

THE COURTS

Title 255—LOCAL COURT RULES

MONTEGOMERY COUNTY

Amendment to Local Rule of Criminal Procedure Rule 303*—Arrestment

Order

And Now, this 3rd day of February, 2000, the Court approves and adopts the following amendment to Montgomery County Local Rule of Criminal Procedure, Rule 303*—Arrestment. This amendment 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.Crim.P. 6, 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 Criminal Procedural Rules 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 303*. Arrestment.

(c) ***

(d) Arrestment may be conducted by the Court Administrator or designated Deputy, **and may be conducted by using advanced communication technology.**

(e) ***

[Pa.B. Doc. No. 00-333. Filed for public inspection February 25, 2000, 9:00 a.m.]

WESTMORELAND COUNTY

Adoption of Custody and Mediation Rules; No. 3 of 2000

Administrative Order

And Now This, 3rd Day of February, 2000, *It Is Hereby Ordered* that effective Monday, April 3, 2000, Westmoreland County Rules of Civil Procedure W1915.1 through W1915.7, W1920.32, and W1920.50 are rescinded, and new Rules W1018, W1915.3 through W1915.15, W1920.32, W1920.50, W1940.1, and W1940.4 are adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule W1018. Caption.

Pursuant to Pa.R.C.P. 1018(e), the caption of all matters filed in Divorce, Support, and Custody, Partial Custody, or Visitation shall include either the word "Divorce," "Support," or "Custody" in parenthesis following the required "CIVIL ACTION—LAW".

(a) The caption in Divorce matters shall be:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW (DIVORCE)

(b) The caption in Support matters shall be:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW (SUPPORT)

(c) The caption in Custody, Partial Custody, or Visitation matters shall be:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW (CUSTODY)

Rule W1915.3. Commencement of Action, Complaint. Order.

(a) All actions raising issues of custody, partial custody, or visitation of minor children shall be commenced by the filing of a verified complaint or petition and a separate scheduling order as set forth in W1915.15.

Comment

Pa.R.C.P. 115.3(b) requires the moving party in actions for Custody and Visitation to attach a scheduling order to the verified complaint. The complaint and order are published at Pa.R.C.P. 1915.15. Westmoreland County local rules of procedure require additional information than that provided in the order found at Pa.R.C.P. 1915.15(c). Local Rule W1915.15 contains the order that will be filed with each action or modification.

The scheduling order published at W1915.15 must [also] be filed and processed in accordance with this rule when any Divorce Complaint with a Custody Count is filed or when any Custody Count is filed separately. (See W1920.32(a).)

(b) The petitioner shall, at the time of filing, proceed to the Westmoreland County Family Court Administrator (Custody Office) for an assignment of a date and time for the Custody Conciliation Conference. The Custody Conciliation Conference shall be scheduled for a date and time approximately 45 days after filing of the complaint or court.

(c) The moving party shall file proof of service of the action with the Westmoreland County Prothonotary prior to the Custody Conciliation Conference.

Rule W1915.4. Child Program.

All parties shall be ordered, at the time of filing, to attend the mandatory Children Hurt In Loss through Divorce/separation (CHILD) Program prior to the Custody Conciliation Conference. In addition, other persons in a caretaking capacity may be ordered to attend.

Rule W1915.4-1. Alternative Hearing Procedures.

Westmoreland County does not use the alternative hearing procedure provided under Pa.R.C.P. 1915.4-1 and 1915.4-2.

Rule W1915.4-2. Office Conference, Hearing, Record, Exceptions, Order.

Westmoreland County does not use the alternative hearing procedure found at Pa.R.C.P. 1915.4-2.

Rule W1915.4-3. Custody Conciliation Conference.

