hearing officer.

(b) The procedure for appealing the recommendation of a custody conference/hearing officer on a request for the appointment of an attorney to represent the child(ren) shall be the same as the procedure set forth in Leh.R.C.P. 1915.4-3(e) to appeal an interim order.

Rule 1915.12. Civil Contempt for Disobedience of Custody Order.

(a) Generally, petitions for civil contempt shall be scheduled for conference before the custody conference/hearing officer. If the contempt matter is not resolved before the custody conference/hearing officer, it shall then be scheduled for a hearing before a judge.

(b) In case of an emergency or extenuating circumstances, petitions for civil contempt may be presented initially to the judge assigned to hear the matter, or if none, to the family court motions judge.

Rule 1915.13. Special Relief.

(a) At any time after the commencement of the action, a party may request special relief by presenting an appropriate petition to the judge assigned to hear the matter, or if none, to the family court motions judge.

(b) Appropriate interim or special relief may be granted only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which event the court may issue a preliminary or special injunction without hearing and without notice upon such terms and conditions as it deems just, including the filing of security. In determining whether relief should be granted and whether notice of hearing should be required, the court may act on the averments of the pleading or petition and may consider affidavits or any other proof.

(c) Special and/or interim relief granted without notice to the opposing party shall be deemed dissolved unless a hearing on the continuance of such relief is held within five days after it is granted or within such time as the parties may agree or as the court upon cause shall direct.

Rule 1915.19. Co-Parent Education Program.

(a) All parties to divorce, custody, and other domestic relations actions, excluding domestic violence, contempt, and support actions, where the interests of children under the age of 18 years are involved, shall complete a program entitled the "Co-Parent Education Program," hereinafter referred to as "COPE."

(b) The moving party shall register for and attend COPE within sixty days of filing an applicable action. The responding party shall register for and attend COPE within sixty days of service of the applicable pleading.

(c) The moving party shall serve upon the responding party, with the applicable pleading, a copy of this rule and a registration form. Copies of this rule and registration forms for COPE shall be available at the office of the clerk of courts, and the child custody office.

(d) Payment of a fee established by the court is required for participation in COPE and must be submitted with the registration form. Any request for waiver or reduction of the fee shall be presented to the custody conference/hearing officer or forwarded with the registration form along with verification of eligibility for social security disability benefits or cash public assistance benefits, a verified affidavit of indigence, or other proof of financial hardship. Fees will not be accepted at the COPE session. Any request for an extension of time to complete COPE shall be made to Family/Divorce Services, P. O. Box 318, Trexlertown, PA 18087 (tel. 610-366-8868), or to such other place as the court shall direct.

(e) No final custody hearing shall be held or divorce decree granted in an applicable case until both parties have completed COPE, unless this requirement is waived by a judge or by the custody conference/hearing officer for good cause shown. Applications for waiver shall initially be presented to the custody conference/hearing officer.

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

ACTIONS FOR DIVORCE OR ANNULMENT

Rule 1920.2. Venue.

A party who enters an appearance in order to file preliminary objections to venue in an action of divorce or an action for annulment of marriage shall not be deemed to be participating in the proceeding for purposes of Pa.R.C.P. 1920.2(a)(2)(ii).

Rule 1920.3. Commencement of Action.

(a) An action shall be commenced by filing a complaint with the clerk of courts. All subsequent pleadings filed pursuant to the Divorce Code or by separate petition relating to any matter involving the same parties shall be filed with the clerk of courts and docketed to the same docket number.

(b) In all cases the plaintiff, upon filing a complaint, shall pay to the clerk of courts a filing fee that shall include \$55.00 as an administration fee. Where claims for costs and expenses are contained in the complaint, the administration fee shall be subject to apportionment between the parties as with any other fees, costs and expenses incurred in the action.

(c) Every pleading or petition filed pursuant to these rules which makes a separate claim for relief shall include in its caption the social security number and present address of each adult party. If the social security number is not available or the address is not known, the pleading or petition shall contain an averment so stating.

Rule 1920.4. Service.

Proof of service or acceptance of service as authorized by Pa.R.C.P. 1920.4(a) and (d) shall be filed within thirty days of service of process. A copy of the certificate of service shall be forwarded to the master-in-divorce.

