

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS [204 PA. CODE CH. 211]

Promulgation of Consumer Price Index and Judicial Salaries pursuant to Act 51 of 1995; No. 247 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And Now, this 27th day of November, 2002, pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, it is hereby *Ordered* that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U) for the most recent 12-month period and the judicial salary amounts effective January 1, 2003, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10(c) of the Pennsylvania Constitution and Section 1721 of the Judicial Code, 42 Pa.C.S. § 1721, the Supreme Court of Pennsylvania has authorized the Court Administrator to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for the most recent 12-month period and the judicial salaries effective January 1, 2003, as required by Act 51 of 1995, amending the Public Official Compensation Law, Act of September 30, 1983 (P. L. 160, No. 39), 65 P. S. § 366.1 et seq. See, No. 247 Judicial Administration Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage of increase in the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, Consumer Price Index for All Urban Consumers (CPI-U), for the 12-month period ending October 2002, was 1.6 percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUURA102SAO, Tuesday, November 19, 2002).

The Court Administrator of Pennsylvania also reports that the following judicial salaries are adopted to implement Act 51 of 1995:

§ 211.2. Judicial salaries effective January 1, 2003.

(a) *Supreme Court.*—The annual salary of the Chief Justice of the Supreme Court shall be \$143,372 and the annual salary of each of the other justices of the Supreme Court shall be \$139,585.

(b) *Superior Court.*—The annual salary of the President Judge of the Superior Court shall be \$137,254 and the annual salary of the other judges of the Superior Court shall be \$135,213.

(c) *Commonwealth Court.*—The annual salary of the President Judge of the Commonwealth Court shall be \$137,254. The annual salary of each of the other judges of the Commonwealth Court shall be \$135,213.

(d) *Courts of common pleas.*—

(1) The annual salary of a president judge of a court of common pleas shall be fixed in accordance with the following schedule:

(i) Allegheny County, \$123,557.

(ii) Philadelphia County, \$124,140.

(iii) Judicial districts having six or more judges, \$122,392.

(iv) Judicial districts having three to five judges, \$121,809.

(v) Judicial districts having one or two judges, \$121,225.

(vi) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of six or more judges, \$122,392.

(vii) Administrative judges of the divisions of the Court of Common Pleas of Philadelphia County with divisions of five or less judges, \$121,809.

(viii) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of six or more judges, \$122,392.

(ix) Administrative judges of the divisions of the Court of Common Pleas of Allegheny County with divisions of five or less judges, \$121,809.

(2) The other judges of the courts of common pleas shall be paid an annual salary of \$121,225.

(e) *Philadelphia Municipal Court.*—The President Judge of the Philadelphia Municipal Court shall receive an annual salary of \$120,060. The annual salary for the other judges of the Philadelphia Municipal Court shall be \$118,021.

(f) *Philadelphia Traffic Court.*—The President Judge of the Philadelphia Traffic Court shall receive an annual salary of \$64,111. The annual salary for the other judges of the Philadelphia Traffic Court shall be \$63,529.

(g) *District justices.*—A district justice shall receive an annual salary payable by the Commonwealth of \$60,031.

(h) *Senior judges.*—The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be \$371 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.

[Pa.B. Doc. No. 02-2211. Filed for public inspection December 13, 2002, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 7]

Post-Sentence Motions: Time for Appeal; Court Order; Reconsideration

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 720 (Post-Sentence Procedures; Appeal) to further clarify that (1) the time for an appeal when a post-sentence motion is not timely filed is the date of the imposition of sentence; (2) the judge's order denying a post-sentence motion must be entered promptly and must contain the notice information required by the rule; and (3) the judge may not vacate sentence. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Tuesday, January 21, 2003.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

Rule 720. Post-Sentence Procedures; Appeal.

(A) TIMING.

* * * * *

(3) If the defendant does not file a **timely** post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in paragraph (A)(4).

(4) If the Commonwealth files a **timely** motion to modify sentence pursuant to Rule 721, the defendant's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion.

(B) OPTIONAL POST-SENTENCE MOTION.

* * * * *

(3) Time Limits for Decision on Motion.

* * * * *

(c) When a post-sentence motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and [**shall**], as provided in **Rule 114**, forthwith [**furnish**] **shall serve** a copy of the order [**by mail or personal delivery to**] on the attorney for the Commonwealth, the defendant(s), and defense counsel that the post-sentence motion is deemed denied. This order is not subject to reconsideration.

(d) If the judge denies the post-sentence motion, the judge promptly shall enter an order that shall include the information required by paragraph (B)(4), and the order shall be filed and served as provided in Rule 114.

[(d)] (e) * * *

Comment

* * * * *

TIMING

* * * * *

If no timely post-sentence motion is filed, the defendant's appeal period runs from the date sentence is imposed. See paragraph (A)(3). Under paragraph (A)(4), however, when the defendant has not filed a post-sentence motion but the Commonwealth files a **timely** motion to modify sentence under Rule 721, it is the entry of the order disposing of the Commonwealth's motion that commences the 30-day period during which the defendant's notice of appeal must be filed. See Rule 721(B)(2)(b).

* * * * *

DISPOSITION

* * * * *

If the trial judge decides the motion within the time limits of this rule, the judge may [**reconsider that decision**] **grant reconsideration on the post-sentence motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.1**, but the judge may not vacate the sentence pending reconsideration. Rule 720(B)(3). The reconsideration period may not be used to extend the timing requirements set forth in paragraph (B)(3) for decision on the post-sentence motion: the time limits imposed by paragraphs (B)(3)(a) and (B)(3)(b) continue to run from the date the post-sentence motion was originally filed. The trial judge's reconsideration must therefore be resolved within the 120-day decision period of paragraph (B)(3)(a) or the 30-day extension period of paragraph (B)(3)(b), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-sentence motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (B)(3)(c).

* * * * *

Official Note: Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996. *Comment* revised Septem-

ber 26, 1996, effective January 1, 1997; amended August 22, 1997, effective January 1, 1998; *Comment* revised October 15, 1997, effective January 1, 1998; amended July 9, 1999, effective January 1, 2000; renumbered Rule 720 and amended March 1, 2000, effective April 1, 2001; amended _____, 2003, effective _____, 2003.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed clarifying changes to Rule 720 published at 32 Pa.B. 6077 (December 14, 2002).

REPORT

Proposed amendments to Rule 720

Post-Sentence Motions: Time For Appeal; Court Order; Reconsideration

INTRODUCTION

The Committee has continued to monitor Rule 720 (Post-Sentence Procedures; Appeals) since its adoption in 1993. As a result of this monitoring, on several occasions while reaffirming the Rule 720 procedures as adopted, the Committee has recommended a few changes to clarify the intent and purpose of the rule.¹ Since the Court's most recent changes in 1999, two additional issues have been raised with the Committee that we concluded necessitate further clarification in Rule 720.²

First, there continues to be some confusion about the time for appeal when a defendant files an untimely post-sentence motion. Second, there is some confusion about the content of the judge's order denying a post-sentence motion.

The Committee considered these issues and concluded the post-sentence procedures in Rule 720 are meeting the needs of the criminal justice system without unduly burdening the courts. However, in an exercise of caution and as an aid to the trial and appellate courts, as explained below, the Committee is proposing a few additional changes to provide further clarification in the rule and Comment with regard to the time for appeal and the content of the judge's order.

DISCUSSION

1. Untimely Post-Sentence Motions

An issue that has come up from time to time in the case law concerns the time for appeal when a defendant files a post-sentence motion beyond the 10-day time limit of Rule 720(A)(1) and, notwithstanding the untimeliness of the motion, the trial court disposes of the motion. Although the appellate courts have determined in these cases the time for appeal runs from the imposition of sentence and quashed the appeals, in dicta and in some concurring and dissenting opinions, some appellate court

¹ For example, in 1997, the Court amended Rule 720, inter alia, to make it clear that the judge may not vacate sentence, see Committee's explanatory Final Report at 27 Pa.B. 4553 (9/6/97), and in 1999, amended the rule to clarify the procedures when a defendant withdraws a post-sentence motion, see Committee's explanatory Final Report at 29 Pa.B. 3836 (7/24/99).