(a) Each parent shall file a Westmoreland County Parent Information Form no later than 30 days from the filing of the Complaint or the Custody Count. Each parent shall also attach a copy of his or her most recent Federal Income Tax Return to the Parent Information Form. The Parent Information Form, copies of which are available from the Westmoreland County Family Court Administrator (Custody Office), shall contain the following information:

- (1) Identifying information—Name, Address, Phone Number, Age, Date of Birth, Marital Status, Education;
- (2) Parent's occupation, place of employment and work schedule;
- (3) Date of separation;
- (4) Name of any new partner;
- (5) Members of parent's household;
- (6) Names, ages and birth dates of children involved;
- (7) Children's schedule (school, extra curricular activities);
- (8) Issues/problems of concern;
- (9) Recommendations for custody/visitation;
- (10) Current custody schedules (when the child is in the parent's custody).

(b) The parties may file with the Family Court Administrator, an Election to Proceed Through Mediation. The party filing the Election to Proceed Through Mediation must Certify that both (all) parties agree to mediation. Upon receipt of the Election and Certification, the Family Court Administrator shall continue the scheduled Conciliation Conference, and advise the Mediator to schedule the Mediation.

(c) The parties may also at any time file either a Consent Order or a Consent Agreement with the Family Court Administrator (Custody Office). The form of the agreement may be:

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY,
PENNSYLVANIA
CIVIL ACTION—LAW (CUSTODY)

Plaintiff)	
v.)	No. _____ of 20__
Defendant)	

CUSTODY CONSENT AGREEMENT

We have agreed to the following parenting plan for the custody of our children:

1. The parents shall share the legal and physical custody of the following named child(ren):

Name	Date of Birth
_____	_____

2. The Children shall reside with his/her/their Mother/Father at _____.

3. The parties agree that the time arrangements between the Father and Mother with the child(ren) are as follows:

- a. Weekdays - _____
- b. Weekends - _____
- c. Summer/Vacation periods - _____
- d. Holidays - _____
 - Thanksgiving - _____
 - Christmas (Eve) _____
 - New Year's Eve _____
 - Easter _____
 - Other holidays _____

4. Transportation - _____

5. The child(ren) shall be with the Mother on Mother's Day and with the Father on Father's Day.

6. The child(ren)'s birthday will be spent with the parent scheduled to have the child that day.

7. Each parent shall keep the other informed of the child(ren)'s health, progress in school, school activities and general welfare and shall consult the other parent concerning major decisions affecting the child(ren).

8. Each parent is entitled to receive directly from the schools, health care providers, or other relevant sources, information concerning their child(ren).

9. Neither parent shall engage in conduct which presents to the child(ren) a negative or hostile view of the other parent.

10. Each parent shall encourage the child(ren) to comply with the parenting agreement and foster in the child(ren) a positive view of the other parent.

11. The parties may decide different time arrangements other than those provided for in the Consent Agreement and make decisions for the child(ren) whenever they mutually agree to do so. Nothing in this agreement is understood to limit or restrict the ability of the parties to mutually agree on alternative parenting arrangements. If for any reason the parties cannot agree, the terms of this consent agreement will be followed.

12. VACATIONS SUPERSEDE THE REGULAR SCHEDULE, AND HOLIDAYS SUPERSEDE ANY OTHER TIME ARRANGEMENT UNLESS THE PARTIES MUTUALLY AGREE TO DO OTHERWISE.

13. VIOLATION OF THIS ORDER BY ANY PERSON MAY RESULT IN CIVIL AND CRIMINAL PENALTIES INCLUDING PROSECUTION PURSUANT TO SECTION 2904 OF THE PENNSYLVANIA CRIMES CODE, INTERFERENCE WITH CUSTODY OF CHILDREN.

14. Jurisdiction of the child(ren) shall remain with the Court of Common Pleas of Westmoreland County, Pennsylvania, unless or until jurisdiction would change under the Uniform Child Custody Jurisdiction Act.

15. We agree to abide by the agreement adopted this _____ day of _____, 20____ and submit it to the Court of Common Pleas to be formalized into an order of Court.

_____	_____
Mother	Father
_____	_____
Attorney	Attorney
Custody Hearing Officer	

(d) If neither an Election to Proceed Through Mediation pursuant to subsection (b), nor a Consent Agreement pursuant to subsection (c) are filed with the Family Court

Administrator (Custody Office), the Conciliation Conference shall proceed as originally scheduled.

