

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

[Correction]

Proposed Amendment to Rule 202 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. No. 202 to define the word "verified" as used in the rules, and to make other technical amendments to this rule. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or e-mail to: minorcourt.rules@supreme.court.state.pa.us
no later than Wednesday, November 14, 2001.

By the *Minor Court Rules Committee*

FRED A. PIERANTONI, III
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

[(1) *District justice*—The district justice, before whom the action or proceeding is pending.

(2) *Sheriff*—Includes a deputy sheriff.

(3) *Constable* means a deputy constable.

(4) *Prothonotary*—Includes any officer exercising the powers and performing the duties of the office of prothonotary as set forth in the Judicial Code, and includes the analogous officer in those counties which do not have a prothonotary.]

"*Constable*" means a certified constable or a certified deputy constable.

"*District justice*" means the district justice before whom the action or proceeding is pending.

"*Prothonotary*" includes any officer exercising the powers and performing the duties of the office of prothonotary as set forth in the Judicial Code, and includes the analogous officer in those counties which do not have a prothonotary.

"*Sheriff*" includes a deputy sheriff.

"*Verified*," when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Official Note

* * * * *

Amended April 25, 1979, effective in 30 days, June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended July 16, 2001, effective August 1, 2001; amended _____, effective _____.

REPORT

Proposed Amendment to Pa. R.C.P.D.J. No. 202

Amendment to Rule 202 to define the word "verified" as used in the rules

The Committee undertook a review of Rule 202 when it discovered that the word "verified" was used in the rules but was not defined. Upon review of the three instances where the word currently is used in the rules, the Committee determined that it should be defined in Rule 202 (Definitions). The Committee proposes that the same definition for "verified" as is used in Pa.R.C.P. No. 76 be adopted in Pa. R.C.P.D.J. No. 202.

In conjunction with the proposed amendment to the rule described above, the Committee also recognized the need for two technical amendments to this rule. First, the Committee proposes that the introductory language in the rule be amended to more closely mirror that in Pa.R.C.P. No. 76 so as to more clearly state how terms in the rules are to be defined and construed. Also, the Committee proposes that the rule be restructured to remove the numbered list of definitions and to list the definitions in alphabetical order. The Committee believes that this technical change will present the list of defined terms in a more logical order and will better facilitate future additions to or deletions from the list.

[Pa.B. Doc. No. 01-1881. Filed for public inspection October 19, 2001, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Deferment of Reliance Insurance Company Cases by Reason of Order of Liquidation; Administra- tive Doc. 09 of 2001

Order

And Now, this 9th day of October 2001, upon consideration of the Order of Liquidation entered by the Pennsylvania Commonwealth Court dated October 3, 2001 pursuant to the petition of the Insurance Commissioner of the Commonwealth of Pennsylvania, it is hereby *Ordered* and *Decreed* that all cases in which Reliance Insurance Company is a named party shall be placed in deferred status.

It is further *Ordered* and *Decreed* that all actions currently pending against an insured of Reliance Insurance Company are deferred for ninety (90) days from October 3, 2001 or such additional time as the Rehabilitator may request.

It is further *Ordered* and *Decreed* that this Court's Order of August 17, 2001 is vacated.

By the Court

JOHN W. HERRON,
Administrative Judge

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, The Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Code shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's website at <http://courts.phila.gov>.

[Pa.B. Doc. No. 01-1917. Filed for public inspection October 26, 2001, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ERIE COUNTY

Revision and Restatement of the Rules of Civil Procedure; Civil Division Court Order 2001— 90036

Order

And Now, this 29th day of August, 2001, the following revisions and additions to the Rules designated as the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, are hereby approved,

adopted and promulgated as the Rules of this Court. These Rule changes, revisions and deletions shall become effective thirty (30) days after the publication of the same in the *Pennsylvania Bulletin* and they shall apply to all actions pending at that time.

WILLIAM R. CUNNINGHAM,
President Judge

Rule 212.1. Pre-Trial Procedure.

(a) Scope

This Rule shall encompass all civil actions, except actions where jurisdiction lies in the Family/Orphans Court Division.

(b) Case Management Orders (CMO)

1. Case Management Orders—General

[(a)] (A) At the time of judicial assignment, the Office of Court Administration shall issue a CMO designating dates for the close of discovery, the filing of pre-trial statements, and a proposed trial term.

[(b)] (B) At any time prior to judicial assignment, the parties may agree to the entry of a CMO by filing a stipulation with the Office of Court Administration and the Prothonotary.

[(c)] (C) Following the entry of the CMO, any request for modification shall be done by motion filed with the Prothonotary and mailing or delivering a copy to the assigned judge.

2. Case Management Orders—Time Limitations

[(a)] (A) All **[CMO's] CMOs**, except those requested by stipulation, which are issued by the Office of Court Administration, shall provide the following time limitations:

(i) Close of discovery within two hundred forty (240) days of the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within thirty (30) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within sixty (60) days of the close of discovery.

(iv) **[The proposed] Proposed** trial term within one hundred twenty (120) days of the discovery, or as close thereto as the availability of trial terms may allow.

[(b)] (B) If a case has been accepted by the Court as "complex," all **[CMO's] CMOs** shall designate dates consistent with the following time limitations:

(i) Close of discovery is five hundred forty (540) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within forty five (45) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within ninety (90) days of the close of discovery.

