

# THE COURTS

## Title 207—JUDICIAL CONDUCT

### PART II. CONDUCT STANDARDS

#### [207 PA. CODE CH. 33]

#### Notice of Adoption of Formal Opinion 2002-1

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has adopted its Formal Opinion 2002-1.

HOWLAND W. ABRAMSON,  
*Chairperson*  
*Ethics Committee*  
*Pennsylvania Conference of State Trial Judges*

#### FORMAL OPINION 2002-1

#### Judicial Ethics Committee of the Pennsylvania Conference of State Trial Judges

#### *Time Withdrawn Judicial Candidates Must End Fund Raising*

The Committee has received several requests for advice asking when judicial candidates who have withdrawn their candidacy must end fund raising. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion.

#### *History of Pennsylvania law*

Effective January 1, 1999 the Supreme Court amended Canon 7B (2) of the Code of Judicial Conduct to expressly provide that fund raising of a judicial campaign must end "no later than the last calendar day of the year in which the judicial election is held." Before the amendment the Code did not expressly provide when fund raising must end. However, before the amendment this Committee had decided that after an election, a judge could have only one fund raiser, the judge could not attend, and the fund raiser was required to be held within 6 months after the judge was sworn in.

The Pennsylvania Code of Judicial Conduct does not expressly address the time when a withdrawn judicial candidate must end fund raising.

#### *Other Jurisdictions*

In contrast to Pennsylvania, the Ohio Code of Judicial Conduct expressly provides the time when defeated or withdrawn judicial candidates must end fund raising. That time is the earlier of the time the campaign debt is paid off or 120 days after the defeat or withdrawal. Ohio Code of Judicial Conduct 7(C)(4)(b),(c). Candidates who participate in the general election may raise funds until 120 days after the general election. Ohio Code of Judicial Conduct 7(C)(4)(a).

In New York judicial candidates who do not run in the general election can raise funds for six months after the primary, convention, caucus, or meeting. New York Codes, Rules and Regulations sections 100.0 (Q), 100.5 (A)(5). Candidates who run in the general election may raise funds for six months after the general election. Id.

Some other jurisdictions measure the ending time for fund raising from the number days after the last election in which the candidate participates during the election year and do not expressly address withdrawn candidates.

E.g., Nebraska Code of Judicial Conduct 5C (2) (30 days); Washington Code of Judicial Conduct 7B (2) (60 days); North Dakota Code of Judicial Conduct 5C (2) (90 days); Alabama Canons of Judicial Ethics 7B (4)(b) (120 days). The 1972 American Bar Association Model Code of Judicial Conduct and the 1990 American Bar Association Model Code of Judicial Conduct provide for 90 days.

The Kentucky Code of Judicial Conduct prohibits any fund raising after the general election. Kentucky Rules of the Supreme Court 4.300, Code of Judicial Conduct 5B (2).

Louisiana permits post election fund raising only for the purpose of extinguishing campaign debt resulting from that election. Louisiana Code of Judicial Conduct 7D (3).

#### *Rationale for the Committee's Opinion*

Pennsylvania Code of Judicial Conduct 7B (2) provides in pertinent part:

A candidate's committees may solicit funds *for his campaign* no earlier than thirty (30) days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities *in connection with such judicial campaign* shall terminate no later than the last calendar day of the year in which the judicial election is held.

(Emphasis added).

The Committee observes that the Code limits candidates who participate in the general election to a post election fund raising period of less than sixty days, i. e. from the date after the general election (which is held in November) to December 31. The Committee considered whether candidates who withdraw should be limited to fund raising after their withdrawal by the same number of days as candidates who participate in the general election have after the general election, a period of less than sixty days. However, because the language of the Code provides the date by which fund raising must end rather than the number of days after the general election and does not refer to the general election in selecting the ending date, the Committee rejected the view that fund raising must end by a period of less than sixty days after the candidate withdraws, i.e. the number of days a candidate in the general election would have to fund raise after the general election.

However, as indicated by the above underlined portions of the Code, in addition to the December 31 cut off date, the Code limits fund raising "for his campaign" and "in connection with such judicial campaign." These limits require that a withdrawn judicial candidate end fund raising when the campaign debt has been extinguished. The reason is that for a withdrawn candidate, because such judicial campaign has ended, any fund raising after the debt has been extinguished could not be for "such judicial campaign." To give effect to all the provisions of Code of Judicial Conduct 7B (2), a withdrawn judicial candidate must end fund raising when the campaign debt has been extinguished or by December 31 of the election year, whichever occurs first.

[Pa.B. Doc. No. 02-414. Filed for public inspection March 15, 2002, 9:00 a.m.]