(1) All parties, and any child, for whom custody or visitation is sought, shall be present at the Custody Conciliation Conference, unless otherwise ordered by the Court. Failure of a party to appear at the Custody Conciliation Conference may result in the entry of a custody or visitation order by the Court on the recommendation of the Custody Hearing Officer in the absence of that party. The absent party may also be subject to contempt proceedings.

(2) The Custody Hearing Officer shall conduct the Conciliation Conference actively engaging the parties using mediation skills and techniques in order to reach an agreement. The Conciliation Conference is informal, with no record created or testimony elicited from parties or witnesses. The parties are given the opportunity to present the issues or problems and to explore all available options for resolution. A second session may be scheduled if needed.

(3) A Consent Agreement form is completed and signed when an agreement is reached.

(4) If the parties cannot agree, the Hearing Officer will forward to the Court a report and recommendation for a temporary order.

A. The report shall contain the following:

1. Recommendations, if any, that an evaluation including requirements such as physical or mental evaluations or home studies be undertaken pursuant to Rule W1915.8;

2. Findings of fact on jurisdiction or venue issues; and

3. Recommendations for temporary custody/visitation.

B. The temporary order will include all areas of prior agreement.

C. The temporary order shall become a final order unless a Praecipe For Custody Trial is filed within 30 days of the date of service of the temporary order. A copy of the temporary order shall be served in accordance with Pa.R.C.P. 236, with a copy to the Family Court Administrator (Custody Office).

D. The Praecipe For Custody Trial is found at W1915.10.

Rule W1915.4-4. Voluntary Mediation.

(a) The parties may agree to mediate custody and visitation matters before a neutral mediator. The parties are responsible to pay for mediation services. Mediation shall be conducted in accordance with Pa.R.C.P. 1940-1 et.seq.

(b) All matters raised before the mediator shall remain confidential except as provided at 42 Pa.C.S.A. § 5949(b). Confidentiality may be waived in writing by the parties.

(c) All agreements shall be reduced to writing and submitted to the Court.

(d) The Westmoreland County Family Court Administrator (Custody Office) shall provide the mediators with dates and times for which to schedule a conciliation conference for those who have not succeeded through mediation. The mediators shall immediately schedule by Notice those who have not settled through mediation. The date and time scheduled for the conciliation conference shall forthwith be reported by phone or facsimile to the Family Court Administrator (Custody Office).

Rule W1915.8. Physical and Mental Examination of Persons (Custody Evaluations).

(a) Evaluations may be ordered in accordance with Pa.R.C.P. 1915.8 in a custody proceeding by the Court on its own motion, or by motion of either party. In the event an evaluation is Ordered, a Pretrial Conference will be automatically scheduled.

(b) The Court shall assess the cost of court-appointed evaluations at the time of the order in accordance with subsection (e). The moving party shall pay the costs of a private evaluation.

(1) Both parties shall present the verification of their respective income to the Court no later than 30 days after the filing of the Complaint or Custody Count pursuant to W1915.4-3(a). Failure to do so shall result in assessment of the maximum cost of \$1,750.

(2) Fees assessed under this rule shall be paid as directed by the Court. Failure to pay as ordered may result in contempt proceedings and appropriate penalties as provided in Pa.R.C.P. 1915, et.seq.

(3) Costs of evaluation of the parents, children, and any other person ordered by the Court to be evaluated shall be assessed as follows:

<i>COMBINED PARENTAL INCOME (GROSS ANNUAL)</i>	<i>COST OF EVALUATION</i>
\$20,000 or less	\$ 750
\$20,001 to \$60,000	\$1,150
\$60,000 and over	\$1,750
No verification of income	\$1,750

(4) The assessed cost set forth above shall apply except where good cause for a deviation is shown to the Court. The Court may increase the assessed cost based upon such factors as the number of people evaluated and the complexity of the case. The cost shall be assessed between the parents in proportion to their incomes, unless otherwise agreed by the parties.

(c) The Order for a custody evaluation shall also schedule the next court event. If the evaluation is ordered at the Conciliation Conference, the Order shall also schedule a Pretrial Conference.

Rule W1915.10. Praecipe for Custody Trial. Pretrial Conference. Decision.