(iv) The proposed trial term within one hundred eighty (180) days of close of discovery, or as close thereto as the availability of trial terms may allow.

[(c)] (C) If a case has been accepted by the Court as "expedited," all **[CMO's] CMOs** shall designate dates consistent with the following time limitations:

(i) Close of discovery is ninety (90) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within fifteen (15) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within thirty (30) days of the close of discovery.

(iv) The proposed trial term within ninety (90) days of close of discovery, or as close thereto as the availability of trial terms may allow.

[(d) (D)] A party may request that a case be designated as complex or expedited by the filing of a stipulation or motion.

[(e) (E)] All cases where the amount in controversy is within the limits for mandatory arbitration shall be designated as "expedited" cases and **[CMO's] CMOs** issued accordingly.

(c) *Settlement Conference*

A party may request that the assigned judge conduct a settlement conference at any time after the filing of the last responsive pleading.

(d) *Trial Depositions*

1. All depositions for use at **[Trial] trial** shall be completed no later than 10 days preceding the beginning of the trial term for which the case is listed.

2. All objections to trial deposition testimony shall be provided to the court no later than 2 days prior to the day of trial.

(e) *Motions in Limine*

All motions in limine, including motions to resolve objections to depositions to be used at trial, must be presented to the Court no later than ten (10) days preceding the beginning of the trial term in which the case is listed.

(f) *Certification For Trial*

1. These certification procedures apply to all civil jury and non-jury cases.

2. In order to have a case assigned to a particular trial term, all counsel or parties must certify the case as ready for trial by filing with the Prothonotary and serving upon the Court Administrator a certification in substantially the form contained herein and designated "Certification I."

3. If a party has failed to comply with the timetables established in the CMO or has failed to sign a Certification I after being requested to do so in writing, a party wishing to place the case on the trial list must file a certification in substantially the same form contained herein and designated "Certification II."

4. A Certification I or II indicating readiness for trial shall be filed with the Office of Court Administration and the Prothonotary no later than **the last Friday of the calendar month that precedes the month immediately before the beginning of the proposed trial term, unless a different deadline is established by notice published in the Erie County Legal Journal [sixty (60) days prior to the beginning of the proposed trial term].**

5. All "Certification II's" shall be forwarded to the assigned judge for disposition.

CERTIFICATION II

1. The undersigned requests that the case be placed on the Trial List for the (month) term.

2. A case management order was entered providing for a proposed trial term of (month) .

3. A request to file a Certification I has been made of all parties.

4. This Certification II has been filed because: [All parties have agreed to file a Certification I except:]

5. The case is otherwise is ready for trial.

 Signature (Counsel or Party)

 Date

Rule 227.3. Transcript of Testimony.

Any party filing objections to the moving party's request for transcription shall present such objections to the trial Judge for prompt scheduling of argument on the objection.

See Appendix, Court Order No. 6003-1995.

Rule 227.5. Judgment on Verdict.

Except by special order of the Court, no judgment shall be entered on a verdict:

- (1) Without payment of the jury fee; and
- (2) Until ten (10) days have expired after its rendition; and
- (3) While timely filed motions for post trial relief are pending.

Rule 227.6. Judgments by Agreement.

Except in actions to which a minor or an **incapacitated person [incompetent]** is a party; and, in actions for wrongful death, in which a minor or **incapacitated person [incompetent]** has an interest, verdicts, non-suits and judgments by agreement may be entered at any time, but only upon written stipulation signed by the parties and filed of record.

See Appendix, Court Order No. 138-1992.

[Rule 238. Award of Damages for Delay in an Action for Bodily Injury, Death or Property Damage

(a) In actions submitted to arbitration pursuant to the Act of July 9, 1976, P.L. 586 (42 Pa. C.S.A. Section 7361, entitled "Compulsory Arbitration"), and Pennsylvania Rules of Civil Procedure 1301 et seq:

(i) The Arbitrators shall not be provided any information regarding any settlement negotiations prior to the close of the testimony, closing addresses and completion of their deliberations regarding all claims in controversy.

(ii) Should the Arbitrators determine that damages will be awarded to a party, before making an award they shall ascertain whether the parties are in agreement as to the amount, if any, of damages for delay which should be awarded under Pa.R.C.P. 238.

(iii) If the parties are in agreement on the amount, if any, of damages for delay which should

be awarded, the Arbitrators shall make an award promptly, separately stating any damages for delay.

(iv) If the parties are not in agreement, prior to making an award, the hearing shall be reconvened to determine the amount, if any, of damages for delay which will be included in the award.]

Rule 248. Modification of Time.

To be effective, any written agreement of the parties extending or shortening the time prescribed by a pre-trial order for the doing of any act, must be in stipulation form, signed by all counsel and unrepresented parties, and filed of record with a copy going to the Office of the Court Administrator—Civil Division.

COURT MATTERS

Rule 302. Trial Division Judicial Assignment and Arguments—Civil.

(a) Judicial assignment to a case will be made 60 days after the filing of the complaint. Counsel and unrepresented parties will receive notice of the assignment on the returned copy of the civil cover sheet. If no cover sheet is filed, notice will be given based upon information available to the Prothonotary. All judicial assignments will be noted in the Prothonotary computer file.

