

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CHS. 200, 1000 AND 4000]

Promulgation of Rules of Civil Procedure Governing Motion Practice; No. 401 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

And Now, 24th day of October, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

(1) Rules 205.2, 206.1, 206.4, 206.5, 210, 239, 1028, 1034, 1035.2, 4012 and 4019 are amended to read as follows, and

(2) New Rules 208.1 through 208.4 and 239.1 through 239.8 are promulgated to read as follows.

Whereas prior distribution and publication of these rules and amendments would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective nine months after the date this Order was promulgated.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 205.2. Filing Legal Papers with the Prothonotary.

No pleading or other legal paper that complies with the Pennsylvania Rules of Civil Procedure shall be refused for filing by the prothonotary based on a requirement of a local rule of civil procedure or judicial administration, including local Rules 205.2(a) and 205.2(b).

**Official Note:** Rule 239.1(a) authorizes each court of common pleas to impose requirements governing the physical characteristics of pleadings and other legal papers. Rule 239.1(a) requires each court which has imposed requirements to promulgate a local rule, numbered Local Rule 205.2(a), listing the requirements.

Similarly, Rule 239.1(b) also authorizes each court to require pleadings and other legal papers to be accompanied by a cover sheet. Rule 239.1(b) requires each court which has imposed the requirement to promulgate a local rule, numbered Local Rule 205.2(b), stating the requirement and setting forth the form of the cover sheet.

Any local rule which has been promulgated must be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

Rule 206.1. Petition. Definition. Content. Form.

(a) As used in this chapter, "petition" means

(1) an application to open a default judgment or a judgment of non pros, and

(2) any other application which is designated by local rule, numbered Local Rule 206.1(a), to be governed by Rule 206.1 et seq.

**Official Note:** A petition for relief from a judgment by confession is governed by Rule 2959.

Motions are governed by Rule 208.1 et seq.

Rule 206.1(a)(2) authorizes each court of common pleas to designate applications which are to proceed in the manner of a petition under Rule 206.1 et seq. Rule 239.2(a) requires each court which has made that designation to promulgate a local rule, numbered Local Rule 206.1(a), listing the applications to be determined pursuant to Rule 206.1 et seq. Any local rule which has been promulgated must be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

(b) A petition shall specify the relief sought and state the material facts which constitute the grounds therefor.

[ (b) ](c) \* \* \*

**Official Note:** Petitions are subject to Rule 440 governing service of legal papers other than original process, Rule 1023.1 governing the signing of documents, and Rule 1025 governing the endorsement of legal papers. Any requirements of a court relating to the format of a petition and cover sheet must be set forth in local rules numbered Local Rule 205.2(a) and Local Rule 205.2(b).

#### Rule 206.4. Rule to Show Cause. Alternative Procedures.

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(b) The procedure following issuance of the rule to show cause shall be in accordance with Rule 206.7.

**Official Note:** Subdivisions (b) through (e) of Rule 239.2 require every court to promulgate Local Rule 206.4(c) describing the court's procedures for the issuance of a rule to show cause. Local Rule 206.4(c) shall be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

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

(a) [ The rule to show cause procedure prescribed by this rule shall apply if

(1) the relief sought by the petition is the opening of a default judgment or a judgment of non pros, or

(2) the petition is of a type authorized by local rule to be determined pursuant to a rule to show cause, or

(3) the court, upon its own motion or the request of a party, has determined that the issuance of a rule to show cause as to the particular petition will serve the interests of justice. ] Rescinded.

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

**The court may provide in the order for the filing of briefs.**

(*Editor's Note:* Rules 208.1—208.4 are new. They are printed in regular type to enhance readability.)

**Rule 208.1. Motion. Definition. Scope.**

(a) As used in this chapter, "motion" means any application to the court for an order made in any civil action or proceeding except as provided by subdivision (b)(1) and (2).

(b)(1) The rules of this chapter shall not apply to the following matters:

- (i) preliminary objections (Rule 1028),
- (ii) motions for judgment on the pleadings (Rule 1034) and for summary judgment (Rule 1035.1 et seq.),
- (iii) requests for special relief, including preliminary injunctions,
- (iv) motions relating to the conduct of the trial, including motions for nonsuit pursuant to Rule 218, motions relating to jury selection, motions to exclude expert testimony pursuant to Rule 207.1, motions in limine, and motions made during the course of the trial,
- (v) motions for post-trial relief (Rule 227.1),
- (vi) motions for delay damages (Rule 238),
- (vii) petitions (Rule 206.1), and
- (viii) petitions for relief from a judgment by confession (Rule 2959).

(2) The rules of this chapter shall not apply to motions arising in the following actions or proceedings:

- (i) asbestos litigation and cases otherwise designated by the court for special management (Rules 1041.1 and 1041.2),
- (ii) actions in replevin (Rule 1071 et seq.),
- (iii) class actions (Rule 1701 et seq.),
- (iv) family law actions (Rules 1901 through 1940.9), and
- (v) proceedings in Orphans' Court.

(c) The rules of this chapter shall not modify the provisions of any other general rule governing a particular motion.

**Rule 208.2. Motion. Form. Content.**

- (a) A motion shall
  - (1) contain a caption setting forth the name of the court, the number of the action, the name of the motion, and the name of the moving party,
  - (2) be divided into paragraphs numbered consecutively,
  - (3) set forth material facts constituting grounds for the relief sought, specify the relief sought and include a proposed order,
  - (4) include a certificate of service which sets forth the manner of service including the name of an attorney of record for each party that is represented by counsel, the party whom the attorney represents, a "pro se" designation for each party that is unrepresented, and the address at which service was made, and
  - (5) be signed and endorsed.

**Official Note:** Motions are subject to Rule 440 governing service of legal papers other than original process, Rule 1023.1 governing the signing of documents, and Rule 1025 governing the endorsement of legal papers. Any

requirements of a court relating to the format of a motion and cover sheet must be set forth in local rules numbered Local Rule 205.2(a) and Local Rule 205.2(b).

(b) A motion need not be verified unless verification is required by general rule governing the particular motion or by order of court.

**Official Note:** Rule 239.3(a) authorizes a court to require that a motion include a brief statement of the applicable authority. Rule 239.3(a) requires each court which has imposed this requirement to promulgate a local rule, numbered Local Rule 208.2(c), stating the requirement.

Rule 239.3(b) also authorizes each court to provide a certification requirement for a motion as uncontested. Rule 239.3(b) requires each court which has imposed this requirement to promulgate a local rule, numbered Local Rule 208.2(d), stating the requirement.

Similarly, Rule 239.3(c) authorizes each court of common pleas to require the moving party in any motion relating to discovery to certify that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action. Rule 239.3(c) requires each court which has imposed this requirement to promulgate a local rule, numbered Local Rule 208.2(e), stating the requirement.

Any local rule which has been promulgated must be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

**Rule 208.3. Alternative Procedures.**

(a) Except as otherwise provided by subdivision (b), the court shall initially consider a motion without written responses or briefs. For a motion governed by this subdivision, the court may not enter an order that grants relief to the moving party unless the motion is presented as uncontested or the other parties to the proceeding are given an opportunity for an argument.

**Official Note:** Rule 208.3(a) does not prevent a court from denying the moving party's request for relief without the opportunity for an argument where the motion is procedurally defective, is untimely filed or fails to set forth adequate grounds for relief.

Parties may choose to submit responses and briefs at the time of the presentation, provided that copies have been served on every other party. However, parties are not required to do so.

Rule 239.3(d) requires every court to promulgate Local Rule 208.3(a) describing the local court procedure governing motions under this rule. Local Rule 208.3(a) shall be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

(b) A court, by local rule, numbered Local Rule 208.3(b), may impose requirements with respect to motions listed in the rule for the filing of a response, a brief or both. Where a response is required, any party opposing a motion governed by Local Rule 208.3(b) shall file the response within twenty days after service of the motion, unless the time for filing the response is modified by court order or enlarged by local rule.

**Official Note:** Motions are governed by the procedure in subdivision (a) unless the court by local rule designates particular types of motions to be governed by the procedure in subdivision (b).

The twenty-day response period may be extended or reduced by special order of court. A local rule may only extend the time period.

A response shall be filed by any party opposing a motion governed by subdivision (b) even if there are no contested issues of fact because the response is the opposing party's method of indicating its opposition.

Rule 208.3(b) authorizes each court of common pleas to impose requirements of responses and briefs with respect to designated motions. Rule 239.3(e) requires each court which has imposed such requirements to promulgate a local rule, numbered Local Rule 208.3(b), listing the motions and the requirements.

Rule 239.3(e) also provides that Local Rule 208.3(b) must describe the local court procedure governing motions under subdivision (b) and may allow the court to treat the motion as uncontested if a response is not filed.

Any local rule promulgated must be published on the web site of the Administrative Office of Pennsylvania Courts (www.aopc.org).

**Rule 208.4. Initial Consideration of Motion. Court Orders. Issues of Disputed Fact.**

(a) At the initial consideration of a motion, the court may enter an order that

- (1) disposes of the motion, or
- (2) sets forth the procedures the court will use for deciding the motion which may include one or more of the following:
  - (i) the filing of initial or supplemental responses,
  - (ii) the filing of initial or supplemental briefs,
  - (iii) the filing of affidavits, depositions and the like,
  - (iv) the issuance of a rule to show cause pursuant to subdivision (b) of this rule,
  - (v) the holding of an evidentiary hearing, and
  - (vi) the entry of an order providing for any other procedure for developing the record.

(b)(1) If the moving party seeks relief based on disputed facts for which a record must be developed, the court, upon its own motion or the request of any party including the moving party, may enter an order in the form set forth in paragraph (2) providing for the issuance of a rule to show cause. The procedure following issuance of the rule to show cause shall be in accordance with Rule 206.7.

**Official Note:** A court will not necessarily utilize the rule to show cause procedure of subdivision (b) because other methods for developing the record, such as the filing of affidavits, may be the most efficient and appropriate manner for developing a record.

(2) The order required by paragraph (1) shall be substantially in the following form:

**(Caption)**  
**ORDER**

AND NOW, \_\_\_\_\_, upon consideration of the foregoing motion, it is hereby ordered that

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within \_\_\_\_\_ days of this date;
- (3) the motion shall be decided under Pa.R.C.P. No. 206.7;

(4) depositions shall be completed within \_\_\_ days of this date;

(5) argument shall be held on \_\_\_\_\_ in Courtroom \_\_\_\_\_ of the \_\_\_\_\_ County Courthouse; and

(6) notice of the entry of this order shall be provided to all parties by the moving party.

By the Court  
\_\_\_\_\_  
J.

**Official Note:** In counties in which an evidentiary hearing is held, the order should be modified by deleting paragraphs (4) and (5) and substituting new paragraph (4) to read as follows:

(4) an evidentiary hearing on disputed issue of material fact shall be held on \_\_\_\_\_ in Courtroom \_\_\_ of the \_\_\_\_\_ County Courthouse.

The court may provide in the order for disposition upon briefs rather than oral argument.

The court has inherent power to permit forms of discovery other than depositions.

