

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 81 AND 83]

Amendments to the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement; No. 28 Disciplinary Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of April, 2004, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. The Pennsylvania Rules of Professional Conduct are amended to read as set forth in Annex A hereto.
2. The Pennsylvania Rules of Disciplinary Enforcement are amended to read as set forth in Annex B hereto.
3. This Order shall be processed in accordance with Pa.R.J.A. 103(c). The amendments adopted hereby shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall govern matters thereafter commenced and, in so far as just and practicable, matters then pending.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

LAW FIRMS AND ASSOCIATIONS

Rule 5.5. Unauthorized Practice of Law; **Multijurisdictional Practice Of Law.**

- (a) A lawyer shall not [:
- (a) aid a non-lawyer in the unauthorized practice of law; or
- (b)] practice law in a jurisdiction [where to do so would be] in violation of [regulations] the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment

1. A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

2. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. [Paragraph (a)] This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

3. [Likewise, it does not prohibit lawyers from providing] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.

Code of Professional Responsibility Comparison

Rule 5.5 is the equivalent of present DR 3-101 of the Pa. C.P.R.]

4. Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

5. There are occasions in which lawyers admitted to practice in another foreign or United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

6. There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

7. Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any foreign or United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. It is also intended to allow military lawyers to practice law on a pro bono basis for members of the military in civil matters. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is

admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

8. Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

9. Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

10. Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

11. When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

12. Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

13. Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal ser-

vices on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that non-lawyers may perform but that are considered the practice of law when performed by lawyers.

14. Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

15. Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

16. Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

17. If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

18. Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

19. A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

20. In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

21. Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.5. Disciplinary Authority; Choice of Law.

(a) *Disciplinary Authority.* A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction [where the lawyer is admitted] for the same conduct.

(b) *Choice of Law.* In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a [proceeding in a court or agency] matter pending before [which a lawyer has been admitted to practice (either generally or for purposes of that proceeding)] a tribunal, the rules [to be applied shall be the rules] of the jurisdiction in which the [court or agency] tribunal sits shall be applied, unless the rules of the [court or agency] tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

[(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied

shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.]

Comment

Disciplinary Authority

1. [Paragraph (a) restates] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Pennsylvania Rules of Disciplinary Enforcement 201(a)(6) and 216(d). A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

2. A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court [or agency] with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. [In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.] Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

3. Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of [an attorney] a lawyer shall be subject to only one set of rules of professional conduct, [and] (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

4. Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding [in a court or agency] pending before [which the lawyer is admitted to practice (either generally or pro hac vice)] a tribunal, the lawyer shall be subject only to the rules of [professional conduct of that court or agency] the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, in-

cluding conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer [licensed to practice only in this jurisdiction shall be subject only to the rules of professional conduct of this jurisdiction, and that a lawyer licensed in multiple jurisdictions shall be subject to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be appropriately applied, for example; to a situation in which a lawyer admitted in, and principally practicing in, State A, but also admitted in State B, handled an acquisition by a company whose headquarters and operations were in State B of another, similar such company. The exception would not appropriately be applied, on the other hand, if the lawyer handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B.] shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

5. When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

6. If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

7. The choice of law provision [is not intended to apply to] applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise. [Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law.

Code of Professional Responsibility Comparison

There is no counterpart to this Rule in the Code.]

Annex B

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 201. Jurisdiction.

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

* * * * *

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal services in this Commonwealth.

* * * * *

Rule 216. Reciprocal discipline.

* * * * *

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (a) of this rule, the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

* * * * *

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; or

(3) that the imposition of the same or comparable discipline would result in grave injustice, or be offensive to the public policy of this Commonwealth[; or].

[(4) that the misconduct established has been held to warrant substantially different discipline in this Commonwealth.]

* * * * *

(d) In all other respects, a final adjudication in another jurisdiction that an attorney, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Commonwealth.

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[Pa.B. Doc. No. 04-840. Filed for public inspection May 14, 2004, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Amending Rule 103; No. 308 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 30, 2004 amendment to Rule of Criminal Procedure 103 that includes a definition of "signature" that makes it clear that "signature," when used in reference to documents generated by the minor judiciary or court of common

pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 30th day of April, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 1048 (March 1, 2003), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 815), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 103 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

Annex A

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

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

* * * * *

SIGNATURE, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules.

* * * * *

Comment

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Neither the definition of law enforcement officer nor the definition of police officer gives the power of arrest to any person who is not otherwise given that power by law.

The definition of signature was added in 2004 to make it clear when a rule requires a document generated by the minor judiciary or court of common pleas to include a signature or to be signed, that the signature may be in any of the forms provided in the definition. In addition, documents that institute proceedings or require the inclusion of an oath ordinarily are not documents generated by the minor courts or courts of common pleas and therefore any signature required on the document would not be included in this definition of signature; however, in the event such a document is generated by the minor courts or the courts of common pleas, the form of "signature" on this document is limited to handwritten, and the other forms of signature provided in the definition are not permitted.

* * * * *

Official Note: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended **January 31, 1970**, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended March 3, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the April 30, 2004 amendments defining "signature" published with the Court's Order at 34 Pa.B. 2542 (May 15, 2004).

FINAL REPORT¹

Amendment to Pa.R.Crim.P. 103

Definition of Signature

On April 30, 2004, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.R.Crim.P. 103 (Definitions) to include a definition of signature: "signature, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules."

The Committee has been undertaking a review of the Criminal Rules as part of its continuing efforts to encourage and facilitate the use of advanced communication technology (ACT) in court proceedings,² conform the rules to the ACT changes adopted by the Supreme Court in 2002,³ and respond to issues raised by the Supreme Court's Common Pleas Court Management System (CPCMS) Project staff. One issue the CPCMS Project staff raised with the Committee was "whether the rules permit a judge, defendant, counsel, etc. to use an electronic signature to sign a form." The CPCMS Project staff pointed out that the Criminal Rules do not specifically permit electronic signatures on criminal case documents, and, because they are in the final stages of developing the CPCMS to automate the common pleas courts, they need to know whether to incorporate the capability of using electronic signatures into the system. The Committee's review of the rules revealed that without some specific reference to electronic signatures, there could be confusion whether this form of signature is permitted, especially in view of the Court's continuing efforts to integrate automation and ACT procedures into the Criminal Rules

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² The Committee strongly believes the use of technology should be encouraged when feasible because this promotes the Court's goals of statewide uniformity in the practice of law, and the use of technology has been shown to result in a more efficient use of the court's limited resources.

³ See, e.g., the Court's May 10, 2002 Order published at 32 Pa.B. 2591 (May 25, 2002).

and the criminal trial process. The Committee considered various approaches to providing in the Criminal Rules this clarification. We concluded the best way to proceed is to define the term "signature" in the rules and make it clear the term "signature" includes electronic signatures on documents generated⁴ by the minor courts⁵ or courts of common pleas that are prepared and transmitted electronically.

During the Committee's discussion of the wording of a definition, several members expressed concerns about the scope of the definition and whether some controls over the use of forms of signatures other than a traditional signature handwritten by the signatory should be included. Concerning the scope of the definition, because the changes tie into the CPCMS which primarily is an automated court management system, the Committee agreed that, for the time being, the definition should be limited to court-generated documents and not documents coming into the court from counsel or defendants. In addition, the members thought this definition provides the best means of capturing a judge's signature so that when the judge authorizes a document, the signature of the judge can be generated or reproduced on the document in lieu of the judge physically handwriting his or her name. Finally, the members agreed that the definition should be broad enough to 1) encompass all the forms of signature, not only electronic, and be worded broadly so the definition would not have to be amended to accommodate new forms of technology as they are developed, and 2) accommodate not only the judge who authorizes his or her signature on a document be generated or reproduced electronically or by some other means, but also the judge who elects to physically handwrite his or her name.

Concerning placing some controls in the definition, the members particularly were concerned about signatures being placed on documents without the authorization of the individual purporting to have signed the document. We noted that the same situation arises with signatures that are not electronically generated, and that there probably is no procedural way to protect completely against unauthorized signatures. However, we agreed the definition should include a provision requiring that a signature must be affixed upon the document by the signer or by someone with the signer's authorization.

In view of the foregoing considerations, Rule 103 (Definitions) has been amended by including a definition of the term "signature" to make it clear that when used in reference to a minor court or common pleas court-generated document only, signature includes: 1) a handwritten signature; 2) a copy of a handwritten signature; 3) a computer generated signature, or 4) a signature created, transmitted, received, or stored by electronic means, and explain that the signature must be placed on the document by the signatory or by someone with the signatory's authorization. In addition, the Comment to Rule 103 has been revised to include an explanation that if the minor court or court of common pleas ever generate a document that institute proceedings or require the

⁴ The members while working on this definition were aware that the term "electronic signature" can mean either a signature that is generated or created or produced or reproduced by a system when the appropriate buttons are entered (i.e., as in a PIN), or a signature that is "written" or "entered" on an electronic pad, captured as a signature, and "remembered" by that system so that it can be reproduced when necessary, and that all these forms of electronic signatures needed to be included in the definition of "signature."

⁵ The Committee published our proposal at 33 Pa.B. 1048 (March 1, 2003), and included in the proposed definition the language "court generated document." In view of correspondence we received following the publication of our proposal, the Committee agreed to modify the definition to make it clear that the definition includes signatures on documents generated by the minor courts and does not include signatures on documents that come into the court from counsel or the defendant. Accordingly, we agreed to replace in the definition the language "court generated document" with "documents generated by the minor judiciary or court of common pleas."

inclusion of an oath, the form of signature on the document is limited to the original handwritten signature of the district justice or judge, and the other forms of signature provided in the definition are prohibited.

[Pa.B. Doc. No. 04-841. Filed for public inspection May 14, 2004, 9:00 a.m.]

[234 PA. CODE CH. 5]

Order Approving the Revision of the Comment to Rule 560; No. 307 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 23, 2004 changes to Rule of Criminal Procedure 560 clarifying that the attorney for the Commonwealth may electronically prepare, sign, and transmit the information for filing. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 23d day of April, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Rule of Criminal Procedure 560 is approved in the following form.

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

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

PART E. Informations

Rule 560. Information: Filing, Contents, Function.

* * * * *

Comment

The attorney for the Commonwealth may electronically prepare, sign, and transmit the information for filing.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 561(A). Upon the filing of an information, any charge not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 561(B). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See Rule 585.

* * * * *

Official Note: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; **Comment revised April 23, 2004, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the April 23, 2004 Comment revision published with the Court's Order at 34 Pa.B. 2543 (May 15, 2004).

FINAL REPORT¹

Revision of the Comment to Pa.R.Crim.P. 560

Electronic Preparation, Signature, and Transmission for Filing of Informations

On April 23, 2004, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule 560 (Information: Filing, Contents, Function) to clarify that the attorney for the Commonwealth may electronically prepare, sign, and transmit the information for filing.

The Committee received an inquiry from the Common Pleas Case Management System (CPCMS)² staff asking whether under present Rule 560 an information may be prepared, signed, and transmitted electronically. They informed us that they have developed a "DA link" through the Internet to the CPCMS that is capable of transferring an information to the clerk of courts for filing and docketing, and expressed concern that because Rule 560 does not specifically permit the attorney for the Commonwealth to electronically prepare, sign, and transmit an information to the clerk of courts this form of automation would not be permitted.

The Committee reviewed Rule 560, which provides the procedures for the attorney for the Commonwealth to prepare and file an information, as well as the recent rule changes permitting the electronic preparation and transmission of citations, and concluded there is no reason not to include a comparable provision in Rule 560. Furthermore, even with the technology in place, the absence of a provision specifically permitting this could result in confusion and inhibit some attorneys for the Commonwealth from using the CPCMS DA link. Therefore, a provision acknowledging that Rule 560 permits an attorney for the Commonwealth to complete the Rule 560 information procedures electronically is necessary and will be helpful to the attorneys for the Commonwealth, members of the bench and bar, and other participants in the judicial system such as the clerks of courts. Accordingly, the language "The attorney for the Commonwealth may electronically prepare, sign, and transmit the information for filing" has been added as a new first paragraph to the Rule 560 Comment.

[Pa.B. Doc. No. 04-842. Filed for public inspection May 14, 2004, 9:00 a.m.]

[234 PA. CODE CH. 6]

Jury Deliberations: Written Jury Instructions

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania that the Justices reconsider the current Rule 646 (Material

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² The Supreme Court has been developing the CPCMS, a statewide automated case management system for the criminal divisions of the courts of common pleas, and the Court anticipates the new system will be functioning fully within the next year and will promote the Court's goal of statewide uniformity. As part of the development of the CPCMS, the Committee has been working with the system staff to ensure conformity and consistency with the Criminal Rules.

Permitted in Possession of the Jury) provision that provides during deliberations the jury shall not be permitted to have written jury instructions, and amend the rule. The proposed amendments to Rule 646 the Committee is considering would provide the procedures for the trial judge in his or her discretion to permit the jury to have written jury instructions for use during deliberations. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed amendments to Rule 646 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Friday, June 18, 2004.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 6. TRIAL PROCEDURES IN COURT
CASES**

PART C(2). Conduct of Jury Trial

Rule 646. Material Permitted in Possession of the Jury.

(A) Upon retiring, the jury may take with it such exhibits as the trial judge deems proper[, **except as provided in paragraph (B)]**.

(B) **Within the discretion of the trial judge, the jury may be permitted to have written jury instructions for use during deliberations.**

(C) During deliberations, the jury shall not be permitted to have:

* * * * *

(3) a copy of the information[;].

[(4) **written jury instructions.**]

Comment

* * * * *

[The 1999 amendment to paragraph (B) makes it clear that the trial court is prohibited from sending written jury instructions with a jury for use during deliberations. See *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998), in which the Court held it was reversible error to submit written jury instructions to the jury.]

Written jury instructions may include all preliminary instructions, instructions provided during the trial, and the instructions given at the end of the case. When written jury instructions are not available, a transcript or an audio or audio-video recording would be satisfactory under this rule.

* * * * *

Official Note: Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; **amended _____, effective _____.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendment concerning written jury instructions published at 34 Pa.B. 2544 (May 15, 2004).

REPORT

Amendments to Pa.R.Crim.P. 646

Jury Deliberations: Written Jury Instructions

INTRODUCTION

The Criminal Procedural Rules Committee is considering recommending that the Court reconsider the long standing ban on juries having access to written jury instructions for consideration during deliberations and amend Rule 646 (Material Permitted in Possession of the Jury) to provide in the discretion of the trial judge for the jury to be permitted to have written jury instructions for use during deliberations. These changes are intended to facilitate jury trial procedures, aid jurors in better comprehending the instructions, and align the Pennsylvania rule concerning written jury instructions with the procedures in a number of other state and federal jurisdictions.¹

For a number of years, the Committee has visited and revisited the concept of jury trial innovations generally,² and in recent months we have considered the specific issue of permitting the jury to have written jury instructions for use during deliberations.³ The Committee recognizes the interest among members of the bench and bar in having the jury receive the written jury instructions applicable to the case the jurors are deciding. We concluded, from the information we received from contacts in other states that permit the jury to have written jury instructions, and after reviewing literature discussing studies concerning the impact of written jury instructions on the judicial system,⁴ which found that in fact the fears concerning the possible prejudice to a defendant from providing written instructions to a jury, or that the jury

¹ From our research, it appears that Pennsylvania is the only jurisdiction that specifically provides the jury shall not be permitted to have written jury instructions for use during deliberations. Most jurisdictions permit the jurors to have written jury instructions; a few jurisdictions, however, remain silent on this issue.

² For example, in the mid-1980s, the Committee explored areas of jury trial innovations including note taking by jurors and improvements in jury instructions, and in 1985, the Court adopted changes to then-Rule 1119 (current Rule 647) that required the trial judge to rule on requests for instructions before closing arguments and encouraged the judge to provide instructions on substantive matters to the jurors before and during the trial. See 15 Pa.B. 1733 (May 15, 1985).

³ Another area the Committee recently considered involves note taking by jurors. See 33 Pa.B. 2166 (May 3, 2003) for the Committee's Report explaining the proposal.

⁴ See, e.g., G. Thomas Munsterman, Paula L. Hannaford, and G. Marc Whitehead, *Jury Trial Innovations* at pp. 174-176 (1997), Leonard B. Sand and Steven Alan Reiss, *A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit*, 60 NYU L.Rev. 423 at 453-458 (1985), and Justice Castille's dissent in *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998) (the most recent Supreme Court decision addressing this issue).

would assess undue weight to the points of law in written instructions or misinterpret or misapply the law generally are unfounded, that providing the written instructions to the jury aids their comprehension without negative consequences, and often results in fewer questions from the jury about the instructions, which promotes judicial economy. In view of the positive findings in the recent studies of this issue, and the positive experience of the Committee members who practice in other jurisdictions, including the Federal Courts, that permit the jurors to have written jury instructions for use during deliberations, the Committee agreed it is time to reexamine Pennsylvania's prohibition on jurors having written jury instructions during deliberations and that the Criminal Rules should be amended to permit this practice.

DISCUSSION OF PROPOSED AMENDMENT TO RULE 646

After the Committee agreed that juries should be provided written jury instructions for use during deliberations, we encountered a challenge in determining how to incorporate this change into Rule 646. We reviewed the history of Rule 646, and found that although the paragraph (B)(4) language "During deliberations the jury shall not be permitted to have written jury instructions" only has been in the rules since 1999,⁵ historically the practice in Pennsylvania specifically has been discouraged since the Court first addressed the issue in *Commonwealth v. Baker*, 353 A.2d 406 (Pa. 1976) (plurality opinion).⁶ In addition, the Committee recognized that recent developments in trial practice generally have emphasized the necessity of developing procedures to improve the jurors' comprehension of the case they are hearing. We also recognized that there continues to be some resistance to a complete "about-face" change that would permit written jury instructions to be provided to the jury for use during deliberations. Taking into consideration the concerns of the opponents, the Committee identified several issues that require consideration in order to progress with this change.

The Committee first discussed whether written jury instructions should be provided to the jury in all cases, or only when counsel agree, or when the trial judge permits it. The Committee majority agreed that mandating this upon the trial judges was not necessary, although there was concern by some members that if not a mandated procedure, some judges would never permit this practice. The Committee also agreed that providing the written jury instructions to the jury when counsel agree was not a feasible option because often, especially in the more serious cases, opposing counsel are contentious and unable to agree on much, if anything, and this would result in additional appeals issues. Having fully considered and debated the merits of mandating the trial judges to provide in all cases written jury instructions for use during deliberations, or requiring the agreement of counsel, the Committee ultimately settled on leaving the

question of whether to send written jury instructions with the jury for their use during deliberations within the discretion of the trial judge.