Rule 1920.12. Complaint.

(a) In addition to the requirements of Pa.R.C.P. 1920.12, the plaintiff shall set forth in the complaint,

(1) a statement that the plaintiff specifically waives or reserves the right to request that the court require the parties to participate in counseling in any action under section 3301(a)(6), (c), or (d) of the Divorce Code. If a reservation of such request for counseling is contained in the complaint, waiver of the right of plaintiff must be contained in the affidavit submitted under Pa.R.C.P. 1920.72, or a separate waiver must be submitted by the plaintiff prior to the entry of the divorce decree if counseling has been completed pursuant to court order.

(2) an allegation as to the military or non-military service of the parties. If no such allegation is made, the allegation must be contained in the affidavit submitted under Pa.R.C.P. 1920.72 or by separate affidavit prior to the entry of the divorce decree.

(3) a statement as to any children born to the parties, whether such children are minors, and that the plaintiff and defendant have been advised of the requirement to participate in the Co-Parent Education (COPE) Program administered by the Lehigh County Court of Common Pleas pursuant to Leh.R.C.P. 1915.19.

(4) if desired, a request that the parties participate in the Interim Relief Program before the master-in-divorce.

(b) An additional copy of the verified complaint in divorce shall be filed for each of the following claims set forth in the divorce complaint:

- (1) Custody;
- (2) Equitable distribution;
- (3) Other types of ancillary relief.

(c) A claim for custody, whether filed in a separate complaint or petition or as a count in the divorce complaint shall conform to the requirements of the Uniform Child Custody Jurisdiction Act, 42 Pa.C.S. § 5341 et seq., and Pa.R.C.P. 1915.1 et seq.

Rule 1920.13. Pleading More than One Cause of Action. Alternative Pleading.

(a) Where a claim for relief under the Divorce Code is made in addition to a claim of divorce or for annulment, the plaintiff shall set forth in the complaint or petition requesting such relief, allegations as to whether either party had previously requested the same or similar relief in this or any other jurisdiction and the number, commencement date, and present status (if pending) or the final disposition of such proceeding.

(b) As provided in Pa.R.C.P. 1920.13(d), the court may order reasonable counsel fees, costs and expenses pending final disposition of any claim. In the first instance, the master-in-divorce shall hear all petitions for interim counsel fees, costs and expenses. All such requests shall be made by petition and rule to show cause delivered to the master-in-divorce office. An original plus two copies shall be delivered, after which the master shall fix a date and time on the rule returnable and shall have the original and copies filed with the clerk of courts. The rule to show cause shall be given a return date for the filing of an answer and also a conference date with the master, and shall be forwarded directly to the parties by the master-in-divorce office.

(c) The petition for interim counsel fees, costs and expenses shall contain:

(1) an identification of all other pending litigation between the parties;

(2) the petitioner's income and expense statement in the form required by the practice and procedure governing an action for support, together with a true copy of the petitioner's most recent federal income tax return and pay stubs, if any, for the preceding six months;

(3) the petitioner's inventory of all property owned or possessed in the form sufficient to inform the master of the size, nature, and extent of the assets of the parties, both marital and non-marital;

(4) the specific amounts claimed for interim counsel fees and expenses and any statement for services, bills, estimates, or other itemization or explanation.

(d) The answer to the petition shall include:

(1) the respondent's income and expense statement and an inventory as required of petitioner, together with a true copy of the respondent's most recent federal income tax return and pay stubs, if any, for the preceding six months;

(2) a concise statement of the respondent's position regarding the amounts claimed by the petitioner.

(e) If no answer is filed by the return date, upon praecipe and an affidavit of service of the petition and rule returnable, showing service more than ten days before the return date, the master will recommend that the rule be made absolute.

Following conference, the master will make a recommendation in the form of a draft order of court to the administrative judge of the family division for entry of an interim order recommending the allowance of specific amounts as interim counsel fees and expenses; directing that the fees and/or expenses be paid by the non-moving party or from existing marital assets; denying the petition; or granting such other relief as may be warranted under the circumstances. The order will provide that any party aggrieved may file a written demand for de novo review before the court within ten days. If neither party files a demand for review within ten days thereafter, the recommendation shall become a final court order. A demand for de novo review shall be placed on the next available family court miscellaneous list for disposition.