The court may provide in the order for the filing of briefs.

**Rule 210. Form of Briefs.**

**[ If briefs are filed they ]** Briefs shall be typewritten, printed, or otherwise duplicated and endorsed with the name of the case, the court and number and the name **[ and ]**, address **and telephone number** of the attorney or the party if not represented by an attorney.

**Official Note:** Rule 239.4 authorizes each court of common pleas to impose additional requirements governing the form and content of a brief. Rule 239.4 requires each court which has imposed such requirements to promulgate a local rule, numbered Local Rule 210, listing the requirements. Any local rule which has been promulgated must be published on the web site of the Administrative Office of Pennsylvania Courts (www.aopc.org).

**Rule 239. Local Rules.**

\* \* \* \* \*

(c) To be effective and enforceable:

\* \* \* \* \*

**(7) Any local rules promulgated pursuant to Pennsylvania Rules of Civil Procedure Nos. 239.1 through 239.7 must be numbered in accordance with the requirements of those rules and published on the web site of the Administrative Office of Pennsylvania Courts.**

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*(Editor's Note:* Rules 239.1—239.8 are new. They are printed in regular type to enhance readability.)

**Rule 239.1. Pleadings and Legal Papers. Local Rules 205.2(a) and 205.2(b).**

(a) A court may impose requirements governing the physical characteristics of pleadings and other legal papers. A court which imposes such requirements must promulgate a local rule, numbered Local Rule 205.2(a), listing those requirements.

(b) A court may require pleadings and other legal papers to be accompanied by a cover sheet in the form set forth in the local rule. A court which imposes such requirements must promulgate a local rule, numbered Local Rule 205.2(b), stating the requirements and setting forth the form of the cover sheet.

**Rule 239.2. Petitions. Rule to Show Cause. Local Rules 206.1(a) and 206.4(c).**

(a) If, pursuant to Rule 206.1(a)(2), a court has designated applications which are to proceed under Rule 206.1 et seq., the court must promulgate a local rule, numbered Local Rule 206.1(a), listing those applications.

(b) Every court shall promulgate a local rule, numbered Local Rule 206.4(c), which describes the court's procedures for the issuance of a rule to show cause.

(c)(1) If a court has by local rule adopted the procedure of Rule 206.6 providing for the issuance of a rule to show cause as of course, Local Rule 206.4(c) shall expressly

(i) state that the rule shall issue as a matter of course pursuant to Rule 206.6, and

(ii) describe the steps that the moving party must take for the rule to issue.

(2) Local Rule 206.4(c) shall also describe the manner by which the court considers a petitioner's request for a stay of execution pending disposition of a petition to open a default judgment.

(d) If a court follows the procedure of Rule 206.5 under which the issuance of a rule to show cause is discretionary, Local Rule 206.4(c)

(1) shall describe the manner in which the request for the issuance of the rule is scheduled, argued, and decided, and

(2) may impose requirements for the filing of briefs addressing whether a rule to show cause should issue.

(e) In addition to the matters set forth in subdivision (b) or (c), Local Rule 206.4(c) may impose requirements upon the moving party to

(1) transmit the original and/or copies of the petition and related legal papers to a judge or other court personnel, and

(2) notify other parties of the date, time and location of a court proceeding.

**Official Note:** Local Rule 206.4(c) shall not modify the provisions of Rules. 206.1 through 206.2 governing the contents of a petition or answer, Rule 206.3 governing verification, or Rule 206.7 governing the procedure after issuance of a rule to show cause.

Local Rule 206.4(c) shall not alter the form of the order of court required by Rule 206.5(d), which sets forth the dates by which an answer shall be filed and depositions shall be completed, and the date of the final argument. Pursuant to the Note to Rule 206.5(d), the form of the order may be modified to provide for an evidentiary hearing on disputed issue of fact, the use of forms of discovery other than depositions, the filing of briefs, and disposition without oral argument.

**Rule 239.3. Motions. Local Rules 208.2(c), 208.2(d), 208.2(e), 208.3(a) and 208.3(b).**

(a) A court may impose a requirement that a motion include a brief statement of the applicable authority. A court which has imposed this requirement must promulgate a local rule, numbered Local Rule 208.2(c), stating the requirement.

(b) A court may impose a certification requirement for motions that are presented as uncontested. A court which imposes such a certification requirement must promulgate a local rule, numbered Local Rule 208.2(d), stating the requirement.

(c) A court may require any motion relating to discovery to include a certification signed by counsel for the moving party certifying that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action. A court which requires such a certification must promulgate a local rule, numbered Local Rule 208.2(e), stating the requirement.

(d) Every court shall promulgate a local rule, numbered Local Rule 208.3(a), which describe the court's motion procedure under Rule 208.3(a). Local Rule 208.3(a)

(1) shall describe the manner in which

(i) motions are scheduled, argued and decided and

(ii) emergency motions are scheduled, argued, and decided if they are governed by a different procedure, and

(2) may impose requirements upon a party to

(i) transmit the original and/or copies of the motion and related legal papers to a judge or other court personnel; and

(ii) notify other parties of the time, date and location of a court proceeding.

(e) If, pursuant to Rule 208.3(b), a court has imposed requirements for the filing of a response, a brief or both with respect to designated motions, the court shall promulgate a local rule, numbered Local Rule 208.3(b), which lists those motions and requirements and which describes the court's motion practice under Rule 208.3(b). Local Rule 208.3(b) shall conform to the requirements of subdivision (d) of this rule and may provide that the motion shall be treated as uncontested if a response is not filed.

**Rule 239.4. Briefs. Local Rule 210.**

A court may impose requirements governing the form and content of a brief. A court which imposes such requirements must promulgate a local rule, numbered Local Rule 210, listing those requirements.

**Rule 239.5. Preliminary Objections. Local Rule 1028(c).**

(a) Every court shall promulgate a local rule, numbered Local Rule 1028(c), which describes the court's procedures for the disposition of preliminary objections and which

(1) shall set forth the manner in which preliminary objections are scheduled, argued and decided, and

(2) may impose requirements upon a party to

(i) transmit the original and/or copies of the preliminary objections and related legal papers to a judge or other court personnel,

(ii) notify other parties of the date, time and location of a court proceeding, and

(iii) file briefs.

**Official Note:** Under Rules. 1026 and 1029, an answer to preliminary objections shall be filed within twenty days after service of the preliminary objection whenever preliminary objections raise issues of fact and are endorsed with a notice to plead. This requirement shall not be altered by a local rule.

(b) This rule shall not apply to family law actions governed by Rules 1901 through 1940.9 or actions pursuant to the Eminent Domain Code of 1964.

**Rule 239.6. Motion for Judgment on the Pleadings. Local Rule 1034(a).**

Every court shall promulgate a local rule, numbered Local Rule 1034(a), which describes the court's procedures for the disposition of a motion for judgment on the pleadings and which

(1) shall set forth the manner in which motions for judgment on the pleadings are scheduled, argued and decided, and

(2) may impose requirements upon a party to

(i) transmit the original and/or copies of the motion and related legal papers to a judge or other court personnel,

(ii) notify other parties of the date, time and location of a court proceeding,

(iii) file a response within twenty days after service of the motion, and

(iv) file briefs.

**Rule 239.7. Motion for Summary Judgment. Local Rule 1035.2(a).**

Every court shall promulgate a local rule, numbered Local Rule 1035.2(a), which describes the court's procedures for the disposition of motions for summary judgment and which

(1) shall set forth the manner in which motions for summary judgment are scheduled, argued and decided, and

(2) may impose requirements upon a party to

(i) transmit the original and/or copies of the motion and related legal papers to a judge or other court personnel,

(ii) notify other parties of the date, time and location of a court proceeding, and

(iii) file briefs.

**Official Note:** The procedural requirements of Rule 1035.1 et seq., including the thirty-day period of Rule 1035.3(a) in which to file a response to the motion, shall not be altered by a local rule.

**Rule 239.8. Local Rules. Effective Date.**

Local rules required by Rules 239.2, 239.3, 239.5, 239.6 and 239.7 shall be promulgated not later than nine months following the date of the Order of the Supreme Court promulgating this rule.

**Official Note:** The date of the Order promulgating Rule 239.8 was October 24, 2003.

Local requirements under Rules 239.1 through 239.7 are not effective and enforceable unless local rules are published on the web site of the Administrative Office of Pennsylvania Courts. See Rule 239(c)(7).

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter A. CIVIL ACTION**

**PLEADINGS**

**Rule 1028. Preliminary Objections.**

\* \* \* \* \*

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of

preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

**Official Note:**

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[ Consult local rules which may contain supplementary procedures governing the filing and disposition of preliminary objections. ] Rule 239.5 requires every court to promulgate Local Rule 1028(c) describing the local court procedure governing preliminary objections. Local rule 1028(c) shall be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).

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**Rule 1034. Motion for Judgment on the Pleadings.**

(a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.

**Official Note:**

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**Rule 239.6 requires every court to promulgate Local Rule 1034(a) describing the local court procedure governing motions for judgment on the pleadings. Local Rule 1034(a) shall be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).**

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**Rule 1035.2. Motion.**

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**Official Note:**

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**Rule 239.7 requires every court to promulgate Local Rule 1035.2(a) describing the local court procedure governing motions for summary judgment. Local Rule 1035.2(a) shall be published on the web site of the Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org)).**

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

**Rule 4012. Protective Orders.**

(a) Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

\* \* \* \* \*

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

**Official Note:** Motions for a protective order are governed by the motion rules, Rule 208.1 et seq. A court of common pleas, by local rule numbered Local Rule 208.2(e), may require that the motion contain a certification that counsel has conferred

or attempted to confer with all interested parties in order to resolve the matter without court action.

\* \* \* \* \*

**Rule 4019. Sanctions.**

(a)(1) The court may, on motion, make an appropriate order if

\* \* \* \* \*

(2) A failure to act described in subdivision (a)(1) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

**Official Note: Motions for sanctions are governed by the motion rules, Rule 208.1 et seq. A court of common pleas, by local rule numbered Local Rule 208.2(e), may require that the motion contain a certification that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action.**

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**Explanatory Comment**

- I. Statewide Practice of Law
- II. Preliminary Objections, Motions for Judgment on the Pleadings and Motions for Summary Judgment
- III. Petitions
- IV. Motions
- V. Additional Provisions
- VI. Effective Date

**I. Statewide Practice of Law**

The primary obstacle to the statewide practice of law has been the inability of lawyers to learn how each court of common pleas actually operates, particularly with respect to pre-trial applications. New Rules 239.1 through 239.8 and the amendment to Rule 239 adding new subdivision (c)(7) will eliminate this obstacle through three requirements: (1) the promulgation of local rules which describe the steps that litigants must take to have pre-trial matters decided, (2) the use of a standardized numbering system for the local rules, and (3) the publication of the local rules on the web site of the Administrative Office of Pennsylvania Courts (AOPC).

