### THE COURTS

### Title 249— PHILADELPHIA RULES

#### PHILADELPHIA COUNTY

Reactivation of Allegheny Hospital Medical Malpractice Cases Which Had Been in Deferred Status; Administrative Doc. 02 of 2001

And Now, this 5th day of February, 2001, it appearing that pursuant to the Liquidation Plan of Reorganization approved by the Bankruptcy Court, the Section 362 litigation stay was lifted as to Allegheny (AHFRF) cases effective December 26, 2000, it is hereby *Ordered* that all medical malpractice cases involving Allegheny Hospital entities which had been stayed under Section 362 shall be removed from deferred status and placed in active status in a waiting to list status conference posture.

It is further *Ordered* that the Program Team Leaders will schedule those cases in the applicable programs for status conferences.

By the Court

JOHN W. HERRON, Administrative Judge

This Administrative Docket is promulgated in accordance with the April 11, 1987 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 Docket 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.

 $[Pa.B.\ Doc.\ No.\ 01\text{-}314.\ Filed\ for\ public\ inspection\ February\ 23,\ 2001,\ 9:00\ a.m.]$ 

# Title 255—LOCAL COURT RULES

#### FRANKLIN AND FULTON COUNTIES

Amendment of Local Civil Action Rules; Misc. Doc.; Page 2001-450

#### **Order of Court**

February 7, 2001, Civil Action Rules 39-206.1, 39-2039, 39-2064 and 39-2206 for the Court of Common Pleas of the 39th Judicial District of Pennsylvania are hereby

amended as set forth in the attachment, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALKER, President Judge

#### 39-206. Petitions and Motions.

*39-206.1.* Motion and Petitions may be made or presented to the Court at any open session thereof or in the chambers of the motion judge at such times as the Court may set.

*39-206.1.2.* All Motions and Petitions shall contain a certification that counsel for the moving or petitioning party has sought concurrence in the Motion or Petition from each other party and that it has been given or denied.

39-206.1.3. Motions made, Petitions presented and rules taken, unless permitted by the Court to be made or taken orally, shall be in writing and shall be verified if the facts do not appear on the face of the record, in the papers on file, or have not been agreed upon by the parties in writing.

*39-206.1.4.* Motions made and Petitions presented in writing to the Court shall contain a reference to any applicable local or state rule of procedure of statute with reference to which such Motion or Petition is presented.

39-206.1.5. The proper Order to be made by the Court upon a Motion or Petition shall be prepared by counsel in the format prescribed by Pa. R.C.P. 206.5(d) and submitted to the Court for approval, and if approved by the Court, it shall be filed of record immediately after presentation to the Court.

*39-206.1.6.* Petitions and Motions, other than those made during the actual trial of the case, shall be served forthwith upon the adverse party pursuant to the Pennsylvania Rules of Civil Procedure.

39-206.2 [Reserved].

39-206.3 [Reserved].

39-206.4. Rule to Show Cause. Alternative Procedures.

*39-206.4.1.* Petitions presented in the 39th Judicial District shall proceed upon a rule to show cause, the issuance of which shall be discretionary with the Court as provided in Pa.R.C.P. 206.5.

39-206.5. Rule to Show Cause. Discretionary Issuance. Stay. Form of Order.

*39-206.5.1.* The Order issued pursuant to Pa.R.C.P. 206.5 may provide for the taking of depositions on disputed issues of fact, or any evidentiary hearing, at the discretion of the Court.

39-206.6 [Reserved].

39-206.7. Procedure After Issuance of Rule to Show Cause.

*39-206.7.1.* If an Answer is filed raising disputed issues of material fact, the Court may, in its discretion, order an evidentiary hearing in lieu of depositions under Pa.R.C.P. 206.7.

### 39-2039. Procedure for Approval of Compromises in Cases in Which a Minor is Plaintiff.

39-2039.1 Situs of the Filing of the Petition. Petitions for approval of settlements in cases where a minor is

plaintiff shall be filed with the Prothonotary if an action is pending. In cases in which an action is not already pending, such petitions may be styled as Orphans' Court matters and filed with the Clerk of Courts.

*39-2039.2 Issuance of Rule to Show Cause Discretionary.* Petitions for approval of settlements shall not proceed upon a Rule to Show Cause unless the Court, in its discretion, determines that a Rule should issue.

