

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations; No. 422 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 9th day of November, 2004, Pennsylvania Rules of Civil Procedure 1910.16-2, 1910.16-4 and 1910.16-6 are amended as follows.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

The amount of support to be awarded is based in large part upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

* * * * *

(6) [social security] Social Security disability benefits, [social security] Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation:

* * * * *

(b) *Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement.*

* * * * *

(2) If a child for whom support is sought is receiving [social security retirement or disability derivative] Social Security benefits as a result of a parent's [age] retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of the obligee, obligor and child's benefits shall then be reduced by the amount of the child's [social security or derivative] benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the

result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child.

Example 1. If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives [social security] Social Security derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$539 per month. From that amount, subtract the amount the child is receiving in [social security] Social Security derivative benefits (\$539 minus \$300 equals \$239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$239 between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$239, or \$143.40, per month.

Example 2. Two children live with grandmother who receives \$400 per month in Social Security death benefits for the children as a result of their father's death. Grandmother also receives \$500 per month from a trust established by father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$1,500 net per month. For purposes of calculating mother's support obligation, grandmother's income will be \$500, the amount she receives on behalf of the children from the trust. Therefore, obligee's and obligor's combined net monthly incomes total \$2,000. Add to that the \$400 in Social Security benefits grandmother receives for the children to find the basic child support amount in Rule 1910.16-3. The basic support amount at the \$2,400 income level for two children is \$811. Subtracting from that amount the \$400 in Social Security derivative benefits grandmother receives for the children, results in a basic support amount of \$411 to be apportioned between the parties. As mother's income is 75% of the parties' combined income of \$2000, her support obligation to grandmother is \$308 per month.

* * * * *

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

PART I. BASIC CHILD SUPPORT

OBLIGOR OBLIGEE

* * * * *

6. Plus Child's Monthly Social Security [Retirement or Disability] Derivative Benefit, [_____] if any. (See Rule 1910.16-2(b)(2))

* * * * *

8. PRELIMINARY BASIC CHILD SUPPORT OBLIGATION (determine from Schedule at Rule 1910.16-3 based on number of children and line 7 adjusted combined monthly net income)	[____]
9. Less Child's Monthly Social Security [Retirement or Disability] Derivative Benefit	[____]
10. BASIC CHILD SUPPORT OBLIGATION	[____]
* * * * *	

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

(a) *Child care expenses.* Reasonable child care expenses paid by the custodial parent, if necessary to maintain employment or appropriate education in pursuit of income, are the responsibility of both parents. These expenses shall be allocated between the parties in proportion to their net incomes and obligor's share added to his or her basic support obligation. When the custodial parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the custodial parent. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

(1) Except as provided in subsection (2), the total child care expenses shall be reduced [**by 25%**] to reflect the **amount of the** federal child care tax credit available to the custodial parent, whether or not the credit is actually claimed by that parent, up to [**a**] the maximum annual cost [**of \$2, 400 per year for one child and \$4,800 per year for two or more children**] allowable under the Internal Revenue Code. [**For example, where the custodial parent incurs \$7,000 per year of reasonable child care expenses for two children, the net child care expenses subject to allocation between the parties is calculated as follows. Multiply the first \$4,800 of these expenses by .75 - \$3,600. Add the remaining child care expenses of \$2,200 to this amount for a total of \$5,800. Divide this amount by 12 months for a total of \$483 per month of net child care expenses that are subject to allocation between the parties in proportion to their net incomes.**]

(2) The federal child care tax credit shall not be used to reduce the child care expenses subject to allocation between the parties if the custodial [**parent's gross income (before considering any support) falls below \$1,200 per month for one child, \$1,600 per month for two children, \$1,800 per month for three children, \$2,000 per month for four children, \$2,300 per month for five children and \$2,500 per month for six children**] parent is not qualified to receive the credit.

* * * * *

Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to

the Internal Revenue Code. 26 U.S.C.A. § 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation.

[Pa.B. Doc. No. 04-2100. Filed for public inspection November 24, 2004. 9:00 a.m.]