(b) If judicial attention is required prior to 60 days after the filing of the complaint, counsel shall submit a request for judicial assignment with the Trial Court Administrator on a form substantially as contained herein.

(c) To obtain judicial attention in a case wherein a complaint was filed before April 1, 1996, counsel shall submit a request for judicial assignment with the Trial Court Administrator on a form substantially as contained herein.

(d) If a complaint has not been filed, any matter requiring judicial attention shall be taken to motion court. The motion court judge will resolve that particular matter. Permanent assignment of the case will not take place until the complaint has been filed.

(e) All motions and petitions requiring decisions and other matters not within the scope of Erie L.R. 212.1 shall be filed with the Prothonotary and, as set forth in Erie L.R. 302(f) and (i), a copy shall be delivered to the assigned judge for the scheduling of the matter for argument.

(f) Motions for judgment on the pleadings, motions for summary judgment, discovery motions and any motion not within the scope of subsections (g), (i) and (j) below, together with a supporting brief, shall be filed with the Prothonotary and a copy of the motion and brief shall be contemporaneously delivered to the assigned judge. Within thirty (30) days of receipt of the moving party's brief, the non moving party shall file a brief and, [if appropriate, a response with the Prothonotary and] shall deliver a copy to the assigned judge. Any depositions, answers to interrogatories or affidavits in support of or in opposition to the motion shall be filed with the Prothonotary not later than the due date of the respective party's brief.

Rule 308. Bill of Costs.

(a) Bills of Costs must contain the names of the witnesses, the date(s) of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the

Affidavit of the party filing it, his agent or attorney, that the witnesses named were actually present in Court and that, in his opinion, they were material witnesses, and a copy shall be served as provided for in Pa.R.C.P. No. 1027.

(b) The party upon whom a Bill of Costs has been served may within ten (10) days after such service, file exceptions thereto and the issue shall be determined by the Court. Failure to file exceptions within ten (10) days shall be deemed a waiver of all objections.

(c) Deposition transcripts costs shall not be taxable costs except in the following instances:

(1) Deposition transcript costs shall be taxable where a substantial portion of the deposition transcript is in fact introduced at trial as substantive evidence.

(2) Deposition transcript costs shall be taxable in those instances where the transcript was in fact used by the Court in its determination and was filed for that purpose.

(3) Where the deposition at issue was a videotape deposition, the costs of the videotape shall not be taxable but only the transcript of said deposition if one was in fact obtained.

Rule 310. Termination of Action or Proceeding Because of Inactivity.

This Rule shall apply to cases filed on or after January 1, 1980.

The Prothonotary shall list for general call the first week of October of each year civil matters in which no steps or proceedings have been taken for two (2) years or more prior thereto and shall give notice thereof to counsel of record and to the parties for whom no appearance has been entered, as provided by Pa. R.J.A. No. 1901(c). If no action is taken or no written objection is docketed in such a matter prior to the commencement of the general call, the Prothonotary shall strike the matter from the list and forward a general order dismissing the matter from the list and forward a general order dismissing the matter with prejudice for failure to prosecute under the provisions of this Rule to the Administrative Judge of the Civil Division. If no good cause for continuing a matter is shown at the general call, an order shall be entered forthwith by the Court for dismissal.

The Prothonotary shall publish the list the first week of September of each year.

NOTE: This rule is based on Pa.R.J.A. No. 1901.

See Appendix, Court Order No. 65-1991.

Rule 311. Procedure in Statutory Appeals

[(a)] Unless a contrary procedure is provided for otherwise in Statute or general Rule of Court, this Rule shall apply to all statutory appeals where this Court has jurisdiction to review adjudications of School Districts, municipalities or State Administrative Agencies or offices. This Rule shall have no [applicabilities] applicability to [on] state Administrative Agencies or officers [. This Rule shall have no applicability] or to proceedings under the Uniform Arbitration Act.

(e) In cases in which evidence is received by the Court pursuant to this Rule, after the close of the evidentiary proceedings, all parties shall submit proposed findings of fact to the Court along with their respective briefs on the merits of the appeal in accordance with a schedule fixed by the hearing Judge. The hearing Judge shall retain the

case and make the final disposition of the appeal, including the adoption of findings of fact, where appropriate.

(f) No case shall be listed for argument and no motion shall be filed requesting that a hearing be set until the record of the administrative tribunal is docketed with the Prothonotary. It shall be the duty of the administrative agency involved to promptly notify all parties of the filing of the record.

(g) Unless otherwise required by statute, the order of a single Judge of this Court which is dispositive of the merits of the appeal shall constitute a final order of this Court in all matters subject to this Rule. Neither the filing of exceptions nor en banc proceedings shall be required or permitted.

(h) Unless a different time is specified by statute, it shall be the duty of the administrative agency involved to docket the record of the proceedings before it with the Prothonotary no later than thirty (30) days from service of the notice of appeal upon the tribunal or agency. The record shall, in all cases, contain at least a brief adjudication setting forth the findings and conclusions of the administrative tribunal.

(i) In the event that any administrative tribunal fails to comply with the provisions of this Rule, or of any statute, relating to the time within which to transmit its record to this Court, any party may, by motion, apply for an order compelling the transmittal of a complete record.

Rule 312. Fair Trial. Free Press.