The new rules enable a litigant to obtain the details of a local practice from the AOPC web site by referring to the particular county and the number of the local rule for a specific procedure. For example, new Rule 239.3(c) provides that a court may require any motion relating to discovery to include a certification that counsel has conferred with all interested parties in order to resolve the matter without court action. A common pleas court, which requires such certification, must promulgate a local rule, numbered Local Rule 208.2(e), describing its requirement. Consequently, a litigant can learn from the AOPC web site whether a particular court has promulgated Local Rule 208.2(e) and, if so, the requirements of that rule.

These new rules of civil procedure do not change the practice and procedure relating to pre-trial applications. They are directed to the courts of common pleas which are required to promulgate local rules describing their local practices.

**II. Preliminary Objections, Motions for Judgment on the Pleadings and Motions for Summary Judgment**

New Rules 239.5, 239.6 and 239.7 impose identical requirements upon every court of common pleas to promulgate local rules which describe the court's procedures for the disposition of preliminary objections (Local Rule 1028(c)), motions for judgment on the pleadings (Local Rule 1034(a)) and motions for summary judgment (Local Rule 1035.2(a)). These local rules must set forth the manner in which preliminary objections and motions for judgment on the pleadings and summary judgment are scheduled, argued and decided. They may impose various requirements including the filing of briefs.

Practice and procedure under the rules of civil procedure governing preliminary objections and motions for judgment on the pleadings or summary judgment remain unchanged.

**III. Petitions**

Petitions continue to be governed by Pa.R.C.P. 206.1 et seq. Amendments to these rules affect two aspects of petition practice.

First, the scope of the petition rules is set forth in new subdivision (a) of Rule 206.1 which defines the term "petition." As used in these rules governing petition and motion practice, "petition" means an application to open a default judgment or a judgment of non pros and any other application to the court which is designated by local rule, numbered Local Rule 206.1(a), to be governed by the petition rules, Pa.R.C.P. No. 206.1 et seq.

Second, petitions proceed pursuant to a rule to show cause. New Rule 239.2(b) requires every court to promulgate a local rule, numbered Local Rule 206.4(c), which describes the court's procedures for the issuance of a rule to show cause.

**IV. Motions**

*a. Scope and form*

New Rule 208.1(a) provides that a motion is any application to the court for an order sought in a civil action or proceeding other than those matters described in Rule 208.1(b)(1) and (2). Examples of excluded matters include preliminary objections, motions for judgment on the pleadings and summary judgment, petitions, motions for special relief and motions for post-trial relief. In addition, the following actions or proceedings are also excluded from operation of the new motion rules: asbestos litigation, actions in replevin, class actions, family law actions and Orphans' Court proceedings.

New Rule 208.2 sets forth very basic form and content requirements for motions. In addition, new Rule 239.3 authorizes the local courts to impose three specific requirements:

1. New Rule 239.3(a) permits a court to promulgate a local rule, numbered Local Rule 208.2(c), requiring that the motion set forth the applicable authority.
2. New Rule 239.3(b) permits a court to promulgate a local rule, numbered Local Rule 208.2(d), imposing a certification requirement for motions that are presented as uncontested.
3. New Rule 239.3(c) permits a court to promulgate a local rule, numbered Local Rule 208.2(e), setting forth a requirement that any motion relating to discovery include a certification that counsel has conferred with all interested parties in order to resolve the matter without court action.

b. *Alternative procedures*

New Rule 208.3 provides two approaches to the disposition of a motion. First, subdivision (a) states that, except as provided by subdivision (b), a motion shall be considered initially by the court without written responses or briefs. New Rule 239.3(d) requires every court to promulgate a local rule, numbered Local Rule 208.3(a), describing the local court procedure governing motions under Rule 208.3(a).

Second, subdivision (b) of Rule 208.3 provides that a court by local rule, numbered Local Rule 208.3(b), may require that a response be filed to the types of motions identified in the local rule and impose briefing requirements. In other words, motions are governed by the simplified procedure of Rule 208.3(a) except for those types of motions which the common pleas court has designated by local rule to be governed by the procedure of Rule 208.3(b) in which responses and briefs may be required.

c. *Disposition of motions*

New Rule 208.4 governs motions filed pursuant to either Rule 208.3(a) or Rule 208.3(b). It provides that at the initial consideration of the motion, the court may enter an order that disposes of the motion or an order that "sets forth the procedures the court will use for deciding the motion". While not intending to limit the procedural options that a court might employ, Rule 208.4(a)(2) catalogs six procedures for use in deciding the motion which might be included in the court's order.

A court may decide that a particular motion is best resolved through a rule to show cause procedure. Subparagraph (iv) of Rule 208.4(a)(2) provides for this option and Rule 208.4(b) sets forth the procedure.

**V. Additional Provisions**

The following new rules of civil procedure address the obligation of the courts of common pleas to promulgate specific local rules.

a. *Pleadings and other legal papers*

New Rule 239.1(a) allows a court to promulgate a local rule, numbered Local Rule 205.2(a), which imposes requirements governing the physical characteristics of pleadings and other legal papers. Subdivision (b) of the rule allows a court to promulgate a local rule, numbered Local Rule 205.2(b), which requires pleadings and other legal papers to be accompanied by a cover sheet in the form set forth in the local rule.

b. *Briefs*

New Rule 239.4 permits a court to promulgate a local rule numbered Local rule 210, imposing requirements governing the form and content of a brief.

**VI. Effective Date**

New Rule 239.8 states that the local rules required by Rules 239.2, 239.3, 249.5, 239.6, and 239.7 shall be promulgated not later than nine months following the date of the Order of the Supreme Court promulgating the rule.

[Pa.B. Doc. No. 03-2140. Filed for public inspection November 7, 2003, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BEAVER COUNTY

#### Local Rules of Civil Procedure; No. 10130 of 2001

##### Order

October 10, 2003

Local Rule L1307 is amended to read as follows.

This Order and the following rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Beaver County shall submit seven (7) certified copies of the Order and the following to the Administrative Office of Pennsylvania Courts, two (2) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court, one (1) to the Beaver County Law Library and one (1) to the Prothonotary of Beaver County to be kept for public inspection and copying.

*By the Court*

ROBERT E. KUNSELMAN,  
*President Judge*

#### **Rule L1307—Amount of Arbitrator's Compensation for Appeal**

The amount of compensation of arbitrators to be paid upon an appeal shall be the per diem amount paid to each member of the Board which heard the case. That amount shall be transmitted with the award to the Prothonotary who shall include that amount in the "Notice of Award" given to each party or their counsel.

[Pa.B. Doc. No. 03-2141. Filed for public inspection November 7, 2003, 9:00 a.m.]

### BUCKS COUNTY

#### Order Renumbering Rule of Orphans' Court Procedure 15.4A and Promulgating Rule of Orphans' Court Procedure 15.4A

##### Order of Court

*And Now*, this 3rd day of October, 2003, Bucks County Rule of Orphans' Court Procedure 15.4A is hereby renumbered as Bucks County Rule of Orphans' Court Procedure 15.4B.

Furthermore, Bucks County Rule of Orphans' Court Procedure 15.4A is hereby promulgated as follows:

Petitions for involuntary termination of parental rights pursuant to 23 Pa.C.S. § 2511, et seq., shall be accompanied by a completed Orphans' Court Praeceptum for Parental Rights Termination Hearing. Said praecipe shall be in such form as shall be required by the Clerk of the Orphans' Court, and shall be reproduced on tan paper stock.

*By the Court*

R. BARRY MCANDREWS,  
*President Judge*

[Pa.B. Doc. No. 03-2142. Filed for public inspection November 7, 2003, 9:00 a.m.]

CARBON COUNTY

Colloquy and Waiver of Right Form—Gagnon II Hearings; No. 119 MI 03

Administrative Order 16-2003

And Now, this 24th day of October, 2003, in order to utilize judicial resources but, at the same time, protect the rights of incarcerated defendants, it is hereby

Ordered and Decreed that, effective immediately, the Carbon County Court of Common Pleas hereby Adopts the Colloquy and Waiver of Right Form to be reviewed with incarcerated defendants at the completion of Gagnon I hearings where a prima facie case has been found. All incarcerated defendants who waive their personal appearance at the Gagnon II hearings shall have their Gagnon II hearing held via two-way simultaneous audio-visual communication (video conferencing).

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 Criminal 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 copies of the Order in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,
President Judge

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs.

: NO. CR

Defendant

COLLOQUY AND WAIVER OF RIGHT TO BE PRESENT AT CRIMINAL PROCEEDING

(GAGNON II HEARING)

- 1. Pursuant to Pennsylvania Rule of Criminal Procedure Rule 118, you, as the defendant, have a constitutional right to be present in court for your criminal proceeding, specifically, a Gagnon II Hearing.
2. You may waive your constitutional right to be physically present in court and consent to having the proceeding conducted using two-way simultaneous audio-visual communication (video conferencing).

3. By signing below, you, the defendant, knowingly, intelligently and voluntarily (do) (do not) consent to waive the constitutional right to be physically present in court and have the proceeding conducted using two-way simultaneous audio-visual communication (video conferencing).

\*\*\*\*\*

ACKNOWLEDGMENT

I, \_\_\_\_\_, do hereby affirm and attest that I have read or had read to me the aforementioned colloquy and waiver form and that I fully understand my constitutional right to be present at a criminal proceeding and my right to waive such right and use video conferencing.

Signature of Defendant Date

I, \_\_\_\_\_, Esquire, Attorney for the Defendant, state that I have advised my client of the contents and meaning of this colloquy and waiver form and that it is my belief that he/she comprehends and understands this form.

Signature of Counsel Date

I, \_\_\_\_\_, do hereby affirm and attest that I have read and explained the aforementioned waiver form to the defendant.

Signature of Adult Probation/Parole Officer (Witness) Date

[Pa.B. Doc. No. 03-2143. Filed for public inspection November 7, 2003, 9:00 a.m.]

CARBON COUNTY

Guideline for Juvenile Placement Visits Outside Reasonable Travel Time; No. 120 MI 03

Administrative Order 19—2003

And Now, this 24th day of October, 2003, in order to provide uniformity in juvenile placement visitations and ensure effective and efficient use of judicial resources, it is hereby

Ordered and Decreed that, effective immediately, the Carbon County Court of Common Pleas hereby Adopts the following guidelines for visiting juveniles in placements outside reasonable traveling destinations:

- 1. Any juvenile placement review visit requiring more than three (3) hours travel time will be conducted by telephone by the probation officer assigned to the case.
2. The probation officer will complete the monthly progress report used for the placement review by telephone. See Exhibit "A."

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 Juvenile 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 copies of the Order in the Juvenile Court Office.