Title 25—LOCAL COURT RULES

BERKS COUNTY

Amendments to the Rules of Civil Procedure; No. 04-380 Prothonotary

Order

And Now, this 12th day of November, 2004, the following amendments to the Berks County Rules of Civil Procedure are hereby adopted effective immediately, in accordance with Pa.R.C.P. No. 239(d). All previous Family Court local rules of civil procedure are hereby repealed as of the effective date of these rules. The District Court Administrator is *Ordered and Directed* to:

1. File seven (7) certified copies of this Order, including the newly adopted rules, with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania.
4. File one (1) certified copy with the Berks County Law Library.
5. Keep continuously available for public inspection and copying, one (1) copy in the Office of the Prothonotary of Berks County.

By the Court

ARTHUR E. GRIM,
President Judge

Support

Rule 1910.4 Commencement of Action. Modification or Termination of Order.

All civil actions or proceedings brought in the Court of Common Pleas of Berks County to enforce a duty of support within the scope of Pa.R.C.P. 1910.1 shall be commenced by filing an original and three copies of a complaint with the Domestic Relations Section of the Court of Common Pleas. The form of the complaint shall be in strict compliance with the applicable Pa.R.C.P. Subsequent proceedings to modify or terminate a support order shall be initiated by filing a petition, together with three copies thereof with the Domestic Relations Section of the Court of Common Pleas. The form of the petition shall be in strict compliance with the applicable Pa.R.C.P.

Rule 1910.5 Order Directing Party to Appear at Conference. Service.

(a) An order shall be attached to the front of the complaint or petition directing the parties to appear before a conference officer at the time and place directed by the court.

(b) A certified copy of the complaint or petition with order shall be served upon the defendant or respondent as provided by Pa.R.C.P. 1930.4.

Rule 1910.10 Hearing Procedure

The action shall proceed as prescribed by the alternative procedure of Pa.R.C.P. 1910.12.

Rule 1910.11 Rescinded

Rule 1910.12 Nonappearance Before Conference Officer or Support Master.

(a) If a party fails to appear at the conference before the conference officer or at the hearing before the Support Master after notice thereof and without good cause shown, the conference or hearing may proceed without that party. If the plaintiff or petitioner fails to appear at the conference before the conference officer or at the hearing before the Support Master after notice thereof and without good cause shown, the court may dismiss the action or petition and may place the costs on the party who failed to appear.

(b) Either party may demand a hearing by filing a properly filed written demand for a hearing within ten (10) days from the date of the default order as set forth in Pa.R.C.P. 1910.12(b)(2).

Rule 1910.15 Rescinded

Rule 1910.32 Subpoena

The parties to a hearing before the Support Master shall have the right to subpoena necessary witnesses and records as provided by the law for presentation at the hearing before the Support Master. Application to enforce any such subpoenas shall be made to the court.

Rule 1910.33 Testimony Transcriptions

Whenever, in any support proceeding, notes of the testimony or other transcript are requested by a party or parties to be transcribed, and it is so ordered by the court, payment shall be in accordance with the Pennsylvania Rules of Judicial Administration. Failure to make payment may result in dismissal of the pending matter.

Child Custody

Rule 1915.1 Scope

These rules shall apply to actions for custody, partial custody and visitation of minor children governed by Pa.R.C.P. 1915, et seq.

Rule 1915.2 Rescinded

Rule 1915.3 Commencement of Action; Filing

(a) An action shall be commenced by filing a verified complaint and three (3) copies of same substantially in the form provided by Pa.R.C.P. 1915.15(a).

(b) An Order shall be attached to the complaint substantially in the form provided by Pa.R.C.P. 1915.15(c). The proposed Order when filed shall be completed and shall include in the space so designated the name, address and telephone number of the Lawyers' Referral Service of the Berks County Bar Association. The current address and telephone number is as follows:

LAWYERS' REFERRAL SERVICE OF BERKS COUNTY
BAR ASSOCIATION
544 Court Street
Reading, PA 19601
Telephone No.: (610) 375-4591

When filed, the Order form shall be completed except for the conciliation conference date and time and the Judge's signature and date. The Prothonotary shall then

obtain a date and time for a conciliation conference from the Custody Coordinator. The verified complaint and attached Order shall then be presented to the Judge assigned to the case for signature.