A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extra judicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(a) Evidence regarding the occurrence or transaction involved.

(b) The character, credibility or criminal record of a party, witness or prospective witness.

(c) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(d) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(e) Any other matter reasonably likely to interfere with a fair trial of the action.

See Appendix, Court Order Nos. 76-1991, 77-1991, 84-1992.

Rule 314. Sanction for Late Settlement.

Upon hearing, the Court may consider assessing one day's jury costs against any of the parties and/or attorneys, if settlement occurs after the jury has been called and appears for jury selection.

Rule 1910.19. Support Order. Modification. Termination.

A petition seeking to modify or terminate a support order may be prepared by the Support Intake Office. A petition under this Rule shall be filed in the Support Docketing Office and a copy shall be filed with the Support Counseling Office.

See Appendix, Court Order No. 90508-1998.

ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by (c) of the state rule, an action shall be commenced by filing a verified complaint substantially in the form provided by Pa.R.C.P. 1915.15(a). The original complaint shall be filed with the Office of the Prothonotary and a confirmed copy shall be filed with the Custody Counselor's Office.

(1) In addition to the requirements set forth in Pa.R.C.P. 1915.15(a), all complaints for custody, partial custody, visitation or for modification of an existing order shall specifically set forth allegations of jurisdiction and factual allegations of a prima facie case to justify the relief sought.

(2) All actions for modification of an existing order shall specifically set forth factual allegations of a substantial change of circumstances.

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Pa.R.C.P. 1915.15(b).

(1) Plaintiff, or plaintiff's counsel, shall obtain a date and time for a custody conference from the Custody Counselor's Office.

(2) The verified complaint and attached order shall then be presented to the Judge of the Family Division or the Judge's designee for signature. The complaint may be presented ex parte only if plaintiff is seeking neither temporary custody nor a change in the custodial arrangement pending the counseling session or upon a showing of an emergency situation. Otherwise, the defendant must be given proper advance notice as set forth in the UCCJA, 42 Pa. C.S.A. §§ 5345 and 5346 and Erie L.R. 440.

(c) Before filing the complaint with the Prothonotary's Office, bring the original and four copies of the complaint and the completed Information Sheet—Children Cope With Divorce seminar (Form 1)—to the Office of Custody Conciliation ("OCC"). The OCC will process your complaint and include the following attachments:

(1) The Order of Court (Form 2) which conforms to Pa.R.C.P. 1915.15 and bears the Judge's signature which includes the date of the Intake Conference and dates when both parents are scheduled to attend the Children Cope With Divorce seminar.

(2) The Children Cope With Divorce brochure and registration form. This brochure briefly describes the program. **[Both parties are required to mail in the registration form with their fee.]**

(3) The Instructions for the Children Cope With Divorce program.

(d) After the OCC processes the complaint, they will keep a copy of the petition for their files and return the original and the three remaining copies to the petitioner. The original complaint and the Information Sheet should be filed in the Prothonotary's Office with the filing fee. The Prothonotary's Office will give the petition a docket number and certify the remaining copies.

(e) The defendant must be served with the complaint following procedures in Pa.R.C.P. 400 et seq.

See Appendix, Court Order No. 9-1993.

Rule 1915.7. Consent Order.

(a) If an agreement for custody, partial custody or visitation is reached and the parties desire a consent order to be entered, they shall submit to the Court a Petition for Entry of Consent Order (Form 3) and a proposed order bearing the written consent of the parties or their counsel. A formal order will be sent to each party in approximately seven to ten days.

(b) All written agreements must include the provisions found in the Consent Agreement (Form 4).

(c) Notice of intent to present the written agreement to the Court for approval must be given to all parties pursuant to Local Rule 303, "Motion Court and Other Motions and Petitions."

Rule 1915.8. Physical and Mental Examination of Parties.

In the event that exceptions are filed to the Custody Counselor's recommendations and the order entered pursuant thereto, then any written report of any examining physician or psychologist or both of a child or party shall be delivered to the attorneys of record, or to the parties if there are no attorneys of record, prior to the date of the status conference as prescribed by [**Local Rule**] **Erie L.R. 1915.20.**

(2) Parties must participate in both Intake and Conciliation Conferences in a cooperative manner, at all times adhere to the "Mediation Rules" and comply with the directives of the person conducting the conference.

(3) An attorney who attends an Intake or Conciliation Conference with a client will participate consistent with the following standards:

(i) The manner and scope of participation in conferences shall be determined by the OCC supervisor or conciliator;

(ii) Attorneys shall fully cooperate with the efforts of the OCC Supervisor and/or custody conciliator to facilitate the agreement of the parties;

(iii) Counsel shall at all times behave in a professional manner and refrain from engaging in hostile or antagonistic conduct directed toward any conference participant;

(iv) Attorneys shall advise their clients in a manner not disruptive of the conciliation process which will ordinarily require consulting with the client outside the conference room;

(v) Attorneys shall not engage in "legal argument," except that counsel may advise of "legal" issues relevant to the formation of a temporary or recommended order;

(vi) Counsel shall not attempt to "question" the other party or present "evidence" nor otherwise engage in conduct characteristic of an adversarial proceeding; and

(vii) Prior to agreeing to a custody agreement, a party may consult with her or his attorney, and a reasonable opportunity to do so will be provided by the conciliator.