*By the Court*

RICHARD W. WEBB,  
*President Judge*

**CARBON COUNTY JUVENILE PLACEMENT  
REVIEW  
MONTHLY PROGRESS REPORT**

Name: \_\_\_\_\_ PO: \_\_\_\_\_

Judge: \_\_\_\_\_

Placement: \_\_\_\_\_ Start Date: \_\_\_\_\_

Anticipated length of placement: \_\_\_\_\_ Placement

Review Date: \_\_\_\_\_

Reason for Placement visit: \_\_\_\_\_

Date of Phone Contact: Placement Staff: \_\_\_\_\_  
Individual: \_\_\_\_\_  
Family: \_\_\_\_\_

Goals/Progress/Adjustment of Placement:

- \_\_\_\_\_ Recently placed. Too early to tell if progress has been made.
- \_\_\_\_\_ Adjustment to placement is good \_ fair\_ poor \_ .
- \_\_\_\_\_ Progress on goals is noted. Staff indicated he/she is doing well with counseling and responsibility.
- \_\_\_\_\_ Staff indicated he/she is doing well with Staff Intervention and he/she is responding to staff input.
- \_\_\_\_\_ Participation in school is adequate. Grades are good.
- \_\_\_\_\_ Home visit made since last report. Parent indicates it went positively.
- \_\_\_\_\_ Parent involvement has been adequate.  
\_\_\_\_\_ Parent visit to facility made on: \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ Potential for early release—Explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Released: \_\_\_\_\_

[Pa.B. Doc. No. 03-2144. Filed for public inspection November 7, 2003, 9:00 a.m.]

**CARBON COUNTY**

**Procedure Concerning Providing Court-Appointed Counsel in Summary Offenses; No. 121 MI 03**

**Administrative Order No. 17-2003**

*And Now*, this 24th day of October, 2003, in order to clarify various issues involving the appointment of counsel in summary offenses, it is hereby

*Ordered and Decreed* that the following is a clarification of procedures:

1. *Right to Counsel.* In any summary trial or hearing before a District Justice in which the District Justice has determined there is a likelihood of imprisonment, the Defendant shall be advised that he/she has the right to retain counsel and that if he/she does not have the financial ability to retain counsel, counsel will be appointed by the Court. Defendants seeking court-appointed counsel will be directed to report to the Public Defender's Office to determine eligibility. Failure to report as directed may result in the denial of court-appointed counsel. Upon establishment of financial eligibility, counsel will be appointed for the District Justice's summary trial or contempt hearing. Counsel's appointment will terminate at the conclusion of the summary hearing or contempt hearing, unless the District Justice sentences the Defendant to a period of incarceration and an appeal is timely taken.

2. *Notice of Appeal.* In any case in which a District Justice has imposed a sentence of imprisonment and an appeal has been filed to the Court of Common Pleas, Defendant may file the Notice of Appeal without the payment of the Appeal costs if court-appointed counsel was provided at the District Justice level. If court-appointed counsel was not provided at the District Justice level, Defendant must pay the requisite Appeal fees unless a Petition to Proceed in Forma Pauperis is filed concurrently with the Notice of Appeal. The Judge to whom the underlying Appeal is assigned will determine whether Defendant must ultimately pay Appeal costs.

*It Is Further Ordered and Decreed* that 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 Criminal 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 copies of the Order in the Clerk of Court's Office and District Court Offices.

*By the Court*

RICHARD W. WEBB,  
*President Judge*

[Pa.B. Doc. No. 03-2145. Filed for public inspection November 7, 2003, 9:00 a.m.]

## CARBON COUNTY

Revision of Adult Probation/Parole Department  
Firearms Policy; No. 74 MI 99

## Administrative Order No. 20-2003

And Now, this 24th day of October, 2003, it is hereby

Ordered and Decreed that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the Carbon County Court of Common Pleas hereby Revises the Adult Probation/Parole Department Firearms Policy applicable to all members of the Carbon County Adult Probation Department since its inception on December 13, 1999. This revised policy incorporates the Use of Force Policy originally filed to 083 MI 96.

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 Criminal 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 copies of the Order and Rule in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,  
President Judge

**Purpose**

To establish policy and procedure governing the administration of the Carbon County Adult Probation/Parole Department's firearms program.

**Applicability**

To the Chief Adult Probation/Parole Officer, the Deputy Chief Adult Probation/Parole Officer and all Adult Probation/Parole Officers.

**Definitions**

As utilized in this document, the following definitions shall apply:

1. *Arrest*: The physical taking of a person into custody and restraining them until they can be brought before the court to answer the violations alleged against them.

2. *Attack Management*: Shielding, distance and movement.

3. *Attack Potential*: The immediate and simultaneous existence of intent, weapon, delivery system and target.

4. *Center of Mass*: The center of the three largest vital areas available, upper torso, brain and pelvic girdle.

5. *Certification*: The assignment of a certification number to a probation/parole officer after successful completion of a mandatory basic training course from the County Probation and Parole Officers' Firearm Education and Training Commission.

6. *Deadly Force*: As defined in Pennsylvania Crimes Code, 18 P. S. § 501, which states: "Force, which, under circumstances in which it is used, is readily capable of causing death or serious bodily injury."

7. *Debriefing*: A concise review of an event, conducted by all participating departments and ancillary agencies. It is the process of reviewing all aspects of an event, by all participants, to assess strengths, weaknesses, problems or concerns relevant to the actions employed in correlation to anticipated and actual outcomes.

8. *Defense of Life Rule*: The use of deadly force only in those circumstances in which a person cannot safely disengage and where deadly force is required to stop and render a person incapable of continuing life threatening actions.

9. *Delivery System*: The opportunity to place someone in jeopardy.

10. *Displaying a Firearm*: The clearing from a holster (unholstering) a firearm or brandishing a holstered weapon in a manner in which a reasonable person could perceive a use of force threat.

11. *Excessive Force*: Force, which is unreasonable in the performance of an act otherwise lawful; or, force used in making an arrest in excess of the force reasonably necessary to effect control of a subject.

12. *Firearm*: Any pistol or revolver with a barrel less than twelve inches, any shotgun with a barrel less than twenty-four inches, or any rifle with a barrel less than fifteen inches (See 18 Pa.C.S. § 6102).

13. *Force*: The impetus of power; physical power of strength, exerted against a person and employed without their consent for the purpose of controlling the person while maintaining a position of advantage.

14. *Handgun*: A revolver or pistol designed to be fired with one hand.

15. *Impairment*: A condition, which can affect judgment, reaction time or motor skills as it may affect the ability to handle a firearm safely.

16. *Intent*: The means to place someone in jeopardy.

17. *Magazine*: A receptacle where rounds are stored for use in a pistol.

18. *Peace Officer*: Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to section 311, of the Act of May 27, 1949 (P. L. 1903, No. 568), also known as "The Military Code of 1949." Also, see 18 Pa.C.S. § 501 as applied to probation officers in 61 Pa.C.S. § 309.1.

19. *Pistol*: A semi-automatic handgun.

20. *Preclusion*: Fast assessment to determine if a lower level of force would be inappropriate, ineffective and to disengage is not possible.

21. *Self-Defense*: That action taken to nullify an attack when based on a reasonably founded belief that either death, serious bodily injury or other injury will occur because of the existence of a clear and present danger. Self-defense may be personal or instituted for the protection of another person.

22. *Serious Bodily Injury*: As defined in the Pennsylvania Crimes Code, 18 P. S. § 2301, which states: "Bodily injury which creates a substantial risk of death or which

causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

23. *Striation*: A thin narrow, groove or channel caused by constant friction.

24. *Target*: A person or thing at which force may be directed or used.

25. *Target Identification*: An empirical verification of a person or thing at which force may be directed or used.

26. *Target Isolation*: The ability to segregate a target from surrounding people or objects.

27. *Use of Force*: As defined by the Pennsylvania Crimes Code, 18 P.S. § 508, Use of Force in Law Enforcement, which states:

(a) Peace Officer's Use of Force in Making Arrest:

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force, which he believes to be necessary to effect the arrest, and of any force, which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

(2) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.”

28. *Use of Force Model*: The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of the Protective Safety System.

29. *Weapon*: Includes handguns and firearms. It also includes any other instruments of offensive or defensive combat use or designated as being capable of causing injury to another person.

30. *Weapon-Carrying Officer*: A county probation/parole officer who is authorized to carry a weapon in connection with performance of the duties of his employment.

#### **Authority and Policy Statement**

*Authority*: This policy statement has been developed pursuant to and in accordance with statutory requirements, local rules established by the Carbon County Adult Probation/Parole Department and through the formal adoption by the Carbon County Court of Common Pleas through administrative court order.

*Policy Statement*: The Carbon County Adult Probation/Parole Department and Carbon County Court of Common Pleas recognizes that an element of danger does exist in dealing with criminal offenders and will provide adult probation/parole officers with the opportunity to carry a firearm in order to protect themselves from serious bodily

injury or deadly force. The consideration in the use of force is for the preservation of life and physical safety of the officer, the public and the offender.

#### **Statutory Authority of Adult Probation Officers**

*Authority of Probation and Parole Officers*: Probation and Parole Officers employed by the Court of Common Pleas enjoy police powers over the offenders under their supervision. Section I of Act 277 of 1963 and amended Act 117 (61 P.S. § 309.1) vests probation officers with such police powers. The Act states:

“Probation Officers heretofore or hereafter appointed by any Court of record of this Commonwealth are hereby declared to be peace officers, and shall have police powers and authority throughout the Commonwealth to arrest with or without warrant, writ, rule of process, any person on probation, intermediate punishment or parole under the supervision of said Court for failing to report as required by the terms of his/her probation, intermediate punishment or parole or for any other violation of his/her probation, intermediate punishment or parole.”

*Peace Officer*: In 1973, with the adoption of the Pennsylvania Crimes Code, a peace officer was defined in 18 P.S. § 501 as:

“... any person who by virtue of his public office or public employment is vested by law to make arrests for offenses whether that duty extends to all offenses or is limited to specific offenses. . . .”

The police powers granted to probation and parole officers are limited. Those powers extend only to persons subject to the jurisdiction of the sentencing common pleas court or as may be granted by another jurisdiction through an Interstate Compact Agreement (61 P.S. § 321 et seq.) or Intercounty Compact Agreement. Therefore, the police power of probation and parole officers differs in scope from that of the police officer.

*Arrest Authority*: Adult probation/parole officers are empowered to make arrests; however, those powers extend only to offenders under the jurisdiction of the department placed on probation, parole or intermediate punishment (See 61 P.S. § 309.1).

#### **Use of Force Policy**

*Jurisdiction to Act*: The use of any force by adult probation/parole officers will be justified only when the department has jurisdiction. The jurisdiction to act as an authorized adult probation/parole officer is limited to those situations involving offenders under the direct supervision of the department and/or those individuals that are encountered by officers as a direct result of the supervision of the offender.

*Purpose of Force*: The objective of the use of force by adult probation/parole officers is to establish and maintain lawful control in a timely manner, to minimize the potential for injury to parties directly involved, as well as others. The degree of force authorized is that degree necessary to establish lawful control in a timely manner. This degree of force depends upon the degree of danger or resistance perceived by the officer.

*Use of Force Model*: The department formally adopts, subscribes and employs The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of The Protective Safety Systems.

*Timeliness*: Timely means on time and not late. Officers need not wait for injury to occur to themselves or others before taking appropriate action to prevent injury.

*Control of the Subject:* Control of the subject must be established for the safety of the officer and others in response to perceived danger and when necessary to accomplish duties authorized by law.