(c)(1) In the event a claim for custody, partial custody or visitation is joined with an action for divorce, a form entitled "Notice to the Prothonotary", substantially in the form provided by B.R.C.P. 1915.15(a) shall be included.

(c)(2) If a claim for custody, partial custody or visitation is asserted in a divorce complaint or in a subsequent pleading, it shall receive the same term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. 1915.15.

(d) An Order shall be attached to the complaint directing both parties to attend the "Children In the Middle" program, or other suitable alternative program, and pay the costs thereof. The Order shall be substantially in the form provided by B.R.C.P. 1915.15(b).

(e) No attorney shall be permitted to represent a party in custody proceedings unless a written appearance of that attorney is first filed of record.

Rule 1915.5 Question of Jurisdiction and Venue

All references to a hearing in the proposed Order required by B.R.C.P. 1915.3(b) shall be construed as referring to a conference before the Custody Master. If a question of jurisdiction or venue is raised by timely preliminary objections, the conference shall be continued until decision by the Court.

Rule 1915.7 Consent Order

If an agreement for custody, partial custody or visitation is reached prior to commencement of an action and the parties desire a consent Order to be entered, they shall submit to the Court a proposed Order bearing the written consent of the parties or counsel and shall file of record and serve a custody complaint, but shall not be required to file the proposed order otherwise required by B.R.C.P. 1915.3(b).

Rule 1915.8 Physical and Mental Examination of Persons

(a) The Prothonotary shall maintain a list of experts acceptable to the Court for conducting psychological and home study evaluations. The list shall be filed with the Prothonotary and shall be updated from time to time as the Court directs.

(b) In the event it is determined that a psychological or home study evaluation shall be conducted, either party or the Custody Master shall prepare a proposed Order directing the evaluation to be conducted and setting forth how the costs of the evaluation shall be paid. The form shall be substantially in the form prescribed by B.R.C.P. 1915.18.

(c) The contents of an expert report prepared pursuant to Pa.R.C.P. 1915.8 shall be disclosed to the parties, the Court, attorneys in the case and other experts involved in the case. Disclosure to an unauthorized person, including the child who is the subject of the action, may result in sanctions.

Rule 1915.11 Appointment of Guardian Ad Litem

(a) Court Administration shall have on file a list of attorneys deemed suitable by the Court for appointment as a guardian ad litem when it is necessary for a child involved in a custody proceeding to be independently represented by counsel.

(b) The guardian ad litem shall have the authority to interview all parties to the custody action, to interview the child, and to gain access to all documentary evidence needed for the representation of the child and such other authority as granted by the Court.

(c) The Court shall direct the manner and amount of payment of attorney's fees and costs in cases where a guardian ad litem has been appointed, including whether the fees and costs shall be paid by the parties or the County.

Rule 1915.15 Forms

(a) In a divorce complaint containing a count for custody, partial custody or visitation, the Notice to the Prothonotary shall be substantially in the following form:

NOTICE TO PROTHONOTARY

A claim for (custody, partial custody, or visitation) is asserted in this pleading. [There have been no prior proceedings between the parties, or there has been a prior proceeding between the parties which is as follows:

(Include the caption and term number and the nature of such prior proceedings)]

(b) The Order and notice requiring the parties to attend the Children in the Middle Program, or other equivalent program, shall be substantially in the following form:

(CAPTION)

ORDER OF COURT

AND NOW, this _____ day of _____, 200 , in order to minimize the effects of custody litigation upon minor children, it is hereby Ordered as follows:

1. All parties to this custody action shall complete the program known as "Children in the Middle," or an alternative approved program.

2. Each party shall register for the program by calling Family Guidance Center, 610-374-4963, 1235 Penn Avenue, Suites 205-206, Wyomissing, PA 19610, or the program of their choice as approved prior thereto by the Court, within ten (10) days of receiving this Order.

3. Registration forms shall be available in the Office of Court Administration on the Fourth Floor of the Berks County Services Center, 633 Court Street, Reading, Pennsylvania.

4. Each party shall diligently participate in and shall file a copy of the Certificate of Completion of the program in the Office of the Prothonotary of Berks County to the above docket number.