The Committee also discussed what the term "written jury instructions" encompasses. First, the Committee determined that written jury instructions may include all preliminary instructions, instructions provided during the trial, and the instructions given to the jury at the end of a case, and that what constitutes the written jury instructions that will go with the jury for deliberations would be left to the discretion of the trial judge. The Committee next considered whether there would be any legitimate substitutes for "written jury instructions." Some members raised the concern that there may be instances when, for example, the trial judge has written jury instructions from which he or she reads, but deviates from the instructions, or the trial judge derives the instructions from various sources, or the particular court is unable to reduce the instructions into writing in a timely fashion, and therefore, the "written jury instructions" are unavailable. We agreed that, under these types of circumstances, a transcript or an audio or audio-video recording would be an appropriate substitute for the written jury instructions.

In view of these considerations, the Committee is proposing that paragraph (B)(4) be deleted, and a new paragraph (B), that would provide "Within the discretion of the trial judge, the jury may be permitted to have written jury instructions for use during deliberations,"⁷ be added to Rule 646. The Comment also would be revised to explain that 1) written jury instructions may include all preliminary instructions, instructions provided during the trial, and the instructions given at the end of the case, and 2) when written jury instructions are not available, a transcript or an audio or audio-video recording would be satisfactory under this rule.

[Pa.B. Doc. No. 04-843. Filed for public inspection May 14, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Criminal Procedure; No. 286 Misc., 2004

Order

On this 23rd day of April, 2004, the Local Rules of Criminal Procedure, Numbered 100 through 705.1, are adopted effective 30 days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Beaver County shall file or submit certified copies of this order and the Local Rules of Criminal Procedure as follows:

- A. Seven (7) copies with the Administrative Office of Pennsylvania Courts;
- B. Two (2) copies to the Legislative Reference Bureau; for publication in the *Pennsylvania Bulletin*;
- C. One (1) copy with the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court; and

⁷ Present paragraph (B) would become new paragraph (C).

⁵ This language was added following *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998), in which the Court held it was reversible error to submit written jury instructions to the jury.

⁶ In *Baker*, the Court opined "the inherent dangers" in sending written jury instructions with the jury for use during deliberations "outweigh the possible benefit to be derived therefrom"—the jurors may overemphasize the importance of the matters touched upon and ignore the totality of the oral charge—and stated this practice should not be followed. See also *Commonwealth v. Olevnik*, 568 A.2d 1238 (Pa. 1990) (it is reversible error to submit written jury instructions to the jury for use during deliberations because the possible prejudice to a defendant from providing written instructions to a jury universally outweighs any benefit such instruction might provide because a jury likely would assess undue weight to the points of law in written instructions and possibly misinterpret or misapply the law and that the undue emphasis on portions of the charge potentially undermines the integrity of the deliberative process), *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998) (emphasizing holding and rationale expressed in *Olevnik*), and *Commonwealth v. Byrd*, 598 A.2d 1011 (Pa. Super. 1991).

D. One (1) copy shall be kept continuously available for public inspection and copying at the Clerk of Courts office.

By the Court

ROBERT E. KUNSELMAN,
President Judge

LOCAL RULES OF CRIMINAL PROCEDURE

L. R. 100 Scope of Local Rules:

These local rules of Criminal Procedure are adopted to be applicable to the Criminal Division of the Court of Common Pleas of Beaver County, Pennsylvania as long as they are consistent with the Pennsylvania Rules of Criminal Procedure, 42 Pa.C.S.A. 100 et-seq.

L. R. 102 Citing the Local Rules of Criminal Procedure:

All local rules of criminal procedure shall be known as the Beaver County Local Rules of Criminal Procedure and shall be cited as "L. R. Crim. P. No. _____."

L. R. 103 Definitions:

The words and phrases, when used in any Local Rules of Criminal Procedure, shall have the same meaning ascribed to it in the Pennsylvania Rules of Criminal Procedure, unless specifically defined herein or in a Local Rule of Criminal Procedure.

L. R. 104 Design of Forms:

The Court Administrator of Beaver County, Pennsylvania, in consultation with the Beaver County Local Rules of Criminal Procedure Committee, shall design and publish those forms necessary to implement these rules.

L. R. 106 Continuances of Trials:

A Motion to continue trial shall be presented to the assigned Judge, or, if not assigned, to the Criminal Administrative Judge, or his or her designee.

L. R. 115 Transcribing Court Proceedings and Payment:

(I) the court may, on its own motion, order an original or a copy of a transcript of a record or a portion thereof for its own use.

(ii) Any defendant for whom counsel has been appointed or the court has authorized to proceed in forma pauperis, may petition the trial court to transcribe the record or portions thereof with the reasons therefor. Counsel for the Commonwealth shall be notified of such motion and may then request in writing transcription of additional portions of the record stating reasons therefor. The court shall enter an appropriate order which will be filed of record and which order shall be served by the Clerk of Courts upon the Court reporter.

(iii) Expenses of all transcripts ordered under paragraph (I) and (ii) of this rule shall be paid by Beaver County at the rates provided in Pa. R.J.A. No: 5000.7 and shall be assessed as part of the record cost.

(iv) Any defendant, with private counsel and who is not entitled to proceed in forma pauperis who desires a transcript of a record shall file a written request with the Clerk of Courts setting forth the specific portions of the record to be transcribed and shall serve copies of said request upon the Trial Court, Court Administrator, Counsel for the Commonwealth and the Court Reporter. Counsel for the Commonwealth may request in writing that additional portions of the record be transcribed within

seven (7) days. Said request must be filed with the Clerk of Courts, opposing counsel, Court Reporter and Trial Court.

Any transcripts ordered under paragraph 115(iv) shall require a deposit of one half the estimated charge for the transcript prior to its preparation. Defendant or counsel for the defendant shall be informed by the Court Reporter of the amount of the deposit required. Such amount shall be paid to the Clerk of Courts, who shall issue a receipt to the defendant and a copy of same shall be delivered to the Court Reporter. Upon receiving the receipt, the Court Reporter shall prepare the transcript. Upon completion of the transcript, the court reporter shall notify the defendant of the balance due for the transcript. The transcript shall be filed with the Clerk of Courts and shall not be released until the full amount due is paid to the Clerk of Courts.

L. R. 122 Assignment of Counsel-Public Defenders Office

The Court hereby designates and appoints the Public Defender's Office of Beaver County (See 16 P. S. § 9960 et. seq.) as initial counsel for all defendants required to be assigned counsel under Pa. R.Crim. P. No. 122.

L. R. 123 Public Defenders Office Prohibition

The Public Defender and all full-time and part-time attorneys appointed to and employed in that office, together with all their partners, associates, employees and employers, are prohibited from representing on a private basis:

(a) any defendant in any criminal proceeding who has at anytime during the pendency of the case made application for representation by the Public Defender's Office or in which proceeding any co-defendant has made such application; and

(b) any defendant then being represented on any other proceeding through the Public Defender's Office.

This prohibition shall not apply where the defendant initially made application to and retained said attorney or his partner, associate, employee or employer, on a private basis prior to application with the Public Defender's Office.

(ii) In all court cases counsel shall be assigned by the Public Defender's Office to those types of cases identified at 16 P. S. § 9960.6 as well as summary appeals where there is a likelihood that imprisonment might be imposed.

(iii) In cases of conflict in the Public Defender's Office, the Court Administrator, upon Court Order, shall assign counsel to represent defendant from those attorneys appointed to handle all conflicts cases (See 16 P. S. § 9960.7).

L. R. 131 Location of Preliminary Hearing/Central Court:

Pursuant to the authority contained in Pa. R.Crim P. Rule 131, (B), the President Judge of the Court of Common Pleas of Beaver County, Pennsylvania, has determined that local conditions require the establishment of procedures whereby preliminary hearings in all criminal cases, filed in all magisterial districts, shall be held at the Beaver County Courthouse on dates and times assigned by the Court Administrator of Beaver County. Said Court shall hereinafter be referred to as Central Court.

L. R. 310 Motion For Accelerated Rehabilitation Disposition:

After recommendation by the Commonwealth that a defendant be placed on the ARD program, the defendant

shall be scheduled for an ARD hearing before the Court of Common Pleas for consideration for ARD. The ARD hearing shall be in accordance with the provisions contained in Pa. R.Crim.P. Nos. 311, 312, and 313.

(a) At the ARD hearing the defendant shall enter on the record a duly executed ARD colloquy form.

(b) Each defendant charged under 75 Pa.C.S.A. § 3731 and/or 75 Pa.C.S.A. § 3801 et. seq. (relating to Driving Under the Influence) shall, prior to the ARD hearing be evaluated by an interviewer certified under the Court Reporting Network. Any statement made by the defendant during a Court Reporting Network evaluation and screening shall be made available to the court for the limited purpose of aiding the court to consider and rule upon a motion for Nolle Pros, ARD, plea and sentencing. Such statements obtained from the defendant shall be otherwise confidential and shall not be admissible for any other purposes in any criminal proceeding.

(c) If a defendant fails to obtain a CRN evaluation prior to the ARD hearing, his/her case may be removed from the scheduled ARD hearing list by the Court.

L. R. 506 Procedure for Filing Private Complaint

When an affiant, who is not a law enforcement officer, desires to file a criminal complaint, for other than a summary offense, he/she must appear before the District Justice of the Magisterial District where the offense is committed and request preparation of a complaint. The office of the District Justice will prepare a criminal complaint on the form prescribed by The Administrative Office of Pennsylvania Courts (AOPC) containing the information as required by Pa.R.Crim.P.No. 504.

Affiant shall submit the complaint to the attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(a) If the complaint is disapproved, the affiant, may petition the Court of Common Pleas for review.

L. R. 511.1 Scheduling Conference in Summons Cases

When criminal charges proceed by summons:

(a) The Defendant shall be sent, via first class mail, a Notice of Scheduling Conference, to be held on a specific date and time at the office of the District Justice where the charges are filed.

At that Scheduling Conference, the staff shall provide the Defendant with a copy of the complaint; the date of his or her preliminary hearing, set four weeks from the date of the Scheduling Conference; instructions to appear at the Beaver County Courthouse at a particular date and time and the right to counsel. The Defendant shall sign a form indicating that he or she has received the summons and instructions.

The Defendant shall also be sent a copy of the summons, complaint and Notice of Preliminary Hearing, via certified mail, in compliance with Pa. R. Crim. P. 510 unless the Plaintiff has waived the requirement for certified mail at the time of signing the form at the Scheduling Conference.

If the defendant does not appear for the Scheduling Conference, no warrant shall be issued, but the Defendant shall be sent a summons, a copy of the complaint and a Notice of Preliminary Hearing, via certified mail, return receipt requested. The Preliminary Hearing is to be set four weeks from the mail date of the summons.

L. R. 524 Release on R. O. R. or Nominal Bail

For the administrative purposes of the Beaver County Pre-Trial Services Agency, any release of a defendant on his or her own recognizance shall be considered as release on nominal bail. Where a defendant is released on his or her own recognizance or on nominal bail, the court or issuing authority may designate the Beaver County Pre-Trial Services Agency as surety for the defendant and the defendant shall then become subject to the rules and regulations of that agency.

L. R. 528 Percentage Cash Bail System

A defendant, for whom bail has been set with the approval of the Court or the issuing authority or on the recommendation of the Beaver County Pre-Trial Services Agency, shall execute the bail bond and deposit, or cause to be deposited by a private third party surety with the issuing authority or the Clerk of Courts a sum of money equal to ten (10%) percent of the amount of bail set, but in no event less than twenty-five (\$25.00) dollars. Corporate sureties or professional bail bondsman or agents thereof are expressly prohibited from posting the deposit for bail as provided in this rule.

L. R. 530 Designation of Local Bail Agency

The Court hereby designates and appoints the Beaver County Pre-Trial Services Agency to have the exclusive duties and powers of a bail agency for the 36th Judicial District of Beaver County, as provided for the Pa.R.Crim. P.No. 530. Whenever a defendant has failed to comply with the rules and regulations of the bail bond or of the bail agency or any additional conditions of his release, he may be brought before the Court to determine if additional bail shall be set in his case or bail revoked.

L. R. 540.1 Preliminary Hearing Scheduling

At the preliminary arraignment or at the time of issuance of summons, whether at the Scheduling Conference or by certified mail, the issuing authority shall schedule the preliminary hearing on a date and time assigned by the Court Administrator. The issuing authority shall give notice to defendant and the counsel for the defendant, if any, of the date and time selected. The issuing authority shall promptly transfer all papers to the Court Administrator.

L. R. 542 Preliminary Hearing; Preliminary Hearing Memorandum: Arraignment

(a) Whenever a criminal defendant waives a preliminary hearing or when the District Justice finds that the Commonwealth has established a prima facie case, the case shall be scheduled for a non judicial pre-trial conference on a date, time and place assigned by the Court Administrator as well as a date, time and place the case is to be called for trial. The Defendant shall sign the Preliminary Hearing Memorandum containing the Notice of the non judicial pre-trial conference date and trial date.

(b) If the parties reach a plea agreement at or before the preliminary hearing, the defendant shall waive the preliminary hearing and the parties shall sign the preliminary hearing memorandum which shall contain a detailed plea agreement with the terms, conditions and recommendation of said plea agreement. Copies of the memorandum shall be delivered to the defendant and counsel for the defendant. The preliminary hearing memorandum shall contain notice of the expedited ARD, Plea and sentencing times and dates. It shall also contain notice of the date of the non judicial pre-trial conference and date of trial. The issuing authority shall transmit a copy of the preliminary hearing memorandum to the Court Administrator.

(c) When a defendant appears for his or her preliminary hearing, and if the case is waived, bound over or a plea agreement is reached, the defendant shall have bond set and be given a booking order to appear at the RBC within 5 days. The requirement to appear at the RBC shall be made a condition of bond, pursuant to Pennsylvania Rule of Criminal Procedure Rule 527. A copy of the Booking Order shall be faxed to the RBC by the Central Court clerical staff. RBC Staff will then review all non-judicial pre-trial lists and plea/ARD lists to check if the defendant has complied with the condition of bond. If a Defendant has not complied then a warrant shall be issued for the Defendant's arrest.

(d) If the case is continued, no bond is set nor is a booking order issued.

(e) If bond is set in an amount other than a nominal amount, the defendant will have to post that amount in the office of the district justice presiding at Central Court.

(f) If the defendant fails to appear for the preliminary hearing at the scheduled date and time, an arrest warrant shall be issued. The arrest warrant shall be given to the Beaver County Sheriff's Department if an arrest warrant is issued, when it is executed, the defendant shall be arraigned, bond set and a preliminary hearing date shall be set within 3-10 days.

L. R. 546 Return of Deposits and Charges

Upon full and final disposition of the case, the issuing authority or the Clerk of Courts shall retain thirty (30%) percent of the amount deposited, but in no event less than (\$10.00) dollars as administrative costs for the percentage cash bail program. The balance shall be returned to the defendant or the third party surety. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Beaver.

L. R. 550 Pleas of Guilty Before District Justice In Court Cases:

An issuing authority may accept a plea in any case authorized by statute, (42 Pa.C.S.A. § 1515(a)(6)(I)) but may not sentence without a pre-sentence investigation report. If the parties and the issuing authority agree to dispense with a pre-sentence investigation report, the defendant shall be sentenced in accordance with the procedure provided by Pa.R.Crim.P. 704. The issuing authority shall note the sentence on the transcript and transmit it to the Clerk of Courts.

L. R. 552 Administrative Processing And Identification

(A) In all cases in which a defendant has been charged with an offense of a third degree misdemeanor or greater, the defendant shall be required to appear at the Beaver County Regional Booking Center (RBC) located in the Beaver County Jail, 6000 Woodlawn Boulevard, Aliquippa, PA, 15001.

(B) Pursuant to 18 Pa.C.S. 9112, an arresting authority shall be responsible for taking the fingerprints of persons arrested for misdemeanors, felonies or summary offenses which become misdemeanors on a second arrest after conviction of a summary offense. The Regional Booking Center shall serve as the designated fingerprinting site for all arresting authorities in Beaver County.

(C)(1) In cases in which a defendant has been arraigned at the District Justice office and fails to post

bond, the defendant shall be fingerprinted and photographed at the RBC subsequent to his or her commitment at the Beaver County Jail.

(2) In cases in which a defendant has been arrested during night, weekend or holiday hours, unless the charges proceed by summons, the defendant shall be taken directly to the RBC for a video arraignment and booking procedure before being committed to the Beaver County Jail or being released on bond.

(3) In cases of private prosecutions, the defendant may only be fingerprinted and photographed after conviction of the alleged offense. An order shall be issued from the Court of Common Pleas after such conviction directing the Defendant to report to the RBC to be fingerprinted and photographed.

(4) In cases which proceed by issuance of a summons, the District Justice presiding at Central Court at the scheduled Preliminary Hearing, shall order the defendant to submit to the Regional Booking Center within five (5) days following the date of issuance of such order.

(D) A booking fee of fifty dollars (\$50.00) shall be assessed and collected by the Beaver County Clerk of Courts after sentencing upon conviction of or plea to a misdemeanor or felony offense or acceptance into the Accelerated Rehabilitation Program. This fee will not apply to those Defendants whose cases are dismissed by the District Justice, withdrawn or nolle prossed by the Commonwealth or who enter a guilty plea to a summary offense at the time of the preliminary hearing.

L. R. 570 Pre-Trial Conference

At the non-judicial pre-trial conference, the parties shall attempt to reach a plea agreement. If the parties enter into a plea agreement, the case shall be placed on an expedited hearing date assigned by the Court Administrator.

L. R. 570.1 Judicial Pre-trial Conference

If after the non-judicial pre-trial conference the case is not resolved the court may conduct a judicial pre-trial conference at which counsel for the parties shall appear to resolve all pre-trial issues in accordance with the provisions contained in Pa.R.Crim. P No 570.

L. R. 574. Motions

(a) Except as provided in these rules no motion or petition shall be presented and the court shall not act on any motion or petition unless opposing counsel has been notified in writing within three (3) business days of the intention to present the Motion or has consented thereto.

(b) A Motion or Petition may be presented to the court after oral notice to the opposing Counsel only in an emergency situation. Ex-parte motions or petitions will not be received or considered by the Court. A Motion or Petition containing a request for issuance of a rule to show cause may be considered by the Court ex-parte.

(c) All pre-trial motions shall be in writing and shall meet the requirements contained in Pa.R.Crim.P. No: 574.

(d) All motions shall be presented to the assigned Judge, or, if not assigned, to the Criminal Administrative Judge, or his or her designee.

L. R. 578 Omnibus Pre-Trial Motions For Relief

Omnibus pre-trial motions for relief must be filed not less than ten (10) days prior to the scheduled date of Suppression Hearings, as published on the Court Calendar. The Court may, upon cause shown, accept an omnibus pre-trial motion filed less than ten (10) days prior to the

scheduled date of Suppression Hearings, but only if the attorney for the Commonwealth stipulates and consents to the late filing. Any omnibus pre-trial motion filed after ten (10) days prior to the scheduled date of Suppression Hearings must be accompanied by a separate Motion requesting continuance of the case to the next trial term waiving the provisions of Pa. Rule of Criminal Procedure 600.

