

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 11]

### Examination of Defendant by Commonwealth's Mental Health Experts

#### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 567 (Examination of Defendant by Commonwealth's Mental Health Expert), and make correlative changes to Rules 573 (Pretrial Discovery and Inspection) and 1101 (Suspension of Acts of Assembly). New Rule 567 would establish the procedures for the examination of a defendant by a mental health expert retained by the Commonwealth either by agreement of the parties, or by court order when the court determines the defendant intends to introduce evidence concerning his or her mental condition. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 or [criminal.rules@supreme.court.state.pa.us](mailto:criminal.rules@supreme.court.state.pa.us), no later than Monday, June 18, 2001.

*By the Criminal Procedural Rules Committee*

JOSEPH P. CONTI,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

#### PART E. INFORMATION

*(Editor's Note: Rule 567 is new and is printed in regular type to enhance its readability.)*

#### Rule 567. Examination of Defendant by Commonwealth's Mental Health Expert.

##### (A) EXAMINATION OF DEFENDANT

##### (1) BY AGREEMENT

(a) The defendant, defendant's counsel, and the attorney for the Commonwealth may agree to an examination of the defendant by the mental health expert(s) designated in the agreement.

(b) The agreement shall be in writing and signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record.

(c) Unless otherwise agreed, the mental health expert(s) promptly shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

##### (2) BY COURT ORDER

(a) Upon motion of the attorney for the Commonwealth, and after notice to the defendant and an opportunity to be heard, if the court determines at any stage of the proceedings that the defendant intends to introduce evidence concerning his or her mental condition, the court shall order that the defendant submit to an examination by one or more mental health experts selected by the Commonwealth for the purpose of determining the mental condition put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court shall advise the defendant on the record:

(i) of the purpose of the examination and the contents of the court's order;

(ii) that the information obtained from the examination may be used at trial; and

(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).

##### (c) The court's order shall:

(i) specify the time, place, and conditions of the examination;

(ii) provide that the examination be recorded, and that copies be made available to the parties;

(iii) specify who may be present at the examination; and

(iv) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(iv), shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

##### (B) DISCLOSURE OF REPORTS

(1) The mental health experts' reports and the recordings of the examination of the defendant shall be confidential, and not of public record.

(2) Any mental health expert whom either party intends to call to testify concerning the defendant's mental condition must prepare a written report. No mental health expert may be called to testify concerning the defendant's mental condition until the expert's report has been disclosed as provided herein.

(3) The court shall set a reasonable time after the Commonwealth's expert's examination for the disclosure of the reports of the mental health experts.

(4) Upon a sufficient showing, the court may at any time order that the disclosure of a report or reports be

restricted or deferred for a specified time, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting relief following a showing in camera, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

#### (C) SANCTIONS FOR NON-COMPLIANCE

At any time during the course of the proceedings, upon motion or sua sponte, if the court determines there has been a failure to comply with this rule, the court may order compliance, may grant a continuance, or may grant other appropriate relief. Upon motion, any hearing to determine if there has been a failure to comply may be held in camera and the record sealed until after disposition of the case.

#### Comment

This rule establishes the procedures for the examination of the defendant by a mental health expert(s) retained by the prosecution pursuant to an agreement by the parties, see paragraph (A)(1), or a court order, see paragraph (A)(2).

"Mental Health Expert," as used in this rule, includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning his or her mental condition.

#### *Examination of Defendant*

Paragraph (A)(1) is intended to encourage the defendant, defendant's counsel, and the attorney for the Commonwealth to agree to an examination of the defendant by the Commonwealth's mental health expert(s).

When the defendant, defendant's attorney, and the attorney for the Commonwealth agree that the defendant will be examined under this rule, at a minimum, the agreement should specify the time, place, and conditions of the examination, who may be present during the examination, how the examination will be recorded, and the time within which the parties will disclose the reports of their experts.

Paragraph (A)(2) provides for the examination of a defendant by order of the court upon motion of the Commonwealth. The purpose of providing notice to the defendant and an opportunity to be heard in paragraph (A)(2)(a) is so the defendant may challenge the Commonwealth's selected mental health expert(s) when, for example, there is a conflict of interest, or for some other appropriate reason.

It is intended that the examining mental health expert(s), whether appointed pursuant to the agreement of the parties or a Commonwealth's motion, have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing as the examining mental health expert(s) considers appropriate, within the limits of non-experimental, generally accepted medical, psychiatric, or psychological practices.

Nothing in this rule is intended to limit the number of examining experts the defense may use, nor is it to be

construed as a limitation on any party with regard to the number of other expert or lay witnesses they may call to testify concerning the defendant's mental condition.

The court is required in paragraph (A)(2)(b) to inform the defendant, on the record, about the request for a compelled examination. The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about defendant's mental condition. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

As part of the court's order, the judge is required to include a provision for the recording of the examination. The judge also must determine the type of recording, such as audio- or video-tape recordings.

Paragraph (A)(2)(d) requires that the examining mental health expert(s) promptly prepare a written report and sets forth the minimum contents of that report. It is intended that the scope of the mental health expert's report be limited in the court's order to matters related to the defendant's mental condition at the time put into issue by the defendant.

#### *Disclosure of Reports*

After the examination of the defendant by the Commonwealth's mental health expert(s) is completed and the mental health expert's report has been prepared, the defendant and the Commonwealth are required in paragraph (B) to disclose the reports that are made by any experts either party intends to call to testify concerning the defendant's mental condition. The reports must be in writing, and should comply with the content requirements in paragraph (A)(2)(d). An expert witness cannot testify until the report is disclosed as provided in paragraph (B)(2) and (3). There may be situations in which the court would have to call a short recess to permit the expert to complete a written report and to give the parties an opportunity to review the report, such as when a mental health expert(s) is observing the defendant during the trial and will be called to testify on these observations.

When the parties agree to the examination, the time for the disclosure of the reports should be set by the agreement of the parties. The agreement should permit adequate time to review the reports and prepare for the proceeding. If the parties cannot agree, in cases proceeding pursuant to court order under paragraph (A)(2), the court should set the time for the disclosure of reports, which should afford the parties adequate time to review the reports and prepare for the proceeding.

In no case should the disclosure occur until after the defendant has been examined by the Commonwealth's mental health expert(s) and the mental health expert(s) has prepared and submitted a written report. Establishing a reasonable time frame and providing for the reciprocal disclosure are intended to further promote the fair handling of these cases. There may be cases in which, although proceeding pursuant to a court order, the parties, with the court's approval, agree to an earlier time for disclosure consistent with the purposes of this rule. This rule would not preclude such an agreement.

Paragraph (B)(4) recognizes that there may be situations in which the disclosure of an expert's report should be restricted in some way, and gives the court discretion to determine the appropriate action. For example, the court could redact a portion of the report, limit the use of

the report, limit to whom the report may be shown, delay the delivery of the report, or seal the report for a specified period of time.

Examples of situations in which the court might limit disclosure of a report include when there is a need to protect confidential relationships and privileges recognized by law, when there is irrelevant information contained in the report that might be used to develop a case against the defendant, or when the information is so inherently prejudicial that it requires special handling by the judge.

*Use of Information Obtained Under This Rule*

Information obtained from the examination of a defendant by a Commonwealth's expert is not to be disclosed or used except as permitted by case law, which is evolving. See, e.g., *Commonwealth v. Santiago*, 662 A.2d 610 (Pa. 1995), *Commonwealth v. Morley*, 681 A.2d 1254 (Pa. 1996), *Commonwealth v. Szuchon*, 693 A.2d 959 (Pa. 1997), *Commonwealth v. Karenbauer*, 715 A.2d 1086 (Pa. 1998), and *Commonwealth v. Sartin*, 751 A.2d 1140 (Pa. 2000).

See the Pennsylvania Rules of Evidence concerning the admissibility of the experts' reports and information from any examinations of the defendant by an expert.

*Sanctions*

Paragraph (C) authorizes the court to impose sanctions on any person who has failed to comply with any of the provisions of this rule, including the attorney for the Commonwealth, the defendant, defendant's counsel, or an expert. The type of sanction is left to the court's discretion.

When the defendant has refused to cooperate in the examination by the Commonwealth's mental health expert(s), before imposing a sanction, the court should consider whether the defendant's failure to cooperate (1) was intentional, (2) was the result of the defendant's mental illness, and (3) will have an adverse and unfair impact on the Commonwealth's ability to respond to the defendant's claim. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation. See ABA Standards, supra, Std. 7-3.4(c) for examples of possible sanctions to impose on a defendant.

*Mental Health Procedures Act*

Section 7402 (Incompetence to Proceed on Criminal Charges and Lack of Criminal Responsibility as Defense) of the Mental Health Procedures Act, 50 P. S. § 7402, prescribes procedures for conducting court-ordered examinations of a defendant when the defendant's competency is an issue. The procedures in Section 7402 are distinct from the procedures set forth in this rule. However, to the extent that the statutory procedures conflict with the procedures in this rule, this rule takes precedence. See Rule 1101 for suspensions.

**Official Note:** Adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining the proposed new rule governing the examination of the defendant by the Commonwealth's expert published at 31 Pa.B. 2552 (May 19, 2001).

**PART F. PROCEDURES FOLLOWING FILING OF INFORMATION**

**Rule 573. Pretrial Discovery and Inspection.**

\* \* \* \* \*

(C) DISCLOSURE BY THE DEFENDANT

(1) MANDATORY:

(a) Notice of Alibi Defense:

A defendant who intends to offer the defense of alibi at trial shall, at the time required for filing the omnibus pretrial motion under Rule [ 578 ] 579, file of record notice signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense. Such notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of witnesses whom the defendant intends to call in support of such claim.

(b) Notice of Insanity Defense or Mental Infirmity Defense:

A defendant who intends to offer at trial the defense of insanity, or a claim of mental infirmity, shall, at the time required for filing an omnibus pretrial motion under Rule [ 578 ] 579, file of record notice, signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense. Such notice shall contain specific available information as to the nature and extent of the alleged insanity or claim of mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call at trial to establish such defense.

\* \* \* \* \*

**Comment**

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103.

**See Rule 567 (Examination of Defendant by Commonwealth's Mental Health Expert) for the procedures for the examination of the defendant by the Commonwealth's expert when the defendant intends to introduce evidence concerning his or her mental condition in any proceeding.**

\* \* \* \* \*

**Official Note:** Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; **Comment revised \_\_\_\_\_, 2001, effective \_\_\_\_\_, 2001.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Report explaining the proposed Comment revision published at 31 Pa.B. 2552 (May 19, 2001).**

**CHAPTER 11. ABOLITIONS AND SUSPENSIONS**

**Rule 1101. Suspension of Acts of Assembly.**

This rule provides for the suspension of the following Acts of Assembly:

\* \* \* \* \*

**(6) Section 7402 of the Mental Health Procedures Act, Act of July 9, 1976, P. L. 817, No. 143, 50 P. S. § 7402, only insofar as it is inconsistent with Rule 567.**

[ (6) ] (7) \* \* \*

[ (7) ] (8) \* \* \*

\* \* \* \* \*

**Official Note:** Former Rule 39 adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 159 adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 340 combined previous Rules 321 and 322, which were the prior suspension rules, and was adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 1415 adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 2020 adopted September 3, 1993, effective January 1, 1994; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. New Rule 1101 adopted March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2001, effective \_\_\_\_\_, 2001.**

*Committee Explanatory Reports:*

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**Report explaining the addition of new paragraph (6) published at 31 Pa.B. 2552 (May 19, 2001).**

**REPORT**

**Proposed New Rule of Criminal Procedure 567 and Correlative Changes to Rules 573 and 1101**

**EXAMINATION OF DEFENDANT BY COMMONWEALTH'S MENTAL HEALTH EXPERT(S)<sup>1</sup>**

**I. Introduction**

In 1996, the Supreme Court decided *Commonwealth v. Morley*, 681 A.2d 1254 (Pa. 1996), holding, inter alia, that

<sup>1</sup> As explained in the Comment to proposed new Rule 567, "mental health expert," as used in this rule, is intended to include a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning his or her mental condition. It is intended that, in the appropriate case, either by agreement of the parties or by court order, the defendant may be examined by more than one mental health expert.

"where the defendant has raised a defense based on mental infirmity, the defendant may not refuse to allow the Commonwealth psychiatrist to examine him or her on the basis that it violates the defendant's privilege against self-incrimination." In view of this opinion and several other similar cases,<sup>2</sup> the Committee agreed that the Rules of Criminal Procedure should provide uniform procedures for a defendant's examination by the Commonwealth's mental health expert(s).

The Committee agreed that these new examination procedures should be set forth in a separate rule, and as explained more fully in the Discussion Section below, should apply at any stage of the proceedings when the defendant intends to introduce evidence concerning his or her mental condition.<sup>3</sup> The Committee is proposing the new rule be numbered Rule 567, the first rule in Chapter 5, Part F (Procedures Following the Filing of Information). New Rule 567 would provide for the examination of the defendant either by agreement of the parties or by order of the court.<sup>4</sup>

**II. Discussion**

**A. Scope of Rule**

The first issue tackled by the Committee was the scope of the rule. After considerable discussion, the Committee concluded that the examination of the defendant by the Commonwealth's mental health expert would be triggered whenever the defendant is going to introduce any evidence of his or her mental condition at any stage in the proceedings. This would include not only trials, but, for example, proceedings such as sentencing or juvenile decertification hearings. Thus the application of Rule 567 would not be limited to cases in which the defendant is raising an insanity or mental infirmity defense, nor would it be limited to the use of expert testimony or to the time of trial.

