

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART III. FAMILY COURT RULES

[231 PA. CODE PART III]

Recommendation 55; Proposed Amendments to the Rules Relating to Domestic Relations Matters

The Domestic Relations Procedural Rules Committee proposes the following new rules governing family law matters. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed rules to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Friday, April 19, 2002 and must be directed to:

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The introductory comments which precede the proposed rules will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

Recommendation 55 Family Court Rules

Introduction

In late 2000, the Domestic Relations Procedural Rules Committee of the Pennsylvania Supreme Court first published, as Recommendation 55, a proposed new set of rules governing family law matters. Extensive comments were submitted and all were reviewed and considered by the committee. In addition, committee members met with members of the judiciary, family law practitioners, domestic relations personnel and others to hear their concerns about the proposed rules as published. As a result of the comments and suggestions received, Recommendation 55 has been revised substantially. Because of the revisions and because of the widespread interest in these family court rules, the committee is publishing the revised recommendation for further comment.

The committee's goals remain unchanged—to make it easier for the public to gain access to the family court system and to assure that family matters are concluded fairly and expeditiously. However, in order to address the major concerns expressed in the comments to the first draft, in particular the issues of cost, personnel and space, the case management requirement has been removed from the current proposal. In addition, because the Supreme Court of Pennsylvania has not mandated continuing legal education for the judiciary, the proposal to require judges presiding over family court matters to obtain certain related instruction also has been withdrawn. Nevertheless, the committee encourages judges who preside over family court matters to voluntarily avail themselves of programs in the substantive and procedural aspects of the law, as well as family and child dynamics, domestic violence and other related topics.

There also are two new provisions in this revised version of Recommendation 55. First, there is the requirement of unified docketing. Several judicial districts already assign the same primary case number to different aspects of a family law case, such as support and equitable distribution, to facilitate consistency and efficiency of operation. Second, the proposed rules allow the domestic relations sections, which often are the parties' first point of contact with the judicial system in a family matter, to facilitate the entry of agreed-upon custody orders.

Finally, it remains the committee's plan to recommend that the Supreme Court establish a set of Family Court Rules separate from the Pennsylvania Rules of Civil Procedure. The Pa.R.C.P. 1900 series originally set aside for domestic relations matters is insufficient to contain all of the rules for protection from abuse, custody, support, divorce and paternity. If a separate set of rules is established, eventually all of the rules now in the 1900 series of the Pa. Rules of Civil Procedure will be rearranged, renumbered and relocated to the Pennsylvania Family Court Rules.

TITLE 231—RULES OF CIVIL PROCEDURE

PART III. FAMILY COURT RULES

GENERAL RULES

Rule 101. Actions Governed by Family Court Rules.

(a) *Divorce, Annulment, Dissolution of Marriage.*

- (1) Equitable Distribution.
- (2) Alimony/Alimony Pendente Lite.
- (3) Counsel Fees, Costs and Expenses.
- (4) Special Relief.

(b) *Child Custody.*

- (1) Legal Custody.
- (2) Physical Custody.
- (3) Partial Custody/Visitation.

(c) *Support.*

- (1) Child Support.
- (2) Spousal Support.
- (3) Modification and Enforcement.

(d) *Paternity.*

(e) *Protection From Abuse.*

Rule 102. Commencement of Action.

(a) *Centralized Filing.* Each judicial district shall establish a Family Court Filing Unit either as a separate and distinct office of the district's family court division, or as a separate and distinct unit of the prothonotary's or court administrator's office. Actions for divorce, annulment, child custody (except as set forth in subdivision (b) below), paternity and protection from abuse shall be commenced by filing a pleading in the Family Court Filing Unit. Child support, spousal support and alimony pendente lite actions shall be initiated at the Domestic Relations Section.

(b) *Custody Agreements.* If, at a support proceeding, the parties have agreed upon a schedule of custody, partial custody or visitation regarding their child(ren) and it appears that the entry of a custody order incorporating

the parties' agreement will facilitate the payment and collection of child support, the conference officer, hearing officer or master may provide the parties with a form custody complaint and form custody stipulation, along with information as to where to file the completed documents and the filing fee.

(c) *Unified Docketing.* All actions under these Family Court Rules which involve identical parties shall be entered on the court's docket under the same primary case number. Additional letters or numbers may be added parenthetically to specify the type of action, judge assigned or other identifying information.

Rule 103. Consolidation of Family Court Matters.

(a) *General Rule.* To the extent it is practical and appropriate, two or more actions under these Family Court Rules involving the same parties and common questions of law and/or fact should be consolidated for hearing or trial.