5. Each party shall bring a photocopy of the Certificate of Completion to the custody conference or hearing scheduled in this matter.

6. Failure to comply with this Order may result in dismissal of the action, striking of pleadings, or other appropriate sanctions, including citation for contempt.

7. This requirement will not be waived except upon written motion to the assigned Judge for good cause shown.

8. Parties who reside outside of Berks County may attend an equivalent program in that area, provided they furnish official information regarding the program to the Court or to the Custody Master. They shall also be

responsible for providing Certificates of Completion as set forth above.

BY THE COURT:

_____ J.

Rule 1915.15(b) Rescinded

Rule 1915.18 Form of Order Directing Expert Examination and Report

An Order of Court directing psychological or home study evaluations in a custody matter pursuant to B.R.C.P. 1915.8 shall be in substantially the following form:

(CAPTION)

CUSTODY EVALUATION ORDER

AND NOW, this _____ day of _____, 200 , upon motion of _____, Esquire, Berks County Custody Master, it is hereby ORDERED that the following persons shall be evaluated for custody: the parties, (Names), the child/children and any other people who in the discretion of the evaluator should be evaluated. Counsel for any party may submit a short letter to the evaluator to identify issues. Counsel shall have no further ex parte communication with the evaluator.

These examinations shall be performed by: (Expert). The parties shall contact the evaluator to schedule appointments within ten (10) days of the date of this Order. Should the required payment not be paid by the moving party to the evaluator within thirty (30) days of the date of this Order, without an extension having been granted for good cause shown, this action shall be dismissed. Should the required payment not be paid by the responding party to the evaluator within thirty (30) days of the date of this Order, the moving party shall have the option to follow through with his/her portion of the evaluation or request a further custody conference without an evaluation. The evaluation shall not start until payment is made by all parties or the moving party exercises the above option.

The Evaluator shall supply the Court with a copy of such evaluations directed to: Custody Coordinator, Custody Office, 633 COURT STREET, READING, PA 19601. The contents of an expert report prepared pursuant to Pa.R.C.P. 1915.8 shall be disclosed to the parties, the Court, attorneys in the case and other experts involved in the case. Disclosure to an unauthorized person, including the child who is the subject of the action, may result in sanctions. The cost of these evaluations shall be paid for as follows: The Plaintiff shall be responsible for _____ % and the Defendant shall be responsible for _____ % of the total cost of the evaluations.

BY THE COURT:

_____ J.

Rule 1915.26 Conciliation Conference

(a) The court shall refer all actions for custody, partial custody and visitation of minor children to a Custody Master for purposes of a conciliation conference. Applicable Pennsylvania and local Mediation Rules shall be followed.

(b) The Custody Master shall be an attorney of law authorized to practice before the Supreme Court of Pennsylvania and shall be appointed to such position by the Board of Judges of the Court of Common Pleas of Berks

County. The Custody Master shall not practice family law before a Judge, conference officer, hearing officer or permanent or standing master employed in the same Judicial District.

(c) The Custody Master shall attempt to mediate the differences between the parties, encourage amicable resolution of those differences and may recommend mediation, counseling services or physical and mental examinations of persons under Pa.R.C.P. 1915.8. The Custody Master shall attempt to negotiate a settlement by stipulation in writing, signed by the parties and counsel, for approval and entry as an Order of the Court.

(d) The Custody Master may conduct an informal hearing, take testimony of the parties under oath, and hear the position of the parties relative to custody, partial custody, and visitation. The Custody Master shall have the right to conduct oral examination of the child who is the subject matter of the proceeding. No other witnesses shall be permitted, except in extreme cases, and at the discretion of the Custody Master. The testimony shall not be recorded or transcribed. The Custody Master shall not be bound by technical rules of evidence and all evidence of reasonably probative value may be received. The Custody Master shall consider the Court-Ordered written evaluations of experts. The hearing shall not be considered a hearing of the type permitted by Pa.R.C.P. 1915.4-1 but shall be considered an extension of the conciliation process.

(e) The hearing shall be concluded on the date fixed for the hearing, except that the Custody Master may continue the hearing to a date certain for good cause shown, or to obtain investigative or evaluative reports from a social service agency or private providers.