(a) A party may file a Praecipe for Custody Trial in the Westmoreland County Prothonotary's office anytime within 30 days from the date of service of a Custody Order issued as a result of a Conciliation Conference. Prior to filing the Praecipe, the moving party shall deliver the Praecipe to the chambers of the assigned judge for the scheduling of a Pretrial Conference. When Custody Evaluations have been ordered, a Pretrial Conference is automatically scheduled and a Praecipe need not be filed. (See: W1915.8(a).)

(b) A copy of the Praecipe with the scheduled Pretrial Conference date must be served on the other counsel/parties, and on the Family Court Administrator (Custody Office.) The Praecipe For Custody Trial and Scheduling Order shall be substantially as follows:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA CIVIL ACTION—LAW (CUSTODY)

Plaintiff)
v.) No. _____ of 20__
Defendant)

PRAECIPE FOR CUSTODY TRIAL

(Request must be made within 30 days of the date of service of the Recommended Order.)

At a recent Custody Conciliation Conference, an acceptable custody/visitation agreement could not be reached. I hereby request a custody trial before the Westmoreland County Court of Common Pleas.

The issues to be considered are: (Place a mark before the issues to be considered.)

Relocation Time/Length/Number of Visits Primary Residence

Other: _____

I hereby certify that on ____ / ____ / ____, I served a copy of this request on the opposing counsel/party.

Date: ____ / ____ / ____ Petitioner or Petitioner's Counsel

VERIFICATION

I verify that the statements made in this request are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: ____ / ____ / ____ Petitioner or Petitioner's Counsel

SCHEDULING ORDER

You are hereby ordered to appear in person on _____, 20__ at ____ M. before the Honorable _____ in Courtroom ____ in the Westmoreland County Courthouse, 2 North Main Street, Greensburg, Pa. 15601 for a Pretrial Conference.

Counsel or the parties, if unrepresented, shall file a Pretrial Narrative at least 10 days prior to the Pretrial Conference. The parties and any children over whom custody or visitation is sought are required to attend the Pretrial Conference pursuant to Westmoreland Rule W1915.10.

BY THE COURT:

Date: _____, J.

(c) Ten days prior to the Pretrial Conference, each party or counsel shall file and submit a Pretrial Narrative to the chambers of the assigned judge. Copies shall be served on all parties. If no Pretrial Narrative is filed, the offending party may be fined or sanctioned otherwise by the Court. The Pretrial Narrative shall include:

- (1) Names and addresses of all witnesses, including experts;
(2) Summary of each witness's anticipated testimony;
(3) Copies of all exhibits;
(4) Proposed custody arrangement;
(5) Requested stipulation of facts.

(d) All parties, counsel, and any child for whom custody or visitation is sought shall be present at the Pretrial Conference unless otherwise provided by Order of Court. Failure of a party to appear at the Pretrial Conference may result in the entry of a custody/visitation order by the Court.

(e) Any agreement reached at the Pretrial Conference shall be reduced to writing and entered as an order of Court.

Rule W1915.13. Special Relief.

Motions for Special Relief will be screened before any hearing is scheduled. Special Relief may be denied without a hearing.

Rule W1915.15. Form of Complaint. Caption. Order. Petition to Modify a Partial Custody or Visitation Order.

The following scheduling order shall be used in all actions containing an issue of custody, partial custody or visitation of minor children:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA CIVIL ACTION—LAW (CUSTODY)

Plaintiff)
v.) No. _____ of 20
Defendant)

CUSTODY SCHEDULING ORDER

You, _____, (defendant) (respondent), have been sued in court to (obtain) (modify) custody, partial custody or visitation of the children:

Name Date of Birth

(1) The Plaintiff is ORDERED to attend the mandatory Children Hurt In Loss through Divorce/Separation (CHILD) Program on _____, 20__ at ____ M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724)832-4581. The Plaintiff is also ORDERED to prepay the \$40.00 program registration fee using the CHILD Program Registration Form. (No money will be accepted at the session.) The Plaintiff is further ORDERED to serve a copy of the CHILD Program Registration Form on the Defendant.