L. R. 600. Trial List and Notice

(a) In all cases which are not resolved at the preliminary hearing, non-judicial pre-trial conference or judicial pre-trial conference, the Court Administrator shall promptly prepare a list of trial cases for each trial term.

The Notice for trial shall contain the caption, date and time of trial. Notice shall also state that the defendant's appearance is mandatory (See Pennsylvania Rule of Criminal Procedure 602). Notice shall be served in accordance with the provisions of Pa.R.Crim.P. Nos: 577 by Clerk of Courts to:

- (a) Defendant and his/her counsel
- (b) Professional Bondsman, Surety or Bail Agency, and
- (c) Counsel for the Commonwealth, who shall be responsible to notify the Police agency, the victim and all other witnesses.

L. R. 631 Presence of Court During Jury Selection

Defendant, counsel for defendant and counsel for the Commonwealth may, if each so desires, and with the consent of the Trial Judge, waive on the record the presence of the presiding Judge during jury selection.

L. R. 705.1 JUDICIAL STANDARDS—INTERMEDIATE PUNISHMENT PROGRAM

Standard 1.1 The following standards of the Intermediate Punishment Program are approved and will be accepted as Local Rules of Criminal Procedure.

The Adult Probation and Parole Department has, under authority of 42 Pa.C.S.A., Subsections 9721, 9763 and 9801 et seq., and in compliance with the guidelines and recommendations of the Pennsylvania Commission on Crime and Delinquency, created and will operate an intermediate punishment program consisting of house arrest with electronic monitoring, day reporting centers, and intensive supervision all of which may include drug testing, community service and rehabilitation.

Standard 1.2 Eligibility—Except for those individuals mentioned in Paragraph 1.3, all persons sentenced to a period of incarceration in the Beaver County Jail shall be eligible for a sentence under this program. Pursuant to the sentencing guidelines, individuals may be sentenced directly into the program or be ordered to serve a period of incarceration. Individuals must not demonstrate a pattern of present or past violent behavior and must be amenable to supervision.

Standard 1.3 Ineligibility—The following persons shall be ineligible for sentence under this program.

- A. Persons with present convictions of offenses listed in 42 Pa.C.S.A. 9807
- B. Persons sentenced to a maximum term of incarceration by a District Justice.
- C. Persons sentenced to a maximum term of two years or longer or where the balance of a maximum term is imposed for a violation.
- D. Persons deemed inappropriate for sentence under this program by the supervising staff.

E. Any person sentenced by this court who resides in another jurisdiction where intermediate punishment does not exist or the receiving jurisdiction does not accept supervision.

Standard 1.4 Individuals who are eligible under the sentencing guidelines may be placed directly into the program provided they meet all other criteria as outlined in Standards 1.2 and 1.3. Individuals sentenced to the Beaver County Jail will not be placed into the program until they serve at least 1/4 of the minimum sentence shall be defined as the total of all the minimums imposed.

Standard 1.5 All individuals sentenced directly to intermediate punishment shall be ordered to serve a specific period of time in the program.

Standard 1.6 Upon a preliminary finding of a violation of any condition of the program by the intermediate punishment staff, the individual may be detained pending a petition for violation and administrative hearing thereon. At the administrative hearing, the individual may consent to a disposition order, including revocation of the sentence of intermediate punishment.

Gagnon II In the event the individual does not consent to a disposition order, a hearing shall be scheduled before the court. The court may revoke a sentence of intermediate punishment upon proof of a violation of any condition of the sentence.

Section 2 Intensive Supervision

Standard 2.1 Individual's eligibility for the intensive supervision program shall be determined by the administrative staff.

After investigation by the intermediate punishment staff an individual may be placed into the intensive supervision program. In addition an individual may be placed in intensive supervision after exemplary compliance with a more stringent intermediate punishment program.

Standard 2.2 As a part of the intermediate punishment program, intensive supervision will be the least restrictive. However, the level of supervision provided shall be greater than the levels of supervision provided under traditional probation and parole.

Individual and collateral contacts shall include a minimum of 16 contacts per month. These contacts shall include two client face-to-face contacts per week. Contacts shall be conducted on a random basis at all hours of the day, seven days a week.

Standard 2.3 Participants shall be required to participate in treatment programs as directed by The court or the administrative staff.

A specialized treatment regimen will be developed for each individual and will include, but may not be limited to, psychiatric, psychological and medical services, education vocational training, drug and alcohol screening and counseling and individual and family counseling.

Standard 2.4 Upon successful completion of the requirements of intensive supervision and upon completion of the time specified by the court, an individual will be transferred to the traditional probation and parole program.

Section 3—DAY REPORTING CENTER

Standard 3.1 Day reporting centers as an intermediate punishment program shall encompass the level of intensive supervision and in addition daily reporting to a day reporting center.

Individuals in this program shall receive strict supervision at a community based facility. These individuals would be considered at risk and would otherwise be serving a sentence of incarceration. Individuals shall report to a designated facility on a daily basis and must call the center during the remainder of the day as directed. Individuals are to submit a schedule of planned activities each day they are in the program. In addition, they will participate in recommended treatment and educational programs, perform services and activities as directed. The individual can expect calls from the center throughout the day at home, place of employment or designated treatment facility. In addition, random phone calls will be made after curfew hours to ensure compliance with the curfew. Written documentation of attempts at gainful employment will be mandated if the individual is unemployed.

Standard 3.2 An individual's eligibility for acceptance into the Day Reporting Center program shall be determined by the I.P. administrative staff.

After investigation by the intermediate punishment staff an individual may be placed into the Day Reporting Program. In addition, an individual may be placed in intensive supervision after exemplary compliance with a more stringent Intermediate punishment program.

Standard 3.3 All individuals shall be subjected to daily and random drug and alcohol testing and random unannounced home visits.

Random testing and home visits may be done at any time, day or night, seven days a week, 365 days per year.

Standard 3.4 Upon successful completion of the requirements of day reporting and upon completion of the time specified by the court, an individual will be transferred to the traditional probation and parole program.

SECTION 4 HOUSE ARREST INVOLVING ELECTRONIC MONITORING

Standard 4.1 Individuals eligible for house arrest involving electronic monitoring shall be determined by the administrative staff.

After investigation by the intermediate punishment staff an individual may be placed on house arrest. Priority of placement will be given to offenders convicted under 75 Pa.C.S.A. § 3731 or 75 Pa.C.S.A. § 6308 (Relating to driving under the influence of alcohol or controlled substances). These individuals who become eligible for intermediate punishment may only be sentenced to a residential inpatient program or the house arrest program involving electronic monitoring, combined with drug and alcohol treatment. Individuals convicted and sentenced under this statute to the minimum 48 consecutive hours of incarceration will not be eligible for the house arrest involving electronic monitoring.

Standard 4.2 House arrest involving electronic monitoring as an intermediate punishment shall be considered more punitive than the intensive supervision and day reporting center programs.

In house arrest, the focus is on confinement, and the offenders will only leave their homes for employment, therapeutic, medical or other pre-approved reasons. The intermediate punishment staff will make a minimum of one personal and one collateral contact per week for each

offender. There will be an officer on call 24 hours a day, 7 days a week should any violations of this program need to be addressed.

Standard 4.3 Offenders placed in the house arrest program shall wear an electronic wrist or ankle bracelet.

These devices transmit coded signals to a receiver/dialer that is placed in the offender's home. Intermediate punishment staff will employ a 24 hour per day response to any violation which the central computer reports on the offender's daily activity schedule. The cost of this program will be supported by assessing the offender a per diem rate.

Standard 4.4 Requirements for offenders within the house arrest program involving electronic monitoring shall be determined by the administrative staff.

All individuals will be subjected to daily and random drug and alcohol testing and random unannounced home visits. Individuals will maintain fixed residences and actively seek employment if not otherwise employed. Enrollment in educational/vocational training or participation in community service will be established upon directive of the intermediate punishment staff.

Standard 4.5 Upon successful completion of the requirements of house arrest and upon completion of the time specified by the court, an individual will be transferred to the traditional probation and parole program.

SECTION 5 COMMUNITY SERVICE—INTERMEDIATE PUNISHMENT PROGRAM

Standard 5.1 Individual's eligibility for the Community Service Program shall be determined by the administrative staff.

All individuals within the Intensive Probation, Day Reporting Centers and House Arrest involving electronic monitoring programs shall be considered for the community service program as a supplement to their individual requirements of each specific program, unless there are extenuating circumstances. Individuals will perform at least eight hours of community service for every thirty days on Intermediate Punishment.

Standard 5.2 Community Service as Intermediate Punishment shall provide a means of reparation to the community in addition to providing punishment for the offender.

Community service will enable indigent offenders to pay fines and costs while donating services to public and non-profit agencies. This program will instill a sense of work ethic and act as a developmental tool in the building of self-esteem and confidence levels for the offender.

Standard 5.3 The Intermediate Punishment staff shall designate a work site where the community service is to be performed.

Through networking with various government, non-profit and community based organizations, the Intermediate Punishment staff will choose a work site where offenders will perform community service equivalent to one day per month. Intermediate Punishment staff will provide on-site supervision of each offender performing community service.

Standard 5.4 Types of services which offenders will perform are dependent on the needs of the designated service agency.

Cleaning of public streets and parks; painting; cutting grass and assisting in events sponsored within the community etc., will be given consideration as approved Community Service work.

Standard 5.5 Successful completion of the hours required for community service will be performed before an individual can be transferred to the traditional probation and parole program.

[Pa.B. Doc. No. 04-844. Filed for public inspection May 14, 2004, 9:00 a.m.]

CHESTER COUNTY

Adoption of Local Rules of Civil Procedure; No. 4

And Now, this 27th day of April, 2004, the Court approves and adopts the following Chester County Local Rules of Civil Procedure. These Rules shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Domestic Relations Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, (1) one copy with the Court Administrator of Chester County, one (1) copy with the Law Library of Chester County and one (1) copy with each Judge of this Court.

By the Court

HOWARD F. RILEY, Jr.,
President Judge

Rule 1901.2.A. Scheduling

(a)(1) Pro Se Petitioners seeking clerical assistance may file Protection from Abuse Petitions between the hours of 8:30 a.m.—3:30 p.m., Mondays through Fridays. The Court shall be deemed unavailable after 3:30 p.m. during which time a Petition for Temporary Protection from Abuse may be filed before any District Justice within the county who may grant relief in accordance with 23 Pa.C.S.A. § 6110.

(2) Petitioners not requiring clerical assistance may file Protection from Abuse Petitions between the hours of 8:30 a.m. and 4:15 p.m., Mondays through Fridays. The Court shall be deemed unavailable after 4:15 p.m. during which time a Petition for Temporary Protection from Abuse may be filed before any District Justice within the county who may grant relief in accordance with 23 Pa.C.S.A. § 6110.

(b)(1) The Court deems itself unavailable for the filing of Protection from Abuse Petitions on those days the Court is closed for any reason including Court holidays as published on the official holiday schedule including those days designated as Floating Holidays and those days during which the Court's Winter and Summer conference is scheduled.

(2) In addition to the times set forth, above, the Court may issue an Administrative Regulation indicating the date(s) and time(s) the Court deems itself unavailable to sign Temporary Protection from Abuse Orders. District Justices are authorized to issue Temporary Emergency PFA Orders when the Court has deemed itself unavailable to do so. The Administrative Regulation shall be distributed by the Court Administrator to all Common Pleas Court Judges, all District Judges, Emergency Services and all interested Court personnel.

(3) At those times the Court is deemed unavailable for the filing of Protection from Abuse Petitions, a Petition for Temporary Protection from Abuse may be filed before any District Justice within the county who may grant relief in accordance with 23 Pa.C.S.A. § 6110.

Note: The hours listed for the preparation and filing of a PFA are due to amount of time necessary to complete the intake process.

Rule 1902.A. 1901.3A. Commencement of Action.

(1)(a) The notice of hearing and order, petition and temporary Protection from Abuse order shall be substantially in the form required by Pa.R.C.P. 1905(a), (b) & (c), shall be available, in English and Spanish, from the Family Court Administrator. with such modifications as may be required:

(2) Upon affidavit that petitioner does not have funds available to pay the costs, the petition shall be filed by the Prothonotary and served by the Sheriff without prepayment.

(b) All private counsel petitions for Protection from Abuse shall be reviewed and scheduled by the Family Court Administrator and filed with the Office of the Prothonotary prior to submission to the Family Court signing Judge for entry of a Temporary Ex Parte Protection Order.

Note: Chester County currently uses the Protection From Abuse Database (PFAD) for the preparation of petitions and orders online. Hardcopies of these forms are available to those individuals who do not have access to the PFAD system.

Rule 1902.B. Temporary Emergency Orders.

(1) Pursuant to the Protection From Abuse Act, the court may issue ex parte emergency orders upon petition and finding of immediate and present danger of abuse:

(2) An approved form of Temporary Order is available from the Family Court Administrator:

(3) A hearing date shall be obtained from the Family Court Administrator before presenting the petition to the Family Court Signing Judge:

(4) Petitions may be presented to the Family Court Signing Judge in Chambers before court or whenever he is not on the bench or otherwise occupied with court business:

Rule 1902.C. Final Order:

The final order shall be substantially in the form available from the Family Court Administrator and may include any remedy provided by the Protection From Abuse Act:

Rule 1902.D. Filing Orders: 1901.4.A. Service and Registration of Order.

(1) Plaintiff shall file a certified copy of the any Temporary or Final Protection from Abuse order with the appropriate police departments and the Chester County Police Radio Room. The expiration date of the order shall be included in the order. A photocopy of a certified order shall be considered a duplicate original and sufficient to constitute the court's original authorization for enforcement. A cover sheet shall be attached on the copy of the orders sent to the police and the Chester County Police Radio Room substantially in the following form required by C.C.R.C.P. 1905.A.(a).

See Form on Page 155

Rule 1903.5. Probable Cause Arrest. 1901.5.A. Enforcement. Bail. Arraignment. Notice. Prosecution.

(a) A police officer may arrest a defendant for violation of a protection order upon probable cause which shall be supplied by the victim, officer, other witnesses or combination thereof. If necessary, the officer may verify the existence of said order by phone or radio with the appropriate police, Chester County Radio Room or court. The complaint for indirect criminal contempt shall be in the form prescribed in C.C.R.C.P. ~~1903.11.~~ 1905.A.(c). The probable cause affidavit shall be in the form prescribed in C.C.R.C.P. ~~1903.10.~~ 1905.A.(b).

Rule 1903.6. Bail.

(b) Upon arrest, the defendant shall be taken into custody and taken to the district justice in whose district the violation occurred, or other assigned district justice, for arraignment and the setting of bail. The arresting officer shall not release the defendant from custody without taking him or her before the proper district justice. The district justice shall have exclusive jurisdiction for all arraignments for the offense of indirect criminal contempt for violation of protection from abuse orders. All applications for an increase or decrease in bail shall be heard by the Court of Common Pleas, ~~Family Court.~~

Editor's note: Amended July 15, 1994, effective October 1, 1994

Rule 1903.7. Arraignment. Hearing Date. Notice.

(1)(c) Arraignment—The arraignment shall be held in the same manner as required under Pa. R.Crim.P. 303.540 except that no preliminary hearing will be scheduled. The defendant shall be notified that:

(a)(1) He or she is being charged with indirect criminal contempt for violation of a protection from abuse order;

(b)(2) He or she has the right to be represented by counsel and if unable to afford private counsel and otherwise qualifies, counsel will be appointed by the court; and

(c)(3) A hearing will be held in the Court of Common Pleas of Chester County on the next available date for such hearings pursuant to subsection (2)(d).

(2)(d) Hearings—All hearings for indirect criminal contempt for violation of protection from abuse orders shall be heard by the family court and, if possible, by the Judge who issued the original order. The hearings shall be held each Friday that the court is in session at 10 a.m., for all defendants arraigned before midnight of the preceding Tuesday, at such times and manner as directed by the Court. In no case shall the hearing take place more than ten (10) days from the date of arraignment.

(3)(e) Notice—At the conclusion of the arraignment, the defendant or counsel of record for the defendant, if present, shall be given a written notice of the hearing in the form prescribed by C.C.R.C.P. ~~1903.12(a)~~ 1905.A.(d). A copy of the complaint and notice of hearing in the form prescribed by C.C.R.C.P. ~~1903.12(b)~~ 1905.A.(e) shall be given or mailed by regular and certified mail to the plaintiff at the address shown on the complaint, and by regular mail to the arresting officer and the District Attorney of Chester County.

Editor's note: Amended July 15, 1994, effective October 1, 1994

Rule 1903.8. Notice to Family Court.

(1)(f) Following arraignment, the District Justice shall telephone the deputy court administrator, Family cCourt

Administrator and submit the names, common pleas court docket number and assigned hearing dates of all defendants who have been arraigned the previous day and night.

(2)(g) Following arraignment, the office of the District Justice shall deliver the original of all papers to the Prothonotary Clerk of Court of Chester County. The office of the District Justice shall deliver copies of all papers to the deputy court administrator, fFamily cCourt Administrator, the District Attorney of Chester County, and the Public Defender of Chester County.

(3)(h) The deputy court administrator, fFamily cCourt Administrator shall notify the Sheriff of Chester County of the names of any incarcerated defendants scheduled for hearing for transport to the courthouse.

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Rule 1903.9. Prosecution.

(i) The District Attorney of Chester County or his designee shall prosecute all charges of indirect criminal contempt for violation of protection from abuse orders. Any designation of another to prosecute shall be in writing.

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Rule 1903.10. Probable Cause Affidavit.

See Form on Page 156

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Rule 1903.11. Complaint Form;

See Form on Page 157

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Rule 1903.12. Notice of Hearing Form.

See Form on Page 159

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Note: Rescinded rules 1903.10—1903.12 have been replaced by new rule 1905.A.—Forms for Use in PFA Actions.

Rule 1901.7.A. Decision. No Post-Trial Relief. Expungement. Return of Seized Weapons

(a) Petitions requesting the expungement of a dismissed Protection from Abuse proceeding or the return of seized weapons shall be in accordance with C.C.R.C.P. 206.1(a), et. seq.

(b)(1) Copies of the petition requesting expungement and any final order granting expungement shall be served upon the original Petitioner in the Protection from Abuse proceeding, the Chester County Family Court Administrator, the Sheriff of Chester County and any deputized Sheriff's department, the District Attorney of Chester County, the Chester County Police Radio Room and any state and/or local police department initially served.

(2) Copies of the petition for return of seized weapons shall be served upon the original Petitioner in the Protection from Abuse proceeding, the Sheriff of Chester County and the District Attorney of Chester County. All petitions shall include a copy the itemized list of seized weapons provided to the Petitioner by the Sheriff at the time the original seizure was ordered.

(c) Upon receipt of a final order expunging a protection from abuse proceeding, the recipient shall immediately delete from their records any information pertaining to the underlying petition for Protection from Abuse. No proof of compliance shall be required.