1920.15. Counterclaim. Subsequent Petition.

Where a claim for relief under the Divorce Code is made in addition to a claim for divorce or for annulment, the defendant shall set forth in the counterclaim or petition requesting such relief, allegations as to whether either party had previously requested the same or similar relief in this or any other jurisdiction and if so, the caption, court, term and number, commencement date, and present status (if pending) or the final disposition of such other proceedings.

Rule 1920.16. Severance of Actions and Claims. Interim Relief Program.

(a) The master-in-divorce shall be empowered to hear petitions for interim relief to assist parties either through agreement or by recommendation for entry of a court order to stabilize their financial circumstances, preserve assets subject to equitable distribution, and provide for interim distribution of marital assets warranted by the circumstances. Other issues subject to interim relief may include the use or possession of marital assets by the parties pending equitable distribution; payment of joint credit card debt or other liens during the divorce action, including mortgages, car payments, car insurance, per-

sonal loans, etc.; whether cash assets should be escrowed or whether they should be distributed in whole or in part; whether certain marital assets should be sold or disposed of during the pendency of the divorce; and issues of discovery. This shall be known as the "Interim Relief Program".

(1) Participation in the Interim Relief Program shall be voluntary by mutual agreement of the parties. Parties shall retain the right to proceed directly to the court, if so desired, on any matter that may be submitted pursuant to the Interim Relief Program or for special relief pursuant to Pa.R.C.P. 1920.43.

(2) Petitions pursuant to the Interim Relief Program may be filed contemporaneously with the divorce complaint or at anytime thereafter. All such petitions shall be titled "Plaintiff's/Defendant's Petition for Interim Relief pursuant to Lehigh County Rule of Civil Procedure 1920.16". The original of the petition shall be filed with the clerk of courts. A time-stamped copy of the petition shall be provided to the master-in-divorce office at least five days prior to the intended date of presentation to the master. Written proofs of notice of presentation as well as agreement of opposing counsel to proceed before the master-in-divorce shall be attached to the petition.

(3) Petitions shall be heard by the master on Tuesday and Thursday mornings commencing at 9:30 a.m. in the master-in-divorce office. No ex parte petitions will be entertained by the master. The parties and their counsel shall be entitled to attend the proceedings, although the presence of the parties shall not be required. No record of the proceedings shall be provided by the master. The parties shall have the right to arrange and provide for their own stenographic services.

(4) Every attempt shall be made by the master to dispose of all requests/petitions on the date of presentation or hearing. If the parties cannot agree on an order for relief, the master will make a written recommendation in the form of an Interim court order which will be automatically processed by one of the judges of the family division. Any party aggrieved by the order shall be entitled to file a written demand for review by the court within ten days of receipt of the order. Demands for review shall be placed on the earliest available family court miscellaneous list. There shall be no record of the proceedings before the master unless arranged by either of the parties. If a written demand for review from the recommended order is filed by either party, the master shall prepare and file a written statement of the reasons for the recommendation, if not already stated in the recommended order.

Rule 1920.31. Alimony, Alimony Pendente Lite, Counsel Fees, Costs and Expenses.

(a) A claim for alimony pendente lite, whether made by the plaintiff or the defendant, shall in the first instance be decided by the domestic relations section of the court. Where a claim for such relief is made, the clerk of courts shall transmit a duplicate copy of the pleading requesting such relief to the domestic relations section. The practice and procedure with respect to any such claims, including pre-hearing conferences conducted by the domestic relations section, shall be the same as the procedure in cases for support instituted by civil complaint.

(b) Claims for interim counsel fees shall be made in accordance with Lehigh County Rule of Civil Procedure 1920.13.

(c) A motion to modify an award of alimony shall be made in accordance with the general motion procedure under Lehigh County Rule of Civil Procedure 206.1. The judge assigned to the matter

may hear testimony on the motion or may refer it to the standing master-in-divorce or to a substitute master for hearing and recommendation.

Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.

(a) As provided in Lehigh County Rule of Civil Procedure 1920.4, within thirty days of service of the complaint containing a claim for equitable distribution of property, the plaintiff shall prepare and file a certificate of service. A time-stamped copy of said certificate of service shall promptly be forwarded to the master-in-divorce.