² One issue the Committee declined to address concerns the ongoing problem with obtaining trial transcripts in a timely manner, particularly when new counsel enters the case after trial but before post-sentence motions or a notice of appeal are filed. The Committee recognizes that there continues to be problems for the members of the bar in obtaining trial transcripts and meeting the time requirements of the Rules of Criminal and Appellate Procedure, but we do not think these are problems that can be resolved by the Criminal Rules. See discussion in section (3)(b) (Transcript Preparation), 23 Pa.B. 1701, 1704 (4/10/93).

judges have suggested Rule 720 should provide a mechanism for the trial judge to decide these untimely motions.³

The Committee reviewed the case law and the Committee's Rule 720 history,⁴ and concluded Rule 720 should not be amended to permit the trial judge to dispose of the untimely filed post-sentence motion. Post-sentence motions are optional, and the defendant has not lost the opportunity for post-sentence review if the trial judge is not authorized to dispose of untimely filed post-sentence motions. The review just will occur in the Superior Court. Furthermore, to permit the trial judge to vacate sentence within the 30-day time period permitted by 42 Pa.C.S. § 5505 would be completely contrary to the purpose of the rule, and would open the door for the potential recurrence of the types of abuses the Court eliminated with the adoption of Rule 720.

The Committee agreed, however, as an aid to the bench and bar, that Rule 720(A)(3) and (A)(4) should be amended by the addition of "timely" before "post-sentence motion." Although we believe the rule is clear without these proposed changes, adding "timely" will remove any doubt about the intent of these provisions.

The Committee also is proposing a correlative revision to the fourth paragraph of the "Disposition" section of the Comment. We reviewed the rule and *Comment*, and the Rule 720 history, in view of the suggestions by some Superior Court judges that pursuant to 42 Pa.C.S. § 5505 the trial judge should be able to vacate sentence to decide an untimely filed post-sentence motion, and the fact that some trial judges have been using 42 Pa.C.S. § 5505 to vacate sentence to extend the time for decision on the post-sentence motion. We noted as part of the 1997 changes to Rule 720, which had been intended to provide further clarification that the trial judge may not vacate sentence under Rule 720, that the specific references to 42 Pa.C.S. § 5505 and Pa.R.A.P. 1701 were deleted. The Committee agreed the rule would be clearer if these references were again included in the Comment.

2. Judge's Order

The other issue addressed by the Committee concerns the content of the judge's order denying a post-sentence motion. Apparently, because Rule 720(B)(3) does not address the trial judge issuing an order, there is some confusion about the procedures for the entry, filing, and service of the judges' orders and the contents of the orders. The Committee recognized that, in this area, it is important to ensure the defendant receives notice of the denial of the post-sentence motion as soon as possible in view of the 30-day appeal period.⁵ We therefore agreed to propose an amendment to Rule 720, adding a new paragraph (B)(3)(d) that will make it clear that (1) the trial judge must promptly enter his or her order, (2) the order must include all the information required by paragraph (B)(4), and (3) the order must be filed and served as provided in Rule 114 (Notice and Docketing of Orders). We also are proposing a correlative amendment to para-

³ See, for example, Judge Popovich's opinion in *Commonwealth v. Felmlee*, 2002 PA Super 179 (June 7, 2002), footnote 2, and Judge Klein's concurring and dissenting opinion in *Felmlee*. (The Superior Court has withdrawn *Felmlee* and granted en banc reconsideration.)

⁴ See Committee Final Reports explaining the provisions of new Rule 1410 (now Rule 720) and the 1997 amendments, in particular the explanation of the optional nature of the post-sentence motion and the interplay of Rule 720 with 42 Pa.C.S. § 5505 and Pa.R.A.P. 1701, at 23 Pa.B. 1699 (4/10/93), 24 Pa.B. 334 (1/15/94), and 27 Pa.B. 4553 (9/6/97).

⁵ The appeal period runs from the entry of the order, whether it is the judge's order denying the motion or the order entered by the clerk of courts denying the motion by operation of law. See 24 Pa.B. 334 (1/15/94). The Comment refers to Pa.R.A.P. 108 (Date of Entry of Orders) that provides "in computing any period of time under these rules involving the date of entry of an order . . . , the day of entry shall be the day the clerk of court . . . mails or delivers copies of the order to the parties. . . ."

graph (B)(3)(c) to reference Rule 114 for the service requirements for the order entered on behalf of the court by the clerk of courts when a post-sentence motion is denied by operation of law.

[Pa.B. Doc. No. 02-2212. Filed for public inspection December 13, 2002, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Order Amending Rule 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 138; Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rule 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2003. These rule changes clarify that a party who has been allowed to proceed in forma pauperis pursuant to Rule 206 is not required to pay service costs. The changes also provide for minor technical or "housekeeping" amendments to the rule. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 25th day of November, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 31 Pa.B. 5793 (October 20, 2001), 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 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2003.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 206. [Fees.] Costs; Proceedings In Forma Pauperis.

A. Except as otherwise provided by law, the [fees] costs for filing and service of the complaint shall be paid at the time of filing.

B. Except as otherwise provided by subdivision C of this rule, the prevailing party in district justice proceedings shall be entitled to recover [his] taxable costs from the unsuccessful [litigant] party. Such costs shall consist of all filing, personal service, witness, and execution costs [or fees] authorized by [law] Act of Assembly or general rule and paid by the prevailing party.

C. Taxable costs on appeal or certiorari shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he or she does not obtain on appeal a judgment more favorable than that [which he] obtained in the district justice proceeding. A defendant who prevails on certiorari proceedings brought by [him] the defendant or who obtains a favorable judgment [in his favor] upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding district justice proceeding and may recover [his] taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the district justice proceeding may recover [his] taxable costs in that proceeding from the defendant if [he] the plaintiff is successful on appeal, and in that event the defendant may not recover [his] costs in the district justice proceeding from the plaintiff.

* * * * *

Official Note: "Execution" costs [or fees] include those for executing an order for possession. The items constituting taxable costs in appeal or certiorari proceedings will be governed by law or general rule applicable in the court of common pleas.

["Service] Under subdivision B, "personal service . . . [costs or fees] refer] costs" refers only to personal service since mail costs are to be borne by the plaintiff in all cases in accordance with Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1.

This rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. See *Brady v. Ford*, 451 Pa. Super. 363, 679 A.2d 837 (1996).

For special provisions governing [proceedings in forma pauperis, see Section] actions pursuant to the Protection From Abuse Act, see Sections 6106(b) and (c) of the Domestic Relations Code, 23 Pa.C.S. [Section] §§ 6106(b) and (c).

E. Proceedings In Forma Pauperis

* * * * *

(ii) Except as provided by [subdivision] subparagraph (iii), the party shall file a petition and affidavit in the form prescribed by [subdivision] subparagraph (vi). The petition may not be filed prior to the commencement of the action, which action shall be accepted in the first instance, without the payment of [a] filing [fee] costs.

Except as prescribed by [subdivision] subparagraph (iii), the District Justice shall act promptly upon the petition and shall enter [an order] a determination within five days from the date of the filing of the petition. If the petition is denied, in whole or in part, the District Justice shall briefly state the reasons therefor. [In this case the] The unsuccessful petitioner may proceed no further so long as such [fee remains] costs remain unpaid.

(iii) If the party is represented by an attorney, the District Justice shall allow the party to proceed in forma pauperis upon the filing of a praecipe which contains a certification by the attorney that [he] the attorney is

providing free legal service to the party and [that he] believes the party is unable to pay the costs.

(iv) A party permitted to proceed in forma pauperis shall not be required to pay [the filing fee] any costs imposed or authorized by Act of Assembly or general rule which are payable to any court or any public officer or employee.

[Such] The district justice shall inform a party [shall be informed] permitted to proceed in forma pauperis of the option to serve the complaint by mail in the manner permitted by [the Rules of Civil Procedure Governing Actions And Proceedings Before District Justices] these rules.

A party permitted to proceed in forma pauperis has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

(v) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed in forma pauperis, the exonerated [fees] costs shall be taxed as costs and paid to the District Justice by the party paying the monetary recovery. In no event shall the exonerated [fee] costs be paid to the indigent party.

(vi) The petition for leave to proceed in forma pauperis and affidavit shall be substantially in the following form:

[Caption]

Petition

I hereby request that I be permitted to proceed in forma pauperis (without payment of the filing [fee] and service costs). In support of this I state the following:

1. I am the plaintiff in the above matter and because of my financial condition am unable to pay the [fee] costs for filing and service of this action.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the [fees and] costs is true and correct:

* * * * *

[Comment]

Official Note: This Rule substantially follows Pa.R.C.P. No. 240. Under subparagraph E(iv), "any costs" includes all filing, service, witness, and execution costs.

Adopted April 25, 1979, effective in 30 days. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective Sept. 18, 1990; amended March 27, 1992, effective June 25, 1992 [**The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."**]; amended November 25, 2002, effective January 1, 2003.