*39-2039.3 Contents of Petition.* The Petition for Court approval shall comply with Pa. R.C.P. 2039 and shall set forth the following:

- (a) The salient facts which form the bases of the cause of action;
- (b) The date of birth, social security number and address of the minor, names and addresses of the parents and guardians of the minor, and reference to the court, docket number and date of any court order appointing a guardian;
- (c) Terms of the settlement, including the specific provisions of any annuity or structured settlement, the credit rating of any entity which assumes responsibility for future payments and the present cost of the annuity or structure, periodic and lump sum payments;
- (d) Whether a lien or claim has been raised on behalf of any medical supplier, Medicare, the Department of Public Welfare, ERISA plan, or other entity;
- (e) Health care records and/or a written physicians report reflecting the minor's injuries and health care progress;
- (f) A statement under oath by the guardian and/or the parent(s), certifying the present physical and/or mental condition, as appropriate, of the minor and approval of the proposed settlement and distribution;
- (g) If there is to be an allocation between parties, a statement of the amounts to be allocated to each party and specific reasons for such allocation;
- (h) A copy of the agreement supporting a claim for attorney fees;
- (i) An itemized accounting of all attorney expenses which counsel requests that the Court approve for reimbursement as part of the settlement;
- (j) Certification of policy limits or copy of the declarations page supporting any allegation that limits of insurance coverage are being offered; and
  - (k) A proposed Order.

39-2039.4 Proof of Deposit and Compliance with Court Order. As soon as possible and within sixty (60) days of entry of a final order, the petitioner shall file with the Prothonotary or Clerk of Courts, as appropriate, a certification of compliance with the court order and proof of deposit.

39-2039.5 Hearing. In a petition for Court approval of settlement or by separate affidavit, a petitioner shall set forth reasons why a hearing may be required on the petition. Such reasons shall include, but are not limited to, information as to whether or not the available limit of insurance coverage is being offered in settlement. On consideration of the petition, the Court shall determine whether or not a hearing is required. In the event that a hearing is required, the petitioner or counsel for the petitioner or counsel for the petitioner or counsel for the petitioner shall secure a date and time for the hearing and shall provide the Court with a proposed order scheduling hearing.

Local Rules Committee Note: It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for Court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as the nature and continuing effect of the minor's injuries, whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

# 39-2064. Procedure for Approval of Compromises in Cases in Which an Incapacitated Person is Plaintiff

39-2064.1 Situs of the Filing of the Petition. Petitions for approval of settlements in cases in which an incapacitated person is plaintiff shall be filed with the Prothonotary if an action is pending. In cases in which an action is not already pending, such petitions may be styled as Orphans' Court matters and filed with the Clerk of Courts.

*39-2064.2 Issuance of Rule to Show Cause Discretionary.* Petitions for approval of settlements shall not proceed upon a Rule to Show Cause unless the Court, in its discretion, determines that a Rule should issue.

*39-2064.3 Contents of Petition.* The petition for Court approval shall comply with Pa. R.C.P. 2064 as appropriate and shall set forth the following:

- (a) The salient facts which form the bases of the cause of action:
- (b) Date of birth, social security number and address of the incapacitated person, names and addresses of the guardian or guardian at litem, and reference to the court, docket number and date of the court order appointing the guardian or guardian ad litem;
- (c) Terms of settlement, including the specific provisions of any annuity or structured settlement, the credit rating of any entity which assumes responsibility for future payments and the present cost of the annuity or structure, periodic and lump sum payments;
- (d) Whether a lien or claim has been raised on behalf of any medical supplier, Medicare, the Department of Public Welfare, ERISA plan or other entity;
- (e) Health care records and/or a written physician's report reflecting the incapacitated person's injuries and health care progress;
- (f) A statement under oath by the guardian or guardian ad litem certifying the present physical and/or mental condition, as appropriate, of the incapacitated person and approval of the proposed settlement and distribution;
- (g) If there is to be an allocation between parties, a statement of the amounts to be allocated to each party and specific reasons for such allocation;
- (h) A copy of the agreement supporting a claim for attorney fees;
- (i) An itemized accounting of all attorney expenses which counsel requests that the Court approve for reimbursement as part of the settlement;
- (j) Certification of policy limits or copy of the declarations page supporting any allegation that limits of insurance coverage are being offered; and
  - (k) A proposed Order.

39-2064.4 Proof of Deposit and Compliance with Court Order. As soon as possible and within sixty (60) days of entry of a final order, the petitioner shall file with the Prothonotary or Clerk of Courts, as appropriate, a certification of compliance with the court order and proof of deposit.

39-2064.5 Hearing. In a petition for Court approval of settlement or by separate affidavit, a petitioner shall set forth reasons why a hearing may be required on the petition. Such reasons shall include, but are not limited to, information as to whether or not the available limit of insurance coverage is being offered in settlement. On consideration of the petition, the Court shall determine whether or not a hearing is required. In the event that a hearing is required, the petitioner or counsel for the petitioner or counsel for the petitioner shall secure a date and time for the hearing and shall provide the Court with a proposed order scheduling hearing.