Note: For further discussion relating to expungement of Protection from Abuse records, see *Carlacci v. Mazaleski*, 798 A2d 186 (2002).

Rule 1905.A. Forms for Use in Protection from Abuse Actions. Notices. Probable Cause Affidavit. Indirect Criminal Contempt Complaint. Continuance.

(a) The form required by C.C.R.C.P. 1901.4.A. shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
vs : NO.
: CIVIL ACTION—LAW
Defendant : PROTECTION FROM ABUSE

TO THE POLICE

Under the Pennsylvania Protection from Abuse Act, 23 P.S. § 6101, et seq. you are authorized to arrest the Defendant for a violation of the order, without warrant, upon probable cause, whether or not the violation was committed in your presence. The defendant is to be taken forthwith before a District Justice for preliminary arraignment. The Defendant can be found at the following address:

during the hours of ___ a.m./p.m. to ___ a.m./p.m.

Order effective from ____, 20__ to ____, 20__.

(b) The form required by C.C.R.C.P. 1901.5.A.(a)—Probable Cause Affidavit shall be substantially in the following form:

PROTECTION FROM ABUSE INDIRECT CRIMINAL CONTEMPT AFFIDAVIT

On ____, 20__, (Name of Defendant)

did commit the following in violation of a protection from abuse order entered by a Judge of the Court of Common Pleas of Chester County, Pennsylvania on ____, 20__, No. _____.

The acts committed were:

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Witness Affiant

Date: _____ Name: _____

Address: _____

(c) The form required by C.C.R.C.P. 1901.5.A.(a) Complaint for Indirect Criminal Contempt shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

Plaintiff : No.
:
v. : Civil Action
: Indirect Criminal Contempt
Defendant : for Violation of Protection From Abuse Order

COMPLAINT

I, the undersigned, do hereby state under oath:

1. My name is _____ and I live/work at _____;

2. I accuse _____, who lives at _____, with violating a protection from abuse order entered by Judge _____ on the _____ day of _____, 20____. (attach copy of order if available);

3. The date (and day of the week) when the accused committed the offense was on or about _____.

4. The place where the offense was committed was in the County of Chester;

5. The acts committed by the accused were: (place an X before the appropriate statement(s))

_____ attempting to cause or intentionally, knowingly or recklessly causing bodily injury to _____,

-or-

_____ using physical menace to put _____ in fear of imminent serious bodily injury,

all of which were in violation of the protection from abuse order entered in accordance with the Protection from Abuse Act, 23 Pa.C.S. § 6101 et seq.;

6. If the defendant has not already been arrested, I ask that a warrant of arrest be issued and that the accused be required to answer the charges I have made.

I verify that the statements made in the complaint are true and correct to the best of my knowledge, information and belief. I further understand that any false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date _____ Signature of Affiant

The above subscribed affiant personally appeared before me on this date, signed the complaint in my presence and asserted that the facts therein are true and correct; and wherefore it appears that there is probable cause for the issuance of process.

Date _____ (SEAL) Issuing Authority

(d) The form required by C.C.R.C.P. 1901.5.A.(e) Notice of Hearing to Defendant shall be substantially in the following form:

NOTICE OF HEARING TO DEFENDANT

(Name of Defendant)

You have been charged with Indirect Criminal Contempt for an alleged Violation of a Protection From Abuse Order. A hearing has been scheduled in the Chester County Courthouse, High and Market Streets, West Chester, Pennsylvania, on the _____ day of _____, 20____. The hearing will be held in Courtroom No. ____ at

10:00 9:30 a.m. FAILURE TO APPEAR AT THIS HEARING WILL RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST.

If you are found guilty of Indirect Criminal Contempt, you may be sentenced to prison for up to six (6) months and fined up to \$1,000.00 for each offense. You should be represented by a lawyer at this hearing. If you do not have a lawyer you may call the Chester County Public Defender's Office at 17 N. Church Street, Courthouse Annex, 3rd Floor, West Chester, Pennsylvania, (610) 344-6940, any business day between 8:30 a.m. and 4:30 p.m.

IF YOU WANT A PUBLIC DEFENDER, APPLY IMMEDIATELY UPON RECEIPT OF THIS NOTICE.

VERIFICATION

I, _____, of _____, (Dist. Ct./Police/other)

do hereby verify that the above notice was served upon _____ (defendant)

on the _____ of _____, 20____, at _____ (a.m./p.m.). This service was made at _____ (location of service)

(Signature and Title of Server)

(e) The form required by C.C.R.C.P. 1901.5.A.(e) Notice of Hearing to Plaintiff shall be substantially in the following form:

NOTICE OF HEARING TO PLAINTIFF

(Name of Plaintiff)

(Name of Defendant)

has been charged with Indirect Criminal Contempt for an alleged violation of a Protection From Abuse Order wherein you are the Plaintiff. A hearing has been scheduled in the Chester County Courthouse, High and Market Streets, West Chester, Pennsylvania, on the _____ day of _____, 20____.

The hearing will be held in Courtroom No. _____, at ~~10:00~~ 9:30 a.m.

You will be represented by the Chester County District Attorney's Office at this hearing. You may contact that office at (610) 344-6801 for information as to which Assistant District Attorney will be representing you at the hearing. It is not required, but would be helpful, if you would list your present address and telephone number in the space provided so the District Attorney may contact you.

If you do not appear at the hearing, the charges may be dismissed.

Name: _____

Address: _____

Phone Number: _____

VERIFICATION

I, _____, of _____, (Dist. Ct./Police/other)

do hereby verify that the above notice was served upon _____ (plaintiff)

on the _____ of _____, 20____, at _____ (a.m./p.m.).

This service was made at _____

(location of service)

(Signature and Title of Server)

(f) The format for requesting a continuance shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
: NO.
:

Defendant : PROTECTION FROM ABUSE

TEMPORARY ORDER AND ORDER FOR CONTINUANCE

AND NOW, this _____ day of _____, 20____, upon motion of _____, it is hereby ORDERED and DECREED that the hearing scheduled for this date concerning Protection from Abuse is hereby continued and rescheduled to the _____ day of _____, 20____ at _____m. in Courtroom NO. _____, Chester County Courthouse, West Chester, Pennsylvania.

Reason for Continuance: _____

The Temporary Order for Protection from Abused dated _____, shall remain in full force and effect until further Order of this Court.

Failure of the Plaintiff to appear for hearing may result in dismissal of the Protection From Abuse Petition and the entry of an Order requiring the costs of the proceeding to be paid by the Plaintiff.

Failure of the Defendant to appear for hearing may result in the issuance of a final Protection From Abuse Order and an Order to pay costs.

BY THE COURT:

J.

Rule 1910.1.A. Definitions

As used in this chapter, unless the context of a rule indicates otherwise, the following term shall have the following meaning:

"private pay order"—An order for support payable directly to the obligee and not made payable through the Pennsylvania State Collection and Disbursement Unit (PA SCDU).

Rule 1910.4.A. Commencement of Action. Entry of Appearance.

(a) Any attorney who appears on behalf of a client at any stage of the proceedings shall be deemed to have entered his or her appearance. The attorney shall be required to continue such representation until a final order is entered that resolves all outstanding issues in that case. Any attorney who wishes to withdraw his or her appearance after entry of a final order shall file a Praecipe to Withdraw as Counsel as well as a Praecipe for Entry of Appearance by the new attorney. If the new attorney is to be Staff Counsel employed by Domestic Relations, Staff Counsel must sign the Praecipe for Entry of Appearance.

(b) This rule shall not preclude any attorney from filing, at any stage of the proceedings, a Petition to Withdraw as Counsel pursuant to Pa. R.C.P. 1012.

Rule 1910.5.A. Complaint

All complaints shall be accompanied by a completed Domestic Relations Office Standard Intake Form.

Comment: This form is available on the Domestic Relations Office's website @ www.chesco.org/domestic.html.

Rule 1910.7.A. Preliminary Objections. Rule to Show Cause: Question of Jurisdiction or Venue

All Preliminary Objections to jurisdiction or venue; in support, shall be accompanied by a Rule to Show Cause stating separate Rule Returnable and Hearing dates.

Editor's note: Adopted July 15, 1994, effective October 1, 1994.

Rule 1910.10.A. Hearing Procedure. Hearing Officers: Alternative Hearing Procedures

(1)(a) This court chooses to use the procedures set forth in Pa.R.C.P 1910.12, except for those cases in which a motion for a separate listing pursuant to Pa.R.C.P 1910.12(c)(1) has been granted. Cases separately listed pursuant to Pa.R.C.P. 1910.12(c)(1) shall be scheduled for hearing before the Court pursuant to Pa.R.C.P. 1910.11.

Editor's note: Notice To The Bar—Effective December 1, 1996, protracted support matters are to be listed before the Court pursuant to Pa.R.C.P 1910.12(c) and C.C.R.C.R 1910.10.A, as amended. All matters involving complex issues of law or fact or any case requiring more than two hours for hearing shall be placed on the long-day list. Cases inappropriately placed on either the Hearing Officer's regular support list or the Court's long-day list will be rescheduled, in the normal course of business, on the proper list. Any request for continuance or settlements of matters properly scheduled on the long-day list shall be in writing and submitted no less than 72 hours prior to the scheduled date. Failure to do so within the appropriate time frame will necessitate an appearance of all parties at the hearing.

The following form motion shall be used when requesting a long day listing:

See Form on Page 161

Comment: For the form of Motion for Separate Listing and information on the conduct of long day hearings, see C.C.R.C.P. 1910.12.A(i), et seq.

(2) Hearings officers shall be appointed by the president judge. The officers shall be appointed from among those attorneys admitted to practice before the Supreme Court of Pennsylvania who are actively engaged in the practice of law primarily in Chester County and who are deemed by the court to be qualified to serve as hearing officers. No hearing officer or any member of a hearing officer's firm shall appear in any action which requires reference to a hearing officer. The president judge may remove any hearing officer at will on sixty (60) days notice.

Editor's note: Adopted July 15, 1994, effective October 1, 1994, amended November 27, 1996, effective December 1, 1996.

1910.11.A. Office Conference. Subsequent Proceedings. Order.

(a) If entitlement is challenged at the Office Conference, a Temporary Order of Support shall issue if the

parties are subject to a pending Chester County Divorce proceeding in which a claim for Equitable Distribution has been raised.

Comment: The requirement that a Chester County Divorce proceeding be pending is to permit an adjustment from equitable distribution proceeds should it be determined the bar to entitlement claim is meritorious.

Rule 1910.12.A. Office Conferences and Hearings. Record. Exceptions. Order

(a) Whenever possible, all matters dealing with the same parties shall be scheduled for office conference/hearing at the same time.

(1)(b) Continuances of office conferences and matters before Hearing Officers may be granted by agreement of all counsel or counsel and unrepresented parties. All other continuances shall be governed by Pa.R.C.P. 216 and C.C.R.C.P 216.1.

(2) If either party does not appear at a domestic relations office conference, such party may be served with notice of the hearing officer's hearing by any of the means of service permitted for original complaints or by first class mail. The hearing may, however, proceed in the absence of the party so notified.

(c)(1) Should a petitioner fail to appear at the office conference or hearing, as scheduled, the petition may be dismissed.

(2) Should a respondent fail to appear at the office conference or hearing, as scheduled, an order may be entered in his/her absence or a bench warrant for his/her appearance may issue.

(3)(d) Recommendations on the matters set forth in Pa.R.C.P 1910.12(c)(1) 11(d) and 1910.19 shall be made initially by the conference officer.

(4)(e) At the domestic relations office conference the plaintiff may request the entry of a temporary order in all cases in which there has been filed:

(a)(1) A complaint for the support of minor children;

(b)(2) A complaint for the support of spouse and entitlement is not challenged;

(c)(3) A petition for alimony pendente lite; or

(d)(4) A complaint for the support of spouse and minor children and entitlement is not challenged as to spouse. If entitlement is challenged, a temporary order may be requested for the minor children only and a spouse who is a party to a Chester County divorce proceeding pursuant to C.C.R.C.P. 1910.11.A.

(5)(f) When a temporary order is requested at a domestic relations office conference, as above, the domestic relations office shall submit a recommendation to the court as to the amount of the requested order. The recommendation shall be based on the Pennsylvania Support Guidelines in accordance with Pa.R.C.P. 1910.16-2.

(6) For purposes of application of the approved guidelines, the domestic relations office shall use the monthly net income of defendant as reported by his or her employer in the subpoenaed earnings report. If the earnings report is not available, net income shall be computed from defendant's most recent federal income tax return by subtracting all income taxes and FICA actually paid from gross income from all sources.

(7) To determine the monthly net income of the dependent spouse, the same information may be used in the

same order: (g) If the dependent spouse is not employed, no earning capacity will be assigned to him/her for the purpose of entering the temporary order. The parties shall be informed by the domestic relations conference officer that earning capacity will be taken into consideration at the hearing before the Hearing Officer.

~~(8) The recommendation of the domestic relations conference officer shall be written on a standard form on which there shall be space sufficient for the inclusion of statements by both parties or counsel. The written recommendations shall be submitted to the court as soon as possible after the conference.~~

Comment. In reference to subsection 4(d) APL is determined by different standards than support.

(h) When a complaint or petition is scheduled for hearing before a Domestic Relations Hearing Officer and the parties reach an agreement that resolves the outstanding issues prior to the scheduled hearing, the parties shall immediately notify the Domestic Relations Office in writing and within thirty (30) days after the date set for hearing:

(1)

(i) File a stipulation and order outlining the terms of their agreement, or

(ii) File a written statement detailing the current status of the case. Domestic Relations shall automatically review the case every thirty (30) days and submit a report to Family Court regarding any case which has not been resolved within sixty (60) days after the scheduled hearing date. The Court may, sua sponte, direct the parties to file a stipulation and order within a reasonable time or direct the Domestic Relations Office to schedule a new hearing date.

(2) If the parties fail to comply with the terms set forth in part (1) of this rule, the Court may, sua sponte, dismiss the outstanding complaint or petition without prejudice.

(i) Separate Listings

(1) The request for a long day listing shall be in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : CIVIL ACTION—LAW
 Defendant : IN SUPPORT

MOTION FOR A SEPARATE LISTING

AND NOW, this _____ day of _____, 20____, Plaintiff/Defendant moves the Court for a separate listing and in support thereof avers the following:

(1) The hearing will be protracted in nature and requires more than two (2) hours for hearing; or

(2) There are complex questions of law, fact or both.

(3) Issues for resolution: (state if case entails a determination of income or if incomes exceed the guidelines, whether or not it is a self-employment case, whether or not valuations are at issue)

(4) Estimated duration of hearing:

(5) Number of witnesses: (state whether or not witnesses are experts).

Respectfully submitted,

 Counsel for

cc: _____, Esquire—Attorney for

N.B. Failure to complete this form in its entirety will result in its rejection by the Family Court Administrator and the case will not be placed on the Long Day Hearing List.

(2)

(i) Requests for separate listings shall be filed no later than five (5) business days prior to the scheduled hearing before the Support Hearing Officer.

(ii) Objections to requests for separate listings shall be filed within ten (10) days of the filing of the request for separate listing.

Comment: Objections shall be brought pursuant to C.C.R.C.P. 206.1.(a).

(3) In all matters where a motion for a separate listing has been filed each party shall submit to the Court and opposing counsel at least 5 days before the scheduled hearing date a Pre-Trial Statement not exceeding 3 pages setting forth:

(i) a brief statement of the claim(s) being made by the moving party or the defense(s) being made by the responding party;

(ii) a concise statement of the facts;

(iii) a concise statement of the factual or legal issues involved including citations to the applicable statutes or case law, if any;

(iv) a list showing the names and addresses of all witnesses each party intends to call at trial;

(v) copies of all exhibits to be offered at trial intended to be admitted during your case in chief.

Any and all reports of any experts intended to be called and a form of proposed Order setting forth the requested disposition and supporting calculations shall be attached to the Pre-Trial statement.

Rule 1910.12.B. Exceptions.

(j) Exceptions

(1) Dismissal—Exceptions shall be dismissed in any case in which the notes or tape recording of testimony have not been ordered, and paid for it required, within five (5) days of the filing of exceptions.

(2) Briefs:

(a)(i) Within two (2) weeks of the filing of exceptions, the excepting party shall file a brief with the Domestic Relations Office, serve copies of the brief upon all counsel and unrepresented parties and shall file a Certification of Service.

(b)(ii) Within four (4) weeks of the filing of exceptions, the responding party shall file a brief and Certification of Service in the manner prescribed above.

(c)(iii) Upon the expiration of the time for the filing of all briefs and oral argument, if any, the exceptions shall be submitted to the assigned judge. ~~for determination without oral argument, unless the assigned judge specifically requests oral argument or oral argument is timely requested on behalf of a party. Requests for oral argument must be in writing, must be filed no later than the due date for the brief of the responding party and must be accompanied by a waiver of the forty-five (45) limit set forth in Pa.R.C.P. 1910.12(g).~~

~~(d) If an excepting party fails to file a brief within the time prescribed by these rules, or within the time as extended, a non-excepting party may, without filing a brief, move for the dismissal of the exceptions. Such~~

motions shall be in writing and the excepting party shall have a reasonable time to respond thereto. If a non-excepting party fails to file a brief within the time prescribed by these rules, or within the time as extended, his brief may not be considered and he will not be heard at oral argument except by permission of the court.

(3) Oral Argument

(a)(i) Oral argument must be requested in writing at the time the filing of a party's brief is due. The court may, in its discretion, refuse to hear argument upon issues which have not been satisfactorily discussed in a party's brief. shall be scheduled unless both parties or counsel of record execute and return to the Domestic Relations Office a written waiver.

(ii) The form of waiver of oral argument shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : CIVIL ACTION—LAW
 Defendant : IN SUPPORT

WAIVER OF ORAL ARGUMENT ON EXCEPTIONS

Oral argument on Plaintiff's/Defendant's exceptions to the findings and recommendations of the Hearing Officer in Support dated _____, 20 ____, has been scheduled before the Court on _____, 20 ____, at _____m ____ in Courtroom No. ____.

NOTE:

IF BOTH PARTIES, OR THEIR COUNSEL, AGREE IN WRITING TO WAIVE ORAL ARGUMENT, THE EXCEPTIONS WILL BE SUBMITTED TO THE COURT FOR CONSIDERATION IMMEDIATELY UPON RECEIPT OF THE PARTIES' BRIEFS.

IF EITHER PARTY, OR HIS/HER COUNSEL, CHOOSES NOT TO WAIVE ORAL ARGUMENT, BOTH PARTIES MUST APPEAR AT THE DATE AND TIME LISTED ABOVE AND ON THE ATTACHED NOTICE.