FINAL REPORT¹

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

Amendment to Pa. R.C.P.D.J. No. 206

AMENDMENT TO RULE 206 TO CLARIFY THAT A PARTY WHO HAS BEEN ALLOWED TO PROCEED IN FORMA PAUPERIS PURSUANT TO RULE 206 IS NOT REQUIRED TO PAY SERVICE COSTS

On November 25, 2002, effective January 1, 2003, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

I. Background

The Committee undertook a review of Rule 206 in response to an inquiry from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC asked the Committee to review the issue of whether a party who has been allowed to proceed in forma pauperis as provided by Rule 206 is required to pay constable (service) costs. The AOPC noted that Rule 206E provides that a party who is unable to pay the costs of litigation shall be entitled to proceed in forma pauperis, and that the rule further provides that a party permitted to proceed in forma pauperis shall not be required to pay the filing fee imposed or authorized by Act of Assembly or general rule. The AOPC further noted that Rule 206 is silent as to whether payment of service costs is required by a party proceeding in forma pauperis. Upon review of the rule, the Committee noted that the Note to Rule 206 states that the rule "substantially follows Pa.R.C.P. No. 240," which appears to specifically exempt all costs. Pa.R.C.P. No. 240(f)(1) provides that "a party permitted to proceed in forma pauperis shall not be required to pay any costs or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee."

After review and discussion, the Committee agreed that Rule 206 is inconsistent with Pa.R.C.P. No. 240 in that Rule 206 refers only to filing fees and is silent as to the payment of service costs by parties who are permitted to proceed in forma pauperis. Further, the Committee agreed that it is well settled that such parties should not be required to pay service costs. Accordingly, the Committee recommended that Rule 206 be amended to make this clarification and to more closely mirror Pa.R.C.P. No. 240.

In conjunction with the amendment to the rule described above, the Committee also recognized the need for several technical or "housekeeping" amendments to this rule.

II. Discussion of Rule Changes

First, as noted above, the Committee recommended that Rule 206E(iv) be amended to closely resemble Pa.R.C.P. No. 240(f)(1), thereby clarifying that a party permitted to proceed in forma pauperis shall not be required to pay "any costs" including filing, service, witness, and execution costs.

Also, the Committee recommended a further amendment to Rule 206E(iv) to include a provision similar to Pa.R.C.P. No. 240(e) to make clear that a party permitted to proceed in forma pauperis has a continuing obligation to inform the court of improvement in the party's financial circumstances which would enable the party to pay costs. The Committee noted that such a provision is included in the in forma pauperis petition form (Rule 206E(vi)), but is not specified in the rule itself.

² Recommendation No. 3 Minor Court Rules 2002.

³ Supreme Court of Pennsylvania Order No. 138, Magisterial Docket No. 1, Book No. 2 (November 25, 2002).

The Committee also recommended a revision to the Note to clarify that the rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. As authority for this, the Committee recommended that a reference to *Brady v. Ford*, 679 A.2d 837 (Pa. Super. Ct. 1996), be added to the Note.

Finally, in conjunction with the amendments and revisions described above, the Committee also recognized the need for minor changes to the rule and its Note to make other minor clarifications, to address gender neutrality issues, to correct citation form, and to conform with modern drafting style.

[Pa.B. Doc. No. 02-2213. Filed for public inspection December 13, 2002, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 200]

Order Adopting New Rule 212 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 139; Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the new Rule 212 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2003. This new rule provides for the design of forms. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 25th day of November, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 31 Pa.B. 7028 (December 29, 2001), 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 new Rule 212 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2003.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 212. Design of Forms.

The Court Administrator of Pennsylvania, in consultation with the Minor Court Rules Committee, shall design and publish forms necessary to implement these rules.

Adopted November 25, 2002, effective January 1, 2003.

FINAL REPORT¹

New Pa. R.C.P.D.J. No. 212

DESIGN OF FORMS

On November 25, 2002, effective January 1, 2003, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania adopted new Rule 212 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

Proceedings in district justice courts, more so than in other courts, rely heavily on the use of preprinted standard forms. Forms are used for basic pleadings, notices, and virtually all other case-related documents. Most forms used in district justice proceedings are computer generated, produced by the District Justice Automated System (DJS). Traditionally, when individual rules have specified that a form is to be used for a certain document, the rules have made reference to "a form prescribed by the State Court Administrator." In drafting proposed new rules and amendments to existing rules, the Committee has decided that the use of this language in individual rules is cumbersome and unnecessary.

As an alternative, the Committee recommended an entirely new Pa.R.C.P.D.J. No. 212 to be a general rule regarding the design of forms. In recommending such a rule, the Committee contemplated that references to forms in individual rules could be eliminated, except where the content of a form is to be expressly dictated by the rule.

The new rule, which is modeled after Pa.R.Crim.P. 104, provides that "[t]he Court Administrator of Pennsylvania, in consultation with the Minor Court Rules Committee, shall design and publish forms necessary to implement these rules."

[Pa.B. Doc. No. 02-2214. Filed for public inspection December 13, 2002, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 500]

Order Amending Rule 512 and Revising the Note to Rule 514 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 140; Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments and revisions to the Notes to Rules 512 and 514 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective July 1, 2003. These rule changes clarify that the plaintiff/landlord in a landlord and tenant case must appear at the hearing and give testimony, and that a district justice may not enter a default judgment in a landlord and tenant case. The changes also provide for minor technical or "housekeeping" amendments to these rules. The Final Report follows the Court's Order.

Order

Per Curiam:

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

² Recommendation No. 2 Minor Court Rules 2002.

³ Supreme Court of Pennsylvania Order No. 139, Magisterial Docket No. 1, Book No. 2 (November 25, 2002).

And Now, this 25th day of November, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 30 Pa.B. 6547 (December 23, 2000), 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 512 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is amended, and the Note to Rule 514 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is revised, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2003.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 512. Hearings and Evidence.

A. The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property.

B. The district justice shall be bound by the rules of evidence, except that a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy or authenticity.

Official Note: Subdivision A of this rule is intended to make clear that the district justice may not enter a default judgment in a possessory action, including a judgment for money only. The plaintiff must appear and give testimony to prove the complaint even when the defendant fails to appear for the hearing. See Rule 514A and Note. See also Section 503(a) of The Landlord and Tenant Act of 1951, 68 P. S. § 250.503(a). When the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint without prejudice.

[This] Subdivision B of this rule is the same as Rule 321 of the [trespass and assumpsit] civil action rules.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended November 25, 2002, effective July 1, 2003.

Rule 514. Judgment.

* * * * *

Official Note: Subdivision A of this rule requires that the plaintiff appear and give testimony to prove the complaint before the district justice can enter judgment against the defendant, even when the defendant fails to appear for the hearing. The district justice may not enter a default judgment in a possessory action, including a judgment for money only. See Rule 512A and Note. The various issues that the district justice must determine at the hearing include: whether notice to quit was given to the defendant in accordance with law or that no notice was required under the terms of the lease; the amount of rent due, if any; damages to the leasehold premises, if any; the amount found to

constitute the monthly rental, and; the amount of the security deposit held by the landlord, if any.

As to the notice to quit requirement, see Section 501 of The Landlord and Tenant Act of 1951, 68 P. S. § 250.501. See also *Patrycia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966).

The separate entries provided in Subdivision A are made necessary as a result of the rental deposit provisions for appeal or certiorari contained in [Pa. R.C.P.D.J. Nos. 1008.B. and 1013.B.] Rules 1008B and 1013B, as well as the wage attachment provisions contained in [Act 5 of 1996] Section 8127 of the Judicial Code, 42 Pa.C.S. § 8127.

* * * * *

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."]; March 28, 1996, effective March 29, 1996; Note revised November 25, 2002, effective July 1, 2003.

FINAL REPORT¹

Amendments and Revisions to the Notes to Pa. R.C.P.D.J. Nos. 512 and 514

DEFAULT JUDGMENT PROHIBITED IN ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY ("LANDLORD/TENANT" ACTIONS)

On November 25, 2002, effective July 1, 2003, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended or revised the Notes to Rules 512 and 514 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

I. Background

The Committee undertook a review of the issue of the entry of default judgments in landlord/tenant actions on its own initiative, recognizing a need for clarification in the rules that default judgments should be prohibited in these cases. The prohibition against default judgments in landlord/tenant cases has for some time been referred to in the Note to Rule 504, but the Committee felt that the prohibition should be more prominently announced in the rules. The Committee noted that the statewide district justice computer system (DJS) does permit the entry of a disposition of default judgment in landlord/tenant actions, and that many district courts routinely enter this disposition when a defendant fails to appear for a landlord/tenant hearing. The Committee learned that many such dispositions are entered in the DJS every year. Accordingly, the Committee recommended amendments or revisions to the Notes to Rules 512 and 514 as described below.