**B. Examination of Defendant by Agreement**

Recognizing the benefits to the system of a less adversarial process for determining whether a case is appropriate for the examination of the defendant by the Commonwealth's mental health expert and of encouraging cooperation among legal professionals and mental health professionals in these cases,<sup>5</sup> the Committee agreed to incorporate into the new rule a procedure for an examination by the agreement of the parties. Because we wanted to make it clear that obtaining the agreement of the parties was the preferable procedure, the Committee has set forth these procedures first. See paragraph (A)(1).

Paragraph (A)(1)(a) provides that the agreement designate the mental health expert. The Committee concluded that since the decision to have the defendant examined was by agreement, the parties should designate the examining mental health expert, rather than leave that decision to the judge. Because this is an agreement, other than requiring the parties to designate the mental health expert in the agreement, the Committee did not want to mandate in the rule all of the contents of the agreement, preferring to give the parties discretion about how much

<sup>2</sup> See, e.g., *Commonwealth v. Santiago*, 662 A.2d 610 (Pa. 1995), *Commonwealth v. Karenbauer*, 715 A.2d 1086 (Pa. 1998), and *Commonwealth v. Sartin*, 751 A.2d 1140 (Pa. 2000).

<sup>3</sup> To accommodate the broad application of the rule, the Committee agreed that a term with a more expansive application than "insanity" should be used. After examining the rules in other states, as well as case law, we found that "mental condition" is a generally accepted term and suited the rule's purposes.

<sup>4</sup> Because the Rule 567 examination would be triggered either by agreement or by court order, the Committee agreed that the rule would not require any form of formal notice by the defendant.

<sup>5</sup> The Committee also note that this is consistent with what appears to be the approach being followed in some judicial districts in Pennsylvania as well as in other jurisdictions.

detail they want in the agreement. The Committee has included in the Comment the minimum contents we believe should be provided in the agreement as an aid to the parties in preparing their agreement.

Paragraph (A)(1)(b) requires the agreement to be in writing, and signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record. The Committee used "defendant, defendant's counsel, and the attorney for the Commonwealth" instead of "parties" to emphasize that the defendant and the defendant's attorney have to agree. Some members expressed concern about the requirement that the defendant sign the agreement, pointing out that when mental condition is the issue, some defendants would not understand the nature of the agreement, or would not sign the agreement because of their mental condition. Ultimately, the Committee agreed to retain the signature requirement, noting if a defendant is so mentally ill that he or she does not know what they are doing, then you would not have an agreement, and the parties would have to proceed by obtaining a court order. It also was noted that if the attorneys agree, but the defendant does not have the capacity to agree, then the attorneys could file a stipulated motion explaining to the court the reasons for the defendant's failure to sign the agreement.

Paragraph (A)(1)(c) requires the mental health expert to promptly prepare a report of the examination unless the parties otherwise agree. The Committee agreed the parties should have the option in the agreement to provide for the time for the report to be prepared, the contents of the report, and any other report-related matters. However, the rule makes it clear that, unless the agreement provides otherwise, the expert must prepare a standard report and that this must be done promptly after the completion of the examination. We used language comparable to Rule 573(B)(2)(b) to outline what should be included in the report.

#### C. Examination of Defendant By Court Order

When the parties do not agree to the examination of the defendant by the Commonwealth's mental health expert(s), the court may order the examination. See paragraph (A)(2). Paragraph (A)(2)(a) requires the attorney for the Commonwealth to file a motion requesting an order for the examination and to designate in the motion the mental health expert(s) he or she has selected for the examination. One of the issues the Committee debated at length was whether the judge should have any discretion with regard to (1) ordering the defendant to submit to an examination when requested by the Commonwealth and (2) accepting the mental health expert designated by the Commonwealth. Although the Committee did not think the order would be automatic upon the request of the attorney for the Commonwealth, if the court determines that the defendant intends to introduce evidence concerning his or her mental condition, the judge must order the examination. However, concerning the judge's acceptance of the Commonwealth's designated expert, because of possible conflicts, the Committee thought the judge should have discretion to appoint a different expert in the appropriate case. To facilitate the judge's ability to exercise his or her discretion under this provision, the rule requires that the defendant be given notice of the motion and an opportunity to be heard on the motion. See paragraph (A)(2)(a).

Paragraph (A)(2)(b) requires the judge to advise the defendant on the record about the examination, that the information may be used at trial, and the potential consequences for failing to cooperate in the examination.

The Committee agreed that having the judge speak to the defendant in person would emphasize the nature of the examination and the importance of cooperation. These requirements are further explained in the eighth paragraph of the Comment.

Paragraph (A)(2)(c) sets forth the required contents of the court's order. There was an extensive discussion concerning the recording of the examination and access to the recording. The Committee agreed all examinations would be recorded and copies of the recording would be given to all parties, and that the judge must include this in the order.<sup>6</sup> See paragraph (A)(2)(c)(ii). In addition, as explained in the Comment, the judge must provide in the order the type of recording, such as audio- or video-tape recordings.

The judge also must specify in the order who may be present. The Committee agreed this was the judge's decision, rather than the decision of one of the parties or the mental health expert. By leaving the decision to the judge on a case-by-case basis, we intend to accommodate other persons besides counsel, such as a parent if the issue is a juvenile decertification hearing. See paragraph (A)(2)(c)(iii). Finally, the judge must specify in the order the time within which the mental health expert(s) must submit the written report of the examination.

Paragraph (A)(2)(d), which is similar to paragraph (A)(1)(c) with regard to what the expert must include in the report, requires the expert to prepare a written report within the time specified in the order.

#### D. Disclosure of Reports

Paragraph (B) sets forth the procedures governing the disclosure of all reports of all mental health experts either party intends to call to testify. The Committee debated at length the issues related to the public's access to the experts' reports and any tape recordings of the examination. We concluded that the reports and recordings are confidential and should not be public records, and have provided this in paragraph (B)(1).

Paragraph (B)(2) and the Comment make it clear that any mental health expert who will be called to testify must prepare a written report. The rule also prohibits an expert who has not prepared a report as required by the rule from being called to testify. As pointed out in the Comment, there may be situations in which the court would have to call a short recess to permit an expert to complete a report such as when the expert is observing the defendant during the trial.

Paragraph (B)(3) makes it clear that the court must set the time for the disclosure of reports and that time must be a reasonable time after the Commonwealth's experts examination. The Comment explains that the parties in their agreement may set the time for disclosure, but if they cannot agree to the time, the court should set the time. In setting the time for disclosure, the parties or court should afford adequate time for the parties to review the reports and prepare for the proceeding. The Comment also notes that even when proceeding pursuant to a court order, the parties may agree to an earlier time for disclosure consistent with the rule.

Another issue considered by the Committee was the Commonwealth's expert's access to information other than the defendant's experts' reports, such as school records or certain test results. The Committee agreed to not address this in the rule, observing that the Common-

<sup>6</sup> The members noted although a party could not object to the recording of the examination, he or she could object to the admissibility of the recording if the other party wanted to introduce it into evidence at a proceeding.

wealth may ask the defendant to provide this information, and if the defendant does not comply, the Commonwealth may request the court to order the defendant to comply.

Paragraph (B)(4) is similar to the provisions in Rule 573(F) (Protective Orders). After a lengthy discussion concerning public access to the reports and whether portions of the reports could be sealed or the hearing held in camera, the Committee agreed to retain the in camera provision comparable to that provided in Rule 573(F). The Comment sets forth examples of situations when the court might consider limiting disclosure pursuant to paragraph (B)(4).

#### E. *Sanctions for Non-compliance*

Paragraph (C) (Sanctions for Non-compliance) is similar to Rule 573(E) (Remedy). The Committee modified the provision to make it clear that the court may impose sanctions on counsel, the defendant, or an expert for non-compliance with any provisions of Rule 567. The rule permits the court to hear a motion on sanctions in camera, and requires that the hearing be on the record. The Comment further explains this provision, and specifically addresses the special circumstances when a defendant fails to cooperate in the examination. The court should consider whether the defendant's failure to cooperate is due to his or her mental condition or was intentional, and what impact the failure to cooperate will have on the Commonwealth's ability to respond to the defendant's claim.

#### F. *Use of Information Obtained Under the Rule*

The Committee considered at length how to address the use of information obtained under the rule. We noted that the law addressing the use of information obtained from the Commonwealth's mental health expert's examination of the defendant is evolving and the permitted uses are not fully defined. In view of this, the Committee agreed to cite the relevant case law in the Comment.

#### G. *Mental Health Procedures Act*

As the Committee developed new Rule 567, we considered the provisions of the Mental Health Procedures Act, 50 P. S. § 7101 et seq. The Act sets forth the procedures for determining competency issues, as well as limited procedures concerning the lack of criminal responsibility as a defense. The Committee concluded that new Rule 567 does not apply in the context of competency proceedings under the Act. However, to avoid any confusion concerning the application of the Act to examinations governed by Rule 567, the Comment makes it clear that the rule and Act are distinct. In addition, the Committee is proposing that Section 7402 of the Act be suspended "only insofar as it is inconsistent with Rule 567." See Rule 1101 (Suspension of Acts of Assembly).

#### H. *Correlative Revisions of the Comment to Rule 573 (Pretrial Discovery and Inspection)*

The Committee is proposing that the Rule 573 Comment be revised by the addition of a cross-reference to new Rule 567.

[Pa.B. Doc. No. 01-849. Filed for public inspection May 18, 2001, 9:00 a.m.]

## [234 PA. CODE CH. 5]

### Notice of Alibi Defense and Defense of Insanity or Mental Infirmity

#### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.Rs.Crim.P. 568 (Notice of Alibi Defense) and 569 (Notice of Defense of Insanity or Mental Infirmity), and make conforming changes to Rule 573 (Pretrial Discovery and Inspection). These rule changes move the notice of the defenses of alibi, insanity, and mental infirmity from Rule 573 (Pretrial Discovery and Inspection) into separate rules, thereby making the notice of alibi and notice of insanity or mental infirmity procedures distinct from the discovery procedures. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 or [criminal.rules@supreme.court.state.pa.us](mailto:criminal.rules@supreme.court.state.pa.us), no later than Monday, June 18, 2001.

*By the Criminal Procedural Rules Committee*

JOSEPH P. CONTI,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### CHAPTER 5. PRETRIAL PROCEDURE IN COURT CASES

#### PART E. INFORMATION

*(Editor's Note: Rules 568 and 569 are new and are printed in regular type to enhance their readability.)*

#### **Rule 568. Notice of Alibi Defense.**

##### (A) NOTICE BY DEFENDANT

A defendant who intends to offer the defense of alibi at trial shall file a notice specifying an intention to offer an alibi defense no later than the time required for filing the omnibus pretrial motion provided in Rule 579.

(1) The notice shall be signed by the attorney for the defendant, or the defendant if unrepresented. The notice shall be filed with the clerk of courts with proof of service upon the attorney for the Commonwealth.

(2) The notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses whom the defendant intends to call in support of the claim.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve the notice of alibi as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the defendant omits any witness from the notice of alibi, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate the witness, or may make such other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of defense of alibi, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of alibi.

(D) FAILURE TO FILE RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by paragraph (C), the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party promptly shall notify the other party or the other party's attorney of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available alibi witnesses, when such witnesses have been prevented from testifying by reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(G) IMPEACHMENT

A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

**Comment**

This rule, which is derived from paragraphs (C)(1)(a), (c)—(g), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2001, sets forth the notice procedures when a defendant intends to raise an alibi defense at trial.

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

The notice-of-alibi provision is intended to comply with the requirement of *Wardius v. Oregon*, 412 U.S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C). See also *Commonwealth v. Contakos*, 314 A.2d 259 (Pa. 1974).

**Official Note:** Adopted \_\_\_\_\_, 2001, effective \_\_\_\_\_, 2001.

*Committee Explanatory Reports:*

Report explaining the proposed new rule governing notice of alibi defense published at 31 Pa.B. 2557 (May 19, 2001).

**Rule 569. Notice of Defense of Insanity or Mental Infirmary.**

(A) NOTICE BY DEFENDANT

A defendant who intends to offer at trial the defense of insanity or mental infirmity shall file a notice of the intention to offer the defense of insanity or mental infirmity not later than the time required for filing an omnibus pretrial motion provided in Rule 579.

(1) The notice shall be signed by the attorney for the defendant, or the defendant if unrepresented. The notice shall be filed with the clerk of courts with proof of service upon the attorney for the Commonwealth.

(2) The notice shall contain specific available information as to the nature and extent of the alleged insanity or mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call to establish such defense.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve a notice of insanity or mental infirmity defense as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make any other order as the interests of justice require.

(2) If the defendant omits a witness from the notice of insanity or mental infirmity defense, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate such evidence, may grant a continuance to enable the Commonwealth to investigate the witness, or may make any other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of the insanity or mental infirmity defense, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall serve upon defen-

dant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of insanity or mental infirmity.

(D) FAILURE TO SUPPLY RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses as required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the insanity or mental infirmity defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by this rule, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party shall promptly notify the other party or the other party's attorney of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available witnesses with regard to the insanity or mental infirmity defense, when such witnesses have been prevented from testifying by reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

**Comment**

This rule, which is derived from paragraphs (C)(1)(b), (c)—(f), and (D) Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2001, sets forth the notice procedures when a defendant intends to raise a defense of insanity or mental infirmity at trial.