Local Rules Committee Note: It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for Court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as the nature and continuing effect of the incapacitated person's injuries, whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

### **39-2206.** Procedure for Approval of Settlements of Death Cases.

39-2206.1 Situs of the Filing of the Petition. Petitions for approval of settlements of death cases, including actions for wrongful death only in which a minor or incapacitated person has an interest, survival actions, and combined wrongful and survival actions, shall be filed with the Prothonotary if an action is pending. In cases in which an action is not already pending, such petitions may be styled as Orphans' Court matters and filed with the Clerk of Courts.

39-2206.2 Additional Considerations. It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for Court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

*39-2206.3 Contents of Petition.* The petition for Court approval shall comply with Pa. R.C.P. 2206 and shall set forth the following:

- (a) The salient facts which form the bases of the cause of action;
- (b) The decedent's date of death, name of the personal representative of the estate and county of appointment with copy of the Decree of the Register attached, proposed allocation as between wrongful death and survival actions, given the proposed allocation, whether there are sufficient assets in the estate to satisfy all debts, pay all creditors, and pay inheritance taxes, identity of the wrongful death beneficiaries and the amount each is to receive, statement of compliance with Pa. R.C.P. 2205, certification that notice of the presentation of the petition has been given to all parties entitled to share in the proceeds of the proposed settlement, identity of any other

parties who may have an interest in the decedent's estate with a description of such interest, and written approval of the Pennsylvania Department of Revenue for allocation between wrongful death and survival actions if such approval has been sought;

- (c) Terms of the settlement, including the specific provisions of any annuity or structured settlement, the credit rating of any entity which assumes responsibility for future payments and the present cost of the annuity or structure, periodic and lump sum payments;
- (d) Whether a lien or claim has been raised on behalf of any medical supplier, Medicare, the Department of Public Welfare, ERISA plan, or other entity;
- (e) A copy of the agreement supporting a claim for attorneys fees;
- (f) An itemized accounting of all attorney expenses which counsel requests that the Court approve for reimbursement as part of the settlement;
- (g) Certification of policy limits or copy of the declarations page supporting any allegation that limits of insurance coverage are being offered; and

#### (h) A proposed Order.

39-2206.4 Proof of Deposit and Compliance with Court Order. As soon as possible and within sixty (60) days of entry of a final order, the petitioner shall file with the Prothonotary or Clerk of Courts, as appropriate, a certification of compliance with the court order and proof of deposit.

39-2206.5 Hearing. In a petition for Court approval of settlement or by separate affidavit, a petitioner shall set forth reasons why a hearing may be required on the petition. Such reasons shall include, but are not limited to, information as to whether or not the available limit of insurance coverage is being offered in settlement. On consideration of the petition, the Court shall determine whether or not a hearing is required. In the event that a hearing is required, the petitioner or counsel for the petitioner shall secure a date and time for the hearing and shall provide the Court with a proposed order scheduling hearing.

#### Local Rules Committee Notes:

- (1) If an action only raises a wrongful death claim, Court approval of settlement is required only where a minor or incapacitated person has an interest. If the complaint raised wrongful death and survival claims, Court approval is required as to allocation between the categories notwithstanding the absence of minors or incapacitated persons with an interest even if the Plaintiff requests that the entire allocation be to the wrongful death claim. It is anticipated that, in virtually all death cases settled prior to the filing of suit, Court approval will be sought in order to protect the interest of the parties.
- (2) It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as

whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

[Pa.B. Doc. No. 01-315. Filed for public inspection February 23, 2001, 9:00 a.m.]

## LEBANON COUNTY Criminal Court Rules

#### Rule 52-CrD-101—Purpose and Construction.

Title and Citation of Rules. These rules adopted by the Court of Common Pleas of Lebanon—Criminal Division, as amended or supplemented, shall be known as the Lebanon County Court of Common Pleas—Criminal Rules and shall be cited as "Leb.Co.Rule 52-CrD-101."

#### Rule 52-CrD-104—Design of Forms.

The District Attorney shall prepare forms for use during criminal proceedings, which shall be approved by the Court prior to usage. Those forms shall include but are not limited to:

- (a) Waiver of arraignment forms
- (b) Continuance forms
- (c) Guilty plea colloquy forms
- (d) Nolo contendere colloquy forms
- (e) Post-sentence rights forms
- (f) Repeat violent offender forms
- (g) ARD applications
- (h) RAP applications
- (i) Rule 586 applications

After approval by the Court, copies of the above forms shall be available for usage at the Lebanon County Law Library.