In considering how to clarify the prohibition of default judgments in landlord/tenant actions, the Committee first

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

² Recommendation No. 1 Minor Court Rules 2002.

³ Supreme Court of Pennsylvania Order No. 140, Magisterial Docket No. 1, Book No. 2 (November 25, 2002).

considered whether such a prohibition is necessary and whether it is appropriately pronounced by procedural rule. The question was raised as to why it is necessary to hold a perfunctory hearing when the defendant fails to appear. The Committee acknowledged that if a plaintiff/landlord seeks a only money judgment the matter would be filed as a regular civil action, and not as a landlord/tenant action. As such, if the defendant fails to appear, there would be no need for a hearing, the plaintiff/landlord need not appear, and the district justice may enter judgment by default against the defendant/tenant. It is the Committee's opinion, however, that where the landlord seeks possession of real property there are certain determinations that the district justice must make, as discussed below, requiring a hearing and the presence of the landlord, regardless of whether or not the tenant appears. The Committee wishes to stress that such a hearing is often informal in nature, and can be held even if the tenant does not appear. In stating that there may be no default judgment in landlord/tenant cases, it is not the Committee's intent to suggest that the defendant must be present before judgment may be entered; rather, only that the landlord must appear and give testimony before judgment may be entered.

In its analysis, the Committee reviewed the Landlord and Tenant Act of 1951 and the existing rules to conclude that a hearing is necessary. First, the Committee looked to the statutory language of the Landlord and Tenant Act of 1951, 68 P. S. § 250.101 et seq. Section 503(a) of the Act states, *inter alia*:

(a) On the day and at the time appointed or on a day to which the case may be adjourned, *the justice of the peace shall proceed to hear the case. If it appears that the complaint has been sufficiently proven, the justice of the peace shall enter judgment against the tenant:*

68 P. S. § 250.503(a) (emphasis added). This statutory language suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint.

Secondly, Rule 514 contains language similar to that found in 68 P. S. § 250.503(a). Rule 514A states, *inter alia*:

A. *If it appears at the hearing that the complaint has been proven, the district justice shall enter judgment against the defendant that the real property be delivered up to the plaintiff and shall enter judgment by separate entries:*

Pa. R.C.P.D.J. No. 514 (emphasis added). The language of this rule, like that in the statute, suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint.

As mentioned above, when a landlord seeks possession of real property, existing Rule 514 requires that the district justice make and record certain determinations on the transcript or the notice of judgment. These determinations include:

- a determination of the amount of rent due, if any, as of the date of the hearing;
- a determination of the amount of damages for unjust detention and physical damages to the property, if any, and;
- the monthly rent amount, as is needed by the common pleas prothonotary to properly process an appeal.

Also, the district justice must determine:

- whether notice to quit was given to the tenant in accordance with law or that no notice was required under the terms of the lease, because without proper notice to quit or waiver thereof the district justice lacks jurisdiction over the landlord/tenant action;⁴
- whether possession is sought because of non-payment of rent or because of some other breach of the lease, so as to determine whether the provisions of Pa.R.C.P.D.J. No. 518⁵ apply to the case, and;
- a determination of the security deposit amount, as is needed to properly establish the money portion of the judgment.

The determinations listed above cannot necessarily be ascertained from the face of the complaint, and therefore can be made only after hearing testimony from the landlord. The Committee notes that if the district justice does not hold a hearing to take testimony from the landlord as needed to make these determinations, court staff may be preparing notices of judgment with no judicial determination of these issues.

Further, the Committee notes that landlords are required to appear for all landlord/tenant hearings anyway, since there is no requirement that tenants give notice of their intention to defend as in regular civil actions.⁶ As such, these amendments do not place any additional burden on the landlord.

Finally, the Committee noted that the recommended amendments are intended to simply clarify and insert existing practice into the rules. Again, the Committee notes that the Note to Rule 504 already states "there can be no default judgment in these possessory actions" Pa. R.C.P.D.J. No. 504, Note.

II. Discussion of Rule Changes

A. Default Judgments in Landlord/Tenant Actions

Having concluded that a hearing is required before a district justice can enter judgment for the plaintiff in a possessory action, and therefore that default judgment should be prohibited, the Committee went on to discuss the most appropriate way in which to incorporate this into the rules. As previously stated, the Note to Rule 504 already states that ". . . there can be no default judgment in these possessory actions" Pa. R.C.P.D.J. No. 504, Note. The Committee considered an amendment to Rule 504, but ultimately focused its attention on Rule 512, relating to hearings and evidence. The Committee decided that Rule 512 should be divided into two parts. Subdivision A will now read, "The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property." Subdivision B will contain the existing language of the rule. A sentence has also been added to the Note to clarify that the district justice may not enter a default judgment, including a judgment for money only.

The Committee also decided that the Note to Rule 514, relating to judgment, should be revised to make clear that

⁴ In support of this, the Committee recommended that Section 501 of the Landlord and Tenant Act of 1951, 68 P. S. § 250.501, and *Patricia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966), be cited in the Note to Rule 514.

⁵ Rule 518 provides, "[a]t any time before actual delivery of the real property is made in execution of the order for possession, the defendant may, in a case for the recovery of possession solely because of failure to pay rent, satisfy the order for possession by paying to the executing officer the rent actually in arrears and the costs of the proceedings." Pa.R.C.P.D.J. No. 518 (Emphasis added).

⁶ Pa.R.C.P.D.J. No. 305(4), relating to regular civil actions, provides for a notice to the defendant that states, *inter alia*, "(a) If you [the defendant] intend to enter a defense to the complaint, you should so notify this office immediately. . . . (c) YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT." Rule 504, relating to landlord/tenant actions, also provides for a notice to the defendant, but requires no notice of intent to defend, and does not expressly refer to judgment by default.

default judgments are not permitted, and to cross reference Rule 512 with regard to this prohibition. Also, in the Note to Rule 514, the Committee recommended a new first paragraph to not only clarify that the plaintiff must appear and give testimony, but also to clarify the various issues that the district justice must determine, at the hearing, before the district justice can enter judgment for the plaintiff. With regard to the notice to quit requirement, the Committee recommended that a cross reference to Section 501 of the Landlord and Tenant Act, and a reference to *Patrycia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966), be added.

B. Clarification Regarding Failure of Plaintiff to Appear for Landlord/Tenant Hearing

In the Note to Rule 512, the Committee recommended a revision to clarify the proper procedure when the plaintiff fails to appear at a landlord/tenant hearing. While this procedure is made clear in civil actions by Rule 319, relating to failure of a party to appear at the hearing, there is no analogous rule in the 500 Series, nor did the Committee believe that such a rule would be necessary. The recommended revision to the Note, however, would simply clarify that when the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint without prejudice.

C. Technical and "Housekeeping" Amendments

In conjunction with the substantive changes discussed above, the Committee identified a number of technical and "housekeeping" amendments needed in Rules 512 and 514. In the notes to both rules, the Committee recommended minor changes to correct citation form and to make references to other rules more consistent.

[Pa.B. Doc. No. 02-2215. Filed for public inspection December 13, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Amendment of Local Rules of Civil Procedure L1915.3, L1915.4 and L1915.4-1; No. 01-1115

Administrative Order 15-2002

And Now, this 26th day of November, 2002, in order to streamline the procedure and provide efficient and consistent filing procedures, it is hereby

Ordered and Decreed that effective January 1, 2003, the Carbon County Court of Common Pleas hereby *Amends* Local Rules of Civil Procedure L1915.3 governing the procedure for Prosecution of Action, L1915.4 governing the procedure for Prompt Disposition of Custody Cases and Mandatory Education Program for Parents in Custody Cases, and L1915.4-1 governing Alternative Hearing Procedures for Partial Custody or Visitation Cases.

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

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

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

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

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

By the Court

RICHARD W. WEBB,
President Judge

Rule L1915.3—Prosecution of Action.

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

"FORM A"

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

:
:
vs. : NO.
: CUSTODY
:

ORDER OF COURT

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

Pursuant to Carbon County Rule L1915.4 and L1915.4-1, you are ordered to appear in person at the First Floor Conference Room, Carbon County Courthouse, Jim Thorpe, Pennsylvania, 18229, on _____, 20__, at 8:30 A.M./1:00 P.M., prevailing time, for an INITIAL CONCILIATION or MEDIATION CONFERENCE before Carbon County Custody Conference Officer _____.