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

See Rule 567 (Examination of Defendant by Commonwealth's Mental Health Expert) for the procedures for the examination of the defendant by the Commonwealth's expert when the defendant intends to introduce evidence concerning his or her mental condition in any proceeding.

**Official Note:** Adopted \_\_\_\_\_, 2001, effective \_\_\_\_\_, 2001.

*Committee Explanatory Reports:*

Report explaining the proposed new rule governing notice of insanity or mental infirmity defense published at 31 Pa.B. 2557 (May 19, 2001).

**PART F. PROCEDURES FOLLOWING FILING OF INFORMATION**

**Rule 573. Pretrial Discovery and Inspection.**

\* \* \* \* \*

(C) DISCLOSURE BY THE DEFENDANT

**[(1) MANDATORY:**

**(a) Notice of Alibi Defense:**

A defendant who intends to offer the defense of alibi at trial shall, at the time required for filing the omnibus pretrial motion under Rule 578, file of record notice, signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense. Such notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of witnesses whom the defendant intends to call in support of such claim.

**(b) Notice of Insanity Defense or Mental Infirmity Defense:**

A defendant who intends to offer at trial the defense of insanity, or a claim of mental infirmity, shall, at the time required for filing an omnibus pretrial motion under Rule 578, file of record notice, signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense. Such notice shall contain specific available information as to the nature and extent of the alleged insanity or claim of mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call at trial to establish such defense.

**(c) Disclosure of Reciprocal Witnesses:**

Within 7 days after service of notice of alibi defense or of insanity or claim of mental infirmity defense, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall disclose to the defendant the names and addresses of all persons the Commonwealth intends to call as witnesses to disprove or discredit the defendant's claim of alibi or of insanity or mental infirmity.

**(d) Failure to File Notice:**

If the defendant fails to file and serve notice of alibi defense or insanity, or mental infirmity defense as required by this rule, or omits any witness from such notice, the court at trial may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

**(e) Failure to Supply Reciprocal Notice:**

If the attorney for the Commonwealth fails to file and serve a list of its witnesses as required by this rule, or omits any witness therefrom, the court at trial may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, insanity, or mental infirmity defense, or may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

**(f) Failure to Call Witnesses:**

No adverse inference may be drawn against the defendant, nor may any comment be made concern-



ing the defendant's failure to call available alibi, insanity, or mental infirmity witnesses, when such witnesses have been prevented from testifying by reason of this rule unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(g) Impeachment:

A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

(2) DISCRETIONARY WITH THE COURT:

- (a) ] (1) \* \* \*
- [ (i) ] (a) \* \* \*
- [ (ii) ] (b) \* \* \*
- [ (b) ] (2) \* \* \*

\* \* \* \* \*

Comment

\* \* \* \* \*

Pursuant to paragraphs (B)(2)(b) and (C)(2)[ (b) ], the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

\* \* \* \* \*

[ The notice-of-alibi provision of this rule contained in paragraph (C)(1)(a) is intended to comply with the requirement of *Wardius v. Oregon*, 412 U. S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C)(1)(c). See also *Commonwealth v. Contakos*, 314 A.2d 259 (Pa. 1974). The provision requiring a notice of insanity defense, paragraph (C)(1)(b), has not previously been included in these rules, but the safeguards surrounding them have been made identical to those protecting the defendant under the notice-of-alibi provision. ]

Paragraph (C)(1), which provided the requirements for notice of the defenses of alibi, insanity, and mental infirmity, was deleted in 2001 and moved to Rules 568 (Notice of Alibi Defense) and 569 (Notice of Defense of Insanity or Mental Infirmity).

\* \* \* \* \*

**Official Note:** Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment

revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2001, effective \_\_\_\_\_, 2001.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Report explaining the proposed changes to paragraph (C) deleting the notice of defenses of alibi, insanity, and mental infirmity published at 31 Pa.B. 2557 (May 19, 2001).**

**REPORT**

**Proposed New Rules 568 and 569, and Amendments to Rule 573**

**NOTICE OF ALIBI DEFENSE AND NOTICE OF DEFENSE OF INSANITY OR MENTAL INFIRMITY**

*I. Introduction*

When developing proposed new Rule 567 (Examination of Defendant by Commonwealth's Mental Health Expert), which would establish uniform procedures for the examination of a defendant by a mental health expert employed by the Commonwealth,<sup>1</sup> the Committee examined Rule 573 (Pretrial Discovery and Inspection), as well as the Federal Rules of Criminal Procedure and similar rules in other jurisdictions. As part of that examination, we noted that, unlike the Pennsylvania Rules, the Federal Rules and many other jurisdictions have separate rules setting forth the defendant's requirements for giving notice of defenses, in particular alibi and insanity, rather than combining the notices in the discovery rule. The Committee concluded from its review of F.Rs.Crim.P. 12.1 (Notice of Alibi) and 12.2 (Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition) and the other jurisdictions' rules that the federal approach makes sense and provides a clearer distinction between discovery procedures and notice procedures.

Agreeing the notice rules should be separate from Rule 573, the Committee discussed the placement of the new rules. Having previously decided that the new examination rule should be Rule 567, which would be the first rule in Chapter 5, Part F, the Committee agreed the notice rules should follow the examination rule and are proposing that the notice rules be Rules 568 and 569.

*II. Discussion*

*A. New Rules 568 and 569*

Except as otherwise noted below, new Rules 568 and 569 carry over verbatim the text of Rule 573(C)(1). The Committee used the opportunity of moving this text into separate rules to make some editorial and technical changes, as well as some changes we believe will make the notice rules clearer.

Rules 568(A) and 569(A) carry over the provisions from Rule 573(C)(1)(a) and (b) respectively. The Committee has

<sup>1</sup> The Committee's Report explaining the development of new Rule 567 has been published for comment together with this Report.

reorganized the wording and broken the paragraph into subparagraphs dealing with (1) signing and filing the notice, and (2) the contents of the notice. In addition, because we agreed the defendant should give this notice as early as possible, we modified the rules to provide for the filing of the notices to be "no later than the time required for filing the omnibus pretrial motion provided in Rule 579." In response to some members' concerns whether the exceptions to the time for filing the omnibus pretrial motion enumerated in Rule 579 applied to the notice rules' time limits, we agreed to explain in both Comments that the reference in paragraph (A) to the Rule 579 time requirements contemplates consideration of the exceptions to the time for filing set forth in Rule 579.

For purposes of organizational clarity, the Committee agreed to reverse the order of paragraphs (C)(1)(c) and (d) when moved from Rule 573. Therefore, in the new notice rules, the defendant's notice requirement is followed by the procedures governing the defendant's failure to give the notice. See Rules 568(B) and 569(B). Similarly, the provisions for the Commonwealth to give notice of the names of witnesses he or she intends to call to disprove or discredit the defendant's claim, Rules 568(C) and 569(C), will be followed by the procedures governing the Commonwealth's failure to give the notice, Rules 568(D) and 569(D).

In addition to the reorganization of these paragraphs, paragraph (C) concerning the Commonwealth's obligation to give notice has been modified. First, the Committee has changed the title of the paragraph from "Disclosure of Reciprocal Witnesses," Rule 573(C)(1)(c), to "Reciprocal Notice of Witnesses." We think this more accurately represents the content of the provision and ties it to the purpose of the rule. The Committee also has increased the time within which the Commonwealth must give the notice from 7 days to 10 days, which is in conformity with other time limits in the Criminal Rules and is more realistic. Finally, the Committee has changed the provision in Rule 573(C)(1)(c) from "disclosure to the defendant" to "shall serve . . . written notice of the names and addresses . . ." The Committee agreed that it is important to have these notices in writing to avoid the confusion that sometimes arises when there is only oral notice.

The provisions in Rule 573(C)(1)(d) and (e), now Rules 568(B) and (D) and 569(B) and (D), have been reorganized into subparagraphs. The first subparagraph sets forth the sanctions for failing to file and serve the notice. The second subparagraph sets forth the sanctions for omitting a witness' name from the notice. Although many of the suggested sanctions are the same for both types of failure to comply, the Committee thought the rules would be clearer if the provisions were separated.

Rules 568(E) and 569(E) are taken from Rule 573(D). Although Rule 573(D) is not specifically included in the notice section of Rule 573, the Committee agreed that there would be a continuing duty to disclose witnesses whom the party intends to call in the notice context, and therefore included this provision in the new rules.

The first paragraph of the Comments to Rules 568 and 569 provide a history of the source of the new rules, cross-referencing Rule 573. In addition, the Rule 568 Comment carries over the Rule 573 Comment provision citing *Wardius v. Oregon*, 412 U. S. 470 (1973), and the Rule 569 Comment includes a cross-reference to the new examination rule, Rule 567.

#### B. Correlative Changes: Rule 573

Rule 573 would be amended by deleting the alibi and insanity notice provisions in Rule 573(C)(1)(a)—(g) and the corresponding Comment provision concerning notice of alibi. The paragraph (C)(2) caption "Discretionary with the Court" would be deleted as unnecessary now that all of the mandatory section under paragraph (C) has been deleted. Thus, paragraph (C) would begin with paragraph (1) "In all court cases. . . ."

[Pa.B. Doc. No. 01-850. Filed for public inspection May 18, 2001, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CARBON COUNTY

**Adoption of Local Rule of Civil Procedure L1915.4-1, Revision of Local Rules of Civil Procedure L1915.1, L1915.3, L1915.4, L1915.5 and L1915.7, Rescission of Local Rules of Civil Procedure L1915.2, L1915.8, L1915.10, L1915.11, L1915.12, L1915.13, L1915.17, L1915.18, L1915.19 and L1915.20; No. 01-1115**

#### Administrative Order 14-2001

*And Now*, this 4th day of May, 2001, it is hereby

*Ordered and Decreed* that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Court of Common Pleas of Carbon County *Adopts* Local Rule of Civil Procedure L1915.4-1 governing Alternative Hearing Procedures for Partial Custody or Visitation cases including Mandatory Education Program for Patents, *Revises* Local Rules of Civil Procedure L1915.1 governing Scope—Definitions in custody cases, L1915.3 governing Prosecution of Action in custody cases, L1915.4 governing prompt dispositions of custody cases including Mandatory Education Program for Parents, L1915.5 governing discovery motion practice in custody cases, and L1915.7 governing the Consent Order in custody cases, and *Rescinds* Local Rules of Civil Procedure L1915.2 governing Venue in custody cases, Local Rule of Civil Procedure L1915.8 governing Physical and Mental Examination of Person in custody cases, L1915.10 governing the Decision in custody cases, L1915.11 governing the presence of the child at custody hearings, L1915.12 governing Civil Contempt for Disobedience of Custody Order, L1915.13 governing Special Relief in custody cases, L1915.17 governing Pre-Hearing Conference and Consent Order in custody cases, L1915.18 governing Notice of Final Hearing and Order in custody cases, L1915.19 governing the Appointment of Hearing Officer and Report in custody cases, and L1915.20 governing Exceptions to Hearing Officer's Report, De Novo Hearings and Final Hearings in custody cases.

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

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Civil Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Prothonotary's Office.

By the Court

RICHARD W. WEBB,  
*President Judge*

**Rule L1915.1. Scope—Definitions.**

(1) (A) These rules govern local practice and procedure in all actions for custody, partial custody, visitation, modification of existing orders and contempt of court, including all actions heretofore commenced by petition for writ of habeas corpus and all claims for custody, partial custody or visitation asserted in an action of divorce or support.

(B) If a claim for custody, partial custody, visitation or modification of an existing order is raised during the course of an action for divorce or for support, the court shall enter an order directing that the determination of the claim shall be referred to a hearing officer appointed by the Court for an expeditious resolution of the claim.

(2) As used in these Rules, unless the context of a Rule indicates otherwise,

“Conference” means a pre-hearing negotiating session conducted under the auspices of the Court by a hearing officer appointed by the court.

“Court,” shall mean the Court of Common Pleas of Carbon County.

“De novo hearing,” means a hearing before a judge of the Court of Common Pleas of Carbon County.

“Hearing Officer,” means an attorney employed by a judicial district who is engaged in the practice of law and is duly licensed to practice law in the Commonwealth of Pennsylvania

“Program,” means the mandatory “Education Program for Divided Families” in custody and divorce matters.

“Provider,” means the qualified educators, counselors, and trainers selected by the Court of Common Pleas to present the “Education Program for Divided Families”.

**Rule L1915.3. Prosecution of Action.**

When a claim for custody, partial custody or visitation is made in a complaint, petition, or counterclaim, such pleading shall comply with Pa.R.C.P. 1915.15(a) or (b) and shall have attached an Order of the Court referring the claim to the Hearing Officer for a conference, a Conciliation Conference Notice and a Pre-trial Conciliation Information Form which will be substantially in the same form as “Form A” and “Form B” following this rule. A second order shall be attached to the front of the complaint/petition as required by Local Rule L1915.4 Form—“B” and L1915.4-1—Form “A”. The moving party shall follow the Motion practice as set forth in L206.1(2) in the filing and service of the custody pleading.

“FORM A”

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

:  
:  
vs. : NO.  
: CUSTODY  
:

ORDER OF COURT

You, \_\_\_\_\_, Defendant, have been sued in Court to obtain custody, partial custody or visitation of the child(ren), \_\_\_\_\_

Pursuant to Carbon County Rule L1915.4 and L1915.4-1, you are ordered to appear in person at the First Floor Conference Room, Carbon County Courthouse, Jim Thorpe, Pennsylvania, 18229, on \_\_\_\_\_, 20 \_\_, at \_\_\_\_\_, \_\_\_\_\_.m., prevailing time, for a CONCILIATION or MEDIATION CONFERENCE before Carbon County Custody Conference Officer \_\_\_\_\_.