(2) The Defendant is ORDERED to attend the mandatory Children Hurt In Loss through Divorce/Separation (CHILD) Program on _____, 20__ at ____ M. at the Memorial Conference Center at Westmoreland Regional Hospital located at 532 West Pittsburgh Street, Greensburg, Pa. 15601, phone number (724)832-4581. The Defendant is also ORDERED to prepay the \$40.00 program registration fee using the CHILD Program Registration Form. (No money will be accepted at the session.)

(3) Non resident parents must attend a program similar to the CHILD program which has been certified or approved by the local Court. A Certification of Successful Completion must be presented at the time of the Conciliation Conference.

(4) Should the moving party fail to pay fees or fail to appear for the CHILD Program, the Custody action shall be dismissed without prejudice, and any fees paid by such party shall be forfeited.

(5) Should the responding party fail to pay fees or fail to appear for the CHILD program, an immediate Rule to Show Cause why such party should not be held in contempt shall be issued by the Court.

(6) Each Party is hereby Ordered to submit to the Family Court Administrator (Custody Office), pursuant to Westmoreland County Rule of Civil Procedure W1915.4-3, a completed Parent Information Form and a copy of your most recent Federal Income Tax Return within 30 days of the date of filing of this Custody Action. An Election to Proceed Through Mediation or a Consent Agreement may also be filed with the Family Court Administrator at that time. The Plaintiff is hereby Ordered to serve a copy of the Parent Information Form on the Defendant.

(7) You are hereby ordered to appear in person on _____, 20__ at ____ .M. for a Custody Conciliation Conference in the Family Court Custody Office on the fourth floor of the Westmoreland County Courthouse Annex, 2 North Main Street, Greensburg, Pa. 15601.

CHILDREN MUST ATTEND UNLESS OTHERWISE ORDERED

If you fail to appear for the Custody Conciliation Conference as provided by this Order, an order for custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

YOU SHOULD TAKE THIS ORDER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW.

If You Cannot Afford a Lawyer

If You Do Not Have a Lawyer

Laurel Legal Services
306 S. Pennsylvania Ave.
Greensburg, Pa. 15601
(724)836-2211

Westmoreland Lawyer Referral
129 N. Pennsylvania Avenue
Greensburg, Pa. 15601
(724)834-8490

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Westmoreland County complies with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact (724)830-3665. All arrangements must be made at least 3 working days prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

BY THE COURT:

Date: _____, J.

Rule W1920.32. Joinder of Related Claims. Custody Hearing by Court.

(a) All Complaints containing a Custody Count and all Counts of Custody filed separately must be accompanied with a scheduling order found at W1915.15. The order shall be processed in accordance with W1915.3.

(b) The Custody Count shall follow the practice and procedures governing Custody.

W1940.1. Voluntary Mediation in Custody Actions.

Custody mediation procedures specific to Westmoreland County are found at W1915.4-4.

W1940.4. Minimum Qualifications of the Mediator.

Mediators shall certify, on a form supplied by the Family Court Administrator, compliance with the minimum qualifications specified in Pa.R.C.P. 1940.4.

Rule W1920.50. All Counts Conference.

(a) Whenever a pleading containing any count other than divorce or annulment is filed pursuant to the Divorce Code, an all counts conference shall be required prior to the appointment of a master.

(b) The conference shall be scheduled upon request and presentation of an order by either party, after the moving party has filed the all counts conference forms and attachments. A copy of the forms and attachments shall be served on the opposing counsel or party, if unrepresented, and on the Family Court Administrator (Custody Office).

(c) The non-moving party shall file the all counts conference forms and attachments at least 20 days prior to the scheduled conference. A copy of the forms and attachments shall be served on the opposing counsel or party, if unrepresented, and on the Family Court Administrator (Custody Office).

(d) Both parties shall submit a written proposal for settlement at the time of the conference.

(e) Failure to file the required forms, attachments and proposals may result in sanctions, costs, and attorney's fees.

(f) The order for the scheduling of the all counts conference shall be substantially in the form prescribed by WF1920.50(f).

(g) The all counts conference forms and attachments, also collectively referred to as "Addendum A," as required in sections (b) and(c) above, shall be substantially in the form prescribed by WF1920.50(g).