(b) *Trial Continuity.* Whenever possible, trials before a judge or hearings before a master shall be scheduled to be heard on consecutive days. If not held on consecutive days, then the trial or hearing shall be concluded within ninety (90) days of the date of the commencement of the trial or hearing, unless a shorter time frame is required by statute or another procedural rule.

(c) *Prompt Decisions.*

(1) Except as provided in subdivision (2) below, in any matter brought under these Family Court Rules, a decision by a conference officer, master or judge shall be entered, filed and served upon counsel for the parties, or any party not represented by counsel, not later than fifteen (15) days after the conference, hearing or trial concludes, unless a shorter time frame is required by statute or another procedural rule.

(2) The time for entering and filing a decision may be extended if, within fifteen (15) days of the conclusion of the conference, hearing or trial, the court extends the date for such decision by order entered of record showing good cause for the extension. In no event shall an extension delay entry of the decision more than forty-five (45) days after the conclusion of the conference, hearing or trial.

Rule 104. Continuing Education for Family Court Personnel.

(a) *Program Development.* Courses of instruction that include, at a minimum, the following topics shall be developed or approved by the Administrative Office of Pennsylvania Courts (AOPC):

- (1) The substantive law and procedural aspects of the areas of law governed by these Family Court Rules;
- (2) Domestic violence;
- (3) Child development;
- (4) Family dynamics;
- (5) Addictions and treatments;
- (6) Asset valuation
- (7) Community resources.

(b) *Initial Training.* Within one (1) year of being assigned to cases governed by these Family Court Rules, each master, hearing officer, conciliator, mediator and other court personnel designated by the president or administrative judge of the judicial district shall successfully complete the coursework developed or approved by the AOPC.

(c) *Continuing Education.* Each master, hearing officer, conciliator, mediator and other court personnel designated by the president or administrative judge who is assigned to cases governed by these Family Court Rules shall successfully complete six (6) hours of continuing education developed or approved by the AOPC each calendar year after the calendar year in which the initial training was completed.

(d) *Compliance.* The AOPC shall monitor compliance with the educational requirements of this rule.

[Pa.B. Doc. No. 02-77. Filed for public inspection January 18, 2002, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rule 215; No. 1793 S 1989

Order

And Now, this 6th day of December, 2001, Dauphin County Local Rule of Civil Procedure 215 is promulgated as follows:

Rule 215. Preferences.

A trial list preference may be requested in all cases in which a jury previously has been impaneled and sworn, or which were listed and available for trial in the preceding civil trial session but were not reached. Such preference shall be presented in the form of an application for preference. The application must be filed with the Prothonotary at least three weeks prior to the first day of the trial session. Copies must be served upon all other counsel and the Court Administrator's Office. The Calendar Judge will determine the order of preference.

This rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 02-78. Filed for public inspection January 18, 2002, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rule 215.1; No. 1793 S 1989

Order

And Now, this 6th day of December, 2001, Dauphin County Local Rule of Civil Procedure 215.1 is amended as follows:

Rule 215.1. Jury Trials.

* * * * *

(2) **Attachment—Listing a case for trial shall have the effect of attaching all counsel of record for the trial term specified. The attachment shall be effective as of the date of the filing of the certificate of readiness unless a prior scheduling order has been issued.**

The Dauphin County Court will defer to a scheduling/attachment order from another court of equal or higher jurisdiction so long as

(a) The foreign order is earlier in time; and

(b) The party with the scheduling conflict timely moves for a continuance and attaches a copy of the foreign order.

(3) *Objections and Motions for Continuance.*

(a) * * *

(b) Objections and motions for continuance submitted in accordance with Rule [215.1(2)(a)] 215.1(3)(a) will be heard by the Calendar Judge, as provided for in Rule 215.1(5) on the Friday of the third week prior to the trial session, or as otherwise scheduled by the Court.

[(3)] (4) *Compilation of Trial List.*

(a) * * *

(b) * * *

(c) [A trial list preference may be requested in all cases in which a jury previously has been impaneled and sworn, or which were listed and available for trial in the preceding civil trial session but were not reached. Such preference shall be presented in the form of an application for preference. The application must be filed with the Prothonotary at least three weeks prior to the first day of the trial session. Copies must be served upon all other counsel and the Court Administrator's Office. The Calendar Judge will determine the order of preference.

(d)] * * *

[(4)] (5) *Calendar Judge.*

* * * * *

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 02-79. Filed for public inspection January 18, 2002, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rule 1901; No. 1793 S 1989

Order

And Now, this 6th day of December 2001, Dauphin County Local Rule of Judicial Administration 1901 is amended as follows:

Rule 1901. Termination of Inactive Civil Matters.