(e) *Termination of Conciliation Process.* If at any time during the conciliation process a party, individually or through her or his attorney, engages in conduct inconsistent with the rules or which disrupts the conciliation process or interferes with the function of the OCC, the supervisor or conciliator may terminate the proceedings and shall refer the case to court for scheduling an adversarial hearing in the manner provided by these rules.

(f) *Special Relief.* At any stage in the conciliation process, a party may proceed to seek Special Relief by filing a motion in a manner required by the law. Where such a motion is filed concerning a Temporary or Recommended Order of custody, the petitioner shall set forth facts supporting a reasonable belief why the custody arrangement is sufficiently harmful to the child or children to justify court intervention apart from the normal custody process.

(g) *Consent Orders.* Upon agreement, with or without the involvement of the OCC, the parties may proceed pursuant to Local Rule 1915.7 to execute a Custody Agreement and record it upon payment of the appropriate filing fee.

See Appendix, Court Order No. 90613-97.

Rule 1915.19. Request for Court Hearing.

(a) *Referral to Court from Intake Conference.* In unusual circumstances, at the discretion of the OCC the parties may be referred directly to Court for a hearing without attending the Conciliation Conference.

(b) *Objections to Recommended Custody Order.* A party shall object to a recommended custody order by filing with the Prothonotary, with a copy to the OCC, and service on all unrepresented parties and counsel of records, a request for an adversarial hearing before the Court. Such requests must be filed within ten (10) days from the date of mailing of the recommended Order. Such requests shall be forwarded by the OCC to the Family Division Administrative Judge for scheduling of a status conference (Form 6). Nothing in this Rule shall prohibit any party that has executed a consent agreement from filing a request for an adversarial hearing within ten (10) days from the date of the mailing of the recommended Order.

Rule 1920.16(1). Claims for Child and/or Spousal Support.

(a) A claim for child and/or spousal support raised in an action for divorce by complaint, counterclaim or petition shall be substantially in the form set forth in Pa.R.C.P. 1910.26.

(b) Where a claim for child and/or spousal support is raised in an action for divorce, a true and correct copy of the complaint, counterclaim, or petition by which the claim for child and/or spousal support is raised shall be filed with the Non-Support Intake Office. The claim for child support shall be docketed in the Non-Support Intake Office and shall thereafter proceed in accordance with Pa.R.C.P. 1910.1 et seq. and local rules governing proceedings for child support. The docket entry in the Non-Support Intake Office shall include a reference to the appearance docket number of the divorce action.

See Appendix, Court Order No. 90613-97.

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

(a) Upon Motion of either party or upon its own Motion, the Court may appoint a Master to hear testimony and return the record together with the Report and Recommendation to Court. The moving party shall certify that all the parties have complied with the requirement of Pa.R.C.P. 1920.22, **Pa.R.C.P.** 1920.31, Pa.R.C.P. 1920.33 and Pa.R.C.P. 1920.46. The Motion and proposed Order requesting the appointment of a Master shall be in conformity with Pa.R.C.P. 1920.74 (see forms).

(1) Masters shall be appointed in rotation from the list of permanent part-time Masters appointed as such by the

Court to determine issues of divorce, equitable distribution of property, permanent alimony and all other issues relevant thereto.

(2) Master shall be appointed to hear a claim of child and/or spousal support only upon presentation of an Affidavit of the party supplementing the Motion for appointment of a Master showing special circumstances which justify a departure from the procedure of Erie [County] L. R. [C.P.] 1920.16. Should it later appear that special circumstances justifying referral of a claim for child and/or spousal support do not exist, either party or the Master may petition the Court to refer the claim to the Non-Support Intake Office.

(3) Upon appointment of a Master to hear issues which require expedited disposition (including, but not limited to, alimony pendente lite, child and/or spousal support when referred to a Master, occupancy of the marital residence, maintenance of insurance policies, and Counsel fees and expenses), a preliminary hearing will be held before the Master within thirty (30) days of the entry of the Order appointing a Master. Where discovery has not been completed or where all documents required to be filed by Pa.R.C.P. 1920.31 have not been filed prior to the preliminary hearing, the Master may, in his or her discretion, proceed with the hearing and filing of a report and recommendations (which may include recommended sanctions for failure to comply with Pa.R.C.P. 1920.31) or continue the hearing until said documents have been filed.

(b) PREHEARING STATUS CONFERENCE

In actions where expedited disposition is not required,

(1) The Master shall **within fifteen days after receiving notice of the Master's appointment schedule a date for a pre-hearing conference to be held prior to the date of the Master's hearing [conduct a prehearing status conference prior to the scheduling of the Master's Hearing within 15 days after his appointment]**, and shall give notice of the time and place of the prehearing status conference by First class Mail to counsel for represented parties and directly to any unrepresented party. Said notice shall be mailed at least five business days prior the scheduled date of the conference.

(2) At the prehearing status conference, the Master shall review:

(A) The positions of the parties on each Claim, including those issues on which settlement has been reached;

(B) Discovery which has been completed, including the inventory and pre-trial statements pursuant to Pa.R.C.P. 1920.33;

(C) Any documentary evidence to be presented at the hearing;

(D) The names and addresses of each witness any party proposes to call at the hearing;

(E) All matters which may be stipulated by the parties at the hearing;

(F) Establish a schedule for filing of Pre-Trial Narrative Statements, completion of discovery and any other relevant matters; and

(G) Such other relevant matters as should be raised by either of the parties or the Master.