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL

[231 PA. CODE CHS. 1900, 1910, 1915 AND 1920]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters

### Recommendation 58

The Domestic Relations Procedural Rules Committee proposes the following amendments to Rules of Civil Procedure 1905, 1910.2, 1910.16-6, 1910.16-7, 1915.3 and 1920.74 and new Rule 1910.2-1. The Committee solicits comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Friday, May 3, 2002. Please direct comments to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
FAX (717) 795-2116  
E-mail patricia.miles@supreme.court.state.pa.us

The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

### Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

**Rule 1905. Forms for use in PFA Actions. Notice and hearing. Petition. Temporary protection order. Final protection order.**

\* \* \* \* \*

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)

#### FINAL ORDER OF COURT

Defendant's Name: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's Social Security Number: \_\_\_\_\_

Names and Dates of Birth of All Protected Persons, including Plaintiff and minor children:

**Names** **Dates of Birth**

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

**CHECK ALL THAT APPLY:**

**Plaintiff or Protected Person(s) is/are:**

- spouse or former spouse of Defendant
- parent of a common child with Defendant

current or former sexual or intimate partner with Defendant

child of Plaintiff

child of Defendant

family member related by blood (consanguinity) to Defendant

family member related by marriage or affinity to Defendant

sibling (person who shares biological parent-hood) of Defendant

current or former cohabitant (person who lives with) Defendant

**Defendant was served in accordance with Pa.R.C.P. 1930.4 and provided notice of the time, date and location of the hearing scheduled in this matter.**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, [ 19 ]20 , the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED AND DECREED as follows:

\* \* \* \* \*

1. Defendant shall not abuse, stalk, harass, threaten or attempt to use physical force that would reasonably be expected to cause bodily injury to the Plaintiff or any other protected person in any place where they might be found.

2. Defendant is completely evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other residence where Plaintiff or any other person protected under this Order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

\* \* \* \* \*

5. Custody of the minor children, [ names of the children subject to the provision of this paragraph ] [ NAMES OF THE CHILDREN SUBJECT TO THE PROVISION OF THIS PARAGRAPH ] shall be as follows: [ state to whom primary physical custody awarded; state terms of partial custody or visitation, if any. ] [ STATE TO WHOM PRIMARY PHYSICAL CUSTODY AWARDED; STATE TERMS OF PARTIAL CUSTODY OR VISITATION, IF ANY. ]

\* \* \* \* \*

7. Defendant is prohibited from possessing, transferring or acquiring any other weapons for the duration of this [ order ] Order. Any weapons delivered to the sheriff under Paragraph 6 of this Order or under Paragraph 6 of the Temporary Order shall not be returned until further order of court.

\* \* \* \* \*

9. Defendant is directed to pay temporary support for: [ insert the names of the persons for whom support is to be paid ] [ INSERT THE NAMES OF THE PERSONS FOR WHOM SUPPORT IS TO BE PAID ] as follows: [ insert amount, frequency and other terms and conditions of the support order ] [ INSERT AMOUNT, FREQUENCY AND OTHER TERMS AND CONDITIONS OF THE SUPPORT OR-

**DER ]**. This order for support shall remain in effect until a final order is entered by this Court. However, this order shall lapse automatically if the Plaintiff does not file a complaint for support with the Domestic Relations Section of the court within two weeks of the date of this order. The amount of this temporary order does not necessarily reflect the Defendant's correct support obligation, which shall be determined in accordance with the guidelines at the support hearing. Any adjustments in the final amount of support shall be credited, retroactive to this date, to the appropriate party.

\* \* \* \* \*

Plaintiff is granted leave to present a petition, with appropriate notice to Defendant, to **[ insert the name of the judge or court to which the petition should be presented ]** **[ INSERT THE NAME OF THE JUDGE OR COURT TO WHICH THE PETITION SHOULD BE PRESENTED ]** requesting recovery of out-of-pocket losses. The petition shall include an exhibit itemizing all claimed out-of-pocket losses, copies of all bills and estimates of repair, and an order scheduling a hearing. No fee shall be required by the Prothonotary's Office for the filing of this petition.