The Chief Public Defender is directed to prepare forms for use during criminal proceedings which shall be approved by the Court prior to usage. Those forms shall include but are not limited to:

- (a) An application for free legal services based upon indigency
- (b) Any forms relating to reduction or establishment of bail

After approval by the Court, copies of the above forms shall be available for usage at the Lebanon County Law Library and at the Lebanon County Correctional Facility.

Applications for parole or re-parole shall be on forms generated by the Lebanon County Probation Department and approved by the Court. The parole or re-parole process shall be in accordance with procedures in place as established by the Lebanon County Probation Department.

#### Rule 52-CrD-555—Pretrial Procedures.

The Court shall sit for the purpose of Pretrial Hearings, Miscellaneous Court, Call of the List, Jury Trials and Argument in accordance with the annual court calendar which shall be adopted and promulgated prior to January 1st of each year.

### Rule 52-CrD-646—Custody and Storage of Trial Exhibits.

The moving party shall keep custody of and be responsible for all non-documentary material submitted into evidence at trial. That material shall not be left in the courtroom after the conclusion of the trial of the case.

All trial exhibits which are larger than 8.5  $\times$  11 inches shall remain in the custody of and be the responsibility of the moving party. The moving party shall submit an original or copy of the trial exhibit no larger than 8.5  $\times$  11 inches to the Court Clerk, which copy shall be marked and filed of record.

Notwithstanding the above provisions, any party may petition the Court to retain custody of an Exhibit.

### Rule 52-CrD-530—Duties and Powers of a Bail Agency.

A Bail Agency is hereby established and the Bail Administrator is hereby designated the Bail Agency pursuant to the Pennsylvania Rules of Criminal Procedure Rule 528. The Agency shall perform the duties and exercise the powers therein stated. The Bail Administrator shall be appointed by the President Judge of the Court of Common Pleas of Lebanon County.

Any request for an increase or decrease in bail or any request for approval of 10% bail must be submitted to the Court on a form to be prepared and maintained by the Bail Administrator.

#### Rule 52-CrD-574—Motions.

Any petition, application, motion or other written document requiring (the issuance of a preliminary order or other) action by the Court, shall at the time of the filing thereof, have attached thereto immediately prior to the first page thereof, a form order of Court (including the caption of the proceeding), which is appropriate to the nature of the document.

Where a party to any proceeding requests the Court to enter any order, that party or counsel for that party shall submit to the Court a written form of the order including the caption of the proceeding, and if such relief is requested by the filing of a petition, application, motion or other written instrument, the form of the order (including the caption of the proceeding) shall be attached thereto immediately prior to the first page thereof at the time the instrument is filed.

Rules numbered 1—15 of the Rules of the Court of Common Pleas of Lebanon County Criminal Division are specifically repealed as of May 1, 2001.

These Rules shall be effective as of May 1, 2001.

ROBERT J. EBY, President Judge

 $[Pa.B.\ Doc.\ No.\ 01\text{-}316.\ Filed\ for\ public\ inspection\ February\ 23,\ 2001,\ 9\text{:}00\ a.m.]$ 

#### NORTHAMPTON COUNTY

### Administrative Order 2001-2—A.R.D./D.U.I. Program Fee

#### **Order of Court**

*And Now,* this 30th day of January, 2001, the fee for all ARD/DUI cases is fixed at \$1,375.00.

The Clerk of Court is ordered to assess and collect these fees and disburse them as follows: Two Hundred and Sixty-seven (\$267.00) Dollars for Court costs, One Hundred and Seventy-five (\$175.00) Dollars for the Alcohol Highway Safety Program, Forty (\$40.00) Dollars for the CRN evaluation, Eight Hundred and Ninety-three (\$893.00) Dollars for the superintending fee to be placed in Account No. 110—4005.

This order shall be effective with respect to all ARD/DUI participants arrested on or after March 1, 2001.

This order replaces Administrative Order #1994-10, which is vacated effective March 1, 2001.

By the Court

ROBERT A. FREEDBERG,

President Judge

[Pa.B. Doc. No. 01-317. Filed for public inspection February 23, 2001, 9:00 a.m.]

# WESTMORELAND COUNTY Adoption of Custody Rule Changes; No. 3 of 2001

#### **Administrative Order**

And Now, this 1st day of February, 2001, it is hereby Ordered that effective in 30 days from the publication of this Order, Westmoreland County Rules of Civil Procedure W1915.3(b), W1915.4-3(d), and W1915.10(a) and (b) are rescinded, and new Rules W1915.3(b), W1915.4-3(d), and W1915.10(a) and (b) are adopted.