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

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

North Penn Legal Services
122-124 Iron Street
Lehighton, PA 18235
(610) 377-5400

BY THE COURT:

DATED: _____ J.

“FORM B”

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

vs.

: NO. : CUSTODY

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

GENERAL INFORMATION:

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

Blank lines for parent information.

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

Blank lines for children information.

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

Blank lines for other parties.

4. Status of current custody orders or custody arrangements:

Blank lines for custody status.

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

Blank lines for addresses.

Position of Party Submitting Memorandum:

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

Blank lines for living arrangements.

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

Blank lines for environment details.

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

Blank lines for other factors.

4. Efforts at mediation, conciliation, counseling:

Blank lines for mediation efforts.

TRIAL INFORMATION:

1. List of witnesses you would intend to call:

Fact Witnesses:

Blank lines for fact witnesses.

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

Blank lines for experts.

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

Blank lines for issues.

3. Remarks:

Blank lines for remarks.

Counsel for _____

COPIES TO BE SENT TO: Court Opposing Counsel

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

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

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

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

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

5. If the parties are unable to agree, the hearing officer shall immediately schedule a hearing.

6. At the conclusion of the pre-hearing conference, the hearing officer shall prepare a recommended Interim Order which said officer believes is in the best interest of the child(ren) and forward it to the Court within 10 days of the pre-hearing conference. The Interim Order shall require the parties to file a Pre-Trial Memorandum with the Prothonotary's Office within five (5) days prior to hearing, and shall contain the following:

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

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

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

9. At the time of the filing of the Complaint/Petition, the Attorney or unrepresented party shall attach the Court Order requiring attendance at the Program as set forth in Exhibit "1," a registration form, and Program description.

10. The parties shall register BY MAIL for the Program within fifteen (15) days after he or she is served with the Court Order. NO RESERVATIONS WILL BE TAKEN OVER THE TELEPHONE.

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

12. The fee for the Program is \$35.00 per party and must be submitted with the registration form. Certified check or money order will be accepted for payment. Checks and money orders shall be made payable to the Kathryn James. NOTE: NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

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

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

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

Exhibit "1"

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

vs. NO. CUSTODY

ORDER OF COURT

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

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

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

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

North Penn Legal Services
122-124 Iron Street
Lehighton, PA 18235
(610) 377-5400
www.northpennlegal.org

AMERICANS WITH DISABILITIES ACT OF 1990

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

BY THE COURT:

DATED: _____ J.

EDUCATION PROGRAM FOR DIVIDED FAMILIES

In cases involving custody of minor children, mandatory attendance at one 4-hour session entitled "Education

Program for Divided Families" is required. MINOR CHILDREN SHALL NOT BE BROUGHT TO THE PROGRAM.

PROGRAM CONTENT

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

The Program addresses the following items:

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

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

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

WHO

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

WHEN

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

WHERE

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

ATTENDANCE

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

PRESENTERS

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

NOTIFICATION

A copy of the Order requiring the parties to attend the Program, a Registration Form, and Program Description will be provided to the parties by the Attorney or unrepresented party upon filing of a custody action.

FEES

A fee of \$35.00 per party is required and will be used to cover all program costs. The fee must be submitted with

the registration form directly to the Provider. Certified check or money order will be accepted as payment. NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

REGISTRATION

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

VERIFICATION OF ATTENDANCE

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

EVALUATION

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

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

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

Kathryn M. James
P. O. Box 184
Brodheadsville, PA 18322

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

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

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

You are required to attend one 4-hour Saturday session. The cost of the Program is \$35.00 per party.

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

Photo identification is required.

Parking is available on site.

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

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

Children SHALL NOT be brought to the Program.

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

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

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

Your Name: _____

Guest: _____
(Name and Relationship to Child)

Your Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: _____ (Home) _____ (Work)

SATURDAYS—9:00 A.M.
TO 1:00 P.M.

- Jan. 4, 2003 _____
- Feb. 1, 2003 _____
- March 1, 2003 _____
- April 5, 2003 _____
- May 3, 2003 _____
- June 7, 2003 _____
- July 5, 2003 _____
- August 2, 2003 _____
- Sept. 6, 2003 _____
- Oct. 4, 2003 _____
- Nov. 1, 2003 _____
- Dec. 6, 2003 _____

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

Kathryn M. James
P. O. Box 184
Brodheads ville, PA 18322
Telephone: (570) 992-2027

NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

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

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

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

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

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

5. If the parties are unable to agree, the hearing officer shall immediately schedule a hearing.

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

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

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

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

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

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

12. At the time of the filing of the Complaint/Petition, the attorney and/or unrepresented party shall attached to the Complaint/Petition and provide all parties with the Court Order requiring attendance at the Program as set forth in Exhibit "1," a registration form, and Program description.

13. The parties shall register BY MAIL for the Program within fifteen (15) days after he or she is served with the Court Order. NO RESERVATIONS WILL BE TAKEN OVER THE TELEPHONE.

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

15. The fee for the Program is \$35.00 per party and must be submitted with the registration form. Certified check or money order will be accepted for payment. Checks and money orders shall be made payable to the Kathryn James. NOTE: NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

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

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

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

Exhibit "1"

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

vs. :
: NO.
: CUSTODY
:
:
:

ORDER OF COURT

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

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

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

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

North Penn Legal Services
122-124 Iron Street
Lehigh, PA 18235
(610) 377-5400
www.northpennlegal.org

AMERICANS WITH DISABILITIES ACT OF 1990

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

BY THE COURT:

DATED: _____ J.

EDUCATION PROGRAM FOR DIVIDED FAMILIES

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

PROGRAM CONTENT

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

The Program addresses the following items:

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

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

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

WHO

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

WHEN

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

WHERE

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

ATTENDANCE

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

PRESENTERS

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

NOTIFICATION

A copy of the Order requiring the parties to attend the Program, a Registration Form, and Program Description will be provided to the parties by the Attorney or unrepresented party upon filing of a custody action.

FEES

A fee of \$35.00 per party is required and will be used to cover all program costs. The fee must be submitted with the registration form directly to the Provider. Certified check or money order will be accepted as payment. NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

REGISTRATION

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

VERIFICATION OF ATTENDANCE

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

EVALUATION

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

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

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

Kathryn M. James
P. O. Box 184
Brodheadsville, PA 18322

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

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

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

You are required to attend one 4-hour Saturday session. The cost of the Program is \$35.00 per party.

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

Photo identification is required.

Parking is available on site.

Register at least seven (7) days prior to the date you want. IF TEN (10) PARTICIPANTS ARE NOT REGIS-

TERED, THE CLASS WILL BE CANCELLED AND YOU WILL NEED TO RE-SCHEDULE. CONFIRMATIONS ARE NOT SENT. Come to the program you choose, unless notified that the class is full. Class may be cancelled due to bad weather. You will be informed of this cancellation by telephone and given a new class date. Class dates are subject to change.

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

Children SHALL NOT be brought to the Program.

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

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

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

Your Name: _____

Guest: _____
(Name and Relationship to Child)

Your Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: _____ (Home) _____ (Work)

SATURDAYS—9:00 A.M. TO 1:00 P.M.

- Jan. 4, 2003 _____
Feb. 1, 2003 _____
March 1, 2003 _____
April 5, 2003 _____
May 3, 2003 _____
June 7, 2003 _____
July 5, 2003 _____
August 2, 2003 _____
Sept. 6, 2003 _____
Oct. 4, 2003 _____
Nov. 1, 2003 _____
Dec. 6, 2003 _____

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

Kathryn M. James
P. O. Box 184
Brodheadsville, PA 18322
Telephone: (570) 992-2027

NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED. NO REFUNDS GIVEN.

[Pa.B. Doc. No. 02-2216. Filed for public inspection December 13, 2002, 9:00 a.m.]

SOMERSET COUNTY**Consolidated Rules of Court; No. 76 Misc. 2002****Adopting Order**

And Now, this 21st day of November, 2002, it is hereby *Ordered*:

1. Somerset County Rule of Civil Procedure 1910.12 (Som.R.C.P. 1910.12), Office Conference. Hearing. Exceptions, is amended to read in its entirety, as reflected in revised Som.R.C.P. 1910.12, following hereto, effective thirty (30) days after publication in *The Pennsylvania Bulletin*.