**[  12. BRADY INDICATOR.**

1.  **The Plaintiff or protected person(s) is a spouse, former spouse, a person who cohabitates or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.**

2.  **This order is being entered after a hearing of which the Defendant received actual notice and had an opportunity to be heard.**

3.  **Paragraph 1 of this Order has been checked to restrain the Defendant from harassing, stalking, or threatening Plaintiff or protected person(s).**

4.  **Defendant represents a credible threat to the physical safety of the Plaintiff or other protected person(s).**

**OR**

**The terms of this order prohibit Defendant from using, attempting to use, or threatening to use physical force against the Plaintiff or protected person that would reasonably be expected to cause bodily injury.**

**13 ]12. \* \* \***

**[ 14 ]13.** All provisions of this order shall expire in **[ one year ] eighteen months**, on **[ insert expiration date ]** **[ INSERT EXPIRATION DATE ]**

**NOTICE TO THE DEFENDANT**

**VIOLATION OF THIS ORDER MAY RESULT IN YOUR ARREST ON THE CHARGE OF INDIRECT CRIMINAL CONTEMPT WHICH IS PUNISHABLE BY A FINE OF UP TO \$1,000 AND/OR A JAIL SENTENCE OF UP TO SIX MONTHS. 23 PA.C.S. § 6114. VIOLATION MAY ALSO SUBJECT YOU TO PROSECUTION AND CRIMINAL PENALTIES UNDER THE PENNSYLVANIA CRIMES CODE.**

**THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, U.S. TERRITORIES AND THE COMMONWEALTH OF PUERTO RICO UNDER THE VIOLENCE AGAINST WOMEN ACT, 18 U.S.C. § 2265. IF YOU**

**TRAVEL OUTSIDE OF THE STATE AND INTENTIONALLY VIOLATE THIS ORDER, YOU MAY BE SUBJECT TO FEDERAL CRIMINAL PROCEEDINGS UNDER THAT ACT, 18 U.S.C. §§ 2261—2262. [ IF PARAGRAPH 12 OF THIS ORDER HAS BEEN CHECKED, YOU MAY BE SUBJECT TO FEDERAL PROSECUTION AND PENALTIES UNDER THE "BRADY" PROVISIONS OF THE GUN CONTROL ACT, 18 U.S.C. § 922(g), FOR POSSESSION, TRANSPORT OR RECEIPT OF FIREARMS OR AMMUNITION. ] IF YOU POSSESS A FIREARM OR ANY AMMUNITION WHILE THIS ORDER IS IN EFFECT, YOU MAY BE CHARGED WITH A FEDERAL OFFENSE EVEN IF THIS PENNSYLVANIA ORDER DOES NOT EXPRESSLY PROHIBIT YOU FROM POSSESSING FIREARMS OR AMMUNITION. 18 U.S.C. § 922(g).**

**NOTICE TO LAW ENFORCEMENT OFFICIALS**

\* \* \* \* \*

Subsequent to an arrest, the police officer shall seize all weapons used or threatened to be used during the violation of the protection order or during prior incidents of abuse. The **[ insert the appropriate name or title ]** **[ INSERT THE APPROPRIATE NAME OR TITLE ]** shall maintain possession of the weapons until further order of this Court.

\* \* \* \* \*

**Explanatory Comment—Rule 1905 Forms—1997**

The use of standardized forms provides uniformity and is also critical to the enforcement of protection orders both inside and outside of the Commonwealth. These forms are substantially based on those proposed by members of the Pennsylvania Coalition Against Domestic Violence and have been further refined to accommodate the litigants need for simplicity, the court's need for flexibility and law enforcement's need for certain identifying information necessary to enforce the protection order.

The forms must be used so that all protection orders can be properly registered with the statewide PFA Registry and the federal Protection Order File (POF) established by the National Crime Information Center (NCIC) for the collection of information that is necessary for nationwide enforcement of protection orders. Entering a protection order into the Registry and NCIC file enables law enforcement to immediately verify the existence and terms of the order. It is important, therefore, that all protection orders be registered with these two files. To this end, the forms capture all of the information that is required for data entry and the form orders are further structured to present that information in the order and sequence that is most helpful to the various law enforcement agencies responsible for entering the information into the files. Once the information reaches the Registry and is accepted by the NCIC file, it becomes immediately accessible to law enforcement agencies, dispatchers and courts throughout the country.

**[ I. GENERAL USE OF FORMS ]**

The provisions in the form petition and orders reflect the most common forms of relief available under the Protection from Abuse Act. Plenty of space, however, is provided for plaintiff to request additional relief, and for courts to fashion appropriate relief, based on the individual circumstances of the litigants. Since all of the provisions will not necessarily apply in every case, the forms adopt a checkbox method that requires the user to affirmatively check only those provisions which are applicable to his or her situation.

In cases where a provision is generally applicable but its terms do not correspond precisely to the relief being requested or granted, the user should not check the standard provision but instead should use the blank spaces provided in the forms to specify the relief. For example, while the final order contains a standard provision permitting the defendant to retrieve personal belongings only in the company of a police officer, there may be more suitable methods of retrieval available in some cases. If so, then the plaintiff or court should use the blank spaces provided in the form petition or order (rather than the standard provision) to specify the alternative manner of retrieval.