[A list shall be prepared for general call in January of each year of such civil matters as may be designated from time to time by the Court in which no steps or procedures have been taken for two years or more prior thereto. Notice of impending dismissal shall be given to counsel of record and to parties for whom no appearance has been entered at least thirty days prior to the call of said list as provided by the Pennsylvania Rules of Judicial Administration.

Unless written objection to dismissal is filed in such matter and a copy thereof served upon the Court Administrator at least five days prior to the call of the list, the case shall be stricken from the list and the Prothonotary shall enter an order as of course dismissing the matter with prejudice for failure to prosecute. In cases where objections to dismissal are filed and served, the Court may dismiss the matter if cause for continuance is not shown at the call of the list.]

1. On or about October 1st of each year, the Prothonotary shall prepare a list of all civil matters in which there has been no docket activity for the preceding two years. The list shall include the names and addresses of counsel of record and/or pro se litigants.

2. Upon receipt of the list, the Court Administrator shall prepare a Rule to Show Cause for signature by the Civil Calendar Judge. The rule shall contain substantially the following language:

RULE TO SHOW CAUSE

The Prothonotary of Dauphin County, having determined that no docket activity appears in the record of the above captioned matter for a period in excess of two years,

IT IS HEREBY ORDERED that a Rule is granted on all parties to show cause, if any they have, why the captioned action shall not be dismissed with prejudice.

This Rule is returnable within 45 days of the posting date. Any response or objection shall be in proper petition form and include:

a. A brief procedural history of the action setting forth with particularity the party who initiated each procedural step.

b. Specific reason(s) for failure to advance the case since the last docket entry, including any non-docket activity.

c. A statement indicating whether opposing counsel or pro se litigant concurs in the objection to the termination.

d. A specific and comprehensive proposal for moving the case to final resolution.

e. Whether hearing or argument is requested on the objection.

NOTICE

Failure to file a timely response to this Rule in the manner prescribed will be cause for dismissal of this case with prejudice to any party asserting a claim for relief.

3. The Court Administrator shall make service of the Rule by regular mail to the last address of record of the parties or their counsel of record.

4. In any case where notice by mail cannot be given or where the Rule has been returned undelivered, the Court Administrator shall provide notice as set forth above, by publication in the manner provided by rule of court for publication of legal notices.

5. All objections to termination in which no hearing/argument is requested shall be considered on the pleadings and an appropriate order entered by the Civil Calendar Judge.

6. Any objection to termination in which hearing and/or argument is requested shall be heard at a time fixed by the Calendar Judge. An appropriate order disposing of the motion, which may include scheduling provisions and/or specific judicial assignment, shall follow.

7. In cases where no response or objection is filed, the Calendar Judge shall enter an order as of course dismissing the matter with prejudice for failure to prosecute.

COMMENT

Amended Rule 1901 is intended to provide a more comprehensive method for the termination of inactive civil matters. The amended rule more closely tracts the requirements of Pa.R.J.A. 1901 and eliminates the prior practice of a "call of the list."

This rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 02-80. Filed for public inspection January 18, 2002, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rule 4019; No. 1793 S 1989

Order

And Now, this 10th day of December 2001, Dauphin County Local Rule of Civil Procedure 4019 is amended as follows:

Rule 4019. Discovery Disputes.

* * * * *

(4) Procedure for failure to provide discovery; Motion for Sanctions.

(a) If a party fails to respond timely to interrogatories or a request for production of documents or fails to appear in response to a notice of deposition, and no extension of time has been granted, the party issuing the discovery request may file a motion for sanctions.

(b) A written notice of intention to seek sanctions, specifically listing the sanctions sought, shall be sent to the defaulting party(ies) by certified mail, return receipt requested, at least thirty days before filing a motion for sanctions.

(c) If the requested discovery is received within said thirty-day notice period, no motion for sanctions shall be filed.

(d) A motion for sanctions shall state (1) the discovery requested and (2) proposed sanctions appropriate pursuant to Pa.R.Civ.P. 4019. A written certificate of service of the written notice of intention to seek sanctions under subparagraph (b) and a copy of the notice shall be attached. If attorneys' fees and expenses are sought, reasonable documentation of time devoted and expenses incurred shall be attached to the motion.

(e) The Calendar Judge shall conduct a hearing on the motion, even if the default that prompted the motion has been corrected before the hearing date.

This rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 02-81. Filed for public inspection January 18, 2002, 9:00 a.m.]