(c) POST-STATUS CONFERENCE

(1) After the prehearing status conference the Master shall:

(A) Prepare a summary of the discussions and action taken at the prehearing status conference, including a statement of any stipulations, and of any matters which have been settled between the parties and which will not be raised at the hearing before the Master;

(B) Establish a schedule for the filing or service of any additional pleadings or discovery which may be deemed necessary and set hearing date(s);

(C) Serve a copy of the summary and filing schedule on counsel for the parties, or on any unrepresented party; and

(D) Indicate the amount of additional Master's fees to be paid by the litigants prior to hearing.

(d) MASTER'S HEARING

The Master shall establish a hearing date or dates at the prehearing status conference. These dates shall be included in the summary prepared pursuant to Section c (post-status conference) [h], as well as in the formal notice of Master's hearing as required by Pa.R.C.P. 1920.51(b). At least ten (10) days written notice of the time and place of any Master's hearing shall be given to the attorneys of record (or the parties where no attorney has appeared in the case) by the Master by ordinary mail.

(e) CONTINUANCES

(1) A request shall be granted by the master if both parties consent in writing at least fourteen (14) days prior to the scheduled hearing date.

(2) All other requests for continuance shall be at the discretion of the Master.

(f) SETTLEMENT

(1) In the event that all issues raised by the pleadings and referred to the Master are brought to a negotiated settlement, the parties shall, as a condition of postponement or cancellation of the Master's hearing, sign an all encompassing Marital Property Settlement Agreement prior to the time set for the Master's hearing.

(2) In the event that both parties have not signed such an Agreement, the parties, together with their respective counsel of record, shall attend the Master's hearing at the time scheduled for the purpose of entering the substance of their agreement on the record and stipulating to the entry thereof as a decree.

(g) FEES AND COSTS

(1) The initial fees, costs and compensation of the Master shall be in accordance with Administrative Order In Re Divorce Masters Miscellaneous Docket #87 and any amendments thereto.

(2) The Master shall determine additional fees due in accordance with the rate set by the Court and shall require an advance deposit of said amount prior to scheduling any further hearing.

(3) The Master shall receive compensation for a minimum of four hours for each day of a scheduled hearing that is not either:

(A) Continued in accordance with Erie L.R. 1920.51(e); or

(B) Cancelled with notice to the Master in writing at least fourteen days prior to the scheduled hearing date for the reason either that the case has been resolved or withdrawn.

(4) In the event the Master fails to grant the continuance, the parties may petition the Court for a continuance. The Court may grant a continuance and will determine the amount of additional Master's fees, if appropriate.

(5) At the conclusion of the case, the Master shall prepare a certification indicating the amount of Master's fees paid and the disposition thereof.

Rule 1920.53. Hearing by Master. Report.

(a) Where the Master concludes that a recommendation to grant the divorce or annulment should be filed, the Master shall notify the parties of this conclusion either on the record at the termination of the hearing(s) or in writing (a copy of which shall be attached to the Master's report) subsequent to the termination of the hearing(s). The Master shall forthwith proceed to hear testimony and take evidence on all other matters at issue in the action prior to the filing of a report and recommendation.

(b) Where the Master concludes that a recommendation to deny the divorce or annulment should be filed, the Master shall file a report and recommendation in accordance with the terms of Pa.R.C.P. 1920.53(a). No evidence or testimony shall be taken on any other matter at issue unless and until the Court determines that a divorce or annulment should be granted.

Rule 1920.55. Master's Report. Notice. Exceptions. Final Decree.

(a) In the event exceptions are not timely filed by either party, the party who sought the appointment of a master shall praecipe the Court for the entry of a final order.

(b) Where the parties stipulate on the record that additional documentary evidence shall be submitted subsequent to the hearing(s), the Master shall file the report and recommendation within thirty (30) days of receipt of that evidence or in accordance with Pa.R.C.P. 1920.53(a)(1), whichever date is later.

(c) Exceptions shall be served on the opposing party or their counsel of record.

(1) Within ten (10) days of filing the exceptions, the moving party shall file their request for argument before the family division motions judge. Both parties shall file their briefs no later than ten (10) days prior to the scheduled argument. Copies of exceptions and briefs shall be provided to all counsel of record (or to a party directly if unrepresented by counsel) the Master and to the Judge.

See Appendix, Court Order No. 53-1993.

Rule 1920.75. Form of Inventory.

[(a)] The Inventory by Pa.R.C.P. [No.] 1920.33(a) shall be substantially in the following form:

(CAPTION)

INVENTORY OF

(Plaintiff) (Defendant) files the following inventory of all property owned or possessed by either party at the time this action was commenced and all property transferred within the preceding three years.

(Plaintiff) (Defendant) verifies that the statements made in this inventory are true and correct. (Plaintiff) (Defendant) understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904

relating to unsworn [**falsifaaction**] **falsification** to authorities.

(Plaintiff) (Defendant)

MINORS [INCOMPETENTS] AS PARTIES

Rule 2039. Compromise, Settlement, Discontinuance and Distribution in Minors' Actions.