IF YOU AGREE TO WAIVE ORAL ARGUMENT, SIGN BELOW AND RETURN THIS PAGE WITHIN THE NEXT SEVEN (7) DAYS TO:

Chester County Domestic Relations
 Attention: Scheduling, Master Hearing Unit
 117 West Gay Street
 P. O. Box 2748
 West Chester, PA 19380-0991

I, _____, Plaintiff/Defendant or Counsel for Plaintiff/ Defendant (circle one) hereby waive oral argument on the exceptions filed to the findings and recommendations of the Hearing Officer in Support dated _____, 200_. I understand that the exceptions will be submitted to the Judge for consideration immediately and that I will receive a written decision by U. S. Mail.

 Plaintiff/Defendant or Counsel

(b)(iii) Argument before the court shall be made only on the basis of the record made before the Hearing Officer. The parties may, by agreement, supplement the record by depositions or stipulations prior to argument, but no live testimony will be heard by the court, unless the court shall permit same for cause shown.

Comment. These Any motions to dismiss may be made at any time prior to commencement of oral argument and are is not subject to the requirements of C.C.R.C.R 206.1.

Editor's note: Adopted July 15, 1994, effective October 1, 1994

Rule 1910.13.A. Disobedience of Subpoena: 1910.13-1.A. Failure or Refusal to Appear Pursuant to Order of Court. Failure to Produce

(a) If a party is properly served with a subpoena duces tecum for production of records and documents or a notice to attend and produce before a Hearing Officer and does not have good reason for failure to produce, such failure may be deemed disobedience of a court order, and will, in addition, permit the drawing of adverse inferences by the hHearing oOfficer and the court.

(b) If either party has failed to comply with the initial Order of Court requiring the production of certain documents and information at the Domestic Relations Office Conference, a per curiam order shall issue requiring that party to produce a copy of said documents and information to both the Domestic Relations Office and to counsel for the other party (or to an unrepresented party) within ten (10) days of the conclusion of the Domestic Relations Office Conference. Failure to comply with said per curiam order may result in the imposition of sanctions recommended by the Hearing Officer or court and will, in addition, permit the drawing of adverse inferences by the Hearing Officer and the court.

Rule 1910.15.A. Paternity. Rescinded

(1) The domestic relations office shall assign all matters in which paternity is denied to the court for hearing.

(2) At the initial conference in the domestic relations office, the person named by the complainant as the putative father of the child(ren) in question shall be advised as follows:.

(a) That the complaint may be heard before a judge sitting without a jury, or by a judge and jury, as putative father wishes;

(b) That he has the right to be represented by counsel;

(c) That he has the right to request blood tests under the Uniform Act on Blood Tests to Determine Paternity (23 Pa.C.S. § 5104 et seq.), provided he pays for the tests (unless he is indigent, in which event the county may be required to pay), and requests the court to order such tests within thirty (30) days of the conference in the domestic relations office.

(3) The alleged father shall be required to sign and date a form acknowledging receipt of the above advice.

(4) In every suit involving paternity, the domestic relations office shall notify the complainant to file with the domestic relations office at least fourteen (14) days in advance of trial, if reasonably available:

(a) A birth certificate showing the names of both parents;

(b) A written report of the attending physician, giving his opinion as to the date of the onset of pregnancy, the date of birth, and whether or not the delivery was full-term.

If such documents are filed as required above, they shall be admissible at trial without further authentication but may be disputed by the defendant. The complainant may also submit such further, properly authenticated evidence as may be relevant. In appropriate cases, the court may tax the costs of the blood tests to the losing party.

Editor's note: Adopted July 15, 1994, effective October 1, 1994.

Note: the provisions in this Rule are addressed in Pa.R.C.P. 1910.15.

Rule 1910.17.A. Support Order. Private Pay Orders. Arrears. Property Settlement Agreements. Registration. Effective Date.

(a) All orders for Support shall be paid through the Domestic Relations Office. No orders providing for direct payment of moneys shall be accepted for filing at the Domestic Relations Office, except as follows:

(1) In those cases where a Chester County Divorce action is pending, private pay support orders may be filed with the Office of the Prothonotary under the Divorce Docket number.

(b) In no instance will a miscellaneous docket number be issued either by the Domestic Relations Office or the Office of the Prothonotary.

Comment: In lieu of utilizing private pay orders the parties may request no wage attachment issue on matters payable through PA SCDU.

(c) Requests for modification shall be brought under the Divorce Docket number and heard before the Court. The Court may in its discretion order the matter be registered at the Domestic Relations Office for the purposes of the instant modification hearing and subsequent payment.

(d) Every order filed under a Domestic Relations Office docket number and PACSES identification number shall include a provision for payment toward outstanding arrears. Domestic Relations shall not accept for filing any order that fails to include such a provision.

Comment: This provision applies to all support orders filed with the Domestic Relations Office. If there are no arrears due on a case, the arrears provision in the order will not be enforced via wage attachment or any other enforcement remedy. If arrears become due at a later date, the Domestic Relations Office will enforce the arrears provision via wage attachment and any other applicable enforcement remedy.

(e) The Domestic Relations Office shall enforce the support terms and provisions of any property settlement agreement effective the date such agreement is registered with that office.

(1) Any party seeking registration of an incorporated Property Settlement Agreement for enforcement purposes shall:

(i) pay to the Domestic Relations Office a fee of one hundred dollars (\$100.00) for the registration of an alimony order. No fee shall be required to register an order for child support;

(ii) provide to the Domestic Relations Office a certified copy of the divorce decree including a complete, executed copy of the property settlement agreement; and

(iii) completed copies of the Domestic Relations Office information sheets.

Comment: For the time period prior to registration with the Domestic Relations Office, the parties may seek to enforce the provisions of a property settlement agreement by filing the appropriate petition with the Family Court.

IFSA and UIFSA Comment: All Intrastate cases are governed by the provisions of Pa. R.C.P. 1910.2-1 and the Intrastate Family Support Act, 23 Pa.C.S. sec. 8103 et seq. All Interstate cases are governed by the provisions of Pa. R.C.P. 1910.2-1 and the Uniform Interstate Family Support Act, 23 Pa.C.S. sec. 7101, et seq.

Rule 1910.19.A. Support Modification.

(a) Modification of Property Settlement Agreement. In those cases in which a property settlement agreement was executed prior to February 12, 1988, or in which a property settlement agreement was executed after February 11, 1988, but not incorporated into a divorce decree, any party seeking modification of any child support provision of such agreement must petition the court for modification. Such petition must be filed with the Prothonotary's Office under the divorce caption and will be heard by a family court judge. In the event that a judge determines that the child support provision of the agreement is modifiable, the matter may be remanded to a Hearing Officer for consideration of the merits of the alleged grounds for modification.

(b) Registration and Modification. In those cases which involve property settlement agreements signed after February 11, 1988 and which have been incorporated into a final divorce decree, the procedure for modification of a child support provision of the agreement shall be as follows:

(1) The party seeking modification shall register the executed property settlement agreement with the Domestic Relations Office.

(2) The party seeking modification shall file a petition to modify with the Domestic Relations Office. The registration of the property settlement agreement and the petition to modify may be filed simultaneously.

(3) The petition to modify will be handled in the same manner as a petition to modify an existing court order for child support.

Rule 1910.20.A. Credit Bureau Notice.

Notice shall be in the following form in all instances wherein any consumer credit bureau has requested information regarding arrearages:

See Form on Page 162

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
vs : NO.
: CIVIL ACTION—LAW
Defendant : IN SUPPORT

Pursuant to § 4303 of Act 1985-66, a Consumer Credit Bureau Organization has requested the amount of arrearages owed by you under your existing support order. Domestic Relations must provide this information to the Consumer Credit Bureau Organization on any arrearage in excess of \$1,000.00

Our records show an arrearage of \$ _____ on the above order.

You may contest the accuracy of this information by contacting the Domestic Relations Office at 117 West Gay Street, West Chester, PA, (610) 344-6215 no later than _____. If you fail to contact Domestic Relations by said date, the figure stated above will be reported to the Consumer Credit Bureau Organization.

Rule 1910.25-5.A. Civil Contempt. Order. Incarceration.

Any individual incarcerated pursuant to a bench warrant issued for failure to comply with an order of support shall be brought before the Court consistent with the procedures outlined in the Court of Common Pleas of Chester County, Pennsylvania Administrative Regulation No. 3-2004 and/or its successors.

Rule 1915.3.A. Form of Notice. Commencement of Action. Complaint. Order.

~~(1)(a) Notice of a custody action and conciliation conference shall be in the form prescribed by Pa.R.C.P. 1915.15. include the date and time for each party to attend parenting class, the date and time for custody conciliation, the name of the assigned mediator and instructions to contact the mediator within three (3) days.~~

~~(2) Parties requesting the presence of children ages five (5) and older at a conciliation conference shall do so by submitting their request in the form of a proposed order, as follows, to the Office of the Family Court Administrator. That office shall maintain such forms in blank, for this purpose. The proposed order shall be served by the requesting party on all other parties promptly and in sufficient time so that the opposing parties are given at least ten (10) days notice, prior to the conciliation conference, of the entry of the order:~~

~~(3) Form of the order:~~

~~See Form on Page 155~~

~~(b) Relocation. Upon petition of either party, issues of relocation shall be heard before the Court. Each petition shall be accompanied by a Rule Returnable that sets forth separate Rule and Hearing dates.~~

~~(c) All custody matters alleging the prior existence of a Children, Youth and Families (CYF) proceeding shall include a copy of the order closing the case file prior to the institution of an action for custody in the Family Court.~~

~~Comment: For form of the order as required by Pa.R.C.P. 1915.3(a) see C.C.R.C.P. 1915.15.A.(a) Information regarding the appearance of children at a conciliation conference has been moved in its entirety to C.C.R.C.P. 1915.11.A. to coincide with the Pa. R.C.P. 1915.11.~~

~~Rule 1915.5.C. Rule 1915.4.A. Prompt Disposition of Custody Cases. Custody Hearing Demand. Pre-Trial Statement. Certificate of Readiness.~~

~~(a) Initial Contact with the Court.~~

~~(1) All complaints for custody and petitions for modification shall be scheduled for mediation within thirty (30) days of filing with the Office of the Prothonotary and/or~~

~~(2) All parties shall attend parenting classes within thirty (30) days of filing the initial Complaint with the Office of the Prothonotary.~~

~~(b) Listing Trials before the Court.~~

~~(1) All temporary orders for custody unless otherwise specifically indicated on the order, shall automatically become a Final Order of the Court no later than 180 days of the filing of the Complaint or Petition for Modification except in those cases where the parties have demanded trial within the time limitations set forth in Pa.R.C.P. 1915.4. and C.C.R.C.P. 1915.4.A.(c)(3).~~

~~(2) All temporary orders for custody shall include the following language:~~

~~NOTICE: UNLESS A DEMAND FOR TRIAL HAS BEEN FILED, THIS ORDER SHALL BECOME A FINAL ORDER OF THE COURT WITHIN 180 DAYS OF THE FILING OF THE COMPLAINT OR PETITION FOR MODIFICATION or 90 DAYS OF THE MOST RECENT CONCILIATION CONFERENCE, WHICHEVER IS EARLIER.~~

~~(c) Trial~~

~~(1)(a)~~

~~(i) If When trial is demanded by any party, within thirty (30) days of filing the demand or at the time a petition for relocation is filed, after the most recent conciliation conference, said the moving party shall file with the Prothonotary a completed Certificate of Readiness and a pPre-trial statement containing the following information:~~

~~(i)(a) a list of all fact witnesses; a brief statement of the claim(s) being made by the moving party or the defense(s) made by the responding party;~~

~~(ii)(b) a list of all expert witnesses; a concise statement of the facts;~~

~~(iii)(c) issues for resolution; and a concise statement of the factual or legal issues involved, if any, including citations to applicable statutes or case law, if any;~~

~~(iv)(d) estimated length of trial: a list showing the names and addresses of all witnesses each party intends to call at trial; and~~

~~(e) a schedule of all exhibits to be offered at trial.~~

~~(ii) Attached to the Pre-trial statement shall be the reports of any experts intended to be called and a proposed order setting forth the requested disposition of the matter.~~

~~(iii) All Pre-trial statements shall not exceed three (3) pages in length;~~

~~(iv) A time-stamped copy of the filed Pre-trial statement shall be served upon Family Court and opposing counsel ;~~

~~(v) The responding party shall file his/her Pre-trial statement within twenty (20) days of the filing of the movant's statement.~~

~~(2)~~

~~(i) The form of Demand for Trial as required by C.C.R.C.P. 1915.4.A.(c)(1)(i) shall be substantially in the following form:~~

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : ACTION—LAW
 Defendant : IN CUSTODY

DEMAND FOR TRIAL

TO THE FAMILY COURT ADMINISTRATOR:

I, _____, plaintiff/defendant, hereby demand trial in the above-captioned custody matter.

Date: _____ Attorney for I.D. # _____

Address _____

Date of Most Recent Conciliation Conference: _____
 (Must be within 90 days of filing)

N.B. No case shall receive a trial date until such time as a Certificate of Trial Readiness is filed of record. All Certificates of Trial Readiness and Pre-Trial Statements shall be filed within thirty (30) days of filing a demand for trial. Failure to file within the time frame as specified will result in the recommendation of the custody conciliator becoming a Final Order of the Court.

~~(ii) The form of Certificate of Readiness required by C.C.R.C.P. 1915.4.A.(c)(1)(i) shall be substantially in the following form:~~

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : ACTION—LAW
 Defendant : IN CUSTODY

CERTIFICATE OF READINESS—CUSTODY

I hereby certify that all reports are completed and the above custody matter is ready for trial.

Date: _____ Attorney for _____

Date: _____ Attorney for _____

Estimated time of hearing: _____

I hereby certify that on _____, I served a copy of this certificate on _____ with a request that he/she join in this certificate.

Date: _____ Attorney for _____

N.B. This form must be completed in its entirety or the certificate will be rejected by the Family Court Administrator and the case will not be listed for trial.

~~(b) All counsel and unrepresented parties shall be given not less than eight (8) days notice of the intent to present said Certificate of Readiness.~~

~~(2)(a) The Certificate of Readiness shall be in the following form:~~

See Form on Page 156

~~(b)(iii) A copy of the Certificate of Readiness shall be served upon the Family Court Administrator, who shall schedule the case for hearing and promptly notify all counsel and unrepresented parties in the case. Any certificate of readiness that fails to include an estimated time of trial will be rejected and not placed on the trial list.~~

~~(3)~~

~~(c)(i) The opposing party shall file a pre-trial statement within fourteen (14) days of receipt of the demanding party's pretrial statement. The information contained in all pre-trial statements shall be updated, as appropriate, any time prior to commencement of the custody hearing. Failure to produce the information required may result in exclusion of such evidence at time of hearing.~~

~~(3) (4) If trial is not demanded by any party within ninety (90) days after the most recent conciliation conference, the parties shall return for further conciliation before a demand for trial may be filed. All demands for trial shall be filed within ninety (90) days of the most recent conciliation conference. A copy of the demand for trial shall be served upon the Family Court Administrator.~~

Comment: In the event no demand for trial has been filed, the docket will automatically reflect that the Order of the Court was finalized no later than 180 days after the filing of the Complaint or Petition for Modification. This rule does not apply to collateral matters not involving actual custody issues such as legal, physical, partial physical and primary physical custody.

Rule 1915.5.A. Questions of Jurisdiction. No Responsive Pleading by Defendant Required. Counterclaim. Venue. Discovery.

(1)(a)

(1) All references to hearing in Pa.R.C.P. 1915.5. shall be construed as referring to the conference before the custody conciliator. If a question of jurisdiction or venue is raised by timely Preliminary Objections, the conciliation shall be continued until decision by the court.

(2) All Preliminary Objections to jurisdiction or venue shall be accompanied by a Rule to Show Cause stating separate Rule Returnable and Hearing Dates.

~~(3)(b) A party filing and presenting a motion Requests for discovery shall be in accordance with C.C.R.C.P. 206.1.C. except that give forty-eight (48) hours notice to opposing counsel and unrepresented parties of the date, time and place of presentation of the motion. The movant shall file and present to the court with the motion a proposed order and a certification of service. No brief shall be required.~~

Rule 1915.5.B. Custody Conciliator. Conference.

~~(1)(a) The president judge Court shall appoint no fewer than two (2) appropriate persons as custody conciliators. No custody conciliator or any member of the custody conciliator's firm shall appear in any action which may be referred to a custody conciliator:~~

~~(2)(b) The custody conciliator:~~

~~(a)(1) shall conciliate custody; and visitation and contempt cases filed with the court;~~

~~(b)(2) may hear contempt cases filed with the court;~~

~~(c)(3) may recommend to the court that interim temporary and final custody orders be entered; and~~

~~(c)(4) may recommend the appointment of counsel and/or a guardian ad litem for the child.~~

~~(3)(c) All custody matters shall be scheduled for conference before the custody conciliator no sooner than ten (10) days after filing of an action. Emergency matters may be scheduled for an earlier conference on a standby basis. All parties shall be present at such conference. Failure of a party to appear at the conference may result in the entry of an order in the absence of such party.~~

~~(4)(d) An appearance by counsel before the custody conciliator shall be deemed an entry of appearance on behalf of the party represented.~~

~~(5)(e) To facilitate the conciliation process and encourage frank, open and meaningful exchanges between the parties and their respective counsel all statements, except agreements made by the parties, or their witnesses, as well as reports received before the custody conciliator shall not be the subject of direct or cross examination at a later hearing before the court. The custody conciliator shall not be subject to subpoena as a witness.~~

~~(6)(f)~~

(1) At the conclusion of every conciliation conference the conciliator or attorney designated by the conciliator shall prepare an written report of the matters order either agreed upon by the parties or to be recommended by the conciliator. The conciliator shall appoint one of the attorneys to draft an submit the order reflecting the agreement or recommendation to the Court for approval. The drafting attorney shall provide opposing counsel, or the opposing unrepresented party, with a copy of any order to be submitted for approval by a conciliator. Any party shall have five (5) days from the mailing of such proposed order to contact the conciliator with any objection to the proposed order. Objections shall be in writing and addressed to the conciliator with a copy to be filed with the Prothonotary, and a copy sent to the drafter of

the proposed order. If no objection is received within five (5) days, the conciliator shall approve the proposed order and submit same to the court. If an objection to a proposed order is timely received, the conciliator shall advise the court, all counsel and any unrepresented party of the conciliator's recommended resolution of the objection.

(2)

(i) Recommendations that change primary custody, which are not agreed upon by the parties, shall be scheduled for hearing before the Court. Any party requesting the issuance of the recommendation as an interim order shall present to the Family Court Administrator within two (2) business days of the conciliation conference an order for scheduling a hearing. Said matter shall be scheduled within thirty (30) days of the conciliation conference for a brief hearing on the issuance of an interim order. The moving party shall also file a demand for trial no later than the day and time set for the hearing on the issuance of an interim order.