If you fail to appear as provided by this Order, the Court or Custody Conference Officer may grant leave to the party who appears to present testimony and the Court may proceed to enter an Order for Custody, Partial Custody or Visitation based solely upon such testimony or the Court may issue a warrant for your arrest. No stenographic record shall be made of this conference.

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

Legal Services of Northeastern Pennsylvania, Inc.  
122 Iron Street  
Lehighton, PA 18235  
(610) 377-5400

BY THE COURT:

DATED: \_\_\_\_\_ J.

“FORM B”

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

:  
:  
vs. : NO.  
: CUSTODY  
:

PRE-TRIAL CONCILIATION INFORMATION  
(To be submitted at conciliation conference)

GENERAL INFORMATION:

1. Names, addresses, ages and employment of parents:  
FATHER MOTHER

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Names and ages of all children involved; state with whom living:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Names and addresses of other parties involved (if any - children's services, grandparents, foster parents, etc.)

\_\_\_\_\_

\_\_\_\_\_

4. Status of current custody orders or custody arrangements:

\_\_\_\_\_

\_\_\_\_\_

5. Addresses of children for past 5 years; state who had custody at each location:

\_\_\_\_\_

\_\_\_\_\_

Position of Party Submitting Memorandum:

1. State what living arrangements you consider to be in child(ren)'s best interests (i.e. where children should spend weekdays, weekends, holidays, vacation, attend school, matters of that sort):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. State kind of environment you can provide under above arrangement (home, school, other children in neighborhood, your availability at various times):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Other factors you consider relevant to resolution of dispute:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Efforts at mediation, conciliation, counseling:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TRIAL INFORMATION:

1. List of witnesses you would intend to call:

Fact Witnesses: \_\_\_\_\_

\_\_\_\_\_

Experts: (attach copies of any reports currently available to the memorandum):

\_\_\_\_\_

\_\_\_\_\_

2. Issues for resolution: (e.g., suitability of physical environment, suitability of parent, unusual opportunities for enrichment, particular skills of availability of one parent as opposed to another):

\_\_\_\_\_

\_\_\_\_\_

3. Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Counsel for \_\_\_\_\_

COPIES TO BE SENT TO: Court  
Opposing Counsel

**Rule L1915.4. Prompt Disposition of Custody Cases. Mandatory Education Program for Parents in Custody Matters.**

1. Upon the filing of any claim for custody, the moving party shall deposit with the Prothonotary the sum of \$300.00 unless excused by the Court.
2. All actions commenced under these rules shall be scheduled for a pre-hearing conference. The pre-hearing conference shall be held to focus on issues of fact and law and to explore the possibility of a negotiated settlement and consent order.
3. A continuance of the pre-hearing conference may be granted by the Court upon good cause shown.
4. If the parties agree on a custodial arrangement, two hundred dollars shall be refunded to the depositing party and a consent order shall be entered in substantially the same form as set forth in "Form A" following Carbon County Local Rule L1915.7.
5. If the parties are unable to agree, the hearing officer shall immediately contact Court Administration for a hearing date, insert this date on a Hearing Notice as set forth in "Form A," file the original with the Prothonotary, and deliver a copy of same forthwith to the parties, counsel, and Court Administration.
6. At the conclusion of the pre-hearing conference, the hearing officer shall prepare a recommended Interim Order which said officer believes is in the best interest of the child(ren) and forward it to the Court within 10 days of the pre-hearing conference. The Interim Order shall require the parties to file a Pre-Trial Memorandum with the Prothonotary's Office within five (5) days prior to hearing, and shall contain the following:
  - (A) A clear concise statement of the principal custody issues to be resolved by the Court;
  - (B) Principles of law to be applied;
  - (C) List of witnesses to be called and exhibits;
  - (D) Listing of any evidentiary disputes; and Legal Argument.
  - (E) Proposed Findings of Fact
  - (F) Proposed Custody Order.
7. In all custody proceedings where the interests of children under the age of eighteen (18) are involved, the parties shall attend and complete one 4-hour session

entitled "Education Program for Divided Families," referred to in these local rules as "Program".

8. In all custody proceedings, each complaint or petition shall be in compliance with Local Rule L206.1 or Local Rule L205.3.

9. At the time of the filing of the Complaint/Petition, the Prothonotary's Office shall provide all parties with the Court Order requiring attendance at the Program as set forth in Form "B," a registration form, and Program description.

10. The parties shall register for the Program within fifteen (15) days after he or she is served with the Court Order.

11. Every party shall attend the Program within sixty (60) days from the date of the Order requiring attendance. Any request for an extension of time to complete the Program shall be made to the Court.

12. The fee for the Program is \$25.00 per party and must be submitted with the registration form. Certified check or money order will be accepted for payment. Checks and money orders shall be made payable to the Kathryn James. NOTE: NO PERSONAL CHECKS WILL BE ACCEPTED.

13. No final hearing shall be held or final order entered until all parties have attended and completed the Program, unless the Court waives the requirement upon petition filed for good cause shown. Refusal of the non-moving party to attend the Program shall be considered good cause by the Court. Failure to comply with the Order may result in the dismissal of the action, striking of pleadings, or other appropriate action, including sanctions for contempt.

14. Upon filing of the Certificate of Completion, the Prothonotary shall provide a copy to Court Administration.

15. Copies of this Rule, Program Registration Form, and Program Description shall be available in the Prothonotary's Office of the Court of Common Pleas of Carbon County.

"FORM A"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA CIVIL ACTION—LAW

Plaintiff vs. Defendant Attorney for Plaintiff Attorney for Defendant

NOTICE OF HEARING

You, Defendant, have been sued in court to obtain custody of the child(ren):

You are ordered to appear in person at Courtroom No. Carbon County Courthouse, Jim Thorpe, Pennsylvania, on 20 at A.M./P.M., prevailing time, for a hearing. If you fail to appear as provided by this order, an order for custody may be entered against you or the court may issue a warrant for your arrest.

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

LEGAL SERVICES OF NORTHEASTERN PENNSYLVANIA, INC. 122 IRON STREET LEHIGHTON, PA 18235 (610-377-5400)

COUNSEL IS ATTACHED FOR THESE PROCEEDINGS.

Dated: 20 Esquire—Hearing Officer

I/We hereby acknowledge receipt of the Notice of Hearing.

Plaintiff Defendant Attorney for Plaintiff Attorney for Defendant

"FORM B"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA CIVIL ACTION—LAW

vs. NO. CUSTODY ACTION

ORDER OF COURT

You are ORDERED to attend a program entitled "Education Program for Divided Families" in connection with the above-captioned custody action. You must register for the Program using the registration form attached within fifteen (15) days of the date that you receive this Order. Further, you must attend and complete the Program within sixty (60) days from the date of this Order.

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

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

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

Legal Services of Northeastern Pennsylvania, Inc. 122 Iron Street Lehigh, PA 18235 (610) 377-5400

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Carbon County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the District Court Administrator's Office at (570) 325-8556. All arrangements must be made at least

seventy-two (72) hours prior to any hearing or business before the Court. You must attend the scheduled Program.

BY THE COURT:

DATED: \_\_\_\_\_ J.

#### EDUCATION PROGRAM FOR DIVIDED FAMILIES

In cases involving custody of minor children, mandatory attendance at one 4-hour session entitled "Education Program for Divided Families" is required. **MINOR CHILDREN SHALL NOT BE BROUGHT TO THE PROGRAM.**

#### PROGRAM CONTENT

The Program focuses on the impact of divorce on parents and children, with an emphasis on fostering a child's emotional health and well being during the periods of stress. The program is informative, supportive, and directs people desiring additional information or help to appropriate resources.

The Program addresses the following items:

A. Impact of Divorce on Parents and Children: tasks adults face; tasks children face; common reactions of children of different ages; and do's and don'ts of parenting.

B. Identifying and dealing with feelings such as anger toward your children, from your children, and toward your ex-spouse, as well as the healing process.

C. Open Discussion: explaining divorce, visitation problems, new relationships, parents at war with co-parent, etc.

#### WHO

Kathryn M. James  
Masters In Education  
Family Living Educator  
P. O. Box 184  
Brodheadsville, PA 18322  
Telephone: (570) 992-2027

#### WHEN

The Program is offered every month on one (1) Saturday from 9:00 A.M. until 1:00 P.M.

#### WHERE

The Program will be presented at the Carbon County Conservation District building located at 5664 Interchange Road, Lehighton, PA 18235 (located next to the Pennsylvania State Police Barracks on Route 209 North - building is between Gensis Day Care and the PA State Police Barracks). Directions: From the south (Palmerton, Lehighton), take 209 North (about 5 miles past the Turnpike entrance); From the northwest (Jim Thorpe, Lansford, Summit Hill) take 209 North; and from the north (Weatherly, Beaver Meadows) take 93 South to 209 North.

#### ATTENDANCE

Attendance at the Program is required of parties in a custody case where the interests of children under the age of eighteen (18) years are involved and is ordered by the Court. Additional interested persons may attend the seminar upon prior approval of the provider with the payment of ten (\$10.00) dollars.

#### PRESENTERS

A qualified counselor selected by the Court of Common Pleas of Carbon County will present the program.

#### NOTIFICATION

A copy of the Order requiring the parties to attend the Program, a Registration Form, and Program Description will be provided to the parties by the Prothonotary's Office upon filing of a custody action.

#### FEES

A fee of \$25.00 per party is required and will be used to cover all program costs. The fee must be submitted with the registration form directly to the Provider. Certified check or money order will be accepted as payment.

#### REGISTRATION

The provider must receive the registration form and program fee at least seven (7) days prior to the selected date. Each party shall attend the Program without further notification by the Court. Any changes in scheduling must be arranged through the provider.

#### VERIFICATION OF ATTENDANCE

Upon presentation of photo identification, the provider will record the party as "present" and shall provide to the Prothonotary of Carbon County a Certificate of Completion, which shall be filed of record. The Provider will give a Certificate of Attendance to each person who successfully completes the Program.

#### EVALUATION

Each participant shall complete a written evaluation of the Program upon the conclusion of the session. Said evaluation forms shall be presented to the Court upon request.

Kathryn M. James  
Masters In Education  
Family Living Educator  
P. O. Box 184  
Brodheadsville, PA 18322  
Telephone: (570) 992-2027

**REGISTER BY MAIL:** Choose the date you want to attend, complete the attached form, and send it with your certified check or bank money order payable to Kathryn James to:

Kathryn M. James  
Masters In Education  
Family Living Educator  
P. O. Box 184  
Brodheadsville, PA 18322

If you have any questions regarding the program or scheduling, call: (570) 992-2027.

2001 Registration Form—Education Program for Divided Families  
Carbon County, Pennsylvania

The Program is held at the Carbon County Conservation District building located at 5664 Interchange Road, Lehighton, PA 18235 (located next to the Pennsylvania State Police Barracks on Route 209 North - building is between Gensis Day Care and the PA State Police Barracks).

You are required to attend one 4-hour Saturday session. The cost of the Program is \$25.00 per party.

Other guests can attend for an additional \$10.00 fee.

Photo identification is required.

Parking is available on site.

Register at least seven (7) days prior to the date you want. IF TEN (10) PARTICIPANTS ARE NOT REGISTERED, THE CLASS WILL BE CANCELLED AND YOU WILL NEED TO RE-SCHEDULE. CONFIRMATIONS ARE NOT SENT. Come to the program you choose, unless notified that the class is full. Class may be cancelled due to snow. You will be informed of this cancellation by telephone.

If you cannot attend the class you registered and paid for, you must call Kathryn James at (570) 992-2027 to let her know of the change in plans. If the cancellation is made a week prior to the scheduled date, you may attend the next scheduled class at no additional charge. IF NO NOTICE OF CANCELLATION IS GIVEN OR IT IS NOT MADE ONE WEEK PRIOR TO CLASS, YOU MUST PAY AN ADDITIONAL \$10.00 TO TAKE THE NEXT CLASS.

Children SHALL NOT be brought to the Program.

Please be prompt. Latecomers are not admitted and must reschedule.

In case of a snowstorm, listen to the radio and/or television for cancellations—WYNS 11.60 A.M., WLSH 14.10 A.M., or TV WYOU—News 22. Call (570) 992-2027 to reschedule.

Docket Number: of custody case \_\_\_\_\_ Docket Number MUST be filled in for attendance credit. Please indicate County of jurisdiction: \_\_\_\_\_

Your Name: \_\_\_\_\_

Guest: \_\_\_\_\_  
(Name and Relationship to Child)

Your Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ (Home) \_\_\_\_\_ (Work)

SATURDAYS—9:00 A.M. TO 1:00 P.M.

Jan. 6, 2001	_____
Feb. 17, 2001	_____
March 10, 2001	_____
April 7, 2001	_____
May 5, 2001	_____
June 2, 2001	_____
July 7, 2001	_____
August 4, 2001	_____
Sept. 8, 2001	_____
Oct. 6, 2001	_____
Nov. 3, 2001	_____
Dec. 1, 2001	_____

Send completed registration form and fee by certified check or money order payable to Kathryn James to:

Kathryn M. James  
Masters In Education  
Family Living Educator  
P. O. Box 184  
Brodheads ville, PA 18322  
Telephone: (570) 992-2027

**Rule L1915.4-1. Alternative Hearing Procedures for Partial Custody or Visitation Cases.**

1. Upon the filing of any claim for partial custody or visitation, the moving party shall deposit with the Prothonotary the sum of \$300.00 unless excused by the Court.