## [ II. THE BRADY LAW

Paragraph 12 of the final protection order reflects what are known as the “Brady” provisions of the federal Violent Crime Control and Law Enforcement Act of 1994 (P. L. 103-322), codified at 18 U.S.C. § 922(g). These provisions amend the Gun Control Act of 1968 to extend the prohibitions relating to the possession, receipt and purchase of firearms and ammunition to persons who are subject to a final protection order, if the order meets the following four criteria: 1) the order must have been entered after a hearing of which the defendant received actual notice and had the opportunity to participate; 2) the plaintiff or protected person is an “intimate partner” within the meaning of 18 U.S.C. § 921(a)(32), or a child of an intimate partner, or a child of the defendant; 3) the terms of the order restrain the defendant from harassing, stalking, or threatening the plaintiff or protected person; and 4) the order includes a finding that the defendant represents a credible threat to the physical safety of the intimate partner or child or by its terms explicitly prohibits the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. An “intimate partner” is defined as a spouse, former spouse, a person who cohabitates or has cohabited with the defendant, or a parent of a child who is protected under the order, 18 U.S.C. § 921(a)(32).

The Brady indicator is a mandatory field for entry of a protection order into the national NCIC file, i.e., federal data entry agencies are required to indicate by a “Yes” or “No” response whether a final protection order meets these criteria for disqualifying a defendant from possessing or purchasing firearms or ammunition. Thus, if all four provisions of Paragraph 12 are affirmatively checked, the order will be entered into a statewide Registry and the NCIC file as a “Yes” response indicating that the defendant may be subject to prosecution by the appropriate authorities under federal law if he or she possesses, receives or purchases firearms at any time while the order is in effect. If all four provisions have not been checked, then the order is entered as a “No” response indicating that the order is not Brady-eligible.

It is important to distinguish the Brady disqualifier in Paragraph 12 of the final order from the scope of relief contemplated by Paragraphs 6 and 7 of the temporary and final orders. Under the Protection from Abuse Act, 23 Pa.C.S. § 6108(a)(7), a court may order the defendant to relinquish to the sheriff any weapons which were used or threatened to be used in an incident of abuse and to prohibit

the defendant from acquiring or possessing any other weapons for the duration of the order. The “weapon” used in an incident of abuse may or may not be a firearm. If the weapon used is not a firearm, the defendant may still be disqualified from possessing or purchasing a firearm under Brady if the order otherwise meets the criteria under federal law. ]

### Explanatory Comment 2002

The Final Order of Court has been amended to eliminate a separate “Brady Indicator” while facilitating application of federal firearms restrictions in domestic violence matters. The federal law will apply so long as the court finds that the parties to the action are in one of the enumerated relationships set forth in 18 U.S.C. § 922(g).

## CHAPTER 1910. ACTIONS FOR SUPPORT

### Rule 1910.2. Venue. Transfer of Action

\* \* \* \* \*

[ (e) If neither party to an action presently resides in the county where the action is pending or a support order is in effect, and the defendant-obligor is not employed in that county, the court may transfer the action or order or both to any county where either party resides or where the defendant-obligor is regularly employed.

(f) It shall be the duty of the domestic relations section of the court in which the action is pending to forward to the domestic relations section of the court to which the action is transferred all papers filed in the action and a certified copy of the docket entries.

(g) ] (e) \* \* \*

### Explanatory Comment—1999

[ The amendments to this Rule are intended to implement the Uniform Interstate Family Support Act (UIFSA) and the Intrastate Family Support Act (IFSA) to facilitate the fair and prompt establishment of child support by means of encouraging the support litigation to take place as a local action in one forum only. ] Under the former rule, venue in support matters was in the county where the defendant lived or worked, or in the county where the plaintiff lived if that county was the last family domicile. The amended Rule expands the circumstances under which venue lies in the county in which plaintiff resides. If the action is one for spousal and child support or child support only, plaintiff may bring the action in the county in which the child resides regardless of whether that county was the last family domicile. [ The defendant will be required to defend the action there unless he or she can establish sufficient grounds for transfer of the action pursuant to subdivisions (c) through (e) of the proposed rule. ] It is important to note, however, that the court may always permit a party or witness to testify by telephone, audiovisual or other electronic means at specially designated locations. 23 Pa.C.S. § 4342(j).

If plaintiff seeks spousal support only, then venue continues to lie in plaintiff’s county only if that county was also the last marital domicile.