The master shall prepare a recommended order setting forth the filing date for the respective parties' inventories in compliance with Pa.R.C.P. 1920.33(a), and the recommended order shall be forwarded to the administrative judge of the family division for immediate processing.

The failure of any party to file the necessary inventory of all property as required by Pa.R.C.P. 1920.33(a) may be enforced by the adverse party by presenting a motion or petition to the family court motions judge, or to the master-in-divorce pursuant to the Interim Relief Program, for such relief as deemed appropriate.

(b) A proposed qualified domestic relations order may be presented for approval at any regularly scheduled session of family motion/miscellaneous court, or alternatively it may be submitted by mail to the court administrator's office for assignment to a judge of the family division. The court will not enter a qualified domestic relations order unless both parties, either personally or through their attorneys of record, have signed the proposed order or have otherwise signified their approval in writing.

Rule 1920.42. Court Review Officers.

Case papers transmitted to the court pursuant to Pa.R.C.P. 1920.42(a) shall be reviewed by court review officers. Court review officers shall be practicing attorneys designated by the Court.

Rule 1920.43. Special Relief.

A petition setting forth facts entitling a party to relief under Pa.R.C.P. 1920.43 shall be filed with the clerk of courts with rule returnable, subject to all Lehigh County rules relative to the notice and presentation of said petition; or it may be presented to the master-in-divorce pursuant to the Interim Relief Program. The master-in-divorce shall be empowered to hear all petitions presented under subdivision (a) of Pa.R.C.P. 1920.43 by direct petition according to the procedure set forth in Lehigh County Rule of Civil Procedure 1920.16 or by directive of the court.

Rule 1920.45. Counseling.

A request for counseling shall be substantially the following form:

REQUEST FOR COUNSELING

The undersigned, pursuant to Pa.R.C.P. 1920.45, herewith requests counseling and prays the court to enter an order requiring up to a maximum of three counseling sessions within (xxxxxx) days from

(Plaintiff)

(Defendant)

The request shall be presented to the family court motions judge, who shall enter an appropriate order; or it may be presented to the master-in-divorce pursuant to

the Interim Relief Program, for a recommendation of appropriate action by the court.

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

As provided in Pa.R.C.P. 1920.51(a)(3), the motion for the appointment of a master and order shall be substantially the form prescribed by Pa.R.C.P. 1920.74. The motion shall be filed in duplicate with the clerk of courts. All motions shall be accompanied with a check payable to the clerk of courts in the amount of \$250.00, unless the \$55.00 administration fee required under Leh. R.C.P. 1920.3 has not as yet been paid. In that event, the motion shall be accompanied with a payment in the amount of \$305.00. Any motion that fails to conform to the claims or defenses raised in the pleadings of record may be denied.

The master's fee specified above shall cover the master's review of the file, scheduling of the initial conference, the initial conference, preparation and filing of the scheduling order, the settlement conference (if requested by the parties), and the first full day of master's hearings. Should proceedings not be concluded after a full day of master's hearing, the master shall be empowered to request that an additional fee of \$200.00 per day be imposed for any subsequent master's hearings and that this fee be paid prior to the scheduling of a second master's hearing.

If a case is settled or discontinued prior to the scheduling of the initial conference, the full deposit of \$250.00 shall be refunded. If a case is settled or discontinued after the initial conference has been scheduled but before the conference has been held, only \$100.00 of the deposit shall be refunded. If a case is settled or discontinued after the initial conference, no portion of the deposit shall be refundable.

No motion for the appointment of a master shall be filed unless the moving party has filed an inventory in the form and manner set forth in Pa. R.C.P. 1920.33 and 1920.75. The clerk of courts may refuse to accept for filing any motion for appointment if the moving party has failed to file an inventory either prior to or contemporaneous with the filing of the motion. The moving party shall serve upon the non-moving party a true and correct copy of the motion filed, the proposed order, and the signed order when received from the court.

Upon receipt by the master of the order appointing him/her, an initial conference before the master shall be scheduled. Written confirmation of the date and time of the initial conference shall be sent to the parties directly from the master-in-divorce office. With the exception of an unrepresented party, the initial conference shall be between only the master and counsel for the parties.