*Use of Physical Force:* Physical force is to be used only in circumstances of justifiable self-protection or the protection of other persons. Adult probation/parole officers should use their discretion in using physical force. When possible, officers should consider withdrawing from the situation and securing assistance. If physical force is used, the officer shall only use the minimum force necessary to control the situation.

*Officer Identification:* If circumstances permit, the officer must make their identity as an adult probation/parole officer known.

*Verbal Warning:* Whenever possible, the officer must exercise persuasion, advice and warning before using physical force. If such verbal control would be (or is found to be) ineffective, the officer may use physical force to accomplish a lawful purpose.

*Use of Force Considerations:* Officers shall consider the following when employing force:

1. Subject's immediate threat to safety.
2. Subject's active resistance or attempt to escape.
3. Severity of the crime involved.
4. An officer's ability to disengage.
5. The circumstances existing at the moment force is used.
6. The tactics employed by an officer that may have caused a use of force decision to become necessary.

*Reasonable Control Guidelines:* When using force, officers must:

1. Match force to the subject's resistance.
2. Correctly apply techniques and equipment appropriate to that force level.
3. Apply alternative options if tactics fail to establish control.

*Use of Excessive Force:* The use of excessive force is prohibited by Federal and State laws. Violation of these laws can carry both civil and criminal penalties. Officers will be held accountable for the use of force.

*Administration of First Aid:* When an officer uses force on an offender and injuries result, the officer shall:

1. Contact the Carbon County Communications Center for assistance from medical and law enforcement personnel.
2. Contact the Chief Adult Probation/Parole Officer or immediate supervisor.
3. Render first aid to the injured subject. Officers must remember that they are responsible for administering first aid treatment to an injured subject.

*Use of Force Test:* The use of force is based upon determining what force a reasonable officer at the scene would have used under the circumstances (See *Graham v. Conner*, 109 S.Ct. 1865, 1989).

### **Immunity of Adult Probation/Parole Officers**

*Assistance of Law Enforcement Personnel:* In accordance with 42 Pa.C.S. § 8332.8(A), the Carbon County Court of Common Pleas hereby authorizes the Chief Adult Probation/Parole Officer and/or the Deputy Chief Adult Probation/Parole Officer to grant permission to any Car-

bon County Adult Probation/Parole Officer requesting to assist state or local police departments or any other county probation officers in the lawful performance of their duties. Such assistance shall be considered to be acting within the scope of his official duty for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of Carbon County. Adult Probation/Parole Officers must obtain prior permission from the Chief or Deputy Chief before assisting any law enforcement agency or other county probation department.

*Assistance of Criminal Victims:* In accordance with 42 Pa.C.S. § 8332.8(B), all Carbon County Adult Probation/Parole Officers appointed by the Carbon County Court of Common Pleas are entitled to immunity under 42 Pa.C.S. § 8331.3 (relating to criminal victim aid good Samaritan civil immunity) as a result of providing assistance to a victim of a crime, shall be considered to be acting within the scope of his official duty while providing assistance to the victim for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of Carbon County.

1. *Criminal Victim Aid Good Samaritan Civil Immunity:* Pursuant to 42 Pa.C.S. § 8331.3, any person who provides or obtains or attempts to provide or obtain assistance for a victim of a crime involving death, serious physical injury, robbery, burglary, kidnapping, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault or indecent assault at the scene of the criminal act or attempted criminal act shall not be liable for any civil damages as a result of any acts or omissions in providing or obtaining or attempting to provide or obtain assistance, except any acts or omissions designed to harm or any acts or omissions that constitute gross negligence or willful, wanton or reckless conduct. Any Carbon County Adult Probation/Parole Officers witnessing any of the above mentioned criminal acts do not need to obtain prior permission from the Chief or Deputy Chief to assist victims of these criminal acts.

### **Deadly Force Policy**

*Serious Bodily Injury:* The operational definition of serious bodily injury, as defined by the Use of Force Model is:

1. An open gash or wound;
2. Major broken bones; and/or
3. Damage to internal organs.

*Use of Deadly Force:* The use of deadly force by officers shall be strictly limited to defensive situations. If appropriate, officers shall exhaust all other types of force before resorting to the utilization of deadly force. However, officers may employ deadly force as a last resort, when they perceive an immediate danger of loss of life or serious bodily injury.

*Justifiable Use of Deadly Force:* When the use of deadly force is justified, officers discharging weapons shall not shoot to kill nor shoot to wound, but rather to stop the action by causing the instant incapacitation of the subject. For maximum stopping effectiveness and to minimize the danger to innocent bystanders, officers should shoot at center body mass.

*Offensive Posture:* Officers shall not utilize deadly force in an offensive posture to effect the apprehension of those persons who commit violations of probation, parole or intermediate punishment, or any other law amounting to summary, misdemeanor or felony offenses, which do not present the threat of death or serious bodily injury.

Nothing contained in this policy statement shall preclude the use of deadly force for self-defense, when warranted.

*Verbal Warning:* When practical, and if the time and opportunity exists in a deadly force situation, officers shall identify themselves as adult probation/parole officers and give some type of warning prior to the use of deadly force.

*Requirements for Righteous Deadly Force:* Officers shall consider the following:

1. Accurately assessing a subject's imminent potential for attacking in a life-threatening manner (attack potential); the immediate and simultaneous existence of intent, weapon, delivery system and target.

2. Articulating why an officer feared for their life or someone else's when deadly force action was taken.

3. Explaining why a lower level of force was inappropriate, ineffective and disengagement was not possible.

*Target Identification and Isolation:* Officers shall consider the following factors when making a decision to use deadly force:

1. Officers facing a decision to use deadly force must be aware of any innocent third parties that may be present in or near the line of fire.

2. Officers are prohibited from discharging their firearms when they cannot identify their target and it appears reasonably and likely that an innocent person(s) may be injured, unless the prohibition in discharging the firearm is likely to result in the immediate death or serious bodily injury of the officer or another person.

3. Officers shall establish target identification and target isolation.

*Use of Excessive Force:* See Page 5 of this policy statement.

*Administration of First Aid:* See Page 5 of this policy statement.

*Disengagement:* Whenever possible, and if the time and opportunity exists, officers shall utilize shielding, distance and movement (attack management) to disengage from a situation before resorting to deadly force.

*Warning Shots:* Warning shots are strictly prohibited under all circumstances.

*Rescue Shots:* Officers may use a rescue shot for the purpose of identifying location and/or acquiring appropriate assistance.

### **Critical Incident Report**

*Subject Control Report:* A Subject Control Report shall be completed whenever an officer is compelled to use force on a subject who, under the "Use of Force Model," is considered a resister or assailant or upon the request of an immediate supervisor. Also, when practical, this report shall be completed within twenty-four hours of occurrence of the incident. If circumstances do not permit the report to be completed within the established time frame, then the report should be completed as soon as circumstances permit (See page 23 of this policy statement). Also, the following shall apply to subject control reports:

1. Acknowledging that an event or incident shall be reported based upon the perceptions, interpretations, stress- levels and state-of-mind of each individual involved. A subject control report shall be regarded as one source of information subject to review.

2. A subject control report should be written as factual as possible within an atmosphere of tolerance and understanding for possible gaps in memory.

3. All subject control reports are the property of the department and shall not be filed in the employee personnel file.

4. All subject control reports shall be considered confidential, and not of public record.

*Garrity Right:* When a supervisor requests that an officer complete a subject control report, then the officer must complete the report within the established time constraints of this policy statement. Failure by the officer to complete a subject control report will expose the officer to disciplinary action, up to and including termination [See *Garrity v. New Jersey*, 385 U.S. 493 (1967)]. However, if a criminal investigation is pending against the officer, then a subject control report will not be required. All reports of the investigating police officer will be obtained by the Chief and substituted for the subject control report.

### **Debriefing**

*Necessity and Timing of Meeting:* A debriefing shall be convened whenever an officer is compelled to use force on a subject who, under the "Use of Force Model," is considered a resister or assailant or upon the request of an immediate supervisor or officer involved with the incident. Also, when practical, this meeting shall be held within twenty-four hours of occurrence of the incident. If circumstances do not permit the meeting to be held within the established time frame, then the meeting shall be held as soon as circumstances permit. This structured meeting can either be in a one on one situation or in a small group with a supervisor [Chief or Deputy Chief] present. The performance of the officer(s) should be evaluated, with appropriate recommendations for corrective action being referred to the Chief Adult Probation/Parole Officer, if necessary.

### **Authorization to Carry Firearms**

*Authorization to Carry a Firearm:* All adult probation/parole officers with peace officer status can request authorization to become a weapon-carrying officer (See Page 19 of this policy statement).

*Requirements to Carry a Firearm:* The department shall authorize officers to carry firearms for defensive purposes when the following criteria is met:

1. Successful completion of a criminal background investigation.

2. Successful completion of a psychological examination.

3. Successful completion of the Basic Orientation Academy for Probation/Parole Officers.

4. A written request from the Adult Probation/Parole Officer to the Chief Adult Probation/Parole Officer to carry a firearm.

5. Successful completion of a first aid and CPR course.

6. Successful completion of a defensive tactics and Use of Force course.

7. Successful completion and certification from the County Probation and Parole Officers' Firearm Education and Training Commission.

8. Ability to demonstrate a proficiency in the knowledge, handling, and safety of firearms.

*Issuance of Authority to Carry a Firearm:* The process of requesting authorization to carry a firearm shall be reviewed by the Chief Adult Probation/Parole Officer who shall consider the following:

1. Demonstrated need to carry a firearm in the performance of their official duties.
2. Physical and emotional condition of the officer.
3. Presence of alcohol-related problems.
4. Signs of emotional instability.
5. Officer under the care of a psychologist or psychiatrist.
6. Current or past disciplinary problems with the officer.
7. Completion of all requirements as outlined on page 7 of this policy statement.

*Final Approval:* The Chief Adult Probation/Parole Officer will make the final decision. The refusal of a request for authorization to carry a firearm is not appealable. Unless otherwise instructed, an officer may reapply for authorization every six months (See Page 20 of this policy statement).

*Officers Not Requesting Authorization To Carry:* All officers that were hired prior to the implementation date of this policy statement will have the option to carry a firearm. If an officer decides not to carry a firearm, then he/she must complete the Request Not To Carry a Firearm form and return it to the Chief Adult Probation/Parole Officer. Nothing in this policy statement shall prohibit an officer from requesting authorization to carry at a later time (See Page 21 of this policy statement).

*Relinquishing Authorization:* Once an officer is authorized to carry a firearm, that officer cannot request relinquishment of that authorization. The decision to carry a firearm is a difficult and moral decision that must be considered carefully by the officer before requesting authorization.

*Condition of Employment:* All new employees will be required to carry a firearm in the performance of their official duties.

*Issuance of the Firearm:* Once the officer has completed all training and fulfilled all agency requirements, the Chief Adult Probation Officer shall issue a firearm to the officer and execute the firearm issuance form (See Page 22 of this policy statement).