DELAWARE COUNTY

Adoption of Amendment to Delaware County Local Rule 1915.3(h); Misc. Doc. No. 00-3708

Order

And Now, to wit, this 27th day of December, 2001, it is hereby *Ordered* and *Decreed* that Local Rule 1915.3(h) is hereby *Adopted* and shall read as follows:

Local Rule 1915.3(h).

(h) A party may offer into evidence without further proof the following items:

(1) Reports and correspondence and records from physical health providers, educators, law enforcement departments and related officials if said documents are provided to opposing counsel or pro se party at least twenty (20) days before the scheduled hearing. If the moving party receives no written objection thereto not less than ten (10) days prior to the trial date, this evidence shall be admitted without the necessity of testimony from the scrivener. If objection is made, the party requesting the admission of said evidence may submit a specific written request for an evidentiary ruling to the Court Administrator for referral to the appropriate Judge. In no event shall the scheduled hearing be delayed as a result of the application of this rule.

(2) Reports and correspondence from mental health providers and custody evaluators if said documents are provided to opposing counsel or pro se party at least twenty (20) days before the scheduled hearing. If the moving party receives no written objections thereto, not less than ten (10) days prior to the trial date, this evidence shall be admitted without the necessity of testimony from the scrivener. If objection is made, the party requiring the admission of said evidence must be prepared to present the person whose testimony is waived by this rule. In no event shall the scheduled hearing be delayed as a result of the application of this rule.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 02-82. Filed for public inspection January 18, 2002, 9:00 a.m.]

DELAWARE COUNTY

Adoption of Delaware County Local Rule 227.1(g); No. 00-3708

Order

And Now, to wit, this 18th day of December, 2001, it is hereby *Ordered* and *Decreed* that Local Rule 227.1(g) is hereby *Adopted* and shall read as follows:

Rule 227.1(g). Appeal from objections to Tax Sale.

A Motion for post-trial relief may not be filed in an Adjudication or determination by the Court upon any Petition seeking to set aside a Tax Sale pursuant to the Pennsylvania Real Estate Tax Sale Law, 72 P. S. Section 5860.101 et seq.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 02-83. Filed for public inspection January 18, 2002, 9:00 a.m.]

DELAWARE COUNTY

Rescind Delaware County Local Rule 3173(a); No. 00-3708

Order

And Now, to wit, this 18th day of December, 2001, it is hereby *Ordered* and *Decreed* that Delaware County Local Rule 3173 (a) is hereby *Rescinded*.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 02-84. Filed for public inspection January 18, 2002, 9:00 a.m.]

WESTMORELAND COUNTY

Rule WJ507 Retention of Court Reporter Notes; No. 3 of 2002

Administrative Order

And Now This 3rd day of January, 2002, *It Is Hereby Ordered* that Westmoreland County Rule of Judicial Administration WJ507 is rescinded, and new Rule WJ507 is adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule WJ507. Retention of Court Reporter Notes and Transcripts.

A. Raw Notes of Testimony

1. "Raw notes" are those on paper tapes and/or other media in the original state in which they existed when taken at the time of testimony.

2. Court reporters will transcribe notes of all Termination of Parental Rights and Adoption proceedings. The transcript and printed raw notes of testimony will be filed in the record, and retained.

3. The court reporter may destroy the raw notes 60 days after the date of filing of the transcript. The court reporter shall retain the notes until the court rules on any objections of the transcript.

4. In any case in which no transcript has been prepared, the raw notes shall be retained for seven years from the date of testimony.

5. Notwithstanding the provisions of this subsection, any party may petition the court for an order directing the retention of particular court reporter notes for a period of time beyond that required herein.

B. Transcripts

1. The original of all transcripts will be filed with the appropriate record keeper. With the exception of subsections 2 and 3, Transcripts filed with the Prothonotary, Clerk of the Orphans' Court, and Clerk of Courts are subject to the retention periods set forth in the *County Records Manual*.

2. Transcripts filed in juvenile matters may be destroyed when the subject reaches the age of 25, or 10 years after the last action in the case, whichever is later.

3. Transcripts for Divorce or Annulment cases may be destroyed 5 years after the Final Decree in Divorce or Annulment is entered.

C. Record Retention Disposal Log

Disposal of raw notes shall be accomplished as provided in Section 2.3 of the *Supreme Court's Record Retention and Disposition Schedule*. When completing Disposal Log Forms, the raw notes need not be listed on the Records Disposal Log by caption and case number, but may be listed merely by date of hearing.

Comment: The requirements of this Rule are derived from the *Supreme Court Record Retention and Disposition Schedule*.

[Pa.B. Doc. No. 02-85. Filed for public inspection January 11, 2002, 9:00 a.m.]