(ii) The form of order required by C.C.R.C.P. 1915.5.B.(f)(2)(i) shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : CIVIL ACTION—LAW
 Defendant : IN CUSTODY

NOTICE AND ORDER TO APPEAR

A recommended order for a change in primary custody has been forwarded to the Court by _____, Conciliator. At the request of _____, a hearing has been scheduled before the Court to determine if the recommended order should be entered as an Interim Order pending trial.

The parties and counsel are ordered to appear for a hearing on _____ at _____ m. in Courtroom No. _____ of the Chester County Courthouse, West Chester, PA. The Court has set aside fifteen (15) minutes for each side to present their case in the format of their choice (evidentiary testimony, legal argument). At the conclusion of which, the Judge will render a decision regarding the entry of an Interim order pending trial. Upon the filing of a Demand for Trial and the requisite Certificate of Trial Readiness, the matter shall be set for trial in the normal course of business. Failure to demand trial within ninety (90) days of the conciliation conference shall result in the Interim Order, if entered, becoming a final Order of the Court.

BY THE COURT:

Date: _____

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, PLEASE CONTACT THE OFFICE SET FORTH BELOW:

Lawyer Referral Service
 15 West Gay Street
 West Chester, PA 19380
 610-429-1500

IF YOU CANNOT AFFORD A LAWYER, PLEASE CONTACT THE OFFICE SET FORTH BELOW:

Legal Aid of Southeastern Pennsylvania
 Chester County Division
 14 East Biddle Street
 West Chester, PA 19380
 610-436-4510

AMERICAN WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Chester County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference.

BY THE COURT:

Date: _____

Comment: It is the general practice of this Court to schedule Custody conciliation conferences no later than 90 days from the filing of the Complaint or Petition to Modify. Hearing requested pursuant to C.C.R.C.P. 1915.5.B.(f)(2)(i) will be approximately 30 minutes in length (15 minutes each side) for the presentation of evidence on the issue of a change in primary custody.

Rule 1915.8.A. Physical or Mental Examination of Persons:

(1) In the event that either psychological studies or home studies become necessary to a proper disposition of the cause, and a party or parties are unable to pay the cost of such studies, the cost thereof may be assessed upon the county, subject to the obligation of the parties to reimburse the county as their means permit:

(2) Any person requesting the performance of a Home Investigation shall post an investigation fee with the Family Court in such amount as shall be established by the court from time to time:

Rule 1915.11.A. Appointment of Attorney for Child. Interrogation of Child. Attendance of Child at Hearing or Conference.

(a) If counsel or a guardian ad litem is appointed for the child, fees may be assessed against the parties. or the county, subject to the obligation of the parties to reimburse the county as their means permit. The court shall maintain a list of counsel willing to act as counsel for the child, at such rate as may be fixed by the court, and appointments shall be made from such list on a rotating basis, unless otherwise ordered by the court:

(b)

(1) No child(ren) shall be present at a conciliation conference unless specifically ordered to appear.

(2)

(i) Parties requesting the presence of children ages ten (10) and older at a conciliation conference shall do so by submitting their request in the form of a proposed order to the Office of the Family Court Administrator. That office shall maintain such forms in blank, for this purpose. The proposed order shall be served by the requesting party on all other parties promptly and in sufficient time so that the opposing parties are given at least ten (10) days notice, prior to the conciliation conference, of the entry of the order.

(ii) The form of order required by C.C.R.C.P. 1915.11.A.(b)(2) shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 vs : NO.
 : ACTION—LAW
 Defendant : IN CUSTODY

ORDER FOR APPEARANCE

WHEREAS, a Custody Conciliation Conference in this matter has been scheduled for the _____ day of _____, 20____ at _____m. before a Chester County Custody Conciliator in the Child Custody Conciliation Room at Courthouse, Third Floor Annex, West Chester, Pennsylvania, and,

WHEREAS, _____, who is a party to these proceedings has requested the presence at the Conciliation Conference of the children named below who are the subject of these proceedings and are ten (10) years of age or older,

IT IS HEREBY ORDERED that the following minor children shall attend the aforesaid Conciliation Conference:

Name _____ Date of Birth _____
Name _____ Date of Birth _____
Name _____ Date of Birth _____

BY THE COURT:

Date: _____

(3) The custody conciliator may at his/her discretion reschedule a conference and direct the appearance of a child or children of any age.

Rule 1915.12.A. Contempt. Civil Contempt for Disobedience of Custody Order. Petition. Form of Petition. Service. Order.

(a) All petitions for Contempt shall be accepted for filing by the Office of the Prothonotary upon payment of the appropriate fee.

(b) All petitions for Contempt shall allege with specificity the facts that constitute a wilful failure to comply and indicate the remedy the party is seeking.

(c) All Petitions for Contempt shall may be scheduled for a conciliation conference hearing before the Custody Conciliator. At the conclusion of the conference all unresolved matters shall be certified for hearing before the court. Said certification shall be forwarded to the Family Court Administrator after filing, for scheduling consistent with the court's business. The hearing shall be limited to one (1) hour in duration at which time the parties may present evidentiary testimony. At the conclusion of the hearing, the custody conciliator shall make a recommendation and advise the parties they have ten (10) days in which to request a hearing de novo. At the conclusion of the ten (10) days if no objections have been filed, the recommendation shall become an order of the court. In the event objections are filed, the matter shall be listed, in the normal course of business, for a hearing de novo before the Court. The hearing shall be limited to the issues raised by the pleadings.

Rule 1915.13.A. Special Relief

(1)(a) Motions or pPetitions seeking a stay or other immediate, substantive relief may be presented to the court at any time.

(2)(b) The court will not enter a stay or grant the relief ex parte unless:

(a)(1) Notice—it appears from the petition or motion that reasonable notice, under the circumstances, has been given to all parties in interest of the date, time and place of the application; or

(b)(2) Stipulation—it appears from the petition or motion that there is an agreement by all parties in interest; or

(c)(3) Exigency—the court in its discretion shall determine that there are extraordinary circumstances justifying a stay or immediate relief. Such exigent circumstances include those where immediate action is necessary to protect the mental or physical well-being of a child or children, or to undo the effects of a "snatch" (that is, a recent sudden change in a long-standing custody arrangement brought about contrary to the wishes of the custodial parent), or to preserve the status quo.

(c) Where prompt action is necessary, the family court may also enter temporary orders based on:

(a)(1) the recommendations of the conciliator; or

(b)(2) affidavits, depositions, reports of physicians, police or school personnel, and the oral representations of counsel; or

(c)(3) investigations of child service agencies, or

(d)(4) a combination of the foregoing.

Rule 1915.15. A. Form of Complaint. Caption. Order. Petition to Modify a Partial Custody or Visitation Order.

(a) The form of order required by Pa.R.C.P. 1915.3(a) shall be in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
vs : NO.
: CIVIL ACTION—LAW
Defendant : IN CUSTODY

NOTICE & ORDER TO APPEAR

A complaint has been filed in the Court of Common Pleas of Chester County concerning custody/partial custody/visitation of your children.

You are ordered to appear in person at the Chester County Courthouse, 17 North Church Street, Custody Conciliation Room, Third Floor Annex, West Chester, PA for a Custody Conciliation Conference on _____, at _____, ____m.

If you fail to appear as provided by this order, an order for custody, partial custody or visitation may be entered against you.

You, _____, Plaintiff, are ordered to appear in person to attend a Parenting Class on Wednesday, _____ at 4:30 p.m. in the Jury Room, Chester County Courthouse, 2 North High Street, West Chester, PA.

You, _____, Defendant, are ordered to appear in person to attend a Parenting Class on Wednesday, _____ at 4:30 p.m. in the Jury Room, Chester County Courthouse, 2 North High Street, West Chester, PA.

Failure to attend the session as scheduled may affect your rights to custody, partial custody or visitation.

You are ordered to contact the Mediator assigned to your case within three (3) days of receiving these papers.

Mediator: _____ Phone _____

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, PLEASE CONTACT THE OFFICE SET FORTH BELOW:

Lawyer Referral Service
15 West Gay Street
West Chester, PA 19380
610-429-1500

IF YOU CANNOT AFFORD A LAWYER, PLEASE
CONTACT THE OFFICE SET FORTH BELOW:

Legal Aid of Southeastern Pennsylvania
Chester County Division
14 East Biddle Street
West Chester, PA 19380
610-436-4510

AMERICAN WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Chester County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference.

BY THE COURT:

Date: _____

(b) All Petitions for Modification shall be accepted for filing by the Office of the Prothonotary upon the payment of the appropriate fee.

(c) All Petitions for Modification shall allege with specificity the modification sought and the reasons for seeking the modification.

Rule 1920.16.A. Severance of Actions and Claims. Bifurcation.

(a) Upon motion of either party and after hearing, the Master may recommend bifurcation of the divorce proceedings and issuance of a divorce decree prior to a determination of other matters raised by written report in accordance with Pa.R.C.P. 1920.53. The court shall permit bifurcation for good cause shown. In such event, this decree shall be indexed in the judgment docket to give notice of the divorced spouse's equitable interest in the property of the other.

(b) The decree of divorce in such circumstances shall contain the following statement: "The court reserves jurisdiction to dispose of ancillary matters properly raised by the parties heretofore; each spouse shall retain his or her equitable interest in the marital property of the other." be substantially in the form as prescribed by Pa.R.C.P. 1920.76.

(c) A copy of the Petition for Bifurcation shall be served upon the appointed Master.

Rule 1920.18A. Discontinuance. Rescinded

After a special master has been appointed, a discontinuance shall be entered only by leave of court after notice to the defendant and the master.

Editor's note: Amended July 15, 1994, effective October 1, 1994.

Rule 1920.22.A. Discovery. Sanctions. Rescinded

If a party does not comply with a discovery order, the master may either:

(1)(a) Proceed, nevertheless, to consider the evidence presented by the parties and, in his or her closing report, recommend sanctions against the non-complying party, including deemed admissions on the matters involved; or

(2)(b) Make an immediate recommendation to the court that sanctions of a specified nature be imposed.

Comment: Written interrogatories may be served as of course pursuant to Pa.R.C.P. 1920.22. Pa.R.C.P. 1920.33(a) further requires the filing of any inventory by

each party within ninety (90) days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code. Any party who has complied with these Rules may, where appropriate, apply to the court for sanctions pursuant to Pa.R.C.P. 4019 if the opposing party has failed to answer interrogatories and/or failed to file a required document. In the event of a successful Application pursuant to Pa.R.C.P. 4019, the Court of Common Pleas of Chester County may grant a broad order requiring, inter alia: timely answers to interrogatories; timely production of all relevant documents requested; and, when appropriate, deposition of the uncooperative party. Failure to comply with a court order requiring compliance with mandatory or other discovery will result in the imposition of appropriate sanctions, which may include, inter alia, an award of counsel fees and/or costs.

Editor's note: Amended July 15, 1994, effective October 1, 1994.

Comment: The rule relating to discovery in domestic relations matters is C.C.R.C.P. 1930.5.A.

Rule 1920.31.A. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses. Registration of Alimony. Registration of Foreign Decrees

(a)(1) A party in whose favor the court has entered an order for alimony may, upon payment to the domestic relations office of a registration fee of fifty (\$50.00) one hundred (\$100.00) dollars, register the order. Upon registration, and notice to the opposing side, the order shall be enforced in the same manner as other support orders.

(2) All orders for alimony shall be subject to automatic wage attachment.

Editor's note: Amended July 15, 1994, effective October 1, 1994.

(b)(1) Petitions to register, adopt and enforce foreign decrees as provided in Section 3705 of the Divorce Code shall be filed with the Prothonotary and shall contain the following:

(a)(i) identification of parties and their respective residences;

(b)(ii) a certified copy of the decree and any subsequent modifications; and

(c)(iii) a reference to laws of the issuing state which impact on enforcement of such decree

(2) Upon filing of the petition, the Family Court Administrator is authorized to issue, per curiam, a Rule to Show Cause why the prayer of the said petition should not be granted, returnable in not less than twenty (20) days. Each such rule shall notify respondents that well pled facts of the petitions will be admitted unless an answer specifically denying the same is filed by the close of court on the return date of the rule.

(3) The petitions shall be served in the same manner as in original process for divorce.

(4) All well pled factual averments in the petition shall be deemed admitted unless an answer specifically denying the same is filed on the return date of the rule. The requirements of Pa.R.C.P. 1029 shall apply.

(5) An answer to the petition for registration shall contain all defenses to the requested relief including those based upon jurisdiction and the law of the issuing state. Any statutes or applicable law upon which the

respondent-bases his defense shall be cited, and in the case of foreign statutes, a copy of the applicable statute shall be attached.

(6) If no answer has been timely filed, the petitioning party, five (5) days after the return date, may move to have the rule made absolute, granting the prayer of the petition.

(7) When an answer has been timely filed and any issues(s) raised by the petition and answer is (are) ripe for consideration, subject to the provisions of Pa.R.C.P. 209.206.7, any party may file a praecipe for determination in the form described in C.C.R.C.P. 206.2, with a supporting brief. Responsive briefs shall be filed within fifteen (15) days of the filing of the praecipe for determination.

(8) A decree granting registration and adoption of a foreign decree with respect to alimony or alimony pendente lite may be registered with the Domestic Relations Office in the same manner as provided in C.C.R.C.P. 1920.31.A.

Rule 1920.31.B. Registration of Foreign Decrees:

(1) ~~Petitions to register, adopt and enforce foreign decrees as provided in Section 3705 of the Divorce Code shall be filed with the Prothonotary and shall contain the following:~~

(a) ~~identification of parties and their respective residences;~~

(b) ~~a certified copy of the decree and any subsequent modifications; and~~

(c) ~~a reference to laws of the issuing state which impact on enforcement of such decree.~~

(2) ~~Upon filing of the petition, the Family Court Administrator shall issue a Rule to show Cause why the prayer of the said petition should not be granted, returnable in not less than twenty (20) days. Each such rule shall notify respondents that well pled facts of the petitions will be admitted unless an answer specifically denying the same is filed by the close of court on the return date of the rule.~~

(3) ~~The petitions shall be served in the same manner as in original process for divorce.~~

(4) ~~All well pled factual averments in the petition shall be deemed admitted unless an answer specifically denying the same is filed on the return date of the rule. The requirements of Pa.R.C.P. 1029 shall apply.~~

(5) ~~An answer to the petition for registration shall contain all defenses to the requested relief including those based upon jurisdiction and the law of the issuing state. Any statutes or applicable law upon which the respondent-bases his defense shall be cited, and in the case of foreign statutes, a copy of the applicable statute shall be attached.~~

(6) ~~If no answer has been timely filed, the petitioning party, five (5) days after the return date, may move to have the rule made absolute, granting the prayer of the petition.~~

(7) ~~When an answer has been timely filed and any issues(s) raised by the petition and answer is (are) ripe for consideration, subject to the provisions of Pa.R.C.P. 209, any party may file a praecipe for determination in the form described in C.C.R.C.P. 206.2, with a supporting brief. Responsive briefs shall be filed within fifteen (15) days of the filing of the praecipe for determination.~~

(8) ~~A decree granting registration and adoption of a foreign decree with respect to alimony or alimony~~

~~pendente lite may be registered with the Domestic Relations Office in the same manner as provided in C.C.R.C.P. 1920.31A.~~

~~Editor's note: Amended July 15, 1994, effective October 1-1994~~

~~Comment: C.C.R.C.P. 1920.31.B. has been moved in its entirety and renumbered as C.C.R.C.P. 1920.31.A.(b)(1)-(8).~~

Rule 1920.32.A. Joinder of Related Claims. Custody. Hearing by Court. Joinder of Custody Claim.

If a custody claim is asserted in a divorce complaint, a duplicate copy of the complaint shall be filed with the Prothonotary and it shall receive a court number separate from the divorce action. Such filing shall contain the information required by Pa.R.C.P. 1915.3(a) & 1915.15(a) and C.C.R.C.P. 1915.3.A. An additional filing fee may be required for this duplicate complaint. A copy of the duplicate, with the separate court number, shall be served on the defendant.

Rule 1920.42.A. Affidavit and Decree Under § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in § 3301(c) and § 3301(d)(1)(i) Divorces. Counter-Affidavit. Praecipe to Transmit Record. Incorporation of Agreement in Divorce Decree

(1)(a) ~~Withdrawal of Claims—Prior to the filing of the praecipe to transmit the record, any ancillary claim that has not been resolved by an agreement to be incorporated into the decree shall be withdrawn by praecipe of the party who raised the claim. All praecipes to withdraw ancillary claims shall include a certification that opposing counsel, any unrepresented party and the Master, if appointed, have been served with a copy of said praecipe and notice of intention to file same at least twenty (20) days prior to the date of its filing. The notice of intention to file the withdrawal of ancillary claims may be waived. Waivers shall be in writing and signed by counsel of record, or the parties and filed of record.~~

Note: The required notice of intention to file a praecipe to withdraw ancillary claims may be given at the same time as the notice of intention to file a praecipe to transmit the record. The praecipe to withdraw ancillary claims may then be filed immediately prior to the filing of the praecipe to transmit the record.

(2)(b) ~~All praecipes to transmit a record shall include a certification that opposing counsel, any unrepresented party and the master, if appointed, have been served with a copy of said praecipe and notice of intention to file same at least twenty (20) days prior to the date of its filing: In those cases where a Master has been appointed, at the time of filing the Notice of Intention to file the Praecipe to Transmit the Record or the Waiver of Notice of Intent with the Prothonotary, the filing party shall notify the Master, in writing, that the action has been settled and file a certification of said notice with the Prothonotary.~~

(3)(c) ~~Within eight (8) days of the Master's receipt of a notice of intention to file a praecipe to transmit record, the Master shall return the court file to the Prothonotary of Chester County, along with a statement of services rendered, certification that payment has been made and a recommendation for disposition of the praecipe to transmit record.~~

(4) ~~Notices required by this rule may be waived but any such waiver of notice must be filed of record and, if the party waiving notice is not represented by counsel of record, then such waiver shall be effective only if the~~

waiver is contained in a separate written document which specifically sets forth the substance of the notice requirements which are being waived and is signed by the party waiving such notice.

(d) If the parties conclude a written agreement as to any or all ancillary matters and desire to have such agreement incorporated in the divorce decree, the agreement to be so incorporated must be filed of record. The Praecepto to Transmit the Record should request incorporation and a written stipulation agreeing to same, executed by the parties and/or their respective counsel, must be filed of record. Should incorporation be included in the agreement, the Praecepto to Transmit the Record shall refer to the paragraph and page number(s) of the agreement at which the terms providing for incorporation may be found.

~~Comment: See C.C.R.C.P. 1920.76.A regarding incorporation of a marriage settlement agreement into the divorce decree.~~

~~Editor's note: Amended July 15, 1994, effective October 1, 1994.~~

Rule 1920.43.A. Special Relief.