2. All actions commenced under these rules shall be scheduled for a pre-hearing conference. The pre-hearing conference shall be held to focus on issues of fact and law and to explore the possibility of a negotiated settlement and consent order.

3. A continuance of the pre-hearing conference may be granted by the Court upon good cause shown.

4. If the parties agree on a custodial arrangement, two hundred dollars shall be refunded to the depositing party and a consent order shall be entered in substantially the same form as set forth in "Form A" following Carbon County Local Rule L1915.7.

5. If the parties are unable to agree, the hearing officer shall immediately contact Court Administration for a hearing date, insert this date on a Hearing Notice as set forth in "Form A," file the original with the Prothonotary, and deliver a copy of same forthwith to the parties, counsel, and Court Administration.

6. Where no agreement is reached, the hearing officer shall prepare a recommended Interim Order which said officer believes is in the best interest of the child(ren) and forward it to the Court within 10 days of the pre-hearing conference. The Interim Order shall require the parties to file a Pre-Trial Memorandum with the Prothonotary's Office within five (5) days prior to hearing, and shall contain the following:

- (A) A clear concise statement of the principal custody issues to be resolved by the Court;
- (B) Principles of law to be applied;
- (C) List of witnesses to be called and exhibits;
- (D) Listing of any evidentiary disputes; and Legal Argument.
- (E) Proposed Findings of Fact
- (F) Proposed Custody Order

7. The moving party shall be responsible to secure the services/attendance of an outside court reporter for said hearing and shall be responsible for the payment of said outside court reporter unless the Court places the payment responsibility on the other party.

8. Within 10 days of the conclusion of the hearing, the hearing officer shall file and serve a copy upon all parties a report stating the reasons for the recommendation along with a proposed order including a specific schedule of partial custody or visitation.

9. If exceptions are filed, no exceptions shall be argued before the Court unless written briefs have been filed. The moving party shall file three (3) copies of a brief and exceptions with the Prothonotary's Office no later than ten (10) days after filing of the hearing officer's report, and forthwith serve one (1) copy of the brief upon each adverse party or counsel of record. Each adverse party or his counsel of record shall file in the appropriate filing office three (3) copies of a brief in answer, not later than five (5) days after receipt of moving party's brief and forthwith serve a copy thereof upon all opposing parties or their counsel of record. All briefs shall be prepared in conformity with Local Rule L210. Transcription of the proceedings shall be filed of record by the party raising the objections. The cost of transcription shall be borne by the party filing the original exceptions unless otherwise ordered by the Court.

10. Argument shall be held within 45 days of the date that the last party files exceptions.

11. In all custody proceedings where the interests of children under the age of eighteen (18) are involved, the parties shall attend and complete one 4-hour session entitled "Education Program for Divided Families," referred to in these local rules as "Program".

12. In all custody proceedings, each complaint or petition shall be in compliance with Local Rule L206.1 or Local Rule L205.3.

13. At the time of the filing of the Complaint/Petition, the Prothonotary's Office shall provide all parties with the Court Order requiring attendance at the Program as set forth in Form "B," a registration form, and Program description.

14. The parties shall register for the Program within fifteen (15) days after he or she is served with the Court Order.

15. Every party shall attend the Program within sixty (60) days from the date of the Order requiring attendance. Any request for an extension of time to complete the Program shall be made to the Court.

16. The fee for the Program is \$25.00 per party and must be submitted with the registration form. Certified check or money order will be accepted for payment. Checks and money orders shall be made payable to the Kathryn James. NOTE: NO PERSONAL CHECKS WILL BE ACCEPTED.

17. No final hearing shall be held or final order entered until all parties have attended and completed the Program, unless the Court waives the requirement upon petition filed for good cause shown. Refusal of the non-moving party to attend the Program shall be considered good cause by the Court. Failure to comply with the Order may result in the dismissal of the action, striking of pleadings, or other appropriate action, including sanctions for contempt.

18. Upon filing of the Certificate of Completion, the Prothonotary shall provide a copy to Court Administration.

19. Copies of this Rule, Program Registration Form, and Program Description shall be available in the Prothonotary's Office of the Court of Common Pleas of Carbon County.

"FORM A"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA CIVIL ACTION—LAW

Plaintiff vs. NO. Defendant Attorney for Plaintiff Attorney for Defendant

NOTICE OF HEARING

You, Defendant, have been sued in court to obtain partial custody or visitation of the child(ren):

You are ordered to appear in person at the 1st floor Conference Room, Carbon County Courthouse, Jim Thorpe, Pennsylvania, on

20 at A.M./P.M., prevailing time, for a hearing. If you fail to appear as provided by this order, an order for partial custody or visitation may be entered against you or the court may issue a warrant for your arrest.

PLAINTIFF SHALL DEPOSIT THE SUM OF (\$0.00) DOLLARS (\$0.00) WITH THE PROTHONOTARY OF CARBON COUNTY NO LATER THEN TEN (10) DAYS PRIOR TO DATE OF HEARING.

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

LEGAL SERVICES OF NORTHEASTERN PENNSYLVANIA, INC. 122 IRON STREET LEHIGHTON, PA 18235 (610-377-5400)

COUNSEL IS ATTACHED FOR THESE PROCEEDINGS.

Dated: 20 Esquire—Hearing Officer

I/We hereby acknowledge receipt of the Notice of Hearing.

Plaintiff Defendant Attorney for Plaintiff Attorney for Defendant

"FORM B"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA CIVIL ACTION—LAW

vs. NO. CUSTODY ACTION

ORDER OF COURT

You are ORDERED to attend a program entitled "Education Program for Divided Families" in connection with the above-captioned custody action. You must register for the Program using the registration form attached within fifteen (15) days of the date that you receive this Order. Further, you must attend and complete the Program within sixty (60) days from the date of this Order.

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

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

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



Legal Services of Northeastern Pennsylvania, Inc.  
 122 Iron Street  
 Lehighton, PA 18235  
 (610) 377-5400

**AMERICANS WITH DISABILITIES ACT OF 1990**

The Court of Common Pleas of Carbon County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the District Court Administrator's Office at (570) 325-8556. All arrangements must be made at least seventy-two (72) hours prior to any hearing or business before the Court. You must attend the scheduled Program.

BY THE COURT:

DATED: \_\_\_\_\_ J.

**EDUCATION PROGRAM FOR DIVIDED FAMILIES**

In cases involving custody of minor children, mandatory attendance at one 4-hour session entitled "Education Program for Divided Families" is required. **MINOR CHILDREN SHALL NOT BE BROUGHT TO THE PROGRAM.**

**PROGRAM CONTENT**

The Program focuses on the impact of divorce on parents and children, with an emphasis on fostering a child's emotional health and well being during the periods of stress. The program is informative, supportive, and directs people desiring additional information or help to appropriate resources.

The Program addresses the following items:

- A. Impact of Divorce on Parents and Children: tasks adults face; tasks children face; common reactions of children of different ages; and do's and don'ts of parenting.
- B. Identifying and dealing with feelings such as anger toward your children, from your children, and toward your ex-spouse, as well as the healing process.
- C. Open Discussion: explaining divorce, visitation problems, new relationships, parents at war with co-parent, etc.

**WHO**

Kathryn M. James  
 Masters In Education  
 Family Living Educator  
 P. O. Box 184  
 Brodheadsville, PA 18322  
 Telephone: (570) 992-2027

**WHEN**

The Program is offered every month on one (1) Saturday from 9:00 A.M. until 1:00 P.M.

**WHERE**

The Program will be presented at the Carbon County Conservation District building located at 5664 Interchange Road, Lehighton, PA 18235 (located next to the Pennsylvania State Police Barracks on Route 209 North - building is between Gensis Day Care and the PA State Police Barracks). Directions: From the south (Palmerton, Lehighton), take 209 North (about 5 miles past the Turnpike entrance); From the northwest (Jim Thorpe,

Lansford, Summit Hill) take 209 North; and from the north (Weatherly, Beaver Meadows) take 93 South to 209 North.

**ATTENDANCE**

Attendance at the Program is required of parties in a custody case where the interests of children under the age of eighteen (18) years are involved and is ordered by the Court. Additional interested persons may attend the seminar upon prior approval of the provider with the payment of ten (\$10.00) dollars.

**PRESENTERS**

A qualified counselor selected by the Court of Common Pleas of Carbon County will present the program.

**NOTIFICATION**

A copy of the Order requiring the parties to attend the Program, a Registration Form, and Program Description will be provided to the parties by the Prothonotary's Office upon filing of a custody action.

**FEEES**

A fee of \$25.00 per party is required and will be used to cover all program costs. The fee must be submitted with the registration form directly to the Provider. Certified check or money order will be accepted as payment.

**REGISTRATION**

The provider must receive the registration form and program fee at least seven (7) days prior to the selected date. Each party shall attend the Program without further notification by the Court. Any changes in scheduling must be arranged through the provider.

**VERIFICATION OF ATTENDANCE**

Upon presentation of photo identification, the provider will record the party as "present" and shall provide to the Prothonotary of Carbon County a Certificate of Completion, which shall be filed of record. The Provider will give a Certificate of Attendance to each person who successfully completes the Program.

**EVALUATION**

Each participant shall complete a written evaluation of the Program upon the conclusion of the session. Said evaluation forms shall be presented to the Court upon request.

Kathryn M. James  
 Masters In Education  
 Family Living Educator  
 P. O. Box 184  
 Brodheadsville, PA 18322  
 Telephone: (570) 992-2027

**REGISTER BY MAIL:** Choose the date you want to attend, complete the attached form, and send it with your certified check or bank money order payable to Kathryn James to:

Kathryn M. James  
 Masters In Education  
 Family Living Educator  
 P. O. Box 184  
 Brodheadsville, PA 18322

If you have any questions regarding the program or scheduling, call: (570) 992-2027.

2001 Registration Form—Education Program for Divided Families  
 Carbon County, Pennsylvania

The Program is held at the Carbon County Conservation District building located at 5664 Interchange Road,

Lehighton, PA 18235 (located next to the Pennsylvania State Police Barracks on Route 209 North—building is between Gensis Day Care and the PA State Police Barracks).

You are required to attend one 4-hour Saturday session. The cost of the Program is \$25.00 per party.

Other guests can attend for an additional \$10.00 fee.

Photo identification is required.

Parking is available on site.

Register at least seven (7) days prior to the date you want. IF TEN (10) PARTICIPANTS ARE NOT REGISTERED, THE CLASS WILL BE CANCELLED AND YOU WILL NEED TO RE-SCHEDULE. CONFIRMATIONS ARE NOT SENT. Come to the program you choose, unless notified that the class is full. Class may be cancelled due to snow. You will be informed of this cancellation by telephone.

If you cannot attend the class you registered and paid for, you must call Kathryn James at (570) 992-2027 to let her know of the change in plans. If the cancellation is made a week prior to the scheduled date, you may attend the next scheduled class at no additional charge. IF NO NOTICE OF CANCELLATION IS GIVEN OR IT IS NOT MADE ONE WEEK PRIOR TO CLASS, YOU MUST PAY AN ADDITIONAL \$10.00 TO TAKE THE NEXT CLASS.

Children SHALL NOT be brought to the Program.

Please be prompt. Latecomers are not admitted and must reschedule.

In case of a snowstorm, listen to the radio and/or television for cancellations - WYNS 11.60 A.M., WLSH 14.10 A.M., or TV WYOU—News 22. Call (570) 992-2027 to reschedule.

Docket Number: of custody case \_\_\_\_\_ Docket Number MUST be filled in for attendance credit. Please indicate County of jurisdiction: \_\_\_\_\_

Your Name: \_\_\_\_\_

Guest: \_\_\_\_\_ (Name and Relationship to Child)

Your Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ (Home) \_\_\_\_\_ (Work)

SATURDAYS—9:00 A.M. TO 1:00 P.M.

- Jan. 6, 2001 \_\_\_\_\_
- Feb. 17, 2001 \_\_\_\_\_
- March 10, 2001 \_\_\_\_\_
- April 7, 2001 \_\_\_\_\_
- May 5, 2001 \_\_\_\_\_
- June 2, 2001 \_\_\_\_\_
- July 7, 2001 \_\_\_\_\_
- August 4, 2001 \_\_\_\_\_
- Sept. 8, 2001 \_\_\_\_\_
- Oct. 6, 2001 \_\_\_\_\_
- Nov. 3, 2001 \_\_\_\_\_
- Dec. 1, 2001 \_\_\_\_\_

Send completed registration form and fee by certified check or money order payable to Kathryn James to:

Kathryn M. James  
Masters In Education  
Family Living Educator  
P. O. Box 184  
Brodheads ville, PA 18322  
Telephone: (570) 992-2027

Rule L1915.5. Discovery Motion Practice.

(1) Discovery motions in custody actions shall only be authorized by special Order of Court and shall be filed in compliance with Local Rule of Civil Procedure L206.1.

Rule L1915.7. Consent Order.

(1) A proposed consent order substantially in the same form as Form "A" following this Rule shall be attached to the stipulation or agreement.

"FORM A"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

\_\_\_\_\_  
Plaintiff  
vs. NO. \_\_\_\_\_  
\_\_\_\_\_  
Defendant  
\_\_\_\_\_  
- Counsel for Plaintiff  
\_\_\_\_\_  
- Counsel for Defendant

CUSTODY ORDER OF COURT

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon review of the attached Agreement between the parties regarding custody of the child(ren), it is hereby

ORDERED and DECREED that said Agreement is approved and shall be incorporated into this Order of Court as if more fully set forth herein.