By the Court

CHARLES H. LOUGHRAN, President Judge

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

(b) The petitioner shall, at the time of filing, proceed to the Westmoreland County Family Court Administrator (Custody Office) for an assignment of a date and time for the Custody Conciliation Conference. The Custody Conciliation Conference shall be scheduled for a date and time not later than 45 days after filing of the complaint or count.

#### Rule W1915.4-3. Custody Conciliation Conference.

- (d) If neither an Election to Proceed Through Mediation pursuant to subsection (b), nor a Consent Agreement pursuant to subsection (c) are filed with the Family Court Administrator (Custody Office), the Conciliation Conference shall proceed as originally scheduled.
- (1) All parties, and any child, for whom custody or visitation is sought, shall be present at the Custody Conciliation Conference, unless otherwise ordered by the Court. Failure of a party to appear at the Custody

Conciliation Conference may result in the entry of a custody or visitation order by the Court on the recommendation of the Custody Conference Officer in the absence of that party. The absent party may also be subject to contempt proceedings.

- (2) The Custody Conference Officer shall conduct the Conciliation Conference actively engaging the parties using mediation skills and techniques in order to reach an agreement. The Conciliation Conference is informal, with no record created nor testimony elicited from parties or witnesses. The parties are given the opportunity to present the issues or problems and to explore all available options for resolution. A second session may be scheduled if needed.
- (3) A Consent Agreement form is completed and signed when an agreement is reached.
- (4) If the parties cannot agree, the Conference Officer will forward to the Court a report and recommended order.
  - A. The report shall contain the following:
- 1. Recommendations, if any, that an evaluation including requirements such as physical or mental evaluations or home studies be undertaken pursuant to Rule W1915.8:
  - 2. Findings of fact on jurisdiction or venue issues; and
  - 3. Recommendations for custody/visitation.
  - B. The order will include all areas of prior agreement.
- C. Except as provided in subsection D, the order shall become a final order unless a Praecipe For Custody Pretrial Conference is filed within 30 days of the date of service of the order. A copy of the order shall be served in accordance with Pa. R.C.P. 236, with a copy to the Family Court Administrator (Custody Office).
- D. When an evaluation is ordered, the Order will also schedule a Pretrial Conference. The Praecipe requirement of subsection C does not apply when the Pretrial Conference is ordered.
- E. The Praecipe For Custody Pretrial Conference is found at W1915.10.

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

- (a) A party may file a Praecipe for Custody Pretrial Conference in the Westmoreland County Prothonotary's office anytime within 30 days from the date of service of a Custody Order issued as a result of a Conciliation Conference. Prior to filing the Praecipe, the moving party shall deliver the Praecipe to the chambers of the assigned judge for the scheduling of a Pretrial Conference. When Custody Evaluations have been ordered, a Pretrial Conference is automatically scheduled and a Praecipe need not be filed. (See: W1915.8(a).)
- (b) A copy of the Praecipe with the scheduled Pretrial Conference date must be served on the other counsel/parties, and on the Family Court Administrator (Custody Office.) The Praecipe For Custody Pretrial Conference and Scheduling Order shall be substantially as follows:

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

	)	
Plaintiff	j	
V.	)	No of 20
Defendant	j	
	)	

#### PRAECIPE FOR CUSTODY PRETRIAL CONFERENCE

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

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

The issues to be considered are (Place a mark before the issues	
Relocation	Time/Length/Number of Visits Primary Residence
Other:	
I hereby certify that on/_	, I served a copy of this request on the opposing counsel/party.
Date:/	Petitioner or Petitioner's Counsel
	VERIFICATION
I verify that the statements $\boldsymbol{n}$ made subject to the penalties $\boldsymbol{\sigma}$	nade in this request are true and correct. I understand that false statements herein are f 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities.
Date:/	Petitioner or Petitioner's Counsel
	SCHEDULING ORDER
You are hereby ordered to a Honorable2 North Main Street, Greensbu	appear in person on, 20 atM. before the in Courtroom in the Westmoreland County Courthouse, rg, Pa. 15601 for a Pretrial Conference.
	epresented, shall file a Pretrial Narrative at least 10 days prior to the Pretrial Conference. over whom custody or visitation is sought are required to attend the Pretrial Conference e W1915.10.
	BY THE COURT:
Date:	,J.
	[Pa.B. Doc. No. 01-318. Filed for public inspection February 23, 2001, 9:00 a.m.]