~~(1)(a) All applications petitions for special relief shall be in the form prescribed by C.C.R.C.P. 206.1.A.(1)(a) and C.C.R.C.P. 206.2.B.(1) and (2).~~

~~(2)(b) A rule to show cause assigned a return date not sooner than twenty (20) days after the date of filing shall be issued per curiam when presented to the deputy court administrator, family court.~~

~~(3)(c) Any petitioner seeking a return date sooner than twenty (20) days of filing, or seeking a rule which stays proceedings or which by its terms grants substantive relief, shall present the petition, proposed order and rule to the signing judge of the Family Court. The court will not enter a stay or grant more immediate relief ex parte unless:~~

~~(a)(1) Notice—It appears from the petition or motion that reasonable notice, under the circumstances, of the date, time and place of the application presentation of the petition has been given to all counsel and unrepresented parties;~~

~~(b)(2) Stipulation—It appears from the petition or motion that there is an agreement by all counsel and unrepresented parties; or~~

~~(c)(3) Exigency—The court in its discretion shall determine that there are extraordinary circumstances justifying a stay or more immediate relief.~~

~~(4)(d) Immediately after filing documents with the Prothonotary each party shall serve upon all other counsel and unrepresented parties complete copies of such documents. Within five (5) days of such filing, the moving party shall file with the Prothonotary a separate document certifying such service in the form prescribed by C.C.R.C.P. 206.3.~~

~~(5) The court in its discretion may order depositions in lieu of scheduling a hearing on any Application for special relief.~~

~~(6) At least five (5) days prior to any evidentiary hearing before the court, all parties shall file with the prothonotary a pre-hearing statement and shall immediately serve copies of the statement on all other parties. The pre-hearing statement shall not exceed two (2) pages in length and shall set forth the following:~~

~~(a) A brief statement of the claim(s) being made by the moving party or the defense(s) being made by respondent;~~

~~(b) A concise statement of the facts;~~

~~(c) A concise statement of the legal issues involved, if any, and shall include citations to any applicable statutes; and~~

~~(d) An estimate of the required hearing time.~~

~~Pre-hearing statements for hearings scheduled less than twenty (20) days from the filing of the application shall be filed one day before the evidentiary hearing.~~

~~Editor's note: Amended July 15, 1994, effective October 1, 1994.~~

Rule 1920.46.A. Military Service.

~~(1)(a) If the defendant has not appeared and the plaintiff avers in the affidavit regarding military service that the defendant is in the military service or that the plaintiff cannot determine whether or not the defendant is in the military service, then the plaintiff shall file with the affidavit a motion and order for the appointment of an attorney to represent the defendant and shall deposit with the Prothonotary two hundred (\$200.00) dollars to cover the attorney's fees.~~

~~(2)(b) The attorney appointed to represent the defendant shall promptly perform the following duties:~~

~~(a)(1) The attorney shall make diligent inquiry to ascertain the whereabouts of the defendant.~~

~~(b)(2) If the attorney ascertains that the defendant is in the military service, the attorney shall inform the defendant of the action pending and ascertain whether the defendant wishes to appear and be heard, shall attend all hearings before the Master, and shall take any action proper to protect the interests of the defendant.~~

~~(c)(3) If the defendant is in the military service and wishes to appear and be heard, or if in the opinion of the attorney the defendant is prejudiced by said military service, the attorney shall state this in an interim report filed with the Prothonotary, copies of which shall immediately be served upon the attorney for the plaintiff and the Master, if appointed. In such event all proceedings shall be stayed until further order of the court.~~

~~(d)(4) If the attorney cannot ascertain the whereabouts of the defendant or whether or not the defendant is in the military service, the attorney shall, within ninety (90) days from the date of the appointment, file with the Prothonotary an interim report stating what information has been ascertained and what steps were taken to ascertain such information, copies of which report shall immediately be served upon the attorney for the plaintiff and the Master, if appointed. The attorney shall attend all hearings before the Master and take any action proper to protect the interest of the defendant.~~

~~(e)(5) Within ten (10) days after the hearings before the Master have closed, the attorney shall file with the Master a final report stating whether or not the defendant's whereabouts have been ascertained, and if the defendant is in the military service, whether or not the defendant is prejudiced by said military service. This final report shall be attached to and made a part of the report of the Master.~~

~~(f)(6) Upon the filing of an interim report resulting in the staying of all proceedings until further order of the court, or upon the filing of a final report, the attorney shall be entitled to receive the two hundred (\$200.00) dollars previously filed with the Prothonotary.~~

Editor's note: Amended July 15, 1994, effective October 1, 1994.

Rule 1920.51.A. Hearing by the Court. Lists of Masters. Appointment of Master. Notice of Hearing. Applicable Masters' Fees.

(1) ~~The court shall maintain a list of masters which shall be comprised of attorneys appointed by the president judge from among those attorneys admitted to practice before the Supreme Court of Pennsylvania and actively engaged in the practice of law in Chester County who are deemed to be specially qualified to serve as masters.~~

(2)(a) In actions where ancillary claims have been raised and are at issue, on the motion of either party, a Master shall be appointed by the court to hear testimony and prepare a report and recommendation.

(3)(b) Motion for Appointment of a Master—A motion for the appointment of a Master may be filed at any time after the filing of a complaint in divorce and shall state specifically what claims are at issue, what claims have been settled by agreement and whether any such agreement is to be entered as a court order. The moving party must be in compliance with Pa.R.C.P. 1920.31 and 1920.33. The motion shall include a certification that the completed inventory has been filed and served on the other party. The motion and order shall be in the form prescribed by Pa.R.C.P. 1920.74(a), (b).

(4)(1) Certification of Service—The movant shall file, along with the motion for appointment of a Master, a certification that opposing counsel or any unrepresented party has been served with a copy of the motion and all other documents required pursuant to sub-section (3)(b) hereof.

(5)(2) The motion for the appointment of a Master shall aver whether any acting Master is disqualified from acting as a Master in the action and the basis for the disqualification.

(c) Objections to the Motion for the Appointment of Master shall be filed within ten (10) days of the filing of the motion and shall be in accordance with C.C.R.C.P. 206.1.C. except that no brief shall be required.

Editor's note: Adopted July 15, 1994, effective October 1, 1994.

(d) Cover Sheet—Any motion for appointment of a Master shall be filed in the office of the Prothonotary and shall be accompanied by the following cover sheet, available at the office of the Prothonotary.

(e) Appointment of Master—Upon filing of the motion for the appointment of a Master, in the form prescribed by Pa.R.C. P. 1920.74, the required cover sheet and the posting of the required fee, the Office of the Prothonotary shall forward the motion to the Family Court Administrator Masters' Unit for the scheduling of a preliminary conference. When a party files a motion for the appointment of a Master, the moving party shall pay to the Prothonotary the applicable fee pursuant to this Rule. No Master shall be appointed without such payment.

(f) Applicable Fee—The party filing for the appointment of a Master shall specify on the cover sheet the matters sought to be heard by the Master, which shall determine the applicable fee. In addition to posting the requisite fee, the moving party shall pay eight dollars (\$8) for filing fee with the Prothonotary.¹

¹ The filing fee with the Prothonotary is subject to change.

(1) The fee for the appointment of a Master to hear only marital dissolution issues shall be \$130.

(2) The fee for the appointment of a Master to hear interim issues of alimony pendente lite, counsel fees and/or litigation expenses shall be \$100. The party moving for the appointment of a Master to hear a claim for alimony pendente lite shall file a time-stamped copy of the motion filed with the Prothonotary pursuant to subsection (1) hereof and a copy of the receipt or payment of the requisite fee, in the Domestic Relations Office of Chester County. The Domestic Relations Office shall then schedule a conference in accordance with Pa.R.C.P. 1910.12 and C.C.R.C.P. 1910.12.A.

(3) Whenever a party moves for the appointment of a Master to hear equitable distribution of marital property, whether or not there are other claims to be heard by the Master, the moving party shall deposit \$500 for the Master's fee plus eight dollars (\$8) for filing with the Prothonotary.

(g) The above fees are non-refundable.

Rule 1920.51.B. Regular Masters [Rescinded]

Rule 1920.51.C. Special Masters [Rescinded]

Rule 1920.51.D. Disqualification of Master. [Rescinded]

Rule 1920.51.E. Motion for Appointment of a Master. Applicable Masters' Fees:

(1) Cover Sheet—Any motion for appointment of a master shall be filed in the office of the Prothonotary and shall be accompanied by the following cover sheet, available at the office of the Prothonotary:

See Form on Page 165

(2) Appointment of Master—Upon filing of the motion for the appointment of a master, in the form prescribed by Pa.R.C. P. 1920.74, the required cover sheet and the posting of the required fee, the Office of the Prothonotary shall forward the motion to the Family Court Administrator for the scheduling of a preliminary conference. When a party files a motion for the appointment of a master, the moving party shall pay to the Prothonotary the applicable fee pursuant to this Rule. No master shall be appointed without such payment.

(3) Applicable Fee—The party filing for the appointment of a master shall specify on the cover sheet the matters sought to be heard by the master which shall determine the applicable fee. In addition to posting the requisite fee, the moving party shall pay eight dollars (\$8) for filing fee with the prothonotary.²

(a) The fee for the appointment of a master to hear only marital dissolution issues shall be \$130.

(b) The fee for the appointment of a master to hear interim issues of alimony pendente lite counsel fees and/or litigation expenses shall be \$100. The party moving for the appointment of a master to hear a claims for alimony pendente lite shall file a time-stamped copy of the motion filed with the Prothonotary pursuant to subsection (1) hereof and

1. The filing fee with the prothonotary is subject to change:

a copy of the receipt or payment of the requisite fee, in the Domestic Relations Office of Chester County. The Domestic Relations Office shall then schedule a conference in accordance with Pa.R.C.P. 1910.12 and C.C.R.C.P. 1910.12.A.

~~(c) Whenever a party moves for the appointment of a master to hear equitable distribution of marital property, whether or not there are other claims to be heard by the master, the moving party shall deposit \$500 for the master's fee plus eight dollars (\$8) for filing with the Prothonotary.~~

The above fees are non-refundable.

~~Editor's note: Adopted July 15, 1994, effective October 1, 1994.~~

Comment: C.C.R.C.P. 1920.51.E. has been moved in its entirety and renumbered as C.C.R.C.P. 1920.51.A.(d)–(g).

Rule 1920.51.F. 1920.53.A. Hearing by Master. Master's Report.

(a) Master's Duty To Determine Jurisdiction—The Master shall examine the formal sufficiency and regularity of the proceedings and the question of jurisdiction on the face of the pleading. If defective, but curable by amendment, the Master shall notify counsel and suspend further action until the necessary amendment is made. When the Master is satisfied of the formal sufficiency and regularity of the proceeding and the existence of jurisdiction, the hearing shall proceed as follows:

~~(1)(b) Uncontested Cases Divorce and Annulment Cases—(Not Involving Equitable Distribution.)~~

~~(a)(1) Counsel shall be provided with written notice of the hearing at least ten (10) days prior thereto.~~

~~(b)(2) In all hearings before a master that are believed to be uncontested, tThe plaintiff shall, prior to the hearing, submit to the Master a written "Plaintiffs Record of Testimony" bearing the case's caption, and consisting of the following:~~

~~(i) The plaintiff's testimony, in question and answer form, signed and verified by the plaintiff,~~

~~(ii) Any exhibits specifically identified in the plaintiff's evidence, and~~

~~(iii) The testimony of each of the plaintiff's witnesses, in question-and-answer form, signed and verified by the witnesses.~~

~~(c)(1) The Master's hearing in uncontested cases shall be conducted as follows:~~

~~(i) At the time of hearing, tThe plaintiff and all witnesses whose evidence Record of Testimony has been prepared in advance shall be present and shall affirm their prerecorded evidence, under oath or affirmation, in the Master's presence.~~

~~(ii) The Master may examine the plaintiff and the witnesses regarding the prerecorded evidence to evaluate their credibility, and may interrogate them as to any relevant matter whether or not included in the prepared record of testimony.~~

~~(iii) The Master, upon being satisfied that the plaintiff's record of testimony is credible, shall accept it and include it in the Master's report in lieu of findings on the merits, provided, however, that in the report the Master certifies that:~~

~~1.(a) At the hearing and in the Master's presence the plaintiff and witnesses offering prerecorded testimony were placed under oath and were examined and that they, by credible evidence, substantiated the facts set forth in the plaintiff's record of testimony, and~~

~~2.(b) No witness who was sworn or affirmed presented testimony or evidence contrary to the facts set forth in such record testimony.~~

~~(c) A report and recommendation of the Master shall issue at some time after the hearing.~~

~~(d) The Master's hearing, in contested divorce and annulment cases, shall be conducted as follows:~~

~~(1) The parties shall appear and present evidence, with a Court Reporter present.~~

~~(2) The Master may inquire of the parties under oath.~~

~~(2) Contested Cases—(or Involving Equitable Distribution) Rule 1920.54.A. Hearing by Master. Report. Related Claims.~~

~~(a) Preliminary Conference—~~

~~(i)(1) A Master shall hold a preliminary conference within thirty (30) days after being appointed to determine the scope of the ancillary issues raised. No stenographic record shall be made of this conference unless requested by a party, and approved by the Master, in which case that party shall engage and bear the cost of the stenographer.~~

~~(ii)(2) A Master may recommend to the court the entry of orders for discovery, alimony pendente lite, child support, counsel fees, expenses or costs following the preliminary conference.~~

~~(b) Discovery—~~

~~(1) Counsel may prepare and submit to the assigned Master and opposing counsel a listed of requested discovery at the preliminary conference.~~

~~(2) A Master may recommend to the court the entry of orders for discovery, including but not limited to, the filing of an inventory, an income and expense statement and affidavit of vital statistics. Said discovery orders may include discovery deadlines upon the request of either party or at the direction of the Master.~~

~~(b)(c) Prehearing Settlement Conference—Within thirty (30) days of the hearing, tThe Master shall conduct a settlement conference at which both parties shall submit a prehearing statement, which shall:~~

~~(1) Gives biographical information of each party, including but not limited to, age, education, occupation, income, health and children;~~

~~(i) Identify all witnesses with a brief summary~~

~~(ii) Identify all exhibits and agreements which shall be premarked;~~

~~(iii) Identify all reports of all experts;~~

~~(iv)(2) Contains any updates on valuation of property at issue;~~

~~(3) Identifies any and all legal or factual disputes or issues;~~

~~(v)(4) Contains a proposed specific schedule of distribution of all property including the percent of distribution to each party;~~

~~(vi) Identify the dates and duration of conferences during which counsel and the parties have discussed settlement in good faith.~~

~~Editor's note: The prothonotary has prepared a Certification of Trial Readiness Divorce form.~~

See Form on Page 166

~~(d) Certification of Trial Readiness:~~

~~(1) At the conclusion of the settlement conference, if all discovery has been completed, the deadline for discovery~~

has passed, the case has not settled and divorce grounds have been established, the parties may file a Certification of Trial Readiness.

(2) A time-stamped copy of the completed Certification of Trial Readiness shall be served upon the assigned Master and proof thereof, shall be filed with the Prothonotary. Any certificate that fails to include an estimated time of trial will be rejected by the Master and not placed on the Master's trial list.

(3) Upon receipt of the Certification of Trial Readiness by the Master, the matter shall be placed on the assigned Master's trial list in accordance with the filing date as indicated by the Prothonotary's time-stamp.

(4) All certifications of trial readiness shall be filed on blue paper with the Office of the Prothonotary.

Comment: The form certificate has been moved to C.C.R.C.P. 1920.74.A. to be consistent with Pa.R.C.P. 1920.71, et seq.

Note: This form of certification of trial readiness amends the prior form originally published in 1993.

(c)(e) Hearing—

(f)(1) The Master shall hold a formal record hearing for the determination of all matters at issue. Each party shall file a pre-trial statement not less than 10 days prior to the scheduled Master's hearing not exceeding 3 pages setting forth:

(i) a brief statement of the claim(s) being made by the moving party or the defense(s) made by the responding party;

(ii) a concise statement of the facts;

(iii) a concise statement of the factual or legal issues involved including citations to the applicable statutes or case law, if any;

(iv) a list identifying the names and addresses of all witnesses each party intends to call at trial;

(v) copies of all exhibits to be offered at trial intended to be admitted during the party's case in chief;

(vi) identify and attach reports of all experts;

(vii) contain any updates on valuation of property at issue;

(viii) contain an updated, proposed specific schedule of distribution of all property including the percent of distribution to each party.

(2) Failure to comply with the above rule may result in the imposition of sanctions recommended by the Master and will, in addition, permit the drawing of adverse inferences by the Master and the court.

(3) A copy of the pre-trial statement shall be served upon the Master and opposing counsel or any unrepresented party. Proof of service shall be filed with the Prothonotary.

All discovery pertaining to the ancillary issues before the master shall be made and transcribed for filing pursuant to Pa.R.C.P. 1920.53(a)(f) at any formal hearing before the master and court reporters shall be made available to the masters.

(f)(4) The time and place of such hearing shall be designated by the court. Court reporters shall be made available to the Masters. Once a hearing begins, it shall proceed to its conclusion within the limits of the estimated trial time. Thereafter, scheduling shall be consistent with the schedule of the Master. Whenever possible,

consistent with the master's duties pursuant to Pa.R.C.P. 1920.53 et seq., the master shall announce his or her recommendations at the conclusion of the hearing.

(5) The Master shall file a report in accordance with Pa.R.C.P. 1920.54. and 1920.55-2(a)(1), (2).

Editor's note: Adopted July 15, 1994, effective October 1, 1994.

Comment: Exhibits not attached and intended to be used as rebuttal or on cross-examination are still subject to relevancy standards by the finder of fact.

Comment: See generally, Pa.R.C.P. 1920.33

Rule 1920.53.A. Master's Report. Rescinded

(f) Preparation; Form—

(a) Upon receipt of notice of the filing of the transcript of testimony, or after the hearing if the plaintiffs record of testimony has been accepted in lieu of the transcript, the master shall prepare a report and recommendation and enclose the papers of the case in a strong backing paper in the following order:

(i) Decree Recommended

(ii) Master's Report

(iii) Testimony

(iv) Complaint and other papers in the case.

(b) The cover shall be endorsed with the court number, the names of the parties, the names of the attorneys and the name of the master.

(c) All regular master reports shall conform to Pa.R.C.P. 1920.53. All special master reports shall conform to Pa.R.C.P. 1920.53 and 1920.54.

(2) Notice of Filing of Report—If the defendant did not appear at the master's hearing, and if there is no attorney of record for the defendant, the master shall include in the notice required by Pa.R.C.P. 1920.53 and 1920.54 a statement that exceptions to the report may be filed with the prothonotary within ten (10) days after the date of filing of the report.

(3) Dismissal of Complaint— If a master's report recommends that the divorce decree not be granted, and if no exceptions to the report are filed within ten (10) days of the filing of the report, the court shall dismiss the complaint.