The attached "Appendix to Order" is incorporated herein and shall be part of this Order.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

\_\_\_\_\_  
Plaintiff  
vs. NO. \_\_\_\_\_  
\_\_\_\_\_  
Defendant  
\_\_\_\_\_  
- Counsel for Plaintiff  
\_\_\_\_\_  
- Counsel for Defendant

AGREEMENT FOR ENTRY OF SHARED CUSTODY ORDER OF COURT

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the following agreement is entered into upon stipulation of the parties:

This Agreement and ensuing Order of Court shall govern the custodial situation of the following children:

\_\_\_\_\_  
\_\_\_\_\_

2. In accordance with the statutory laws of this Commonwealth, each party shall be provided all access to the

medical, dental, religious and school records of the child(ren) involved. Absent an emergency situation, each party shall be informed in regard to the medical and dental needs of the child(ren) involved.

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

4. The welfare of the child(ren) shall be the primary consideration of the parties in any application of the terms of this Agreement. The parties shall exert every reasonable effort to foster a feeling of affection between the child(ren) of the other party. Neither party shall do anything to estrange the child(ren) from the other party, to injure the opinion of the child(ren) as to the other party, or to hamper the free and natural development of the child(ren)'s love and respect of the other party.

5. Primary Physical custody of the child(ren) shall be as follows:

\_\_\_\_\_

6. The Plaintiff/Defendant, Father/Mother, shall have partial physical custody and visitation rights in accordance with the following schedule:

- (a) During the week: \_\_\_\_\_;
- (b) Weekends: \_\_\_\_\_;
- (c) Major Holidays: \_\_\_\_\_;
- (d) Minor Holidays: \_\_\_\_\_;
- (e) Mother's Day and Mother's Birthday shall be with the Mother; Father's Day and Father's Birthday shall be with the Father.
- (f) Child(ren)'s Birthday(s): \_\_\_\_\_;
- (g) Vacation/Summers: \_\_\_\_\_;
- (h) Other times: \_\_\_\_\_.

7. All other periods of partial custody by either party shall be by mutual agreement of both party after reasonable request, and such agreement shall not be unreasonably withheld.

8. Each party agrees to keep the other advised of their current residential address and telephone number. Each party shall be entitled to speak to the child(ren) by telephone at reasonable times and intervals when the child(ren) is/are in the custody of the other party.

9. Each party agrees to give to the other a general itinerary of all vacations they plan to take with the child(ren).

10. Each party shall endeavor to give at least twenty-four (24) hours prior notice to the other in the event that it will not be possible to exercise any of the rights herein identified.

11. It is the intention of the parties that this agreement will be adopted into an Order of Court.

12. The filing fee for the stipulated order shall be paid by the \_\_\_\_\_ (Indicate Plaintiff or Defendant)

to the Prothonotary of Carbon County simultaneous with the filing of the stipulated order.

_____ WITNESS AS TO PLAINTIFF	_____ PLAINTIFF
_____ WITNESS AS TO DEFENDANT	_____ DEFENDANT

[Pa.B. Doc. No. 01-851. Filed for public inspection May 18, 2001, 9:00 a.m.]

**CARBON COUNTY**

**Adoption of Local Rule of Civil Procedure L1920.12 Complaint in Divorce/Annulment Cases; No. 01-1097**

**Administrative Order 16-2001**

*And Now*, this 4th day of May, 2001, it is hereby

*Ordered and Decreed* that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas hereby *Adopts* Local Rule of Civil Procedure L1920.12 governing complaints filed in Divorce and Annulment cases.

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

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

*By the Court*

RICHARD W. WEBB,  
*President Judge*

**Rule L1920.12. Complaint.**

(a) In every divorce or annulment complaint, the plaintiff shall complete Form "A" as set forth below this rule with the Social Security Number of each party to said action as required by 23 Pa.C.S.A. 4304.1(a)(3). Said form shall not be attached to said complaint but shall remain separate from the complaint.

(1) The Prothonotary's Office shall record the Social Security Numbers in the Court Computer Database and, upon verification of proper entry, shall shred the form containing the Social Security Numbers. The Social Security Numbers shall remain confidential in that they will only be visible to internal personnel and cannot be accessed through the public access programs.

Form "A"

Docket Number of Divorce/Annulment Case \_\_\_\_\_

Plaintiff Name: \_\_\_\_\_

Plaintiff Social Security Number: \_\_\_\_\_

Defendant Name: \_\_\_\_\_

Defendant Social Security Number: \_\_\_\_\_

[Pa.B. Doc. No. 01-852. Filed for public inspection May 18, 2001, 9:00 a.m.]

**SCHUYLKILL COUNTY****Amended Criminal Rules of Procedure; M 01-238***Order*

And Now, this 3rd day of May, 2001, at 1:30 p.m., Schuylkill County Criminal Rules of Procedure for the Court of Common Pleas and District Justice Courts are amended and/or adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Schuylkill County is *Ordered* and *Directed* to do the following:

- 1) File seven (7) certified copies of this Order and rules with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of the Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rules with the Pennsylvania Criminal Procedural Rules.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,  
*President Judge*

**Rules of Criminal Procedure****Rule 102. Citation of Rules.**

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure. They may be cited as "Sch.R.Crim.P. No. \_\_\_\_\_."

**Rule 106. Continuances.**

## (a) Motion by Defendant

Motions for Continuance by the defendant shall be in writing, upon forms approved by the Court, executed by the defendant and his attorney. At least twenty-four (24) hours advance notice of the presentation of said motions shall be given to the District Attorney. The motion shall be filed with the Clerk of Courts and contemporaneously a copy shall be served on the District Attorney by the defendant. The defendant will be obliged to appear in Court, with counsel, to waive the time requirements under Rule 600. The Clerk of Courts shall forward all

motions for continuance to the Court Administrator, who shall list the motion for hearing on the date when continuance requests shall be heard in accordance with the published Court Calendar.

**Rule 120. Duties of Counsel.**

Every counsel of record in a criminal case shall be timely present for each hearing, conference or other court proceeding involving his or her client as scheduled pursuant to the provision of these rules, or as the Court may otherwise direct. It shall further be the duty of counsel to promptly notify the client of the date, time, place and duty to be present at each proceeding involving the client's case until such time as the case has been disposed of by verdict, plea or Order of Court. Counsel who fail to comply with this rule may be held in Contempt of Court.

Unless otherwise relieved by Order of Court, counsel of record in a criminal proceeding shall be responsible for representing the defendant until disposition of post sentence procedures pursuant to Pa.R.Crim.P. 704 and 720. Thereafter, counsel shall notify his or her client in writing that his or her representation of the client has been concluded and that the client will have to make arrangements to continue representation for any appeal or seek other counsel. The obligation of counsel shall cease upon the mailing of said notice. In the event an appeal is taken from the judgment of sentence by counsel of record, record counsel shall remain as counsel for the defendant through the appellate process.

**Rule 310. Motion for A.R.D. Disposition.**

(a) In all cases in which a defendant charged with violation of 75 Pa.C.S.A. § 3731 (Driving Under the Influence) seeks a special handling by way of A.R.D., the District Attorney shall arrange with (1) the Drug and Alcohol Clinic at the Good Samaritan Hospital for examination and evaluation, and (2) the Adult Probation Department for an investigation of prior criminal history.

Reports prepared by the Drug and Alcohol Clinic and the Adult Probation Department shall be delivered to the District Attorney and shall be subject to inspection by the District Attorney and defense counsel. Such reports shall become part of the defendant's probation department file. All such reports shall be submitted along with the necessary A.R.D. forms to the Criminal Court Administrator on the cutoff date for submission of paperwork for negotiated pleas as established by the published Court Calendar.

(b) The A.R.D. motions for defendants who have been recommended by the District Attorney for the Fast Track A.R.D. Program shall be heard on the dates published for Fast Track A.R.D. in the Court Calendar.

**Rule 319. Procedure for Obtaining Order Upon Successful Completion of A.R.D. Program.**

(a) Whenever a defendant is placed under the Accelerated Rehabilitation Disposition Program and he shall have satisfactorily completed the program provided for him and complied with its conditions, the Probation Office of Schuylkill County, upon filing of an affidavit by the defendant, shall file a report with the Court Administrator and a copy with the District Attorney, the latter of whom shall within thirty (30) days if he has objection to the dismissal of the charges, file such objection with the Clerk of Courts, serving a copy thereof on the defendant and his attorney. If such objections are filed, the Court shall proceed to hear the case under Pa.R.Crim.P. No. 318.

If no objections are filed within the thirty (30) day period, the Clerk of Courts shall endorse upon the report of the Probation Office as follows: "No objection having been filed within thirty (30) days by the District Attorney, the charges contained in the information filed against the defendant, as a result of which he was placed under the A.R.D. Program on \_\_\_\_\_, are hereby dismissed." The Clerk shall present said report with its endorsement to the sentencing Judge for signature.

(b) The Clerk of Courts shall furnish the Probation Department with a list of the cases under A.R.D. where the probationary period has heretofore expired and where petitions to dismiss have not been filed. The Probation Office shall review its files and make the required reports as set forth under subsection (a) of this Rule, so that appropriate cases may be dismissed.

**Rule 528. Types of Bail: Percentage Cash Bail.**

(a) In the event the District Justice accepts a sum of U.S. Currency equal to ten percent (10%) of the full amount of the monetary condition, the sum of money furnished shall be receipted for, deposited, accounted for, forfeited or returned in accordance with Pa.R.Crim.P. No. 535.

(b) After the final disposition of the case, and provided there has been no forfeiture, the money constituting percentage cash bail shall be returned to the defendant, less a retention fee for administering the percentage cash bail program of ten percent (10%) of the money entered as bail, and in no event shall the retention fee be less than Ten Dollars (\$10.00). The retention fee withheld shall be for the use of the County and shall be received and accounted for by the Clerk of Courts.

(c) When a defendant or a third party surety has deposited a sum of money under the percentage cash bail program, then upon full and final disposition of the case, the deposit less the retention fee for administrative costs, shall be returned to the person who originally posted the deposit. Notice of the full and final disposition shall be sent by the Clerk of Courts to the person who originally posted money at his address of record. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Schuylkill.

**Rule 542. Preliminary Hearing: Transcripts.**

(a) Whenever a court stenographer prepares a transcript of the testimony of witnesses at a preliminary hearing, said stenographer shall furnish a copy of the transcript to the District Attorney.

**Rule 560. Information: Filing, Contents, Functions.**

(e) Promptly after receipt of transcripts in court cases, the Clerk of Courts shall forward copies of the same to the District Attorney. The District Attorney shall make such investigation as he deems appropriate and shall then prepare the informations for filing against the defendants. The District Attorney shall file with the Clerk of Courts on the second and last Mondays of each month the informations he has prepared by said dates.

(f) Whenever the District Attorney files a criminal information against a defendant alleging that the defendant committed murder as defined in 18 Pa.C.S.A. § 2502, the District Attorney shall contemporaneously forward a copy of the information to the Criminal Court Administrator. Upon receipt of the information, the Court Administrator shall assign the case to a member of the Court and shall notify the Clerk of Courts and counsel for

the parties as to which judge the case has been assigned. Thereafter, all pretrial and trial matters occurring in the case shall be referred to the assigned judge for disposition.

**Rule 570.1. Report of Cases Ready for Trial/Pre-Trial Conference.**

By 4:00 p.m. on the day after the District Attorney must transmit the plea paperwork to the Criminal Court Administrator, as published on the Court Calendar, the District Attorney shall prepare and submit to the Criminal Court Administrator a report listing all cases in which the District Attorney is prepared to go to trial during that term of Court (including those in which the defendant has indicated an intent to request a continuance). This list shall constitute the trial list for that term of Court. Thereafter no case may be removed from or added to the trial list without leave of Court.

Pretrial conferences with a member of the Court shall be conducted at 9:30 a.m. on the pretrial conference date as published in the Court Calendar for all cases remaining on the trial list by that date. The conference shall be attended by the assigned assistant district attorney and defense counsel. Pro se defendants must also attend. A victim may be present, if the victim desires to attend.

It shall be the duty of each party, prior to the pretrial conference, to verify the availability of all necessary witnesses for trial. The Court may decline to consider scheduling problems and requests which are not brought to the Court's attention at the pretrial conference.

**Rule 571. Arraignment.**

(a) Every defendant who shall be held for Court by the District Justice, at the conclusion of the preliminary hearing or at the time he waives his preliminary hearing, shall be furnished with a notice of arraignment form by the District Justice. The form shall advise defendant of the time periods wherein he may commence discovery and file an omnibus pre-trial motion in Court. He shall further be given notice that he has the right to waive appearing for formal arraignment in the District Attorney's Office.

In the event he desires to waive formal arraignment, he and his attorney, if any, shall execute the form provided for that purpose by the District Justice, and said form shall be returned to Court with the transcript of the case by the District Justice. The date of arraignment will begin the running of the time for the exercise of defendant's pre-trial rights.

In the event the defendant does not waive his arraignment, the District Attorney, upon filing the information, shall give the defendant notice of arraignment by first class mail, addressed to defendant's last known address of record, arraignment to be held at the District Attorney's Office the following Monday morning at 9:30 a.m.