[ Subdivisions (c) through (e) identify the circumstances under which a support action may be transferred to another county. New subdivision (c)

is designed to avoid multiple claims from being litigated in different counties. Subdivisions (d) through (f) are adopted verbatim from former Rule 1910.8 and were moved to Rule 1910.2 only for the convenience of the practitioner in resolving questions of venue. ]

**Rule 1910.2-1. Procedures Pursuant to the Intrastate Family Support Act.**

(a) The court in the county in which the complaint for support is filed shall retain and process the case for so long as all of the following conditions are met:

- (1) there is proper venue pursuant to Rule 1910.2;
- (2) the defendant-obligor's mailing address is known;
- (3) sufficient information is known about the defendant-obligor's employment to enable the court to issue an earnings subpoena; and
- (4) the obligee consents.

*Official Note:* A support action should be maintained in the county in which the obligee and/or the child(ren) reside and should not involve a second county unless the county of residence is unable to obtain service on the defendant-obligor or obtain information regarding the defendant-obligor's employment. However, the obligee is permitted to request that the case proceed under the Intrastate Family Support Act (IFSA) in accordance with 23 Pa.C.S. § 8103.

If the venue requirements are met, the court in the obligee's county of residence should attempt to retain the case if there already is an order in that county against the same defendant-obligor in this or another child/spousal support case or if the defendant-obligor is incarcerated.

(b) If courts in two or more counties must be involved in the establishment and enforcement of an obligation for support:

- (1) the case must proceed pursuant to the Intrastate Family Support Act; and
- (2) venue shall follow the defendant-obligor in order to maintain the availability of statutory enforcement remedies.

**Explanatory Comment—2002**

Upon receipt of an Intrastate Family Support Act ("IFSA") complaint, the responding court shall accept the complaint and its original filing date.

The obligee in an IFSA action is not required to be physically present in the responding court at any proceedings to establish, enforce or modify a support order, or to make a determination of paternity. 23 Pa.C.S. § 8311(f) and (g) permits documentary evidence and testimony to be transmitted or obtained through the use of electronic media. In the event that additional information is required from the obligee, the responding court must notify the obligee as to the information needed and the acceptable means of providing it, and offer the obligee the assistance and use of the initiating court's staff and/or facilities to transmit such information. Telephonic hearings are authorized by Rule 1930.3 to accommodate out-of-county parties in both IFSA and locally-filed cases with the approval of the court upon good cause shown. The respond-

ing court must provide legal representation for an out-of-county obligee, where necessary, unless the obligee elects to be represented by private counsel.

(c) A support order shall not be registered in another county unless:

- (1) requested by the obligee, or
- (2) necessary to maintain an order for support, to obtain payment of the support obligation or to consolidate multiple cases involving the same defendant-obligor.

(d) Only one support order shall be charging against a defendant-obligor for the same spouse and/or child(ren) at one time.

**Explanatory Comment—2002**

If the obligee no longer resides in the initiating county, the initiating court may close its case after the following steps have been completed: 1) sending a copy of its docket file to the court in the obligee's new county of residence; 2) notifying the obligee and responding court, if applicable, of when and where the case was transferred; and 3) receiving from the court in the new county of residence acknowledgment of its receipt of the docket file and assumption of the initiating role.

If the defendant-obligor no longer resides in Pennsylvania or is employed outside the commonwealth, and the responding court cannot enforce the order or subpoena earnings or income information, the responding court must consider registration of the case under the provisions of the Uniform Interstate Family Support Act (UIFSA).

**Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.**

\* \* \* \* \*

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes and obligor's share added to his or her basic support obligation.

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person which are recurring and can be reasonably predicted by the court at the time of establishment or modification of the support order. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric or psychological services unless specifically directed in the order of court.

*Official Note:* While cosmetic, chiropractic, psychiatric and psychological expenses are not required to be apportioned between the parties, the court may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

\* \* \* \* \*

**Rule 1910.16-7. Support Guidelines. Awards of Child Support When There Are Multiple Families.**

\* \* \* \* \*

(d) When an obligor is subject to more than one order for child support, spousal support and/or

alimony pendente lite, the priority for distribution of payments and/or collections from the obligor, without regard to the source of the funds or method of collection, are as follows unless the court specifically orders a different distribution priority:

- (1) current child support.
- (2) medical, child care or other court-ordered child support related expenses.
- (3) current spousal support or alimony pendente lite.
- (4) child support arrear.
- (5) spousal support or alimony pendente lite arrear.
- (6) court costs.

**CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OR MINOR CHILDREN**

**Rule 1915.3. Commencement of Action. Complaint. Order.**

\* \* \* \* \*

(e) A grandparent seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. § 5313(b) must plead, in paragraph 7 of the complaint set forth at Rule 1915.15(a), facts establishing the elements of a cause of action under §§ 5313(b) (1), (2) and (3).