2. The Somerset County Court Administrator is directed to:

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

B. Distribute two (2) certified copies of this Order and the attached Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

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

By the Court

EUGENE E. FIKE, II,
President Judge

RULES OF COURT

Support.

Som. R.C.P. 1910.12. Office Conference. Hearing. Exceptions.

A. Promptly upon the filing of any complaint or request for modification or termination, the Domestic Relations Section shall schedule a conference, issue a scheduling order, and distribute a copy thereof to all counsel of record, and to all parties, whether or not represented by counsel of record.

B. The Domestic Relations Section may continue and reschedule the conference as may be necessary or convenient according to the needs and available facilities of the Section and as may be fair and reasonable to the parties, provided, however, that no more than two continuances for each party and no more than three continuances in the aggregate, shall be granted, unless Court approval is first obtained. If Court approval is required, a written Motion for Continuance, specifying the reasons therefor, shall be presented to the Motions Judge. Continuances requiring Court approval will be granted only in extraordinary circumstances.

C. With the approval of the Domestic Relations Section, the parties or counsel may waive notice and agree to a date and time for conference.

D. If an agreement for support is reached at the conference, the written Order and recommendation referred to in Som. R.C.P. 1910.11(d) shall be transmitted to the Court in accordance with established assignment and Motions Judge practice. Upon receipt of the written Order and recommendation, the Judge shall either approve the recommendation and enter the Order, or disapprove the

recommendation. Upon approval, the Domestic Relations Section shall promptly distribute a copy of the Order to each party and counsel.

E. If the parties do not reach agreement at the conference, or if the responding party does not appear at the conference, the Conference Officer shall submit to the Court, in accordance with established assignment and Motions Judge practice, a recommended Interim Order, to be entered by the Court as required by Pa.R.C.P. 1910.12, and if a party confirms that hearing is desired, and if the fee is paid as required by subparagraph F. of this Rule, the case shall be scheduled for a hearing before the Hearing Officer.

F. The hearing before the Hearing Officer will be scheduled only upon payment by the party desiring a hearing of a fee of \$25.00 within ten (10) days after the date of mailing of the Interim Order, as provided for in subparagraphs 1. and 2., unless excused for cause by further court order. If the fee is not paid or waived within the required ten (10) day period, hearing will not be scheduled and the Interim Order will become the final order.

1. After the conference is completed, the Conference Officer will advise the parties present that a hearing before the Hearing Officer will be scheduled, if desired, upon payment of a fee of \$25.00 by the party desiring the hearing, that the fee must be paid within ten (10) days after the date of mailing of the Interim Order, and that if not paid within the required ten (10) day period, hearing will not be scheduled and the Interim Order will become the final order.

2. If a responding party does not appear at the conference, the Conference Officer will mail with the Interim Order, a notice to the absent party that a hearing before the Hearing Officer will be scheduled, if desired, upon the payment of a \$25.00 fee by the party desiring the hearing, that the fee must be paid within ten (10) days of the date of mailing of the Interim Order and notice, and that if the fee is not paid within the required ten (10) day period, a hearing will not be scheduled and the Interim Order will become the final order.

3. Payment shall be made to the Somerset County Domestic Relations Section and shall be clearly identified as "HEARING FEE."

G. When a hearing is to be scheduled before the Hearing Officer, the Domestic Relations Section shall schedule the hearing, issue a scheduling order, and distribute a copy thereof to all parties and counsel.

H. The Hearing Officer shall conduct the hearing and proceed otherwise as provided in Pa.R.C.P. 1910.12.

I. If exceptions are filed pursuant to the provisions of Pa.R.C.P. 1910.12(f), the Domestic Relations Section shall provide a copy of the exceptions to opposing counsel and unrepresented parties.

1. In addition to any other required fee, and unless otherwise ordered, a party filing exceptions shall pay a filing fee of \$30.00 to the Domestic Relations Section at the time the exceptions are filed.

2. Unless otherwise ordered, or unless certification is submitted pursuant to subparagraph H.4.(ii) of this Rule, a party filing exceptions shall also present to the Domestic Relations Section, at the time the exceptions are filed, a check or money order in the amount of \$25.00, made payable to the stenographer, as a non-refundable advance payment toward record transcription.

3. Upon presentation of the check or money order pursuant to the requirements of the foregoing subparagraph H.1. of this Rule, or timely presentation of Order excusing payment, the Domestic Relations Section will transmit to the stenographer, the check or money order, if any, or a copy of the Order excusing payment.

a. If payment has been excused, the stenographer will immediately commence transcribing the record.

b. If payment has not been excused, upon receipt of the advance payment, the stenographer shall provide to the excepting party or parties a statement of the balance due for transcription. Within ten (10) days of the mailing of the stenographer's statement, the excepting party shall pay the balance due directly to the stenographer. Where both parties have filed exceptions, each party shall pay an amount equal to one-half of the balance of the costs due. If the stenographer does not receive payment of the balance due within the time limit required by this Rule, the stenographer shall immediately notify the Domestic Relations Section.

c. If only one party has filed exceptions and that party has failed to make the advance payment or other amounts due for the cost of transcription within the required time limit, no transcript will be prepared.

d. If both parties file exceptions and one of the parties fails to make a required payment within the time limits required by this Rule, the transcript shall be prepared, with the total cost to be paid by the non-defaulting party prior to the date set for argument. A party who fails to make payment within the time limits required by this Rule will not be permitted to rely on the transcript in support of the exceptions.

4. A party filing exceptions will be excused from paying for a transcript only if (i) a Motion To Proceed In Forma Pauperis is presented to, and approved by, the Court within the ten (10) day period allowed for filing of exceptions; or (ii) a certification is filed within the ten (10) day period allowed for filing of exceptions, certifying that the record is not necessary for disposition of the exceptions.

5. Exceptions, when filed, shall contain, or have attached, a written certification that the required deposit has been paid, or that payment is not required by Court Order or because a transcript is not necessary for disposition of the exceptions. A copy of the Court Order or certification shall be attached to the exceptions. If the certification and attachments are not filed as required, no transcript will be prepared.

6. Any party requesting reallocation of the cost of transcription shall raise the matter specifically before the Court at argument on the exceptions, or the issue of reallocation shall be deemed waived by that party.

7. Advance payment of the transcript costs within the time limits required by this Rule shall be mandatory, unless a party is permitted to proceed in forma pauperis after petition to the Court, or unless otherwise excused by the provisions of this Rule. If the costs are not paid within the time limits required by this Rule, no transcript will be prepared.

J. Upon filing of exceptions, the Domestic Relations Section shall notify the Court Administrator, who shall schedule the same for argument, sec. reg. Upon issuance of the order listing the case for argument, the Domestic Relations Section shall notify counsel and parties of the date, time, and place of the argument.

K. Following argument on the exceptions, the Court will enter an appropriate final order in the case, copy of which shall be distributed by the Domestic Relations Section to counsel and unrepresented parties.

[Pa.B. Doc. No. 02-2217. Filed for public inspection December 13, 2002, 9:00 a.m.]

YORK COUNTY

Amendment of Local Civil Rules of the Court of Common Pleas Concerning Divorce, Filing Fees, Procedures Before a Master, Exceptions from Master's Report and Mediation Fees; No. 2002 M.I. 00424

Administrative Order

And Now, this 19th day of November, 2002, *It Is Ordered* that the following Local Rules of Civil Procedure for the Court of Common Pleas of York County are added, deleted, or amended as noted.

Additionally, *It Is Hereby Ordered* that the fee for mediation conducted pursuant to custody pre-trial proceedings shall be increased to a total of \$180, the amount to be shared proportionally among the litigants as directed.

The additions, deletions and amendments to rules, and the other procedures in this order shall become effective thirty (30) days after the date of publication in the Pennsylvania Bulletin, or on January 1, 2003, whichever occurs later, and shall apply to all cases pending on that date and to all new cases filed thereafter.

It Is Further Ordered, that in accordance with Pa.R.Civ.P. 239, the District Court Administrator shall:

1. File seven certified copies hereof with the Administrative Office of the Pennsylvania Courts;
2. Distribute two certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
3. File one certified copy hereof with the Domestic Relations Procedural Rules Committee;
4. Cause a copy hereof to be published in the *York Legal Record* at the expense of the County of York; and
5. Supervise the distribution hereof to the Prothonotary of York County, who shall maintain a copy continuously available for public inspection and copying upon payment of reasonable costs, to all Judges, Divorce Masters, and custody mediators, the current list of which shall be supplied to the Court.