At the time the District Attorney mails the arraignment notices, he shall give the Public Defender a list of those defendants who are scheduled for arraignment. The Public Defender shall assign one of his attorneys to meet with the District Attorney on the day of arraignment to represent those defendants who are not represented by counsel. Such representation shall be solely for the purpose of arraignment and shall not constitute an entry of appearance.

If a defendant fails to appear for arraignment, the Court, upon motion of the District Attorney, may issue a bench warrant for the defendant.

**Rule 573. Pre-Trial Discovery and Inspection.**

Defense counsel desiring pre-trial discovery and inspection under Pa.R.Crim.P. No. 573 shall make an appointment and hold an informal conference with the District Attorney's Office within fourteen (14) days after arraignment for that purpose. The District Attorney's Office shall make available all information not in dispute to the defendant. Should the defendant request copies of any items of information, same shall be at the expense of the defendant. At that conference, in addition to discussing discovery sought, the parties may discuss possible plea negotiations.

**Rule 578. Contents of Omnibus Pre-Trial Motions.**

(a) All omnibus pre-trial motions shall state specifically and with particularity the following:

- (1) type of relief requested;
- (2) grounds for relief requested;
- (3) facts and events in support thereof; and
- (4) citations or law in support thereof.

All motions for pre-trial disclosure or discovery shall set forth the fact that an informal conference to discuss the requested material has taken place and proved unsuccessful.

**Rule 579. Time for Omnibus Pre-Trial Motions.**

All omnibus pre-trial motions shall be filed within thirty (30) days after arraignment in accordance with Pa.R.Crim.P. No. 579. The defendant shall file the original with the Clerk of Courts and contemporaneously serve a copy on the District Attorney. The Clerk of Courts shall forward all motions to the Court Administrator for assignment to a judge. In those cases where the defendant acquires new counsel, either through appointment or through the resignation of his original counsel, the new counsel shall have no more than thirty (30) days from his appointment or employment to file such omnibus pre-trial motion as he may deem necessary. Only one extension of time shall be permitted.

**Rule 590.1. Pleas and Plea Agreements.**

(a) The District Attorney shall prepare the sentencing guideline forms provided by the Court as soon as practicable after the informations are lodged, setting forth the sentences required by the guidelines if a plea of guilty is entered by the defendant, and shall forward this material to defense counsel. Counsel for defendants who wish to engage in plea negotiations shall promptly thereafter schedule a meeting with the District Attorney.

(b) In those cases where no plea agreement has been made, a plea negotiation conference shall be held. At said conference, the District Attorney assigned to the case and prosecuting officer or an officer from his department with authority to resolve the case shall meet with the defendant and defense counsel with the end in view to determine whether they can arrive at a plea agreement. The victim shall be notified and given an opportunity to attend and participate in the negotiations.

(c) If the parties arrive at a plea agreement, the defense counsel or defendant shall complete the form for entry of a written guilty plea available at the office of the District Attorney and promptly return it to that office. The District Attorney shall promptly forward the written guilty plea together with a copy of the information against the defendant, a report of the defendant's prior criminal record, and a list of maximum penalties and sentence guidelines for each charge to the Criminal Court

Administrator. When the charge is D.U.I., a copy of the CRN shall also be provided to the Court.

Each written guilty plea shall be accompanied by a "Guilty Plea Certification" completed and signed by the District Attorney and defense counsel, certifying to the Court that the defendant's guilty plea has not previously been presented to the Court, or specifying the date when the plea was presented and identifying the judge who rejected the plea. Counsel who fail to comply with this rule may be held in contempt of Court.

Only those negotiated pleas and motions for A.R.D. for which the required documents are received by the District Attorney before 4:00 p.m. on the "plea paperwork cutoff" date as published in the Court Calendar for a particular term of Court will be considered by the Court during that term of Court. A defendant whose paperwork is not received by the cutoff may proceed to trial, request a continuance to the next term of Court, or enter a general plea of guilty without agreement as to sentence.

The District Attorney must forward all paperwork for negotiated pleas and motions for A.R.D. to the Criminal Court Administrator on the date established for transmittal as published in the Court Calendar.

The Criminal Court Administrator shall assign all guilty pleas and motions for A.R.D. among the judges who will hear those cases. Except for a plea of guilty entered after commencement of trial, the Court shall accept no guilty plea or A.R.D. motion unless scheduled and assigned by the Criminal Court Administrator.

(d) All guilty pleas and motions for A.R.D. for which the paperwork has been timely submitted to the Criminal Court Administrator shall be heard on the date scheduled for guilty pleas in the published Court Calendar.

(1) The pleas of all defendants who are incarcerated at that time shall be heard on the published prisoner plea date at 9:30 a.m.

(2) The pleas of all defendants who are not incarcerated and are represented by the Public Defender or have no counsel shall be heard on the published guilty plea date at 9:30 a.m.

(3) The pleas of all defendants who are not incarcerated and have retained private counsel shall be heard on the published guilty plea date at 1:30 p.m.

(e) General pleas of guilty entered after the dates in subsection (d) shall be scheduled by the Criminal Court Administrator at the direction of the President Judge.

**Rule 606. Judgment of Acquittal Motion.**

(a) Any motion for judgment of acquittal shall follow the procedure set forth at Sch.R.Crim.P. 704.

**Rule 704. Procedure at Sentencing.**

(a) Motions for extraordinary relief.—Any defendant seeking to present an oral motion for extraordinary relief pursuant to Pa.R.Crim.P. 704(B) shall file of record and serve upon the Commonwealth a written request briefly setting forth the rationale for the relief including an explanation as to why immediate relief is essential. Only upon a prima facie showing that alleged errors are so manifest that immediate relief is essential will leave be granted to present the oral motion for judgment of acquittal/arrest of judgment/new trial. The application to the Court shall be captioned "Application for Leave to Argue Oral Motion for Extraordinary Relief" and shall ask for leave to present and argue the merits set forth in the application.

**Rule 706. Fines or Costs or Restitution.**

(a) If at the time of sentencing the Court determines the defendant is without the financial means to pay the fines or costs or restitution immediately or in a single remittance, the Court may provide for payment of said monies in such installments and over such period of time as is deemed just and practicable by the Adult Probation Office and/or Schuylkill Collection Bureau, taking into account the financial resources of the defendant and nature of the burden its payments will impose.

(b) In any case in which the court has ordered payment of a fine or cost or restitution in installments, the defendant may request a re-hearing on his payment schedule as established by the Adult Probation Office and/or Schuylkill Collection Bureau, or when he is in default of a payment, or when such default is imminent.

**Rule 707. Applications for Parole.**

(a) Upon serving the minimum sentence as ordered by the Court, a defendant may be considered for parole.

(b) The Warden, District Attorney and Adult Probation Department shall indicate on the application any objection to the defendant's parole.

(c) The Court may in its discretion, or in the event any of the above said parties object to the application schedule a hearing on the application for parole.

**Rule 708. Post-Sentence Motions.**

(a) Post-sentence motions shall be filed and served promptly on the Trial Judge and opposing counsel. The Trial Judge may schedule a conference to review the record and fix a briefing schedule.

(b) All motions requesting the appointment of a panel sitting as a court en banc shall be presented to the President Judge.

(1) Transcript of Court Trial. When directed by the Court, the transcript of the testimony of the trial of a criminal case shall be filed with the Clerk of Courts. The clerk shall make said transcript available to defense counsel and to the District Attorney, respectively, for a two (2) week period of time for preparation of briefs.

**Criminal Procedure  
District Justice Courts**

**Rule 102. Citation of Rules.**

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure for District Justice Courts. They may be cited as "Sch.R.Crim.P.D.J. No. \_\_\_\_."

**Rule 141. Contempt Procedure in Protection from Abuse Cases.**

(a)(1) Upon information received on a violation of a protection order, the defendant may be arrested without a warrant, provided that the information is sufficient to constitute probable cause.

(2) Upon arrest, defendant shall be taken before either the district justice who has jurisdiction or the district justice on call; the arresting officer shall file a criminal complaint charging the defendant with indirect criminal contempt per 23 Pa.C.S.A. § 6113 and § 6114; defendant shall at that time be arraigned and bail shall be set; defendant shall either be released on bail or taken to Schuylkill County Prison if bail cannot be posted.

(3) The District Justice shall immediately (next working day) provide the Court Administrator with the following information:

(a) name of defendant

(b) name of judge whose order was violated

(4) Court Administrator shall arrange with judge who issued original protection order for a hearing to be scheduled within ten (10) days.

**Rule 506. Private Complaints.**

(c) Private complaints shall be instituted in the manner set forth in Pa.R.Crim.P. No. 506. The affiant shall appear in the office of the District Attorney, who shall determine whether there is a probable cause and either approve or disapprove the complaint without unreasonable delay. If the complaint is approved, it shall be transmitted to the appropriate District Justice who shall act as the issuing authority.

**Rule 517. Fugitives—Court Cases.**

(c) In any court case in which a warrant of arrest has been issued, either upon the filing of the complaint or after the defendant fails to respond to a summons, if the officer to whom the warrant was issued is unable to serve such warrant after good faith effort within thirty (30) days, the said officer shall make a return of "NOT FOUND" to the District Justice.

**Rule 518. Arrest Without a Warrant in Certain Cases.**

(b) Pursuant to the authority granted by Pa.R.Crim.P. No. 518, police officers are hereby authorized, when making an arrest in Schuylkill County and when they deem it appropriate, to promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority when the following conditions have been met:

(1) the most serious offense charged is a misdemeanor of the second degree;

(2) the defendant is a resident of the Commonwealth;

(3) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;

(4) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and

(5) the defendant does not demand to be taken before an issuing authority.

When a defendant is released pursuant to this Rule, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued.

**Rule 543. Continuances of Preliminary Hearings.**

(a) Every request for continuance of a preliminary hearing shall be submitted in writing on a form obtained from the District Justice or Criminal Court Administrator and shall be signed by the defendant and his/her counsel if any. The form may be submitted to the District Justice by fax directly (or via the Criminal Court Administrator if the District Justice office does not have fax capability).

(b) Each party may be granted one continuance by the District Justice upon cause shown. Any such initial

continuance, made at the request of either party, shall not be for more than twenty-one (21) days. A continuance request submitted by the party not requesting the initial continuance, if granted by the District Justice, shall not be for more than fourteen (14) days. The District Justice is prohibited from granting more than one continuance to each party.

Any subsequent continuance by either party may be granted only by the President Judge, or his designee, upon completion and with just cause shown on the approved aforementioned continuance request form. This request for continuance form must be completed and signed by the defendant and his/her counsel if any. Upon refusal or approval of said request for continuance form, the Criminal Court Administrator shall file the signed form with the Clerk of Court's office and shall notify the District Justice who in turn shall notify the parties.

(1) Pre-Preliminary Hearing Line-Up

Defendants desiring a pre-preliminary hearing line-up shall make such request known to the District Attorney and the District Justice at least forty-eight (48) hours in advance of the scheduled preliminary hearing.

In the event the District Attorney opposes defendant's request for a line-up prior to his preliminary hearing, the District Attorney shall advise defendant of such opposition at least twenty-four (24) hours in advance of the scheduled preliminary hearing. Defendant may then request a line-up by filing an original petition with the Clerk of Courts. The Court Administrator shall then assign the matter to a criminal list Judge for disposition. Defendant shall give notice of such filing to the District Attorney and the District Justice.

When a District Justice has been notified of the filing of such petition, he shall continue the case for at least two (2) weeks to allow for the disposition of the petition.

(2) Scheduling of Preliminary Hearings

Unless there are compelling reasons, no preliminary hearing shall be scheduled for a court case by any District Justice during the first two days of jury selection or the first week of criminal court trials in Schuylkill County. If a preliminary hearing is required to be held within that week by the Pa.R.Crim.P., this local Rule of Court shall be cited by the District Justice as a reason for re-scheduling the case for as soon thereafter as possible.

**Rule 547. Transcript of District Justice.**

(c) In addition to the requirements under the Pa.R.Crim.P., the District Justice shall also list the defendant's date of birth in brackets following his name on the transcript, and shall list the names, addresses, and telephone numbers of all witnesses who testified at the preliminary hearing or who the parties request to be listed on the transcript.

(d) The District Justice shall prepare a transcript of the proceedings before him and return the same together with the documents required by Pa.R.Crim.P. No. 547 to the Office of the Clerk of Courts by first class mail or by hand delivery. In appeals from summary convictions, the District Justice shall return the transcript filed with the Office of the Clerk of Courts together with the documents required by Pa.R.Crim.P. No. 460 by certified mail, return

receipt requested, together with a letter of transmittal. The copy of the transmittal letter and return receipt card shall be retained by the District Justice.

[Pa.B. Doc. No. 01-853. Filed for public inspection May 18, 2001, 9:00 a.m.]