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**MOVING PARTY**  
**Name:** \_\_\_\_\_  
 \_\_\_\_\_  
**Attorney's Name:** \_\_\_\_\_  
**Attorney's Address:** \_\_\_\_\_  
**Attorney's Telephone #:** \_\_\_\_\_  
**Attorney's E-Mail:** \_\_\_\_\_  
**Party's Address and Telephone # if not represented by counsel:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Explanatory Comment 2002**  
In *R.M. v. Baxter*, 777 A.2d 446 (Pa. 2001), the Pennsylvania Supreme Court held that 23 Pa.C.S. § 5313(b) confers automatic standing on grandparents to seek physical and legal custody of a grandchild. However, establishing a cause of action under the statute requires the existence of the elements set forth at 23 Pa.C.S. §§ 5313(b)(1), (2) and (3).

**CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENE OF MARRIAGE**

**Rule 1920.74. Form of Motion for Appointment of Master. Order**

(a) The motion for appointment of a master shall be substantially in the following form:

(Caption)

**MOTION FOR APPOINTMENT OF MASTER**

\* \* \* \* \*

(1) Discovery (is)(is not) complete as to the claim(s) for which the appointment of a master is requested.

(2) The [ defendant ] non-moving party (has) (has not) appeared in the action (personally) (by his attorney, \_\_\_\_\_, Esquire).

\* \* \* \* \*

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**NON-MOVING PARTY**  
**Name:** \_\_\_\_\_  
 \_\_\_\_\_  
**Attorney's Name:** \_\_\_\_\_  
**Attorney's Address:** \_\_\_\_\_  
**Attorney's Telephone #:** \_\_\_\_\_  
**Attorney's E-Mail:** \_\_\_\_\_  
**Party's Address and Telephone # if not represented by counsel:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Official Note:** It is within the discretion of the court to determine the point at which a master should be appointed in a case. The court may appoint a master to deal with discovery issues.

[Pa.B. Doc. No. 02-415. Filed for public inspection March 15, 2002, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[234 PA. CODE CHS. 1 AND 9]

**Order Amending Rules 902 and 904, and Approving the Revision of the Comment to Rule 120; No. 277; Criminal Procedural Rules Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rules of Criminal Procedure 902 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery) and 904 (Appointment of Counsel; In Forma Pauperis), and approved a correlative revision of the Comment to Rule

120 (Attorneys—Appearances and Withdrawals). The rule changes require (1) the defendant to verify on the petition for post-conviction collateral relief that the attorney filing the petition is authorized to act on the defendant's behalf, and (2) any attorney representing a defendant in post-conviction collateral relief proceedings to file a written entry of appearance. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 26th day of February, 2002, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, and a Final Report to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Rules of Criminal Procedure 902 and 904 are amended; and

(2) the revisions to the Rule 120 Comment are approved all in the attached form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2002.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION  
AND DEFINITIONS, LOCAL RULES**

**PART B. Counsel**

**Rule 120. Attorneys—Appearances and Withdrawals.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**See Rule 904(A) that requires an attorney who has been retained or appointed to represent a defendant during post-conviction collateral proceedings to file a written entry of appearance.**

**Official Note:** Adopted June 30, 1964, effective January 1, 1965; formerly Rule 303, renumbered Rule 302 and amended 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; amended March 22, 1993, effective January 1, 1994; renumbered Rule 120 and amended March 1, 2000, effective April 1, 2001; **Comment revised February 26, 2002, effective July 1, 2002.**

**Committee Explanatory Reports:**

\* \* \* \* \*

**Final Report explaining the February 26, 2002 Comment revision adding the cross-reference to Rule 904 published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).**

**CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS**

**Rule 902. Content of Petition for Post-Conviction Collateral Relief; Request for Discovery.**

(A) A petition for post-conviction collateral relief shall bear the caption, number, and court term of the case or cases in which relief is requested and shall contain substantially the following information:

\* \* \* \* \*

(14) a verification by the defendant that:

(1) the facts set forth in the petition are true and correct to the best of the defendant's personal knowledge or information and belief and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

(2) the attorney filing the petition is authorized by the defendant to file the petition on the defendant's behalf;

\* \* \* \* \*

**Comment**

**Whether privately retained or appointed, the attorney must enter an appearance as provided in Rule 904.**

**Paragraph (A)(14) was amended in 2002 to require the defendant to include a verification that the attorney is authorized to file the petition.**

Pursuant to paragraph (A)(6), the petition should include specific information about the sentence imposed, including whether the defendant is currently serving a sentence of imprisonment or probation for the crime; awaiting execution of a sentence of death for the crime; or serving a sentence which must expire before the defendant may commence serving the disputed sentence; the minimum and maximum terms of the sentence; the amount of fine or restitution, if any; and whether the defendant is released on parole. See 42 Pa.C.S. § 9543(a).