Note: A copy of the Notice of Presentation, Order of Court, Income and Expense Statement and Inventory and Appraisal of Property forms are provided in the Forms section of the Westmoreland County Rules of Court.

[Pa.B. Doc. No. 00-334. Filed for public inspection February 25, 2000, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Conservators; Notice of Proposed Rulemaking

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Supreme Court of Pennsylvania that it amend the Pennsylvania Rules of Disciplinary Enforcement, as set forth in Annex A, to make a number of changes in the rules relating to conservators appointed to protect the interests of clients of absent attorneys.

The changes being proposed reflect the experience of the Board with conservatorships under existing Rules 321 through 329 of the Pennsylvania Rules of Disciplinary Enforcement over the past several years. Among the important changes being proposed are the following:

1. A provision would be added to impose a temporary stay on all legal and administrative proceedings in which the absent attorney was counsel of record to facilitate the substitution of new counsel for the client of the absent attorney. See proposed Pa.R.D.E. 321(g).

2. Notice of the establishment of a conservatorship would be required to be given by the conservator as promptly as is reasonably practicable. See proposed Pa.R.D.E. 322 (f).

3. Under the current rules, the presumption is that conservators will serve without compensation. Recent conservatorships have typically required the expenditure of a fair amount of time by the conservator, and the Board is accordingly proposing that conservators be compensated in the same fashion as other court appointments. See the amendments to Pa.R.D.E. 328.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before April 14, 2000.

*By The Disciplinary Board of the
Supreme Court of Pennsylvania*

ELAINE BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter C. DISABILITY AND RELATED MATTERS CONSERVATORS FOR INTERESTS OF CLIENTS

Rule 321. Appointment of conservator to protect interests of clients of absent attorney.

(a) Upon application of Disciplinary Counsel or any other interested person, the president judge of a court of common pleas shall have the power to appoint one or more eligible persons to act as conservators of the affairs of an attorney or formerly admitted attorney if:

(1) the attorney maintains or has maintained an office for the practice of law within the judicial district;

(2) **[(Reserved).] any of the following applies:**

* * * * *

(b) A copy of the application for appointment of a conservator under this rule **[shall]:**

(1) **Shall** be personally served upon the absent attorney or the personal representative or guardian of the estate of a deceased or incompetent absent attorney. If personal service cannot be obtained, then a copy of the application shall be served in the manner prescribed by Enforcement Rule 212 (relating to substituted service).

(2) **Shall be filed with the Secretary of the Board.**

(c) The president judge of the court of common pleas shall conduct a hearing on the application no later than seven days after the filing of the application. At the hearing the applicant shall have both the burden of production and the burden of persuading the court by the preponderance of the credible evidence that grounds exist

for appointment of a conservator. **All proceedings in the court of common pleas shall be kept confidential unless and until an order is entered appointing a conservator.**

(d) Within three days after the conclusion of the hearing on the application, the president judge shall enter an order either granting or denying the application. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the absent attorney, **the clerk of the court shall serve** a copy of the order **[shall be served]** upon the absent attorney in the manner prescribed by subdivision **[(b)] (b)(1)** of this rule **and shall file a copy of the order with the Secretary of the Board.**

* * * * *

(f) The filing by Disciplinary Counsel **or any other interested person** of an application for the appointment of a conservator under these rules shall be deemed for the purposes of any statute of limitations or limitation on time for appeal as the filing in **[the court of common pleas or other proper court or] every court, tribunal, magisterial district of this Commonwealth or other government unit** on behalf of every client of the absent attorney of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the absent attorney if:

(1) the application for appointment of a conservator is granted, and

(2) substitute counsel actually files an appropriate document in a court **[or], tribunal, magisterial district or other government unit** within 30 days after **[executing] substitute counsel executes** a receipt for the file relating to the matter.

Official Note: Under 42 Pa.C.S. 5503(b) (relating to implementing court rules) the Supreme Court may define by rule the document which when filed constitutes the commencement of a matter for purposes of Chapter 55 of the Judicial Code (relating to limitation of time). Thus the application by Disciplinary Counsel **or any other interested person** under this rule is an omnibus pleading which stays the running of all statutes of limitations and appeal times pending a 30-day review of the files of the absent attorney.