By the Court,

JOHN H. CHRONISTER,
President Judge

Changes to Local Rules of Civil Procedure on Divorce and Annulment; Rule 1920.1. et seq.

The following Local Rules shall be deleted:

Rule 1920.31 Income and Expense Statement—Sanctions.

Rule 1920.33 Inventory and Appraisal—Sanctions.

Rule 1920.45 Counseling.

The following Local Rules shall be amended to read as set forth as follows:

Rule 1920.51 Divorce Hearing Masters Proceedings

(a) *Qualifications and duties of divorce masters.* The Divorce Masters Office shall be responsible for scheduling and conducting all proceedings involving a master appointed pursuant to Pa.R.C.P. 1920.51, et seq. The court shall employ permanent salaried masters who shall not engage in any private domestic relation matters and who shall serve at the pleasure of the court. Their qualifications and duties shall be as follows:

(1) *The Director of the Divorce Masters Office.* The Director shall be a full-time salaried employee of the County of York and shall serve at the pleasure of the court. The Director shall be a member of the Bar of York County and shall have at least five (5) years experience of practice in the field of Divorce and Family Law. The Director shall be responsible for the operation of the Divorce Masters Office, including supervision of the employees of the office and the other masters employed by the court. The Director shall assign cases to other masters employed by the court and shall conduct proceedings in cases not assigned to other masters. The Director shall report directly to the judge presiding over the Family Court Division.

(2) *Masters.* The court may also employ part-time or full-time masters to work under the supervision of the Director. Such additional masters shall be members of the Bar of York County, shall be employees of the County of York, and shall serve at the pleasure of the court. The part-time masters shall be available at least twenty (20) hours per week to fulfill their assigned duties.

(3) *Special Masters.* In cases where the Divorce Masters Office is not able to conduct proceedings pursuant to Pa.R.C.P. 1920.51, et seq. due to a conflict or extraordinary circumstance, the court may appoint a member of the Bar of York County to sit as a special master in any particular case. Such special master shall serve at the pleasure of the court and shall be an independent contractor of the County of York, with compensation set by the court on a case-by-case basis.

(4) *General Duties.* In each case in which a master is appointed, the master shall preside over all conferences and hearings necessary for the preparation of a final or interim report and recommendation, as appropriate. The master may schedule conferences with counsel, with or without the parties present.

(b) *Appointment of a master.*

(1) *Fee certification.* The Motion for the Appointment of a Master for divorce, annulment or any related claim shall be made on the form prescribed by the Divorce Masters Office. The Motion shall be presented first to the Prothonotary, who shall certify thereon that the fees have been paid. The moving party shall serve a copy of the Motion upon the opposing party or counsel.

(2) *Counsel to present Motion to Divorce Masters Office.* The original Motion and three copies shall then be presented at the Divorce Masters Office for the issuance of an order appointing a master and scheduling such further proceedings as may be necessary.

(3) *Divorce Masters Office to file and to serve.* The Divorce Masters Office shall file the original Motion and scheduling Order with the Prothonotary and provide a copy of each to both the moving party and the responding party.

(c) *Filing fees.* The designated parties shall pay to the Prothonotary the following fees, at the times indicated.

(1) *Prothonotary's fees.* In every action of divorce or annulment initiated by a party, the moving party shall pay to the Prothonotary's Office the required filing fees, as published in the Prothonotary's Office fee schedule.

(2) *Fees to appoint a master.* Upon the presentation of a Motion to Appoint a Master, the moving party shall pay to the Prothonotary, in addition to the fees set forth in subsection (1) of this provision, the following fees, to bring these claims before the master:

[a] *Divorce or annulment, equitable distribution, alimony, counsel fees, costs and/or expenses.* The moving party shall pay a fee of three hundred dollars (\$300.00) for a Motion to Appoint a Master including all or one of the following: divorce, annulment, equitable distribution of marital property, alimony, counsel fees, costs and expenses. A moving party filing an Amended Motion to add one or more of these issues to the Appointment shall not be required to pay an additional fee. For additional provisions concerning alimony, see subsection [c], below.

[b] *Alimony pendente lite.* The moving party shall pay a fee of fifty dollars (\$50.00) for a Motion to Appoint a Master for alimony pendente lite. For additional provisions, see subsection (e) Alimony pendente lite—additional provisions, below.

[c] *Modification of alimony.* The moving party shall pay a fee of two hundred dollars (\$200.00) for a Motion to Appoint a Master for the modification of a final alimony order.

[d] *Modification of alimony pendente lite.* The moving party shall pay a fee of fifty dollars (\$50.00) for a Motion to Appoint a Master for the modification of a prior award of alimony pendente lite.

[e] *Additional fees.* If more than two full days of hearings are necessary to resolve the case, then the parties shall pay an additional fee of one hundred fifty dollars (\$150) for each additional day of testimony or part thereof. The master shall not proceed beyond the second full day of hearings until these additional fees have been paid.

(3) *Fee changes.* The fees stated in this subsection are subject to change by publication.

(4) *Award of costs.* The fees set forth in subsection (c)(2) shall be regarded as costs of the case, and the master may recommend that either party bear those costs or reimburse the other party in full or in part for those costs.

(5) *Request for return of appointment fees.* In any action where the appointment of a master is withdrawn after the appointment has been made by the court, the party who paid the fees specified in subsection (c)(2) may petition the court for the return of part of the fees in accordance with the following provisions:

[a] *Refund of appointment fees.* Only in those cases where no preliminary hearing or conference has been held and written notice of discontinuance or revocation of the appointment of a master has been delivered to the Divorce Masters Office no less than fifteen (15) days in advance of the first originally scheduled proceeding, the fees may be remitted in full, less fifty dollars (\$50.00).

[b] *Master's consent.* The petition for remission of fees will not be approved by the court unless endorsed by the master appointed to hear the case in question.

(d) *Filing of income and expense statements and inventories.*

(1) *Moving party's filing of Income and Expense Statement.* When a Motion for the Appointment of a Master for any claim, set forth in Pa.R.C.P. 1920.31, is presented to the Divorce Masters Office as set forth in subsection (b)(2), above, it shall be accompanied by a copy of the moving party's Income and Expense Statement that has been filed with the Prothonotary. The Income and Expense Statement shall be in the form required by Pa.R.C.P. 1910.27, and shall be substantially complete.

(2) *Moving party's filing of Inventory.* When a Motion for the Appointment of a Master for equitable distribution is presented to the Divorce Masters Office as set forth in subsection (b)(2) above, it shall be accompanied by a copy of the moving party's Inventory that has been filed with the Prothonotary. The Inventory, as required by Pa.R.C.P. 1920.33, shall be substantially complete.

(3) *Respondent's Income and Expense Statement.* Within thirty (30) days after receiving notice that a master has been appointed to hear any claim, other than divorce or annulment, the responding party shall present to the Divorce Masters Office a copy of that party's Income and Expense Statement that has been filed with the Prothonotary. The Income and Expense Statement shall be in the form required by Pa.R.C.P. 1910.27, and shall be substantially complete.

(4) *Respondent's Inventory.* Within thirty (30) days after receiving notice that a master has been appointed to hear a claim for equitable distribution, the responding party shall present to the Divorce Masters Office a copy of that party's Inventory that has been filed with the Prothonotary. The Inventory, as required by Pa.R.C.P. 1920.33, shall be substantially complete.

(5) *Sanctions for failure to file.* Parties failing to comply with the requirements of this subsection (d) shall be subject to Court Ordered sanctions and may be subject to sanctions imposed by the master, sua sponte, as permitted by subsection (f)(9), below.

(e) *Alimony pendente lite—additional provisions.*

(1) *Additional documents required.* When a Motion for Appointment of a Master is presented to the Divorce Masters Office with respect to a claim for alimony pendente lite, the moving party shall also present the following additional documents to the Divorce Masters Office:

[a] A time stamped copy of the initial pleading, filed with the Prothonotary, in which the claim for alimony pendente lite was raised.

[b] The original and two copies of the "Background for APL" form as prescribed by the Divorce Masters Office.

[c] The original and two copies of the "Petition for Alimony Pendente Lite" form as prescribed by the Divorce Masters Office.

[d] The Prothonotary's payment receipt.

(2) *APL referred to DRO.* A Motion for the Appointment of a Master solely on the issue of alimony pendente lite may be referred by the Divorce Masters Office to the Domestic Relations Office for a conference pursuant to Pa.R.C.P. 1910.11. Any party aggrieved by the order entered as the result of such conference may request a hearing de novo which may be conducted by a judge. However, the court, in its sole discretion, may refer it back to the Divorce Masters Office for a hearing of record pursuant to Pa.R.C.P. 1920.54.