\* \* \* \* \*

**[(v)] Deleted by statute.**

\* \* \* \* \*

"(4) That the failure to litigate the issue prior to or during trial . . . or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel." See 42 Pa.C.S. § 9543(a)(2), (3), and (4). (Note: the statutory reference to unitary review in this paragraph is not shown in view of the Court's 1997 suspension of the Capital Unitary Review Act.)

\* \* \* \* \*

**Official Note:** Previous Rule 1502 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rules 903 and 905. Present Rule 1502 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 902 and Comment revised March 1, 2000, effective April 1, 2001; **amended February 26, 2002, effective July 1, 2002.**

**Committee Explanatory Reports:**

\* \* \* \* \*

**Final Report explaining the February 26, 2002 amendments concerning verification of counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).**

**Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.**

**(A) Counsel for defendant shall file a written entry of appearance with the clerk of courts promptly after being retained or appointed, and serve a copy on the attorney for the Commonwealth. If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.**

**[(A)] (B) Except as provided in paragraph [(F)] (G), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.**

- [ (B) ] (C) \* \* \*
- [ (C) ] (D) \* \* \*
- [ (D) ] (E) \* \* \*
- [ (E) ] (F) \* \* \*
- [ (F) ] (G) \* \* \*

**Comment**

\* \* \* \* \*

Paragraph [ (F) ] (G) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

**Official Note:** Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 907. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; **amended February 26, 2002, effective July 1, 2002.**

**Committee Explanatory Reports:**

\* \* \* \* \*

**Final Report explaining the February 26, 2002 amendments concerning entry of appearance by counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).**

**FINAL REPORT<sup>1</sup>**

*Amendments to Pa.Rs.Crim.P. 902 and 904,  
Revision of the Comment to Pa.R.Crim.P. 120*

**POST-CONVICTION COLLATERAL PROCEEDINGS:  
VERIFICATION OF COUNSEL AND ENTRY OF  
APPEARANCE**

On February 26, 2002 effective July 1, 2002, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 902 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery) and 904 (Appointment of Counsel; In Forma Pauperis), and approved a correlative revision of the Rule 120 Comment (Attorneys—Appearances and Withdrawals). The rule changes require (1) the defendant to verify on the petition for post-conviction collateral relief that the attorney filing the petition is authorized to act on the defendant's behalf, and (2) any attorney representing a defendant in post-conviction collateral relief proceedings to file a written entry of appearance.

At the request of the Court, the Committee considered (1) what, if any, procedures should be developed to ensure that a petition for post-conviction collateral relief (PCRA) filed in a case has been authorized by the defendant; and (2) whether there should be specific procedures for the entry of appearance of counsel in post-conviction collateral proceedings. These questions arise in the PCRA context when a PCRA petition is filed by an attorney, and the attorney's authority to represent the defendant is questioned.

<sup>1</sup> The Committee's Final Reports 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 Committee's explanatory Final Reports.

The Committee reviewed the filing and counsel procedures in Chapter 9 (Post-Conviction Collateral Proceedings) of the Criminal Rules. Rule 902(C) requires the defendant to "state in the petition the name and address of the attorney who will represent the defendant. . . ." Although we believe this requirement is clear, in view of the Court's request, the Committee agreed something more was needed in the rule for the defendant to indicate he or she had authorized the attorney to act on the defendant's behalf. Noting that paragraph (A)(14) requires the defendant to verify the truth of the facts in the petition, the Committee concluded the "something more" could be the addition of the defendant's verification of counsel.

The Committee also noted there is no entry of appearance provision comparable to Rule 120 (Attorneys—Appearances and Withdrawals) in the PCRA rules, and that Rule 120 is not applicable to collateral proceedings. Given the PCRA counsel-related problems central to the Court's inquiry, the Committee agreed it made sense to fill the void in the PCRA rules.

The following briefly describes the changes adopted to implement these considerations.

**1. Rule 902 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery)**

Rule 902(A)(14) is divided into two provisions making it clear that the defendant has two things to verify on the petition: (1) that the facts in the petition are true and correct; and (2) that the attorney filing the petition is authorized to file a petition on the defendant's behalf. In addition, a cross-reference to Rule 904 has been added in the Rule 902 Comment to alert attorneys to the entry of appearance requirements.

**2. Rule 904 (Appointment of Counsel; In Forma Pauperis) and Rule 120 Comment (Attorneys—Appearances and Withdrawals)**

Rule 904 has been amended by the addition of a new paragraph (A) requiring the attorney formally to enter his or her appearance for purposes of representing the defendant during post-conviction collateral relief proceedings. The language is similar to paragraph (A) of Rule 120 (Attorneys—Appearances and Withdrawals). In addition, the title to Rule 904 has been amended by adding "Entry of Appearance and" before "Appointment of Counsel."