(g) **The filing by Disciplinary Counsel or any other interested person of an application for the appointment of a conservator under these rules shall operate as an automatic stay of all pending legal or administrative proceedings in this Commonwealth where the absent attorney is counsel of record until the earliest of such time as:**

(1) **the application for appointment of a conservator is denied;**

(2) **the conservator is discharged;**

(3) **the court, tribunal, magisterial district or other government unit in which a matter is pending orders that the stay be lifted; or**

(4) **30 days after the court, tribunal, magisterial district or other government unit in which a matter is pending is notified that substitute counsel has been retained.**

(h) **As used in this rule, the term "government unit" has the meaning set forth in 42 Pa.C.S. § 102 (relating to definitions).**

Rule 322. Duties of conservator.

* * * * *

(e) The conservator shall file a written report with the appointing court and the Board no later than 30 days after the date of appointment covering the matters specified in subdivisions (a) through (c) of this rule. If those duties have not been accomplished, then the conservator shall state what progress has been made in that regard. Thereafter, the conservator shall file a similar written report every [30 days] three months until discharged.

(f) As soon as reasonably practicable following entry of the order appointing a conservator, the conservator shall cause a notice of the establishment of the conservatorship to be published in the legal journal and a newspaper of general circulation in the county or counties embraced by the judicial district in which the conservator was appointed.

Rule 325. Duration of conservatorship.

[Appointment of a conservator pursuant to these rules shall be for a period of no longer than six months. The appointing court shall have the power, upon application of the conservator and for good cause, to extend the appointment for an additional three months. Any order granting such an extension shall include findings of fact in support of the extension.] A conservator shall serve until discharged pursuant to Rule 326 (relating to discharge of conservator) or until other order of the appointing court.

Rule 327. Liability of conservator.

A conservator appointed under these rules shall:

(1) Not be regarded as having an attorney-client relationship with clients of the absent attorney, except that the conservator shall be bound by the obligation of confidentiality imposed by the [Code of Professional Responsibility] Rules of Professional Conduct with respect to information acquired as conservator.

* * * * *

Rule 328. Compensation and expenses of conservator.

(a) A conservator shall [normally serve without compensation, but where a conservatorship is expected to be prolonged or require greater effort than normal the appointing court may, with the prior written approval of the Board Chairman, order that the conservator be compensated on an agreed basis. Any such agreement shall be filed with the Office of the Secretary] be compensated pursuant to a written agreement between the conservator and the Board which shall include provisions for payment of the compensation of the conservator at reasonable intervals and at the same hourly rate as court appointed counsel in the judicial district where the conservator was appointed.

(b) [Upon the completion of a conservatorship, the appointing court, with the prior written approval of the Board Chairman, shall have the power to award compensation or to increase compensation previously agreed to upon application of the conservator and upon demonstration by the conservator that the nature of the conservatorship was extraordinary and that failure to award or increase

previously agreed compensation would work a substantial hardship on the conservator. In such event, compensation shall be awarded only to the extent that the efforts of the conservator have exceeded those normally required or reasonably anticipated at the time the original compensation agreement was approved.] (Repealed.)

(c) The necessary expenses (including the fees and expenses of a certified public accountant engaged pursuant to Enforcement Rule 324(c)) and [any] the compensation of [a] the conservator shall, if possible, be [paid] reimbursed by the absent attorney or his or her estate. [If not so paid, then upon certification by the president judge of the appointing court and approval by the Board Chairman, the] Any expenses and [any] compensation of the conservator that are not reimbursed to the Board shall be [paid] treated as a cost of disciplinary administration and enforcement. [See Enforcement Rule 219(a) (relating to periodic assessment of attorneys).] Payment of any costs incurred by the Board pursuant to this rule that have not been reimbursed to the Board may be made a condition of reinstatement of a formerly admitted attorney or may be ordered in a disciplinary proceeding brought against the absent attorney.