*Firearms Not To Be Carried Without a License:* Since adult parole/probation officers are declared peace officers with police powers to arrest offenders in violation of probation, parole or intermediate punishment, a license to carry a firearm during the performance of their official duties is not required. However, the department recommends that all weapon-carrying officers obtain a license to carry a weapon. The officer shall absorb the costs of the permit. Also, according to 18 Pa.C.S. § 6106, states, no person shall carry a firearm in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license, except, constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

#### **Conditions for Carrying a Firearm**

*Conditions for Carrying Firearms:* All weapon-carrying officers shall carry their firearm concealed and under the following circumstances:

1. During an arrest situation.
2. During a search and seizure situation.
3. While conducting field contacts, including after-hour supervision or investigations by assigned on-call personnel.
4. Range qualification and related training, including practice shooting.
5. To and from employment.
6. During the performance of their official duties as an adult probation/parole officer.

*Office Setting:* While in the office, all weapon-carrying officers shall secure their firearm in the gun security cabinet within the adult probation office. Officers shall be prohibited from carrying their firearm while in the office, unless entering or exiting the building to conduct fieldwork.

*Courthouse Setting:* While in the Courthouse or Courthouse Annex Building, all weapon-carrying officers shall secure their firearm in the gun security cabinet within the adult probation office. Officers shall be prohibited from carrying their firearm in the courthouse or courthouse annex building, unless entering or exiting the building to conduct fieldwork.

*Concealment of Firearm:* Firearms are to be carried in a concealed manner on the officer, under an article of clothing. The following exception will apply:

1. When participating in an arrest situation, the officer may position the weapon in an unconcealed manner to enhance accessibility.
2. When participating in range qualification and related training, including practice shooting.

#### **Displaying a Firearm**

*Displaying a Firearm:* Firearms shall not be displayed or drawn for any other reason than described below:

1. During an arrest situation.
2. Justifiable self-protection, the protection of others, assisting law enforcement and/or victims of crime.
3. When the officer perceives an immediate threat of death or serious bodily injury, which may include an attacking animal.
4. Cleaning the firearm, storage and inspection.
5. Range qualification or practice shooting.
6. Storage at a correctional facility, courthouse or other secure facility.

#### **Handling of Firearms**

*Handling of a Firearm:* The continued authorization to carry a firearm will depend on the following:

1. The officer's compliance with agency policy and procedure.
2. The officer's ability to handle the firearm in a safe manner.
3. The officer's ability to conduct themselves in a safe and proper manner while in possession of the firearm.
4. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearms unless circumstances create strong reasonable belief that it may be necessary to lawfully use the weapon.

5. In those situations, the officer shall exercise a reasonable standard of care with the drawn weapon. Reasonable care includes: pointing the muzzle in a safe direction; keeping the trigger finger outside the trigger guard; and under no circumstances shall a weapon capable of double action be cocked for single action use.

6. The use or handling of a firearm by an officer, on or off-duty, in a careless or imprudent manner or the unjustified endangering of human life by a firearm in violation of this policy statement is strictly forbidden and shall result in a disciplinary investigation and may result in the revocation of authorization to carry a firearm.

7. The department does not authorize or recognize the carrying of an agency issued firearm during off-duty hours.

*Firearm Safety Considerations:* The following regulations apply to all firearms and situations, whether on or off the range, at home or conducting probation/parole activities:

1. Always consider all firearms to be loaded.
2. Never point the muzzle of the firearm across anything, which you are unwilling to shoot.
3. Keep your finger outside the trigger guard until you are ready to shoot.
4. Be certain of your target, target identification and target isolation.
5. When you take a gun from its holster or storage for any other purpose than necessary use, unload it and check to see that it is unloaded three times.
6. A gun is not a toy, do not play with it.
7. Do not use or possess a firearm when drinking or using other substances that alter perception or disposition.
8. Resist the temptation to show off your firearm.
9. Do not loan your firearm to anyone else.
10. When passing a pistol to another individual, make sure the weapon is unloaded, magazine removed, action open, handing it gun grip first.

#### **Storage of Firearms and Ammunition**

*Storing the Firearm:* All weapon-carrying officers shall store their firearm as follows:

1. *In the Field:* When performing fieldwork, firearms are to be concealed on the officer.
2. *In an Automobile:* Firearms shall not be left in a vehicle, trunk, glove compartment, briefcase or other areas of storage, except under the following circumstances.
  - a. When the officer is entering an institution in which a firearms locker is not available.
  - b. When the officer must appear in court in which the courthouse does not allow entrance of an armed officer and there is no firearms locker available.
  - c. Should circumstances arise requiring the emergency or brief storage of a weapon, the containment area must be stationary, locked and be inaccessible to all except the officer.
3. *In the Office:* For purposes of office security and safety, officers are not permitted to carry their firearm in the office, unless entering and exiting to conduct fieldwork. When weapon-carrying officers are assigned to the office for duty days, the firearm must be stored in the gun

security cabinet unloaded, with the key being secured by the officer. Under no circumstances are firearms to be stored in desks or any other location in the office. If weapon-carrying officers do not take their firearms home after normal business hours, then the weapon must be secured in the gun security cabinet, unloaded.

4. *In the Courthouse/Annex Building:* For purposes of courthouse security and safety, officers shall secure their firearm in the gun security cabinet within the adult probation office unloaded. Officers shall be prohibited from carrying their firearm in the courthouse or annex building, unless entering or exiting the building to conduct fieldwork.

5. *Correctional Facilities/Other Courthouses:* When officers enter correctional facilities, other courthouses or any other secure facility, the officer shall secure their weapon in accordance with the facility's regulations.

6. *At Home:* See Page 11 of this policy statement.

7. *Interstate Travel:* When traveling outside the Commonwealth of Pennsylvania, officers are not permitted to carry their firearm into the neighboring state.

8. *In a Public Rest Room:* The officer shall remove his/her duty belt with the firearm in the holster and place the duty belt around the officer's neck. This procedure will ensure that the officer's equipment will not be stolen or forgotten.

*Storage of Ammunition:* When in the office, the firearm will be unloaded and the ammunition secured separately from the firearm in the gun security cabinet, accessible only to authorized personnel. When at home, the ammunition shall be removed from the firearm and stored in a separate location.

*Unattended Firearm:* Under no circumstances shall the officer leave his duty weapon unattended while in the office, field, home or any other unsecured locations.

#### **Home Safety**

*Firearm at Home:* All weapon-carrying officers may take their firearms home after normal business hours.

*Home Safety:* It is essential that the officer assigned to carry a firearm instruct their family members in the proper use and handling of the firearm. It should be made perfectly clear that the firearm is not to be handled by anyone other than the officer or a mature adult. The officer is responsible to educate his family members on the safety and proper handling of the firearm. All firearms should be kept out of the reach of children and immature or irresponsible adults and stored in a secure area. Older children may be given gun instruction with the extent of the training being dependent on the child's maturity and judgment of the parents.

*Storage at Home:* Immediately upon entering the residence, the firearm should be unloaded, the magazine removed and the firearm and equipment stored in a secure area. Officers are encouraged to store the ammunition, magazines and the firearm in different locations. The firearm must not be left unattended and accessible while in the residence. It shall be the responsibility of the officer to ensure that the firearm is properly secured in a locked cabinet or drawer. The firearm should be kept beyond the reach of small children.

*Loaded Firearm:* Firearms shall not remain loaded while in the residence. The officer shall immediately unload the weapon when they enter the residence and all ammunition should be kept in a safe location away from

the weapon. All ammunition should be stored in a cool, dry place to prevent deterioration.

*Trigger Guards:* As a suggestion, a trigger guard lock will secure the firearm from accidental discharge. The key to the trigger guard should be kept on the officer's person at all times.

*Unattended Weapon at Home:* The officer shall not leave his duty weapon unattended while in their residence. The firearm must be secured at all times.

### **Loading and Unloading Firearms**

*Loading Firearms in the Office:* The agency has provided all weapon-carrying officers with a gun barrel to load and unload their weapons. When officers are preparing for fieldwork, the officer shall load his firearm in the gun barrel located within the agency as follows:

1. The officer shall notify all agency personnel that he will be loading his weapon.
2. Before loading the weapon, the officer shall clear the entire room of other agency personnel.
3. The officer shall point the barrel of the weapon into the center of the gun barrel and load the weapon.
4. No other agency personnel shall be permitted in the area until the weapon is loaded and secured in the officer's holster.

*Unloading Firearms in the Office:* When officers return from the field, they shall unload their weapon as outlined above.

### **Discharge of Firearms**

*Discharge of a Firearm:* The discharge of a firearm is permitted only when an officer reasonably believes that he/she or another person is at risk for serious bodily injury or death and that the deadly force employed by the officer is reasonable and necessary and not excessive by comparison to the type of resistance offered by the offender.

*Unholstering:* See Page 9 of this policy statement (Displaying a Firearm).

*A Discharged Weapon:* Any unholstering, discharge or firing of a weapon, other than in a training program, qualification or off-duty practice, must be reported immediately to a supervisor by the officer who discharged the weapon.

*Involved Officer(s) Responsibilities:* Any time an officer is engaged in an incident, which involves the discharge of a firearm, whether by an agency officer or another person, the following procedure shall apply:

1. Immediately following the incident, secure the scene and make every effort to preserve potentially pertinent evidence.
2. Contact the Carbon County Communications Center for the police department that has jurisdiction and medical personnel, if injuries resulted to any persons at the scene.
3. Notify the Chief Adult Probation/Parole Officer or his designee, if unavailable.

*Written Incident Report:* The officer must file a written incident report immediately after the discharge to their immediate supervisor. The officer shall provide the exact location and time of the incident; a detailed description of the incident; names and addresses of witnesses; reasons for discharging the weapon; names of any investigating police officers; and any other information that may be

necessary in understanding and investigating the incident. However, if a police investigation has been initiated, the officer(s) involved with the incident will not need to file a written report at this time. The Chief Adult Probation/Parole Officer will obtain a copy of the police report (See page 23 of this policy statement).

*Surrendering the Weapon:* The officer shall surrender the weapon involved to their immediate supervisor or a requesting police officer involved in the investigation. The officer's weapon shall be confiscated and temporarily suspended until the investigation is completed.

*Incidents and Allegations:* It is the responsibility of the officer carrying a firearm to report immediately to a supervisor any incidents or situations that may result in allegations being made or complaints filed regarding the use or displaying of a firearm. Other staff that observes an unusual situation involving a firearm must verbally report to an immediate supervisor. The Chief Adult Probation/Parole Officer may request a written report.

*Departmental Investigation:* The Chief Adult Probation Officer shall receive prompt notification of the incident so that an investigation can be initiated to verify the factual basis surrounding the situation.

### **Shooting At Moving Vehicles**

*Shooting at Moving Vehicle Guidelines:* Officers shall not discharge a firearm at or from a moving vehicle except under the following circumstances:

1. As a last resort measure of self-defense when the subject is using deadly force by means of other than the vehicle.
2. As a last resort measure of self-defense when a vehicle is being driven in a manner deliberately intended to kill or injure an officer or other party.