Rule 1920.55.A. 1920.55-2.A. Master's Report. Notice. Exceptions to Master's Report. Final Decree

(1)(a) Dismissal—Exceptions shall be dismissed in any case in which the notes of testimony have not been ordered, and paid for if required, within thirty (30) days of the filing of the exceptions.

(2)(b) Briefs—

(1) No less than three (3) weeks before the date set for oral argument, the excepting party or parties shall file a brief with the Prothonotary, shall serve copies of the brief upon all counsel, unrepresented parties and the judge assigned to hear the exceptions, and shall file a certification that service has been made.

(2) No less than one (1) week before the day set for oral argument, the responding party shall file a brief and certification of service in the manner prescribed in (1) above.

(3) In the event that both parties file exceptions, each party shall be treated as an excepting party for the purposes of the briefing schedule as set forth above.

(3)(c) Argument—If an excepting party fails to file a brief within the time prescribed by these rules, or within the time as extended, a non-excepting party may move for dismissal of the exceptions. If non-excepting party fails to file a brief within the time prescribed by these rules, or within the time as extended, he will not be heard at oral argument except by permission of the court.

Argument to the court shall be made only on the evidence in the record made before the master.

Comment: These motions to dismiss may be made at any time prior to commencement of oral argument and are not subject to the requirements of C.C.R.C.P. 206.1.(a).

Editor's note: Amended July 15, 1994, effective October 1, 1994.

Rule 1920.72.A. Form of Complaint. Affidavit. Affidavit Under § 3301(c) or 3301(d) of the Divorce Code. Counter-affidavit. Waiver of Notice of Intention to Request Decree Under § 33301(c) and § 3301(d). Form of Continuance.

(a) All requests for continuance for any proceeding under these rules shall be in the form prescribed by C.C.R.C.P. 1930.1.A.

(b) All requests for continuance shall be by original motion. No facsimile requests will be accepted.

Rule 1920.74.A. Form of Motion for Appointment of Master. Order. Form of Certification of Trial Readiness—Divorce.

(a) All certifications of trial readiness shall be filed on blue paper with the Office of the Prothonotary. Upon the filing of the certificate, a copy shall be served upon the appointed Master.

(b) The certification of trial readiness shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
v. : NO.
Defendant : CIVIL ACTION—IN DIVORCE

CERTIFICATION OF TRIAL READINESS—DIVORCE

Please place the above-captioned case on the trial list of _____, Esquire, Master and schedule if for a hearing. NO CONTINUANCES SHALL BE GRANTED WITHOUT GOOD CAUSE SHOWN. FAILURE TO BE READY AT THE TIME THE CASE IS CALLED MAY RESULT IN THE REASSIGNMENT OF THE CASE ON THE TRIAL LIST.

If after fifteen (15) days the adverse party fails to execute this certificate, the moving party may certify the matter as an active case.

Estimated trial time _____.

I hereby certify that on _____, I notified all interested parties.

Signature of Attorney For Plaintiff
Signature of Attorney for Defendant
Type Name & Attorney I.D. No.
Type Name & Attorney I.D. No.
Address of Attorney
Address of Attorney
Telephone # of Attorney
Telephone # of Attorney

Unrepresented party (signature), name and address typed

TO BE FILED WITH THE PROTHONOTARY. 2004

(This form is printed on blue paper).

Rule 1920.76.A. Incorporation of Agreement in Divorce Decree.

If the parties conclude a written agreement as to any or all ancillary matters and desire to have such agreement incorporated in the divorce decree, the agreement to be so incorporated must be filed of record. The Praecepto to Transmit the Record should request incorporation and a written stipulation agreeing to same, executed by the parties and/or their respective counsel, must be filed of record. Should the stipulation be included in the agreement itself, the Praecepto to Transmit the Record shall refer to the paragraph and page number(s) of the agreement at which the stipulation may be found.

Editor's note: Adopted July 15, 1994, effective October 1, 1994.

Comment: C.C.R.C.P. 1920.76.A. has been moved in its entirety and renumbered as C.C.R.C.P. 1920.42.A.(d).

Rule 1930.1.A. Form of Pleadings. Form of Caption. Form of Continuance Request and Order. Form of Rule Returnable.

(a) The form of request for continuance as required by C.C.R.C.P. 1920.72.A.(a) shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
vs : NO.
Defendant : CIVIL ACTION—IN

MOTION FOR CONTINUANCE

I, _____, Esquire, attorney for Plaintiff/Defendant, move for a continuance of the _____ (specify type of hearing) scheduled for _____, 20____ at _____ m. in Courtroom No. _____ for the following reasons: _____

The opposing party/counsel _____ (name) has been notified and AGREES/DISAGREES.

Attorney for Plaintiff/Defendant

(name)

ORDER FOR CONTINUANCE

AND NOW, this _____ day of _____, 20____, based upon the foregoing Motion, the continuance is GRANTED/DENIED.

The above matter is hereby rescheduled to the _____ day of _____, 20____ in Courtroom No. _____ at _____ m.

BY THE COURT:

J.

(b) The form of Rule to Show Cause as required by Pa.R.C.P. 206.6, in Family Matters shall be substantially in the following form:

Plaintiff : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
vs : NO.
Defendant : CIVIL ACTION—IN

RULE

AND NOW, this _____ day of _____, 20____, upon consideration of with Petition for _____, a Rule is issued upon the Respondent, _____, to show cause, if any he may have, why the prayer of the Petition should not be granted.

Rule Returnable the _____ day of _____, 20____, with hearing the _____ day of _____, 20____ at _____ a.m./p.m. in Courtroom No. _____, of the Chester County Courthouse, West Chester, PA.

The respondent is advised the well-pled facts of the Petition shall be deemed admitted unless a response specifically denying same is filed by close of court on or before the rule returnable date as set forth above.

BY THE COURT:

Rule 1930.3.A. Testimony by Electronic Means.

(a) The procedure for requesting testimony by electronic means shall be in accordance with C.C.R.C.P. 206.1.A.(1).

(b) Should the court grant a request for testimony by electronic means, the requesting party shall be responsible for all costs by either the initiation of the telephone call or by use of a credit card for payment.

Comment: The court requires no less than 48 hours notice to arrange for the use of specialized equipment.

See generally Pa.R.C.P. 1920.3.

Rule 1930.5.A. Discovery in Domestic Matters. Sanctions.

If a party does not comply with a discovery order, the master may either:

(a) Proceed, nevertheless, to consider the evidence presented by the parties and, in his or her closing report, recommend sanctions against the non-complying party, including deemed admissions on the matters involved; or

(b) Make an immediate recommendation to the court that sanctions of a specified nature be imposed.

Comment: Pa.R.C.P. 1920.33(a) requires the filing of an inventory by each party within ninety (90) days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code. Any party who has complied with these Rules may, where appropriate, apply to the court for sanctions pursuant to Pa.R.C.P. 4019 if the opposing party has failed to answer interrogatories and/or failed to file a required document. In the event of a successful Application pursuant to Pa.R.C.P. 4019, the Court of Common Pleas of Chester County may grant a broad order requiring, inter alia: timely answers to interrogatories; timely production of all relevant documents requested; and, when appropriate, deposition of the uncooperative party. Failure to comply with a court order requiring compliance with mandatory or other discovery will result in the imposition of appropriate sanctions, which may include, inter alia, an award of counsel fees and/or costs.

Comment: Requests for Discovery shall be made in accordance with C.C.R.C.P. 206.1.A.(1).

Rule ~~1940.3~~ 1940.3.A. Order for Orientation Session and Mediation. Selection of Mediator.

(a) Except as provided in (c) below, in an action for custody, partial custody or visitation where an agreement is not reached and reduced to writing by the conclusion of

the Custody Conciliation Conference, (see Local Rule 1915.5B) the parties upon recommendation by the conciliator may attend a two-hour custody mediation orientation session:

(a) All Complaints for Custody or Petitions to Modify Custody shall be referred to mediation. The mediator shall be assigned to the case at the time the custody conciliation conference and the parenting classes are scheduled. All parties shall call the assigned mediator within three (3) days of receiving the Complaint for Custody or Petition to Modify.

(b) An orientation session is an initial meeting between parties, and a mediator pursuant to Local Rule 1940.4 below, to educate the parties concerning the mediation process so that an informed choice can be made about continued participation in that process. The mediation is confidential at the point, if any, that mediation commences during, or after, the initial orientation session.

(b) All parties shall attend a custody mediation orientation, unless otherwise excused under this rule.

(c) An orientation session shall not be recommended required if a party or a party's child is or has been the subject of a Protection from Abuse Order abuse by either party within 24 months preceding the filing of the action.

(d) The Family Court Administrative Office shall maintain a list of custody mediators who have satisfied the requirements of C.C.R.C.P. 1940.4.A. The list of custody mediators shall be made available, upon request, to all parties and counsel.

(e) In the event the parties agree to additional mediation at the conclusion of the orientation session, 42 Pa.C.S.A. § 5949 shall govern confidentiality and admissibility issues.

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule ~~*1940.4~~ 1940.4.A. Minimum Qualifications to be a Mediator Under Local Rule 1940.3. of the Mediator.

(a) A mediator must meet the following minimum requirements:

(1) hold a postgraduate level degree in law, or a mental health field such as psychiatry, psychology, counseling, or family therapy;

(2) have successfully completed a 40-hour basic mediation training in a custody mediation program approved by the PBA, or the Academy of Family Mediators, the Academy of Matrimonial Lawyers, or substantial equivalent; consistent with Pa.R.C.P. 1940.4.

(3) provide annual, written proof to the Court's designee that the mediator maintains a current policy of Professional Liability Insurance covering mediation is maintained; which includes mediation as a covered practice area;

(4) participation in a program offered by the Family Law Section of the Chester County Bar Association involving substantive law training, training concerning our local child custody procedures, and training concerning the local custody mediation orientation program, including reporting obligations;

(4) complete twenty (20) hours of additional mediation training every two (2) years, effective January 1, 2002. For the purposes of this rule, additional training shall include advanced mediation training, ongoing supervision

by or consultation with an Advanced Practitioner level member of ACR or substantial equivalent, or by a professional mediation trainer.

~~(5) continued compliance with the ethical standards and any continuing educational requirements of the PBA, or the Academy of Family Mediators, or the Academy of Matrimonial Lawyers, or substantial equivalent.~~

~~(b) Mediators shall submit an application and an application fee in the amount of ~~\$100.00~~ \$150.00 or such sum as the Court directs to the Court's designee]. Mediators shall be required to renew their registration as a mediator annually every two years and to pay an annual a bi-annual renewal fee of ~~\$25.00; \$70.00~~ or such sum as the Court directs.~~

~~(c) The Court, upon its own motion or the motion of its designee, shall have the authority to decertify any Chester County custody mediator who has not complied with any provision of these Rules.~~

~~Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.~~

~~Rule *1940.5. 1940.5.A. Duties of the Mediator.~~

~~(a) At the orientation session, the mediator must inform the parties in writing of the following:~~

~~(1) the costs of mediation;~~

~~(2) the process of mediation;~~

~~(3) that the mediator does not represent provide legal advice, therapy or counseling to either or both of the parties;~~

~~(4) the nature and extent of any relationships with the parties and any personal, financial or other interests that could result in a bias or conflict of interest;~~

~~(5) that mediation is not a Substitute for the benefit of independent legal advice; and~~

~~(6) that the parties should obtain legal assistance for drafting or reviewing any agreement.~~

~~(b) When proceeding from the orientation to mediating a custody dispute, the mediator The primary focus of all custody mediation shall ensure that the parties consider fully be the best interests of the children.~~

~~(c) Only with the consent of tThe parties, the mediator may meet with mutually agree that the mediator include the parties' children or invite other persons to participate in the mediation process.~~

~~(d) At the conclusion of the mediation session, the mediator shall submit a written report to the Family Court Administrative Office.~~

~~Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.~~

~~Rule *1940.6. 1940.6.A. Termination of Mediation~~

~~(a) Mediation, if undertaken after the initial orientation session, shall terminate upon the earliest of the following:~~

~~(1) a written agreement between the parties on all custody issues;~~

~~(2) a written agreement between the parties that mediation be terminated;~~

~~(3) a partial written agreement between the parties concerning custody issues and a determination by the mediator that further mediation will not resolve the remaining issues;~~

~~(4) a written determination by the mediator that tthe parties are unable to reach an agreement through mediation or that the proceeding is inappropriate for mediation; or~~

~~(5) a refusal of one of the parties to continue with the mediation.~~

~~(b) If the parties reach a complete or partial agreement regarding custody at the mediation, the mediator shall promptly prepare and transmit to the parties and their attorneys, if any, a Memorandum Temporary Custody Order, setting forth the terms of the parties' agreement. In no event shall any such Memorandum Temporary Custody Order be binding on the parties unless and until it is incorporated into a written agreement signed by the parties.~~

~~(c) The mediator may mediate subsequent disputes between the parties, but shall not act as attorney, counselor, or psychotherapist, for any party either during or after the mediation of a custody action, or in any matter which was the subject of mediation. If the parties reach an agreement regarding custody at mediation, the mediator shall advise them that they may review the Temporary Custody Order with an attorney. If the parties wish to review the Temporary Custody Order with their attorneys, the order shall not be signed, by the parties, at mediation. The mediator shall provide the parties with a copy of the Temporary Custody Order. The attorneys must finalize and submit the signed Temporary Custody Order to the Family Court at least five (5) days prior to the scheduled custody conciliation conference in order for the conference to be cancelled.~~

~~(d) The mediator is prohibited from instructing either of the parties to sign any Memorandum Agreement. No mediator drafted Memorandum shall be submitted to the Court in any proceeding, nor is such admissible as evidence in the absence of a written Agreement signed by the parties. The parties may agree to waive review by their attorneys and to sign the Temporary Custody Order at the mediation. If the parties sign the Temporary Custody Order at mediation, the mediator shall submit the signed Temporary Custody Order to the Family Court at least five (5) days prior to the scheduled custody conciliation conference in order for the conference to be cancelled.~~

~~Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.~~

~~Rule *1940.7. Confidentiality of Mediation Subsequent to Initial Orientation Session~~

~~42 Pa.C.S.A. 5949 shall govern confidentiality and admissibility issues.~~

~~Note: Rule 1940.7 has been subsumed by C.C.R.C.P. 1940.3.A.~~

~~Rule *1940.8. 1940.7.A. Mediator Compensation.~~

~~Mediators shall be compensated for their orientation services at the rate of \$75.00 per hour or such sum as the Court directs. Unless otherwise ordered, the rate established for the custody mediation orientation session shall be divided between the parties.~~

~~Rule * 1940.7 Mediator's Report.~~

~~The Mediator's Report shall be filed by the mediator with the Family Court~~

~~Note: Rule 1940.7. has been subsumed by C.C.R.C.P. 1940.5.A.~~

Rule *1940.8. Mediator Compensation:

Mediators shall be compensated for their orientation services at the rate of \$75.00 per hour. Unless otherwise ordered, the rate established for the custody mediation orientation session shall be divided between the parties.

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*

Note: Rule 1940.8 has been moved in its entirety to C.C.R.C.P. 1940.7.A. to coincide with the Pennsylvania Rules of Civil Procedure.

Rule *1940.8. Confidentiality of Mediation Subsequent to Initial Orientation Session

42 Pa.C.S.A. 5949 shall govern confidentiality and admissibility issues.

Rule *1940.9 1940.8.A. Sanctions.

On its own motion or the motion of a party, the Court may impose sanctions against any party or attorney who fails to comply or causes a party not to comply with these mediation rules. Sanctions may include an award of mediation costs and attorney's fees, including those incurred in the filing and presentation of the motion for sanctions, as well as a finding of contempt. A hearing on a Custody Complaint or Petition The Custody Conciliation shall not be delayed, however, by a party's refusal or failure in to attending the mediation orientation sessions.

Rule *1940.8. Confidentiality of Mediation Subsequent to Initial Orientation Session

42 Pa.C.S.A. 5949 shall govern confidentiality and admissibility issues.

Note: Rule 1940.8 has been subsumed by C.C.R.C.P. 1940.3.A.

Rule *1940.9 Sanctions:

On its own motion or the motion of a party, the Court may impose sanctions against any party or attorney who fails to comply or causes a party not to comply with these mediation rules. Sanctions may include an award of mediation costs and attorney's fees, including those incurred in the filing and presentation of the motion for sanctions, as well as a finding of contempt. A hearing on a Custody Complaint or Petition The Custody Conciliation shall not be delayed, however, by a party's refusal or failure in to attending the mediation orientation sessions.

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*

Note: Rule 1940.9 has been moved in its entirety to C.C.R.C.P. 1940.8.A. to coincide with the Pennsylvania Rules of Civil Procedure.

Rule *1940.10: 1940.10.A. Evaluation of Custody Mediation Orientation Program.

(a) The court [or its designee] may evaluate the mediation orientation program annually.

(b) The President Judge may appoint a judge of the Court designee to oversee and implement the program consistent with the local Court Rules Chester County Rules of Civil Procedure, including, but not limited to, implementing and monitoring the program consistent with Paragraph (a) above.

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule *1940.11. Certificate of Compliance:

A certificate of compliance shall be filed by the mediator with the Prothonotary's Office, confirming compliance. Such certificate shall reflect only that such party or parties have complied with these Rules without further detail (see 42 Pa.C.S.A. 5949).

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule *1940.12. Available List of Mediators

The Family Court Administrator shall maintain and make available to all parties and counsel in the Family Court Administrator's Office a list of custody mediators who have satisfied the requirements of Local Rule 1940.4. Such list shall include, at a minimum, the names, addresses and the schedule of fees for mediation services.

Editor's note: Adopted May 22, 2000, effective 30 days after publication in the *Pennsylvania Bulletin*.

Note: Rule 1940.12 has been subsumed by C.C.R.C.P. 1940.3.A.

Rule *1940.13 1940.11.A. Ex Parte Communications Counsel and/or the parties shall not engage in or participate in ex parte communications with the mediator regarding substantive issues which relate to the mediation. Communications regarding scheduling are not subject to this rule.

Rule *1940.14 1940.12.A. Removal of Mediator from Court List.

(a) A mediator is an at will service provider and may be removed from the court list for the following reasons:

(1) failure to maintain current mediation qualifications as set forth in Rule 1940.4; C.C.R.C.P. 1940.4.A.

(2) failure to file mediator's reports with the court in a timely manner;

(3) multiple negative reports about the mediator; or

(4) other just cause.

(b) Procedure for Removing a Mediator from the Court List

(1)

(i) Complaints regarding a mediator shall be in writing and be sent to the Family Court Administrator for submission to the Court.

(ii) All complaints shall be considered confidential in nature.

(2) The Court, in its discretion, may decide whether to remove a mediator or recommend additional training or other remedial steps.

(3) If remedial steps are recommended, the mediator may be suspended during the time needed for additional training but shall not be removed from the list unless the mediator fails to amend the situation to the satisfaction of the Court.

[Pa.B. Doc. No. 04-845. Filed for public inspection May 14, 2004, 9:00 a.m.]