At the initial conference, counsel for the parties and any unrepresented party shall submit an informational sheet containing a summary of marital assets and debts with valuations on the dates of acquisition, separation, and distribution. A recommended form of such summary is available in the master-in-divorce office. Copies of the parties' latest federal and state income tax returns or other evidence of the incomes of the parties, if any, shall also be provided to the master.

Following the initial conference, the master will prepare a recommended order setting forth any additional discovery to be conducted by the parties, with time limits within which to complete such discovery, as well as a schedule for the filing of the pretrial statements in accordance with Pa. R.C.P. 1920.33(b) and a date for the master's hearing. The recommended order shall be sub-

mitted to the administrative judge of the family division for immediate processing. Any party dissatisfied with all or any part of a recommended order may file a written demand for review by the court. Such a written demand must be filed with both the clerk of courts, and the master-in-divorce office within ten days after service of the recommended order. Upon the timely filing of a written demand for court review, the court administrator's office will issue a rule placing the matter on the next available family court miscellaneous list.

As provided in the recommended order, either party may request a settlement conference with the master prior to the filing of the pre-trial statements. No settlement conference shall be scheduled as of course. If a settlement conference is held, counsel and the parties are required to attend. At least five days prior to the date of the settlement conference (if not previously provided in the parties' inventory or at the time of the initial conference), the parties shall submit to the master a summary of the marital and non-marital estate, including valuations of assets on dates of acquisition, separation, and distribution, as well as a proposed resolution of the economic issues. Copies of all appraisals, expert reports, or other documentation to support the parties' claims should also be available for the master's review. If the matter is not resolved at the settlement conference, the parties shall proceed with filing of pre-trial statements and other provisions of the initial conference order. The scheduling of the settlement conference shall not relieve the parties from compliance with the initial conference order, unless otherwise directed by the master.

There shall be a mandatory pre-trial conference held by the master in every case. Except in unusual cases, the pretrial conference shall be held on the date of the scheduled master's hearing commencing at 9:30 a.m. Matters such as the sequence of witnesses, the submission of exhibits, proposed stipulations, and rulings on preliminary legal issues shall be reviewed at that time. The parties are required to be present at the pretrial conference. No witnesses, except for the parties, shall appear for the hearing until at least 10:00 a.m. Stenographic services shall not be required until at least 10:00 a.m.

The master's hearing shall be conducted in accordance with Rule Leh.R.C.P. 1920.55-2 providing for a full record hearing.

After the conclusion of the hearing, the master shall provide to the parties an opportunity to submit proposed findings of fact and/or conclusions of law or legal memoranda; no prejudice shall result by any party's failure to do so. No specific form of submission shall be required; a letter addressed to the master and served upon the opposing party/counsel is acceptable.

Rule 1920.53. Extension of Time for Filing Master's Report.

In contested actions, if the master cannot file the report within thirty days after the receipt of the notes of testimony, as required by Pa.R.C.P. 1920.53(a)(1), the master shall apply in writing to the administrative judge of the family division for an extension of time prior to the expiration of that period. A copy of such application shall be provided to counsel of record in the case, or directly to any unrepresented party.

Rule 1920.55-2. Exceptions to Master's Report.

(a) Copies of exceptions to the master's report shall be delivered to the court administrator's office, to the master, to opposing counsel, and to any unrepresented party. The court administrator's office will issue a rule placing the exceptions on an appropriate family court miscellaneous list for argument. The exceptant shall file a brief at least fourteen days prior to the scheduled argument date, and the other party shall file a responsive brief at least seven days before this date. Briefs shall be in the form specified in Leh.R.C.P. 210 and shall be filed with the clerk of courts, with copies to the court administrator's office and to other counsel or to the opposing party if unrepresented.

(b) If no timely exceptions are filed to the master's report, and proof of notice of filing the master's report has been filed, the clerk of courts, after all costs have been paid, shall cause the entire record to be delivered to the court for review and adjudication.

**VOLUNTARY MEDIATION IN
CUSTODY/VISITATION DISPUTES**

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

(a) Upon the commencement of an action for custody, partial custody or visitation of minor children, or the filing of a petition seeking modification or contempt of an existing order for custody, partial custody or visitation, the child custody office shall identify those cases not suitable for mediation, which shall include those in which:

- (1) 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 twenty-four months preceding the filing of the action;
- (2) there is a significant history or allegation of sexual or substance abuse, or mental illness or retardation;
- (3) a party is incarcerated;
- (4) third-party standing is at issue; or
- (5) participation in mediation would, as a result of a party's physical or medical condition, or place of residence or employment, constitute a demonstrable hardship.