*Limitations and Consequences Shooting at a Moving Vehicle:* In deciding to shoot at a moving vehicle, officers must take into account the following limitations and consequences:

1. The difficulty of hitting a moving target.
2. The possibility of ricochets striking unintended targets.
3. Population densities.
4. The difficulty in penetrating the automobile body and/or steel belted radial tires.
5. The inability to stop a vehicle's momentum even when the target actor is hit.
6. The possibility of damage or injury, which might result from causing the vehicle to go out of control.

### **Damaged, Lost or Stolen Firearms**

*Damaged Firearm:* Any officer who suspects that his/her issued firearm is damaged shall immediately notify the Chief Adult Probation/Parole Officer. A potentially damaged firearm shall not be carried. The firearm shall be secured and sent to a certified armorer for repairs. During this time, the officer will not carry a firearm until the firearm can be repaired.

*Lost or Stolen Firearm:* The loss or theft of a firearm shall be immediately reported to the Chief Adult Probation/Parole Officer. This report must be made within twenty-four (24) hours of occurrence, either by telephone or in person. The initial notification will be followed immediately by a written report describing the circumstances surrounding the loss or theft of the firearm. The employee must take immediate and reasonable action to

recover the firearm and obtain all information available to aid in the investigation and recovery of the firearm. Employees must seek assistance from the appropriate law enforcement agency as soon as possible.

*Security and Accountability:* Officers are directly responsible for the safety and security of authorized firearms. Officers may be required to reimburse the County for the costs of lost, stolen or damaged firearms if:

1. An official investigation establishes that the officer is negligent or otherwise at fault,
2. It is administratively decided that reimbursement is to be made.

*Disciplinary Action:* Failure to safeguard or otherwise secure firearms may result in disciplinary action. Furthermore, the officer's authorization to carry may be suspended and he/she referred for appropriate levels of training.

**Requirement to Notify the Department of Physical and Pharmacological Conditions Affecting the Ability to a Carry Firearm**

*Impairment:* It shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor of any physical or pharmacological conditions causing physical and/or emotional impairment.

*Prescriptive Medication:* In those instances when an officer is prescribed a medication for an illness or medical condition, it shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor. When an officer believes and/or medical personnel indicate that a medication may affect judgment and/or reaction time, authorization to carry a firearm shall be suspended. Authorization shall be reinstated upon the cessation of the medication and its effects or with a physician's ruling that the medication's potential contraindications would be aversive to handling a firearm safely and proficiently.

*Employee Drug Testing Program:* All employees of the adult probation/parole officer shall be subject to random drug screens (See Article 56: Carbon County Court System Drug-Free Work Place Policy and Testing Guidelines in the Personnel Policy and Procedure Manual for Court Employees).

**Prohibited Use of Officially Issued Firearm**

*Use of Agency Issued Firearm:* Agency issued firearms may only be used for official purposes, in the performance of the officer's official duties. In accordance with this policy statement, weapon-carrying officers, who use agency issued firearms for other than official authorized purposes, shall be subject to disciplinary action, up to and including termination.

**Temporary Suspension of Authorization to Carry**

*Incidents and Allegations:* See Page 15 and 16 of this policy statement.

*Departmental Investigation:* See Page 15 and 16 of this policy statement.

*Temporary Suspension of Authorization to Carry:* If circumstances arise where an officer's ability to properly handle a firearm is called into question, the Chief Adult Probation/Parole Officer has the duty and authority to immediately remove the officer's agency issued firearm in an effort to provide for the safety of the officer, as well as that of the community. Reasons for a temporary suspension may include, but are not limited to the following:

1. Physical limitation or injury
2. Mental, emotional, or behavioral impairment
3. Allegations of misconduct, negligence, or carelessness
4. Induced impairment due to drugs (illicit or legal), and/or alcohol
5. Unsafe situational tactics
6. Violation of agency policy or procedure
7. Actions which may indicate a staff member's judgment is impaired
8. Violation of the Protection From Abuse Act, 35 P. S. § 10181, as amended, when the Court directs that all weapons be forfeited.

*Period of Temporary Suspension:* The Chief Adult Probation/Parole Officer shall conduct an investigation into the allegation of improper handling of a firearm. Within thirty (30) days of the alleged allegation, a decision shall be made to:

1. Remove authorization
2. Continue temporary suspension
3. Return firearm

*Continued Temporary Suspension:* If after thirty (30) days, the Chief Adult Probation/Parole Officer has not completed the investigation, then the temporary suspension may be extended for an additional thirty (30) days.

*Removal of Authorization:* After completion of the investigation, the Chief Adult Probation/Parole Officer may remove authorization from the officer until he/she can demonstrate an ability to properly handle the firearm in a safe manner and/or has completed training necessary to demonstrate the safe and proper handling of a firearm. This administrative decision is not considered disciplinary action and is for the safety of the officer and the community.

*Appeal of Decision:* The decision of the Chief Adult Probation/Parole Officer shall be final.

*Allegations Involving the Chief Adult Probation/Parole Officer:* When any allegations are lodged against the Chief Adult Probation/Parole Officer for violations of this firearm policy, then the Deputy Chief Adult Probation/Parole Officer shall remove the firearm from the Chief and conduct an investigation into the allegation in accordance with this policy statement.

*Performance of Official Duties During Suspension:* An officer whose authorization to carry a firearm has been suspended shall continue to perform their official duties and functions as an adult probation/parole officer with no interruption in services.

*Reinstatement Process:* An officer who had authorization removed may reapply for reinstatement every six months.

**Firearms Training Requirements**

*Firearm Familiarization Training:* Prior to issuance of the firearm, the officer must view a familiarization video provided by the manufacturer, Glock.

*Basic Firearms Academy:* All officers carrying firearms must attend the initial firearms training course offered by the County Probation and Parole Officers' Firearm Education and Training Commission (See 61 Pa.C.S. § 332.1 through 61 Pa.C.S. § 332.9). The training course shall consist of a period of classroom instruction and range qualification.

*Requalification:* All officers who receive certification by the Commission, must requalify annually and during the time period established by the Commission. The department shall make arrangements with neighboring counties, who have a certified Commission firearms' instructor, to conduct requalification training.

*Mandatory In-Service Training:* In order to maintain state certification, any in-service training mandated by the established County Probation and Parole Officers' Firearm Education and Training Commission, shall be attended by all weapon-carrying officers.

*Failure to Qualify at the Initial Training:* If an officer fails to qualify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer.

*Failure to Requalify:* If an officer fails to requalify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer. Failure to requalify will result in the temporary suspension of authorization to carry a firearm. When an officer fails to requalify, then he/she must attend the initial firearms academy.

*Failure to Qualify By New Employee:* An officer hired after the adoption of this policy statement and fails to qualify/requalify as set forth in this policy statement, will be offered additional training. Failure to qualify thereafter will result in a departmental inquiry as to the reasons an officer failed to qualify. A recommendation will be made to the court concerning the employment status of the officer.

*Independent Firearms Practice:* Officers authorized to carry a firearm may practice with their issued firearm on the employee's own time. The practice must occur only at a firing range, public or private. The department will only issue 200 rounds of practice ammunition to an officer attending the initial firearms training academy and requalification. The officer must purchase all other practice ammunition.

*Training Ammunition:* The department shall issue the appropriate number of rounds required for initial qualification and requalification. Approved training ammunition is new, factory-loaded, 124 grain, 9 mm rounds. The department will only issue ammunition to the officer for two attempts at qualification. Any other authorized attempts to qualify will require the officer to purchase the ammunition approved by the department.

*Familiarization Training:* All adult probation/parole officers will be required to complete a firearms familiarization course, when available.

### **Authorized Equipment**

*Authorized Firearm:* The department shall issue a Glock Model 26 (9 mm) pistol to each officer authorized to carry a firearm. Personal firearms are prohibited. Only the firearm issued by the department to the officer can be carried and used in the performance of official duties, including all trainings at the firearms academy and other commission-sponsored trainings.

*Authorized Duty Ammunition:* The department shall issue thirty (30) rounds of duty ammunition, which is new, factory-loaded, 124-grain hydra-shok, jacketed hollow point. Any other ammunition is prohibited.

*Holsters:* The department shall issue a DeSantis Thumb Break Scabbard for each officer authorized to

carry a firearm. The holster shall be worn on the officer's duty belt, on the officer's strong side. Cross-draw positioning of a firearm is prohibited. All other holsters including shoulder holsters and weapons are prohibited.

*Magazines and Extensions:* Each weapon-carrying officer will be issued two additional ten round magazines fitted with grip extensions.

*Double Magazine Pouches:* Each weapon-carrying officer will be issued a nylon double magazine pouch.

*Modifications to Equipment:* All equipment issued by the department is standard and under no circumstances will any modifications be permitted. Officers altering or modifying their equipment will be subject to disciplinary action, including suspension of authorization to carry a firearm.

### **Cleaning and Maintenance of Firearms**

*Cleaning of Firearms:* Weapon-carrying officers are responsible for the cleaning and lubrication of their issued firearm after each use, whenever the handgun has been subjected to moisture or dirt or every three months. Cleaning kits will be available in the department and the officer must keep a record of when the handgun was cleaned. Since the department has no designated areas for cleaning, officers will be expected to clean their firearm at their desk or at home. Failure to maintain proper maintenance and cleaning of the firearm may result in the temporary suspension of authorization to carry.

*Safety Considerations:* Before cleaning your firearm, make absolutely sure that it is unloaded. All ammunition should be stored away from the cleaning area, with the gun's action open during the cleaning process.

*Damaged Firearms:* See Page 14 of this policy statement.

*Inspection:* The department shall forward all firearms to a certified Glock armorer for inspection every six months.

*Mechanical Problems:* Firearms with mechanical problems that cannot be corrected by routine cleaning shall be taken out of service and sent to a qualified armorer for repair.

### **Maintenance of Magazine and Ammunition**

*Ammunition:* Ammunition should be removed from the magazine and rotated daily. This will ensure that striation will not occur on the tip of the bullet located at the open end of the magazine. Failure to rotate ammunition may result in the destruction of the integrity of the bullet and possibly cause damage or injury when discharged.

*Magazine:* Ammunition should not be stored in a magazine for any prolonged period of time. Prolonged storage of ammunition in a magazine could destroy the spring mechanism. Therefore, at the end of every shift, the officer shall empty the magazine and store the ammunition in accordance with agency policy (See page 10 of this policy statement).

### **Body Armor**

*Issuance of Body Armor:* The department shall provide and issue all adult probation/parole officers a bulletproof vest. It shall be mandatory that all probation officers wear body armor when performing field activities. There shall be no exceptions to this policy statement. Body armor shall be replaced in accordance with manufacturer specifications.

**Violations of Use of Force and Firearms Policy**

*Disciplinary Procedure:* Any employee in violation of this policy statement shall be subject to disciplinary action, up to and including termination (See Article 41: Carbon County Court System Disciplinary Procedure in the Personnel Policy and Procedure Manual for Court Employees).

**Firearm Authorization Request**

I, \_\_\_\_\_, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department, a division of the Court of Common Pleas, Fifty-Sixth Judicial District, do hereby request authorization to carry a firearm in the performance of my duties.