[Pa.B. Doc. No. 00-335. Filed for public inspection February 25, 2000, 9:00 a.m.]

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

Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Reinstatement of Suspended Attorneys; Notice of Proposed Rulemaking

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A to clarify the circumstances under which a suspended attorney may be reinstated to active status without the filing of a petition for reinstatement.

Under Pa.R.D.E. 218(f), a formerly admitted attorney who has been suspended for a term not exceeding one year is generally able to seek readmission without going through the full process of petitioning for reinstatement. A formerly admitted attorney who has been on inactive status for three years or less may also be reinstated without filing a petition for reinstatement pursuant to Pa.R.D.E. 218(g). The current rules are unclear, however, as to whether a formerly admitted attorney may avoid filing a petition for reinstatement if the formerly admitted attorney was on inactive status before being suspended or if the formerly admitted attorney does not immediately seek reinstatement after the period of suspension is over. The Board is considering recommending that Pa.R.D.E. 218(f) be amended to make clear that the general policy that a person who has been on inactive status for more than three years must petition for reinstatement also applies in the two situations described above.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before April 14, 2000.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 218. Reinstatement.

* * * * *

(f)(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the [**suspended**] **formerly admitted** attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Enforcement Rule 217 (relating to formerly admitted attorneys), the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

(2) [**If**] **Paragraph (1) of this subdivision shall not be applicable and a formerly admitted attorney shall be subject instead to the other provisions of this rule requiring the filing of a petition for reinstatement, if:**

(i) other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney;

(ii) the formerly admitted attorney has been on inactive status for more than three years; or

(iii) the order of suspension has been in effect for more than three years [**Paragraph (1) of this subdivision shall not be applicable and such person shall file a petition for reinstatement**].

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[Pa.B. Doc. No. 00-336. Filed for public inspection February 25, 2000, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CHS. 85 AND 89]

Amendments to the Rules of Organization And Procedure of the Board Relating to Verification of Pleadings by Respondent-Attorneys; Notice of Proposed Rulemaking

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering amend-

ing its Rules of Organization and Procedure as set forth in Annex A to require that pleadings and other documents filed in a disciplinary proceeding be verified by the respondent-attorney.

Under the current rules of the Board, every pleading or other document filed in a formal proceeding must be signed either by the respondent-attorney or by his or her counsel, and all statements of fact in those documents are made subject to the penalties set forth in 18 Pa.C.S. § 4904. See 204 Pa. Code § 89.6. There is no requirement, however, that the respondent-attorney must sign documents that include averments or denials of facts, and thus factual averments or denials may be made in documents that are signed solely by counsel for the respondent-attorney. This raises the possibility that a respondent-attorney may fail to inform his or her counsel of the correct facts or fail to correct factual statements in a document since there is no effective way under the current rules for the Board to hold the respondent-attorney responsible for the inaccuracies.

The Board believes that the interests of the disciplinary system may be furthered by requiring a respondent-attorney to sign a verified statement that must accompany any document in which there are factual averments or denials. In the event that the evidence later discloses an inaccuracy in the document, the verified statement will be an independent basis for discipline. The Board is accordingly proposing to add a new § 85.13 to its Rules of Organization and Procedure which is patterned after Pa.R.Civ.P. 1024.

New § 85.13 would not be limited just to formal proceedings and would apply before a formal proceeding has been instituted. This means, for example, that factual averments or denials made in a response to a Form DB-7 letter from Disciplinary Counsel to a respondent-attorney would be subject to the new rule.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before April 14, 2000.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.13. Verification by respondent-attorneys.

Every pleading or other document filed by or on behalf of a respondent-attorney in any proceeding under these rules that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement

signed by the respondent-attorney that the averment or denial is true based upon the respondent-attorney's personal knowledge or information and belief. The respondent-attorney need not aver the source of his information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information and belief as to the remainder.

CHAPTER 89. FORMAL PROCEEDINGS**§ 89.6. Execution.**

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(d) Cross reference. See § 85.13 (relating to verification by respondent-attorneys).

[Pa.B. Doc. No. 00-337. Filed for public inspection February 25, 2000, 9:00 a.m.]