(f) *Preliminary proceedings.*

(1) *Notice of preliminary conference.* Upon appointment, the Divorce Masters Office shall give counsel or the parties not less than ten (10) days written notice of a preliminary conference to be conducted by the master.

(2) *Scheduling of additional proceedings.* At the close of the preliminary conference, the master may schedule additional proceedings, including one or more settlement conferences.

(3) *Notice of other conferences and hearings.* The Divorce Masters Office shall give counsel or the parties not less than ten (10) days written notice of any subsequent conference or hearing.

(4) *Continuance requests.* All requests for continuances are to be submitted on the Court's "Application for Continuance" form and shall include the response of opposing counsel. Requests for continuances shall be submitted to the Divorce Masters Office. The master shall rule on all requests for continuances. Any party aggrieved by the master's ruling may seek relief by filing a Motion for Continuance in Current Business Court.

(5) *Attendance at conferences.* Both parties and their counsel shall attend all conferences unless excused in advance by the master. Parties may participate by speaker telephone, but only with the prior consent of the master and the adverse party or by order of court. A request for a party to be excused or for a party to participate by speaker telephone must be made in writing and delivered to opposing counsel and to the Divorce Masters Office no less five (5) days in advance of the scheduled conference.

(6) *Failure to appear.* If any party fails to appear at any conference or hearing, either in person or by counsel, the master may proceed with the conference or hearing without the participation of that party provided that written notice of the conference or hearing has been given as set forth above.

(7) *Good faith effort to settle.* The parties, with the aid of their counsel and the appropriate assistance of the master, should make a good faith effort to resolve contested matters, including the marital property division, and shall determine those items which are contested and upon which testimony shall be taken at a scheduled hearing.

(8) *Master's conference memoranda.* During the initial conference or any subsequent conference, the master shall determine what discovery shall be provided by the parties and shall include a description of this discovery in a conference memorandum, which shall be provided to the parties shortly after the conference. In addition to other matters contained within it, the conference memorandum shall set a date by which all of the identified discovery shall be produced.

(9) *Sanctions by masters.* If either party fails to comply with the discovery deadlines established by the master in the prehearing statement or otherwise, the master, on motion of the adverse party or sua sponte, may impose any or all of the following sanctions:

[a] The matter may be continued until discovery is complete.

[b] The master, in his or her discretion may apply any of the sanctions set out in Pa.R.C.P. 4019(c)(1), (2), (3), or (5).

(10) *Actions to compel discovery.* If either party fails to comply with the discovery deadlines established by the

master, the adverse party may elect to file a motion in current business court to compel discovery in accordance with the master's directive.

(11) *Notice of Master's hearings.* When the case is ready to proceed, the master shall establish the time and place for the formal hearing and shall give no less than ten (10) days notice thereof by mail to counsel. If either party does not have counsel, then the ten (10) day notice shall be mailed directly to that party at the address noted on the records of the Prothonotary or such other address as the party may have provided in writing to the Divorce Masters Office after service of the Complaint.

(g) *Stenographic record.*

(1) *Hearings of record.* All hearings before a master shall be conducted on the record. Transcripts may be produced by either an official reporter or by electronic recording devices, in the Court's sole discretion.

(2) *Preparation of transcript.* At the conclusion of the hearing or any portion thereof, the master may direct that a transcript be prepared for use by the master in preparing the master's report and recommendation. Such transcript may be on paper or may be reproduced electronically by the reporter.

[a] In the case of paper transcripts or electronic media containing the full text of paper transcripts, the parties or their counsel may obtain copies at their own expense from the court reporter.

[b] In the case of electronic transcripts, the master may request a "real time" copy of the court reporter's notes. "Real time" copies of the court reporter's notes are not available to the parties or their counsel, but are only available for use by the court at a reduced cost to the parties. Therefore, if the parties or their counsel wish to have a transcript of the proceedings, they must request a paper transcript or electronic media containing the full text of the paper transcript from the court reporter and must pay the fees imposed by the court reporter.

(3) *Master's report without transcript.* The master may elect to prepare a report and recommendation without the benefit of a transcript of the proceedings.

(4) *Parties to pay transcript costs.* The master shall direct the manner in which the costs of the transcript shall be paid. If the master orders the transcript, then both parties shall pay the assessed transcript costs within fifteen (15) days of the notice sent by the court reporter(s) of the amount due.

(5) *Assessment of costs.* These costs shall be treated in the same manner as those set forth in subsection (c)(4), above.

(6) *Sanctions for failure to pay.* In the event a party fails to pay the transcript cost, as directed by the master, the compliant party may file a motion with the Court to compel payment. The Court shall order that a judgement be entered against the non-compliant party for the sum of their portion of the transcript cost plus counsel fees in an amount not less than two hundred fifty dollars (\$250.00).

Rule 1920.55 Masters Reports and Exceptions

(a) *Masters reports and recommendations.*

(1) *Effective date for alimony pendente lite and alimony.* All reports from the masters recommending an award of alimony pendente lite or alimony shall contain a recommendation for the effective date of that order. All reports from the masters recommending an award of interim counsel fees shall contain a recommendation for a date by which the award must be paid.

(2) *Draft court orders.* In all cases, the master's report and recommendation shall be accompanied by one or more draft orders setting forth the master's recommended resolution of the case.

(3) *Assessment of costs and expenses.* In any case, the master may assess any costs or expense in the case against either party. The master may recommend that the party pay these costs before the granting of the divorce or the enforcement of any economic decree; PROVIDED, HOWEVER, that the master must first consider the effects of staying the granting of a divorce or the enforcement of any economic decree upon the other party. The master's recommended assessment of costs and expenses shall be binding on the parties unless specific exceptions are filed with respect to this recommended assessment.

(b) *Filing Exceptions.*

(1) *Filing of exceptions.* Exceptions to the master's report, filed pursuant to Pa. R.C.P. 1920.55, shall be filed in the Office of the Prothonotary, with copies provided to the Divorce Masters Office and to the opposing party.

(2) *Time for filing exceptions.* Regardless of whether a transcript has been filed, a party must file any Exceptions to the master's report and recommendation within ten (10) days after the notice of the filing of said report has been mailed. A party filing Exceptions shall also file a certification that the transcript has been requested in accordance with Local Rules.

(3) *Request of transcript.* In the event no transcript has been filed by the court reporter prior to the time that a party files Exceptions, the party filing Exceptions shall make a written request to the court reporter for the preparation and filing of the transcript. This request must be made within ten (10) days after the date of the notice from the Divorce Masters Office that the report and recommendation has been filed. Any party requesting a transcript shall pay the costs of such transcript to the court reporter, within fifteen (15) days of the written notice from the court reporter that the transcript has been transcribed. In the event such party fails to pay the transcript cost within the fifteen (15) days allowed, then that party is deemed to have waived the right to file amended Exceptions, as set forth in this subsection and that party's briefing schedule commences, as set forth in subsection (6), below.

(4) *Amended Exceptions.* If a party wishes to file additional Exceptions after reviewing the transcript, the party may do so by filing amended Exceptions within ten (10) days after the court reporter filed the transcript, provided that the party has timely paid the transcription costs.

(5) *Briefs to reference transcript.* The moving party's brief shall direct the Court to the specific page or pages of the transcript of the notes of testimony that support the moving party's position on all issues raised by the Exceptions. The responding party's brief shall direct the Court to the specific page or pages the transcript of the notes of testimony that support the responding party's position on all issues raised by the Exceptions.

(6) *Filing and service of briefs.*

[a] *Moving party.* In Rule 1920.55 proceedings on the Exceptions to a master's report, the party filing the Exceptions shall file a brief in support thereof within twenty (20) days from the filing of the transcript.

[b] *Opposing party.* Within fifteen (15) days after the service of the moving party's brief, all other parties

desiring to oppose the issue raised by such proceeding shall file a brief in opposition.

[c] *Reply.* Any moving party may file a reply brief within five (5) days after the service of the brief in opposition.

[d] *Listing and disposition.* See Rule 6031(b).

[e] *Sanctions.* See Rule 6031(c).

[g] *Transmittal of the record.* If no Exceptions are filed within ten (10) days of the notice of the filing of the

master's report and recommendation, or if Exceptions have been filed but addressed by the court, then either party may move for the entry of a Final Order of Court by filing a "Praecipe to Transmit Record" with the Prothonotary. The Divorce Masters Office shall not be responsible for preparing or filing this Praecipe.

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