In making the aforementioned request, I acknowledge and certify the following:

- 1. I am a tenured employee and not on a probationary status.
- 2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
- 3. I do not have a problem with drugs or alcohol. I am not presently using any drugs, except as authorized by a medical physician. I have verified with my physician that the medication prescribed will not have any effect on my judgment or impair my ability to carry a firearm in the performance of my duties.
- 4. I have completed psychological testing and have been approved mentally sound by a licensed psychologist to carry a firearm.
- 5. I am medically and physically sound to carry out my assigned duties as a probation/parole officer.
- 6. I have completed classroom instruction on firearms and have successfully passed a written examination (County Probation/Parole Officers' Firearm Education and Training Commission).
- 7. I have completed range instruction and have qualified in the practical phase of shooting (County Probation/Parole Officers' Firearm Education and Training Commission).
- 8. I will only use my firearm for defensive purposes only, where retreat is not possible and serious injury or death is imminent.
- 9. I have successfully completed training in chemical agents and impact weapons and have received certification.
- 10. I have successfully completed training in control tactics, defensive tactics and Use of Force Instruction and have received certification.

I hereby affirm that the aforementioned information is true. Also, I understand that the falsification of any of the aforementioned information shall result in appropriate disciplinary action.

\_\_\_\_\_  
Signature Adult Probation/Parole Officer      Date

**Firearm Certification**

Officer's Name: \_\_\_\_\_

- 1. Successful completion of criminal background investigation.  Yes  No
- 2. Successful completion of psychological evaluation.  Yes  No

- 3. Successful completion of basic orientation academy.  Yes  No
- 4. Successful completion of first aid and CPR training.  Yes  No
- 5. Successful completion of defensive tactics.  Yes  No
- 6. Successful completion of OC spray and expandable baton training.  Yes  No
- 7. Successful completion of Use of Force training.  Yes  No
- 8. Successful completion of County Probation and Parole Officers' Firearm and Education and Training Commission.  Yes  No
- 9. Ability to demonstrate proficiency, safety and knowledge in the proper use and handling of a firearm.  Yes  No

**AUTHORIZATION**

REQUEST DENIED:  REQUEST APPROVED:

Chief Adult Probation/Parole Officer:

I, Ronald S. Kokinda, Chief Adult Probation/Parole Officer hereby approve/deny the within request to carry a firearm in accordance with court and departmental policies and procedures.

Signature and Date: \_\_\_\_\_

**Request Not to Carry a Firearm**

I, \_\_\_\_\_, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department, a division of the Court of Common Pleas, Fifty-Sixth Judicial District, composed of Carbon County, do hereby exercise my option not to carry a firearm in the performance of my duties, at this time.

I acknowledge that if circumstances do change, that I may request authorization to carry a firearm during the performance of my official duties.

In making the aforementioned request, I acknowledge and certify the following:

- 1. I am a tenured employee and not on a probationary status.
- 2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
- 3. I have been offered the opportunity to attend the Basic Firearms' Academy and to carry a firearm during the performance of my official duties, but declined.
- 4. I have been hired prior to the implementation of the Carbon County Adult Probation/Parole Department's firearm program and am exercising my option not to carry a firearm.
- 5. Even though I will not carry a firearm during the performance of my official duties, I fully understand that I must perform the same duties and responsibilities as an adult probation/parole officer who carries a firearm.

I hereby affirm that the aforementioned information is true. Also, I understand that the falsification of any of the aforementioned information shall result in appropriate disciplinary action.

\_\_\_\_\_  
Adult Probation/Parole Officer      Date

\_\_\_\_\_  
Chief Adult Probation/Parole Officer      Date

**CARBON COUNTY ADULT PROBATION/  
PAROLE OFFICE  
ISSUANCE OF FIREARM**

I acknowledge receipt of the agency issued firearm. By signing below, I further acknowledge that I have received appropriate training in the use of the firearm and accept full responsibility for the safe and proper handling of the firearm.

I will comply with all policies and procedures adopted by the Carbon County Court of Common Pleas and the Carbon County Adult Probation/Parole Office.

I understand that I may have my authorization to carry a firearm, during the performance of my duties, temporarily suspended as outlined in this policy statement and that when requested by the Chief Adult Probation/Parole Officer must relinquish my firearm.

Manufacturer      Model      Caliber      Serial Number

**ACKNOWLEDGMENT**

\_\_\_\_\_  
Adult Probation/Parole Officer      Date

\_\_\_\_\_  
Chief Adult Probation/Parole Officer      Date

**CARBON COUNTY ADULT PROBATION/PAROLE  
DEPARTMENT  
"Subject Control Report"**

Officer's Name: \_\_\_\_\_ Date of Incident: \_\_\_\_\_

Subject's Name: \_\_\_\_\_ D.O.B.: \_\_\_ Ht: \_\_\_ Wt: \_\_\_ Sex: \_\_\_

Address of Incident: \_\_\_\_\_

Reason for Use of Control

- Necessary to defend self
- Necessary to defend another
- Necessary to effect arrest
- Necessary to prevent a violent forcible felony
- Necessary to restrain subject for his own safety
- Other \_\_\_\_\_

Subject's Actions (You may check more than one):

- Psychological Intimidation (attitude, clinched fists, stance)
- Verbal Resistance (loud, abusive, profane, threatening)
- Passive Resister (non-movement in response to verbal and other direction).
- Assailant (Actions are aggressive offensive without weapons, actions will probably cause physical injury. Actions will probably cause death or serious bodily injury).

Officer's Actions (You may check more than one):

- Officer Presence (Uniformed \_\_, Marked Unit \_\_, Plain Clothes \_\_, Unmarked Unit \_\_)
- Verbal Direction/Commands (exact words used, see report narrative)
- Control Instruments (Expandable Baton)
- Impact Weapon (Baton)
- Chemical Agent (OC Spray)
- Deadly Force (When an officer must shoot or strike the subject in a manner likely to cause death or serious bodily injury).

Officer's Weapons Used:

- Personal Weapons (hands, feet, knees)
- OC Spray

- Impact Weapon (baton)
- Firearm
- Other (Weapon of Necessity: \_\_\_\_\_)

Injuries

Was the officer injured? \_\_\_ Yes \_\_\_ No

Was the subject injured? \_\_\_ Yes \_\_\_ No

Names of persons providing medical attention: \_\_\_\_\_

Additional Officers Involved: \_\_\_\_\_

Witnesses (Names and Addresses): \_\_\_\_\_

Garrity Right

"It is my understanding that the following report is made for administrative, adult probation department purposes only and will not be used as part of an official investigation. I make this report after being ordered to do so by lawful supervisory officers. It is my understanding that by refusing to obey an order to write this report that I can be disciplined for insubordination, up to and including termination from employment. This report is made only pursuant to such orders and the potential punishment/discipline that can result for failure to obey that order." [See *Garrity v. New Jersey*, 385 U.S. 493 (1967)].

NARRATIVE

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

\_\_\_\_\_  
Officer's Signature      Date

\_\_\_\_\_  
Supervisor's Signature      Date

[Pa.B. Doc. No. 03-2146. Filed for public inspection November 7, 2003, 9:00 a.m.]

**LEHIGH COUNTY**

**Adoption of Local Rule of Civil Procedure 205.3—  
Fee to Provide Electronic Filing Services; 2003-  
J-43**

**Order**

*And Now*, this 21st day of October, 2003,

*It Is Ordered*, that the following Lehigh County Local Rule of Civil Procedure, Rule 205.3, Fee to Provide Electronic Filing Services, is hereby adopted, to become effective January 1, 2004.

The Court Administrator of Lehigh County is directed to:

1. File seven (7) certified copies of this order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one disk copy 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. File one (1) certified copy with the Clerk of Courts of the Court of Common Pleas of Lehigh County.

5. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

*By the Court*

WILLIAM H. PLATT,  
*President Judge*

**Rule 205.3 Fee to Provide Electronic Filing Services**

The Clerk of Courts—Civil Division may impose a reasonable fee approved by the Court, to be included in the fee for Commencement of Actions, for the provision of electronic filing services. Such fees collected shall be maintained in a separate account and shall be used solely to defray the costs of electronic filing.

[Pa.B. Doc. No. 03-2147. Filed for public inspection November 7, 2003, 9:00 a.m.]

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**SNYDER COUNTY**

**Amendment of Local Rules; No. MC-55-2003**

**Order**

*And Now*, this 16th day of October, 2003, it is hereby *Ordered*:

1. That local rule 17OC006.11 is amended to read as follows:

**17OC006.11 Confirmation of Accounts**

A. Provided that proper notice has been given and no objection is filed timely, all accounts and statements of proposed distribution which are filed on or before the first Thursday of each month shall be confirmed nisi by the Court on the fourth Thursday of the month, unless that day is a holiday, in which event, confirmation shall be made the next business day. Prior to the date of confirmation a proposed decree of distribution shall be filed by the accountant. The proposed decree shall contain space for signature by a member of the Orphans' Court.

B. If no exceptions are filed to the confirmation nisi, the Court shall confirm said accounts absolutely ten (10) days after entry of the confirmation nisi, which confirmation absolute shall constitute a final adjudication of such accounts, and a final decree approving absolutely the statement of proposed distribution and directing distribution in accordance therewith shall thereupon be made and entered by the Court.

2. That in recognition of the provisions of Pa.R.C.P. No. 230.2, local rule 17CV0001 ANNUAL CALL is rescinded.

3. That the local rules of the 17th Judicial District of Pennsylvania are amended by the addition of the following local rules:

**17CV1023.1 Motions—Representations to the Court**

All motions filed with the Court must be written, shall contain a certification by counsel for the movant, or by the movant if not represented by counsel, that he or she has sought concurrence in the motion from each party, and that it has been either given, denied, or not received. No motion shall be filed without the said certification. Every motion which has been concurred with by all parties shall be accompanied by a form of order which, if approved by the Court, would grant the relief sought in the motion. Every motion that is not concurred with by all parties shall be accompanied by a form of order which includes alternative provisions for either a rule returnable for answer only or to schedule a date for hearing and argument before the court.

**17CR0574 Motions—Representations to the Court**

All motions filed with the Court must be written, shall contain a certification by counsel for the movant, or by the movant if not represented by counsel, that he or she has sought concurrence in the motion from each party, and that it has been either given, denied, or not received. No motion shall be filed without the said certification. Every motion which has been concurred with by all parties shall be accompanied by a form of order which, if approved by the Court, would grant the relief sought in the motion. Every motion that is not concurred with by all parties shall be accompanied by a form of order which includes alternative provisions for either a rule returnable for answer only or to schedule a date for hearing and argument before the court.

4. The Court Administrator is directed to serve: seven (7) certified copies of this Order on the Administrative Office of Pennsylvania Courts; two (2) certified copies on the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and to provide a copy of this Order to the Legislative Reference Bureau on computer diskette in Word, the diskette to be labeled with this Court's name and address, and with the local rule's computer file name; one (1) certified copy on the Civil Procedural Rules Committee.

5. These local rules shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

*By the Court*

HAROLD F. WOELFEL, Jr.,  
*President Judge*

[Pa.B. Doc. No. 03-2148. Filed for public inspection November 7, 2003, 9:00 a.m.]