(a) [(1)] All petitions presented [**in accordance with this Rule**] for the compromise, settlement, discontinuance and distribution in minors' actions shall be submitted to: [**the Judge of the Orphans' Court Division for approval.**]

(1) **The assigned judge, where there is a civil action pending; or**

(2) **A judge of the Orphans' Court Division where there is no civil action pending.**

(b) [(2)] All approved petitions shall be filed in the Office of the Prothonotary. The guardian of the minor shall file a certified copy of the petition and approving order in the Office of the Register of Wills under the name of the minor.

(c) [(3)] In cases where no action has been filed, all petitions and orders approving settlement shall be filed in the Office of the Register of Wills under the name of the minor.

INCAPACITATED PERSONS AS PARTIES

Rule 2056. Procedure When Incapacity [Incompetence] of a Party is Ascertained.

Unless otherwise directed by the Court, any notice required under Pa.R.C.P. 2056(6) shall be given in accordance with Pa.R.C.P. 402 and 403. If notice cannot otherwise be given, then notice shall be given in accordance with Pa.R.C.P. 430.

Rule 2064. Compromise, Settlement, Discontinuance and Distribution in Actions Filed by or on Behalf of [Incompetents or] Incapacitated Individuals.

(a) All petitions presented for compromise, settlement, discontinuance and/or distribution in actions filed by or on behalf of **incompetents or** incapacitated individuals shall be submitted to: [**the Judge of the Orphans' Court Division for approval.**]

(1) **The assigned judge, where there is a civil action pending; or**

(2) **A judge of the Orphans' Court Division where there is no civil action pending.**

(b) All approved petitions shall be filed in the Office of the Prothonotary. The guardian of the [**incompetent or**] incapacitated individual shall file a certified copy of the petition and approving order in the Office of the Register of Wills under the name of the [**incompetent or**] incapacitated individual.

(c) In cases where no action has been filed, all petitions and orders approving compromise, settlement, discontinuance or distribution shall be filed in the Office of the Register of Wills under the name of the [**incompetent or**] incapacitated individual.

Rule 2206. Settlement, Compromise, Discontinuance and Judgment.

(a) All petitions for the compromise, discontinuance or settlement of wrongful death claims in which a minor or **incapacitated person [incompetent]** has an interest shall be submitted for approval to: **[the Judge of the Orphans' Court Division.]**

(1) The assigned judge, where there is a civil action pending; or

(2) A judge of the Orphans' Court Division where there is no civil action pending.

(b) The petition and Order approving the petition in pending actions shall be filed with the Prothonotary and certified copies of the same shall be filed with the Register of Wills in the name of the minor or **incapacitated person [incompetent]**.

(c) The petition and Order approving the petition where there is no pending action shall be filed with the Register of Wills in the name of the minor or **incapacitated person [incompetent]**.

**ENFORCEMENT OF MONEY [JUDGEMENTS]
JUDGMENTS FOR THE PAYMENT OF MONEY**

Rule 3136. Distribution of Proceeds.

(a) Upon filing the proposed schedule of distribution, the Sheriff shall immediately mail a copy of the proposed schedule of distribution including a **[coy] copy** of the list of liens, clearly indicating thereon the date on which the proposed schedule of distribution was filed, to all parties and lien creditors, as well as to any other persons in interest as set forth in the Pa.R.C.P. No. 3129.1(b) Affidavit.

(b) The Sheriff shall include with the copy of the proposed schedule of distribution transmitted to the Prothonotary a copy of the list of liens and a copy of the certificate or guaranty required by **[Rule] Pa.R.C.P. 3136(c)**.

Rule 3252. Writ of Execution—Money Judgments.

A writ of execution shall contain the following designation as the organization available to receive requests for free legal help:

Lawyers Referral Service
302 West Ninth Street
Erie, PA 16502-1427

814/459-4411
Mon-Fri
8:30 a.m.-3:00 p.m.

Rule 4014. Request for Admission.

(a) Requests shall be prepared in such fashion that sufficient space is provided immediately after each request or subsection thereof for the insertion of the answer or objection.

(b) The answers and objections, if any, shall be inserted in the **[spaced] space** provided in the requests. If there is insufficient space to answer or object to a request, the remainder of the answer or objection shall follow on a supplemental sheet.

[Pa.B. Doc. No. 01-1918. Filed for public inspection October 26, 2001, 9:00 a.m.]

WASHINGTON COUNTY

Local Rules: 1920.51—Master in Divorce; 1915.29—Pre-Hearing Conference; 1915.28—Continuances; No. 2001-1

Order

And Now, this 28th day of September, 2001; *It Is Hereby Ordered* that the stated Washington County Local Civil Rules be amended as follows.

These rules shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

THOMAS D. GLADDEN
President Judge

L-1920.51. Master in Divorce.

a. Any divorce case may be referred to a master. Standing and special masters may be appointed by the Court.

1. The Standing masters in divorce shall be assigned by the Court. If a master has not been appointed in accordance with Local Rule 1920.3 (c) and Appendix H, then any motion for appointment of a standing master shall be served on the opposing party or counsel five days prior to presentation to the Court.