(b) All child custody actions shall be scheduled for a mediation orientation session within thirty days after the pleading commencing the action or seeking a modification or contempt has been served, except those cases identified as not suitable for mediation by the child custody office. As to those cases not suitable for mediation, they shall be scheduled for conference within thirty days after the pleading commencing the action or seeking a modification or contempt has been served.

(c) Any request to bypass mediation or to continue a scheduled mediation or conference shall be presented initially to the custody conference/hearing officer for decision. Any party dissatisfied with the decision may appeal to the judge assigned to hear the matter or, if none, to the family court motions judge.

(d) Mediation may be recommended after a conference in the child custody office when deemed appropriate by the custody conference/hearing officer or the court.

(e) All cases referred to mediation by the child custody office or by the court shall be scheduled for an initial orientation session that, with the parties' agreement, may

be immediately followed by a mediation session. This initial orientation/mediation session shall be scheduled for one to one and one-half hours. Upon agreement of the parties, additional mediation sessions may be scheduled. The parties' attorneys shall not attend the orientation or any mediation sessions.

Rule 1940.4. Minimum Qualifications of the Mediator.

A mediator is a person approved by the Lehigh County Court of Common Pleas who has met the requirements of Pa.R.C.P. 1940.4 and any additional qualifications this court may from time to time require, and who is either a mediator under contract with Lehigh County or a mediator employee of Lehigh County or any other mediator who has been approved by the court to perform mediator services hereunder. All mediators shall adhere to the mediator standards of practice adopted by the Academy of Family Mediators, and the American Bar Association.

Rule 1940.6. Termination of Mediation.

(a) If an agreement is reached through mediation, the mediator shall prepare a memorandum of agreement, which shall be mailed to the parties for them to review with their respective attorneys, if any, and to sign. A signed memorandum of agreement shall be presented to the court for approval and adoption of its terms as an order of court.

(b) The mediator shall refer issues not resolved by mediation to the child custody office, which shall schedule the case for conference before the custody conference/hearing officer.

(c) All discussion at any mediation session shall be confidential and shall not be disclosed by the mediator or any of the participants; provided, however, that the parties may disclose the discussion to their respective attorneys. Unless otherwise directed by the court, a mediator shall not testify at any hearing in any matter in which he or she has acted as mediator.

Rule 1940.7. Mediator Compensation.

Each party shall pay \$50.00 to the County of Lehigh for the initial one to one and one-half hour orientation/mediation session. Each party shall pay an additional \$30.00 per hour for any additional one-hour mediation sessions. Waiver or reduction of costs may be granted for good cause shown upon application to the custody conference/hearing officer.

[Pa.B. Doc. No. 00-1274. Filed for public inspection July 28, 2000, 9:00 a.m.]

LUZERNE COUNTY

**Order Adopting Rules for Compulsory Arbitration;
No. 4767-C 2000**

Order

Now This 11th day of July, 2000, Luzerne County Rules of Court No. 1301 is hereby repealed effective January 1, 2001. The annexed Luzerne County Rules of Court Nos.

1301. Arbitration, 1302. Appointment of the Board, 1303. Hearing. Notice, 1306. Return and Entry of Award, 1308. Appeal. Praecepta for Trial List, are adopted effective January 1, 2001.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

JOSEPH M. AUGELLO,
President Judge

Rule 1301. Arbitration.

All civil actions and actions in replevin in which the amount in controversy, exclusive of interest and costs, is FIFTY THOUSAND (\$50,000.00) DOLLARS or less shall be submitted to and heard and decided by a Board of Arbitrators pursuant to and in accordance with the provisions of 42 Pa.C.S. Sec. 7361 and Pa.R.C.P. 1301 et seq.

Rule 1302. Appointment of the Board.

(a) On praecipe of either counsel or by agreement of reference, a board of arbitrators shall be appointed by the prothonotary in sequential order from the list of qualified arbitrators submitted by the district court administrator. The prothonotary's list of such appointments shall be open to public inspection. An original and a number of copies of the praecipe or agreement sufficient to serve all members of the board and all parties of record, or their counsel, shall be given to the prothonotary.