**SCHUYLKILL COUNTY**

**Amended Civil Rules of Procedure; S-905-2001**

*Order*

And Now, this 3rd day of May, 2001, at 1:30 p.m., the Court hereby amends Schuylkill County Rules of Civil Procedure 216, 217, 1910.11, 1910.12, 1915.17, 1920.53 and adopts Civil Rule 1012 and 1910.12(b)(1)(iii) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). These rules shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is *Ordered* and *Directed* to the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

**Rule 216. Application for Continuance.**

Applications for continuance of any court scheduled proceeding shall be made to the scheduling judge in writing on the general continuance form available through the office of the Court Administrator. The movant shall comply with Pa.R.C.P. 216, state whether the request is opposed, indicate the number of times the case has been previously continued and specify the reason for the request. If the request is due to a prior attachment of counsel, a copy of the scheduling notice or attachment order shall accompany the continuance application. Each request for continuance shall include a certification by counsel that his/her client has been informed about the request for a continuance.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within



twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

**Rule 217. Costs on Continuance.**

When an application for the continuance of any proceeding scheduled by the Court, by a master appointed by the Court, by a custody conciliator appointed by the Court or by any officer of the Domestic Relations Section, is presented so close to the scheduled time for the proceeding as to cause undue inconvenience to the opposing party and/or their counsel, the Court may impose on the party making the application, or that party's counsel, the reasonable costs and expenses actually incurred by the opposing party which would not have been incurred if the application had been made more promptly. When determining the appropriateness of imposing costs and expenses, the Court shall consider the extent of notice to the parties when the proceeding was scheduled, the time when the applicant or counsel knew or should have known of the need for a continuance, how soon in advance of the scheduled proceeding the application for continuance was made and the inconvenience and expenses of opposing parties and their counsel.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

**Rule 1012. Duties of Counsel.**

Every counsel of record in any civil proceeding shall be timely present for each hearing, conference or other court proceeding involving his or her client as scheduled pursuant to the provision of these rules, or as the Court may otherwise direct. It shall further be the duty of counsel to promptly notify the client of the date, time, place and duty to be present at each proceeding involving the client's case until such time as the case has been disposed of by final order or decree. Counsel who fail to comply with this rule may be held in Contempt of Court.

Unless otherwise relieved by Order of Court, counsel of record in any civil proceeding shall be responsible for representing his or her client until the entry of a final order or decree. Thereafter, counsel shall notify his or her client in writing that his or her representation of the client has been concluded and that the client will have to make arrangements to continue representation for any appeal or seek other counsel. Counsel shall certify by praecipe that such notice was given. The praecipe shall be filed within ten (10) days after notice is sent to the client, and a copy of the praecipe shall be served as any other pleading on all other parties. The obligation of counsel shall cease upon the filing and service of said praecipe unless counsel has filed an appeal for the client, thereby obligating counsel to continue representation through the appellate process.

**Rule 1910.11. Office Conference. Request for Continuance.**

A request for continuance of a support conference shall be made in writing to the Domestic Relations Director on

a form established by the Court. The request shall include a statement of the reasons for the request, whether the request is opposed or unopposed, the number of times the case has been previously continued, and a certification by counsel that his/her client has been informed about the request for continuance. The Domestic Relations Director shall have authority to approve only one continuance request from each party. If the Domestic Relations Director denies a request for a continuance, he/she shall state the reasons for the denial on the written request.

A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the President Judge.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

**Rule 1910.12. Office Conference. Hearing. Record. Exceptions. Order.**

(b) (1) If an agreement has not been reached by the parties, the court shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Pa.R.C.P. 1910.26(e). Within ten (10) days after the date of the order, either party may demand a hearing before a hearing officer. If a demand for hearing is filed, the matter shall be assigned to the Hearing Officer for hearing and further proceedings in accordance with Pa. R.C.P. 1910.12.(b)-(g) and these rules. If no hearing is requested, the order shall become final.

(i) A request for continuance of a support hearing shall be made in writing to the Hearing Officer on a form established by the Court. The request shall include a statement of the reasons for the request, whether the other party is opposed or unopposed, and the number of times the case has been previously continued. The Hearing Officer shall have authority to approve only one continuance request from each party. If the Hearing Officer denies a request for a continuance, he shall state the reasons for the denial on the written request.

(ii) A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the President Judge.

(iii) Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

(c)(3) The order may also specify the time within which such discovery must be completed.

(d) Within five (5) business days following the taking of testimony, the Hearing Officer shall file with the court a report containing a recommendation with respect to the entry of an order of support.

(e)(1) In complex contested matters which require the hearing to be continued in progress, the Hearing Officer may assess additional fees of \$100.00 per each additional hearing day. Each additional conference, beyond the first, shall be considered for these purposes as a hearing.

(2) Where additional Hearing Officer's fees are assessed, the moving party shall deposit the fee with the Domestic Relations office and concurrently file a Praeceptum substantially in the following form:

(CAPTION)

PRAECEPTUM FOR DEPOSIT OF ADDITIONAL HEARING OFFICER'S FEE

To the Prothonotary:

As directed by the Hearing Officer in the above captioned case, deposit the sum of \$ \_\_\_\_\_.00 for \_\_\_\_ additional hearing days in compliance with Sch.R.C.P. 1910.12(e).

\_\_\_\_\_  
Attorney for (Plaintiff/Defendant)

Received this day the sum of \$ \_\_\_\_\_.00, additional Hearing Officer's fees in the above captioned case.

\_\_\_\_\_  
Domestic Relations Office

(f)(1) Within five (5) days of filing Exceptions to the Report of the Hearing Officer, pursuant to Pa.R.C.P. 1910.12(f), the party raising exceptions shall request a transcript of all of the testimony, pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the court reporter for the cost of said transcript pursuant to Pa.R.J.A. 5000.6.

(2) If both parties file Exceptions to the Report of the Hearing Officer, they shall equally bear the cost of the transcript of the testimony.

(3) In the event of the failure of an excepting party within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law, the exceptions may be deemed to have been withdrawn and may be dismissed by the Court.

(4) Upon filing of the transcript of testimony, the file shall be delivered to the Court for disposition pursuant to Pa.R.C.P. 1910.12(h). Within ten (10) days of receiving notice of such filing with the Court, the moving party shall file a memorandum of law related to the issues raised in the exceptions, and shall within three (3) days serve a copy of such memorandum upon counsel or upon the opposing party, if not represented by counsel. The opposing party may within ten (10) days file an opposing memorandum.

**Rule 1915.17. Custody Conference Continuance.**

A request for a continuance of a custody conference shall be made in writing to the Custody Conciliation Officer on a form established by the Court and available from the Court Administrator or the Custody Conciliation Section. The request shall include a statement of the reasons for the request, whether the request is opposed or unopposed, the number of times the case has been previously continued and a certification by counsel that his/her client has been informed about the request for continuance.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

The Custody Conciliation Officer shall have the authority to approve only one continuance request from each party. If the Custody Conciliation Officer denies the request for a continuance for any reason, the Officer shall state the reasons for the denial on the written request.

A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the President Judge. It is that party's responsibility to advise the Custody Conciliation Officer of the appeal and of the President Judge's decision.

**Rule 1920.53. Hearing by Master. Report. Continuance.**

(d) The Master shall direct the examination of witnesses and the general course of the proceedings before him. Subpoenas for the attendance of witnesses before the Master shall be issued by the Prothonotary under the seal of Court. The Master shall cause a record to be kept of all proceedings before him. If objection is made to the admission of evidence, an offer and statement of purpose of said evidence, as well as the objection and its grounds, and the Master's ruling shall be noted in the record.

(e) The Master shall hold a hearing within sixty (60) days after the pre-hearing conference provided for in Sch.R.C.P. 1920.51(j); or, when he finds that counseling is required under Pa.R.C.P. 1920.45, within sixty (60) days after the expiration of the time for the completion of counseling under that Rule.

(f) The Master or Court Administrator may grant only one continuance of a hearing to a day certain to each party. However, the Master may continue any hearing in progress.

The motion for continuance shall be made in writing to the President Judge on a form established by the Court. The motion shall include a statement of the reasons for the request, whether the other party or the Master is opposed or unopposed to the request, the number of times the case has previously been continued and a certification by counsel that his/her client has been informed about the request for continuance. If the Master is opposed to the motion, he/she shall state his/her reasons for opposition on the written form.

Counsel have an ongoing duty to consult their scheduling calendar immediately upon receipt of a notice scheduling a court proceeding. In the event a continuance is necessary because of a prior attachment or emergency situation, counsel shall promptly request a continuance, and failure to do so may subject counsel to the contempt powers of the Court. Continuance requests shall be made as soon as the conflict is, or should be known, or within twenty-four (24) hours after discovery of emergency circumstances. Emergency circumstances must be explained in writing, and requests due to scheduling conflicts must include a copy of the conflict attachment notice.

(g)(1) In a contested case the testimony given at a Master's hearing shall be taken by an official court reporter who shall be paid an appearance fee by the party first moving for the appointment of the Master.

(2) Upon the closing of the record at the Master's Hearing the parties may agree to those portions of the record to be transcribed, or the Master may direct that all or a portion of the record shall be transcribed. The Master may make an interim allocation of the transcript fees which shall be paid pursuant to Pa.R.J.A. 5000.6.

(3) Within five (5) days after the filing of exceptions to the Master's report, the party raising exceptions shall request a transcript of all the testimony pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the court reporter for the cost of the transcript pursuant to Pa.R.J.A. 5000.6.

(i) If both parties file exceptions to the Master's report, they shall equally bear the cost of the transcript.

(4) In the event of the failure of an excepting party within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law as required by these Rules or Order of Court, the exceptions may be deemed to have been withdrawn and may be dismissed by the court.

(5) Upon payment of all fees, the court reporter shall certify the transcript and shall give notice to the Master and to the parties that the transcript has been certified. All objections to the transcript shall be raised within ten (10) days after the date of the notice of the certification, or the objections are deemed to be waived.

(h)(1) The testimony in an uncontested case shall be transcribed in question and answer form, shall be read by the witness, and shall be sworn to and signed by the witness in the presence of the Master. Before the Master shall certify such testimony he may examine the witness as to any answers given in such testimony and may demand that the testimony be supplemented, in writing, by answers to other specific questions, or under oath before an official court reporter.

(2) The Master's report shall be filed:

(i) within thirty (30) days after the closing of the record; or

(ii) within thirty (30) days after the notice of the certification of the transcript by the court stenographer when a transcript has been requested; or,

(iii) within thirty (30) days after the final memorandum or brief is due, whichever last occurs.

(i) Should the Master fail to file his final report within the time specified in Sch.R.C.P. 1920.53(g) or 1920.53(h), there being no rule or other matter not disposed of, a party shall have the right to obtain a rule upon the Master to show cause why the final report should not be filed promptly. If no good cause is shown, and if no report is filed, the Court shall take appropriate action promptly. No action taken hereunder by a party shall adversely influence the Master against that party, and the willful violation of this admonition shall result in the removal of the Master from consideration for appointment as a Master thereafter, any other disciplinary and remedial action that the Court may feel appropriate under the circumstances, or both.

(j) The Master shall enclose the papers in the case in a strong paper backer arranged in the following order:

(1) Recommendation as to the form and content of the final decree as to the divorce or annulment and for the disposal of related claims;

(2) In an uncontested case, the Master's report in the form required by Pa.R.C.P. 1920.53(c) and in a contested matter, in the form required by Pa.R.C.P. 1920.53(b);

(3) Testimony; except that in a contested matter, the transcript by the court reporter may be separate from the other papers as long as it is filed at the same time;

(4) Exhibits, if any, which are not included with the transcript;

(5) Docket entries;

(6) Record papers in the case; and

(7) A certificate of service of the Notice required by "Sch.R.C.P. 1920.55."

[Pa.B. Doc. No. 01-854. Filed for public inspection May 18, 2001, 9:00 a.m.]

## SCHUYLKILL COUNTY

### Rules of Civil Procedure; S-892-2001

And Now, this 2nd day of May, 2001, at 11:30 a.m., the Court hereby amends Schuylkill County Rules of Civil Procedure 1910.12(e)(1) and (2) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). The amended rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.

4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM E. BALDWIN,  
President Judge

### Rule 1910.12.

(e)(1) In complex contested matters which require the hearing to be continued in progress, the Hearing Officer may assess additional fees of \$100.00 per each additional hearing day. Each additional conference, beyond the first, shall be considered for these purposes as a hearing.

(2) Where additional Hearing Officer's fees are assessed, the moving party shall deposit the fee with the Domestic Relations office and concurrently file a Praeceptum substantially in the following form:

(CAPTION)

PRAECIPE FOR DEPOSIT OF ADDITIONAL HEARING OFFICER'S FEE

To the Prothonotary:

As directed by the Hearing Officer in the above captioned case, deposit the sum of \$\_\_\_\_\_.00 for \_\_\_\_\_ additional hearing days in compliance with Sch.R.C.P.1910.12(e).

\_\_\_\_\_  
Attorney for (Plaintiff/Defendant)

Received this day the sum of \$\_\_\_\_\_.00, additional Hearing Officer's fee in the above captioned case.

\_\_\_\_\_  
Domestic Relations Office

[Pa.B. Doc. No. 01-855. Filed for public inspection May 18, 2001, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 30 Misc. 2001

Order

And Now, this 30th day of April, 2001, it is hereby Ordered:

1. The following designated Somerset County Rules of Civil Procedure (Som.R.C.P.) are rescinded, effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Som.R.C.P. 1910.52. Form Of Demand For Court Hearing.

Som.R.C.P. 1910.15. Paternity Case Procedure.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order to

the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order with the Pennsylvania Civil Procedural Rules Committee and one (1) certified copy of this Order with the Pennsylvania Domestic Relations Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

EUGENE E. FIKE, II,  
*President Judge*

[Pa.B. Doc. No. 01-856. Filed for public inspection May 18, 2001, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Kevin M. Howard, having been suspended from the practice of law in the State of Delaware for a period of three years, the Supreme Court of Pennsylvania issued an Order dated May 8, 2001 suspending Kevin M. Howard from the practice of law in this Commonwealth, for period of three years, retroactive to October 19, 2000. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 01-857. Filed for public inspection May 18, 2001, 9:00 a.m.]