The motion shall be substantially in the form set forth in Appendix J. The moving party is required to attach to the written motion proof of payment of the Master/Stenographic fee. Payment of this fee shall entitle the parties to a maximum of one or two Preliminary Conferences, a one-hour Hearing on Preliminary Issues, if necessary, and a maximum of a one-day hearing. If it is determined that additional testimony is required then the master shall assign responsibility of payment of costs at the current rate to either the plaintiff or defendant. This is an Interim Interlocutory Order signed by the Judge assigned to the case upon the recommendation of the master which shall be dealt with in the final Master's Report. The party to which the costs have been assigned will then have the opportunity to take exceptions, if desired.

The Court may assign a case to a particular standing master rather than on a random basis.

Standing masters may not personally engage in the practice of divorce law (which includes any matter which may be raised in a divorce complaint) before the Washington County Court of Common Pleas. A master in divorce shall not act in a case in which a partner, office associate or person sharing a suite or offices with the master is counsel for any interested party.

2. The Court may appoint a special master in appropriate cases on written agreement of both parties or counsel. The motion shall be presented to the Court and there shall be a provision specifically dealing with payment of the master, by whom and under what terms and conditions. The special master shall comply with all Rules of Civil Procedure and the Local Rules of Court. Additionally, the motion shall address the provisions made for private, stenographic services and shall provide for payment of these services, by whom and under what terms and conditions.

b. A Master in Divorce shall give counsel of record at least **[10] 7** day notice before conducting any hearing or conference.

c. A Master in Divorce shall give a party who is not represented by counsel at least **[10] 7** days notice before conducting any hearing or conference.

d. Reserved

e. Reserved

f. Requests for continuances of hearings and conferences before the Master in Divorce which are not contested shall be presented in writing to the [**Divorce Officer**] **Divorce Office** prior to hearing or conference. [**The request shall contain a statement that opposing counsel or the opposing party, if unrepresented, has no objection to the continuance. A copy of the request shall be sent to opposing counsel or the opposing party, if unrepresented. The Divorce Officer shall act upon the request.**]

1. A \$25.00 fee shall be charged for continuances and no continuance shall be granted without payment of required fee unless waived by the Court.

2. The fee of \$25.00 shall be paid in the form of a check or money order payable to the Washington County Divorce Office upon presenting the request for continuance.

3. Requests for continuances shall set forth in writing the following information:

(a) A clear, concise and certain reason for the request.

(b) A statement that opposing counsel or the opposing party, if unrepresented, has no objection to the continuance.

(c) A statement of the number of prior continuances, if any.

(d) If another court appearance is the reason for the request, a copy of the notice or Order of the conflicting hearing shall be attached.

(e) A certification that a copy of the request has been sent to opposing counsel or the opposing party, if unrepresented.

g. Requests before a Master in Divorce for continuances of hearings and conferences that are contested shall be presented in writing to the [**Master**] **Court** after [**written or oral notice**] proper written notice, in accordance with the Local Rules, of the intention to do so is given to opposing counsel or the opposing party, if unrepresented. [**The Divorce Officer shall act upon the request.**]

L-1915.29. Pre-Hearing Conference.

a. The parties shall make a good faith effort to resolve the custody and/or visitation issues prior to the pre-hearing conference. If resolution occurs prior to or at the time of the pre-hearing conference, a proposed order shall be drafted in accordance with Pa. R.C.P. No. 1915.7 and submitted to the Court for approval through the Child Custody Conference Officer.

[**b. The moving party shall complete and deliver to the Child Custody Conference Officer a questionnaire substantially in the form provided by Appendix F within ten (10) days of the appointment of the Child Custody Conference Officer. The Divorce Of-**

ficer shall mail a questionnaire to the other interested parties with instructions to return it within five days prior to the initial conference of time permitted or as soon thereafter as is practicable.]

b. A Child Custody Conference Officer shall give counsel of record at least 7 days notice before conducting any hearing or conference.

c. A Child Custody Conference Officer shall give a party who is not represented by counsel at least 7 days notice before conducting any hearing or conference.

L1915.28. Continuances.

[**a. The Child Custody Conference Officer may grant continuances or matters scheduled to be heard by him.**]

a. Requests for continuances of hearings and conferences before the Child Custody Conference Officer which are not contested shall be presented in writing to the Divorce Office prior to hearing or conference.

[**b. The practice relating to continuances shall conform to Local Rule 1920.51, except that references to "The Master" shall mean the Child Custody Conference Officer.**]

b. A \$25.00 fee shall be charged for continuances and no continuance shall be granted without payment of required fee unless waived by the Court.

c. The fee of \$25.00 shall be paid in the form of a check or money order payable to the Washington County Divorce Office upon presenting the request for continuance.

d. Requests for continuances shall set forth in writing the following information:

1. A clear, concise and certain reason for the request.

2. A statement that opposing counsel or the opposing party, if unrepresented, has no objection to the continuance.

3. A statement of the number of prior continuances, if any.

4. If another court appearance is the reason for the request, a copy of the notice or Order of the conflicting hearing shall be attached.

5. A certification that a copy of the request has been sent to opposing counsel or the opposing party, if unrepresented.

e. Requests before a Child Custody Conference Officer for continuances of hearings and conferences that are contested shall be presented in writing to the Court after proper written notice, in accordance with the Local Rules, of the intention to do so is given to opposing counsel or the opposing party, if unrepresented.

[Pa.B. Doc. No. 01-1919. Filed for public inspection October 26, 2001, 9:00 a.m.]