Finally, to emphasize the need for the filing of an entry of appearance in all PCRA cases, a cross-reference to Rule 904 has been added to the Rule 120 Comment.

[Pa.B. Doc. No. 02-416. Filed for public inspection March 15, 2002, 9:00 a.m.]

**[234 PA. CODE CH. 7]**

**Order Amending Rule 708; No. 278; Criminal Procedural Rules Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the amendments to Rule of Criminal Procedure 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition). The amendments clarify that the filing of a motion to modify sentence in a violation case under Rule 708 does not toll the 30-day appeal period, and the appeal period in these cases runs from the date of sentence. The *Final Report* follows the Court's Order.



Order

Final Report<sup>1</sup>

Per Curiam:

Amendments to Pa.R.Crim.P. 708

Now, this 26th day of February, 2002, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, and a *Final Report* to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 708 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2002.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.

\* \* \* \* \*

(D) Motion to Modify Sentence

A motion to modify a sentence imposed after a revocation shall be filed within 10 days of the date of imposition. **The filing of a motion to modify sentence will not toll the 30-day appeal period.**

Comment

\* \* \* \* \*

**Under this rule, the mere filing of a motion to modify sentence does not affect the running of the 30-day period for filing a timely notice of appeal. Any appeal must be filed within the 30-day appeal period unless the sentencing judge within 30 days of the imposition of sentence expressly grants reconsideration or vacates the sentence. See *Commonwealth v. Coleman*, 721 A.2d 798, 799, fn. 2 (Pa. Super. 1998). See also Pa.R.A.P. 1701(b)(3).**

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph (D), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or reimposed.

**Official Note:** Former Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992; amended September 26, 1996, effective January 1, 1997; Comment revised August 22, 1997, effective January 1, 1998; renumbered Rule 708 and amended March 1, 2000, effective April 1, 2001; **amended February 26, 2002, effective July 1, 2002.**

**Committee Explanatory Reports:**

\* \* \* \* \*

**Final Report explaining the February 26, 2002 amendments concerning the 30-day appeal period published with the Court's Order at 32 Pa.B. 1394 (March 16, 2002).**

**CLARIFYING 30-DAY APPEAL PERIOD FOLLOWING MOTION TO MODIFY SENTENCE IN PROBATION AND PAROLE VIOLATION CASES**

On February 26, 2002 effective July 1, 2002, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition). The amendments clarify that the filing of a motion to modify sentence in a violation case under Rule 708 does not toll the 30-day appeal period, and the appeal period in these cases runs from the date of sentence.

The Committee undertook a review of Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) in view of several inquiries the Committee has received concerning the distinction between the times for appeal under Rule 708 and Rule 720 (Post-Sentence Procedures; Appeal). Because Rule 720 provides that the appeal period runs from the date of the disposition of the post-sentence motion, Rule 720(A)(2), some judges and attorneys assume the same time for appeal applies when a motion to modify sentence is filed under Rule 708. Although the case law is clear that this construction of the appeal time in Rule 708 is not correct, and the appeal in a Rule 708 case runs from the date of the sentence, the Committee agreed the confusion arises because Rule 708 does not expressly address this issue.

After a thorough review of the matter, the Committee concluded that Rule 708 should be amended because (1) the sanction for failure to timely file the appeal in a Rule 708 case is so severe, and (2) the confusion may be attributed to Rule 708's silence. Accordingly, Rule 708 has been amended by adding "the filing of a motion to modify sentence will not toll the 30-day appeal period" as the second sentence of paragraph (D) (Motion to Modify Sentence). In addition, as an aid to the bar, we are proposing that the Rule 708 Comment be revised by adding a paragraph elaborating the rule change and cross-referencing *Commonwealth v. Coleman*, 721 A.2d 798 (Pa. Super. 1998), and Pa.R.A.P. 1701(b)(3), which address this issue.

[Pa.B. Doc. No. 02-417. Filed for public inspection March 15, 2002, 9:00 a.m.]

**DISCIPLINARY BOARD OF THE SUPREME COURT**

**Notice of Suspension**

Notice is hereby given that Thomas R. Hendershot having been suspended indefinitely from the practice of law in the State of Maryland, the Supreme Court of Pennsylvania issued an Order dated February 28, 2002 suspending Thomas R. Hendershot from the practice of law in this Commonwealth consistent with the Order of

<sup>1</sup> The Committee's Final Reports 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 Committee's explanatory Final Reports.

the Court of Appeals of Maryland dated October 12, 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 and Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 02-418. Filed for public inspection March 15, 2002, 9:00 a.m.]

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