(b) Arbitrators shall be members of the bar of the Supreme Court of Pennsylvania in good standing and on active status who are residents of Luzerne County and members of the Wilkes Barre Law and Library Association and who have indicated to the district court administrator their willingness and desire to serve by filing with the district court administrator a written statement to that effect.

The name of any attorney appearing on the prothonotary's list of qualified arbitrators may be removed by the district court administrator when the prothonotary's records indicate an attorney's failure to withdraw after appointment, as provided by section (d) of this rule, or any attorney's absence or failure to appear twice after appointment at any scheduled hearing; and the attorney's name shall not again be placed on the list of arbitrators except by order of court.

If an arbitrator fails to appear within the 10 minutes after the scheduled time of hearing, the arbitrator shall be disqualified, and the prothonotary shall immediately appoint a replacement irrespective of the arbitrator's place on the list.

(c) Notice of appointment: The prothonotary shall note on the praecipe or agreement of reference, the names of the arbitrators so appointed, and the time and place of hearing and the prothonotary shall mail a copy thereof to each member of the board of arbitrators and to each party of record, or their counsel within ten (10) days after filing of the praecipe or agreement.

(d) Withdrawal after Appointment: Within five (5) days of receipt of notice of appointment to a board of arbitrators, an arbitrator who desires to be excused on account of illness or incapacity, or who pursuant to Pa.R.C.P. 1302 would be disqualified shall notify the prothonotary, whereupon the next qualified arbitrator shall be appointed from the sequential list. Notice of the substitution of an arbitrator shall be given to the arbitrators, and parties of record or their counsel.

(e) Appointment after Disqualification: An arbitrator who is disqualified for appointment to a particular board shall be appointed to the next board for which the arbitrator is qualified.

(f) Compensation: Each member of a board of arbitrators who has signed the report or signs a dissent shall receive as compensation for services a fee of one hundred twenty-five (\$125.00) dollars. If a matter is referred to a judge of the court pursuant to Pa.R.C.P. 1303(b)(2) or if the matter is resolved by agreement of the parties without a hearing, each member of the board who appears shall receive as compensation fifty (\$50.00) dollars. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the court, on petition of the members of the board and for cause shown, may allow additional compensation. The court may also, on petition of any party to a case, on cause shown and to prevent injustice, reduce the amount of such compensation or disallow compensation entirely. The members of a board shall not be entitled to receive their fees until after filing a report with the prothonotary. When the same is filed, the prothonotary shall issue an order for payment of such fees which shall be immediately paid from county funds as in the case of all other county debts. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

Rule 1303. Hearing. Notice.

(a)(1) All cases subject to arbitration shall be scheduled for hearing at the Luzerne County Courthouse on a date to be fixed by the prothonotary which date shall not be less than forty (40) days and no more than sixty (60) days from the filing of the praecipe for appointment of a board of arbitrators. Continuances shall be approved by the court, however, if all parties consent the chair may grant one continuance of a scheduled hearing. Cases set for hearing may not be continued by the chair for more than sixty (60) days from the date scheduled unless by order of court upon cause shown. In the event the hearing is not held on the continued date, and no further continuance is granted by the court, the case shall be stricken from the arbitration list and the arbitrators shall be discharged by order of court.

(2) The written notice of hearing shall include the following statement:

"This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may

be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.”

(b)(2) If one or more parties is not ready, and if all parties present consent, the motion’s judge or such other judge selected by the district court administrator shall determine if the court should hear the matter or whether the matter should proceed in arbitration. If the court is to hear the matter, it shall be heard on the same date as the scheduled arbitration hearing.

Rule 1306. Return and Entry of Award.

Within seven (7) days after hearing the board shall make its report and award signed by all or a majority of the members. The prothonotary shall enter the same of record and give immediate notice thereof to the parties or their attorneys.

Rule 1308. Appeal. Praecipe for Trial List.

Appeals from an award of the board of arbitrators shall be ordered on the trial list on praecipe of either party.

[Pa.B. Doc. No. 00-1275. Filed for public inspection July 28, 2000, 9:00 a.m.]