(f) Any investigative or evaluative reports ordered and obtained shall be considered by the Custody Master.

(g) If a written settlement is not reached, by stipulation, the Custody Master shall file a recommended order. At the discretion of the Custody Master the Master may also file findings of fact, conclusions of law and a written report.

(h) Notice of the Custody Master's findings of fact, conclusions of law and/or recommended order shall be served on counsel of record, parties without counsel of record, and on any other persons without counsel of record who were given notice of the hearing before the Custody Master. The notice shall state that each party has ten (10) days from the date of notice to file written exceptions with the Prothonotary to the findings of fact, conclusions of law or recommended order, and that upon failure to file such exceptions within ten (10) days, the recommended order of the Custody Master will be submitted to the Court for entry as an Order of Court.

Rule 1915.27 Nonappearance at Hearing Before Custody Master

(a) If a plaintiff fails to appear, without proper cause shown, at the hearing before the Custody Master, and the Custody Master is satisfied that proper notice of the order fixing the hearing has been given to plaintiff, the Custody Master shall recommend to the Court that an order be entered dismissing the complaint with respect to that party.

(b) If a defendant or party joined in the case fails to appear, without proper cause shown, at the hearing before the Custody Master, and the Custody Master is satisfied that proper service of the order has been given to the defendant or non-appearing party, it shall be

presumed that said party has agreed to a hearing in that party's absence, and the Custody Master shall proceed to conduct a hearing and make findings of fact, conclusions of law, and recommend an order to be entered by the Court.

(c) If all parties fail to appear at a hearing before the Custody Master, and the Custody Master is satisfied that proper service has been given to all parties, the Custody Master shall recommend to the Court that an Order be entered dismissing the complaint.

Rule 1915.28 Exceptions. Hearing By Judge.

(a) If there are exceptions to the recommended order, a pre-trial conference followed by a hearing de novo shall be held before the Judge assigned to the case.

(b) Any exceptions shall be filed in accordance with B.R.C.P. 207.1(a), including therewith a copy for the Custody Master.

(c) The proposed Order to be submitted by the party filing the exceptions shall be in the following form:

ORDER

AND NOW, _____, exceptions having been filed to the Order recommended by the Berks County Custody Master, a pre-trial conference is hereby scheduled for _____ at _____ in _____ of the Berks County Courthouse/Services Center. A pre-trial conference memorandum shall be filed in accordance with B.R.C.P. 212.2 (a). The memorandum shall contain the following: (1) Summary Statement of Facts; (2) Witnesses Expected to be Called; (3) Expert Witnesses Expected to be Called; (4) Exhibits Expected to be Offered Into Evidence; (5) Legal Issues Anticipated; and (6) Special Problems.

BY THE COURT:

_____ J.

Rule 1915.29 Scheduling of Pre-trial Conference

A pre-trial conference will be scheduled by the Judge assigned to the case whenever a trial de novo is demanded. A Court Order will be sent to the parties advising them of the date and time for the pre-trial conference, as well as the issues to be addressed. The purpose of the pre-trial conference is to identify issues which will be the focus of the trial, to determine the time required for trial, address other pre-trial matters such as discovery requests and exchanges of expert reports, set the date for a trial and discuss other relevant matters, including settlement of the action.

A trial before the Court shall comport with the requirements for conducting nonjury trials, and the parties shall adhere to established trial procedure and the rules of evidence.

Rule 1915.30 Pre-trial Conference

The attorneys of record, or party if there is no attorney of record, shall be prepared to discuss the following:

(a) Whether any agreement can be reached regarding custody, partial custody and visitation of the child or children;

(b) The relative positions of the parties concerning custody, partial custody and visitation of the minor child or children;

(c) The witnesses each party intends to call to testify at the time of trial and their anticipated testimony;

(d) The expert witnesses each party intends to call to testify at the time of trial and their anticipated testimony and any reports prepared by said witnesses;

(e) A list of exhibits that each party intends to introduce at the time of trial;

(f) An estimation of the length of time the trial is expected to take;

(g) Any special legal issues which any party believes are relevant to the determination of custody, partial custody or visitation; and

(h) Whether an expedited trial is required due to the special circumstances of the case.

Rule 1915.31 Notice of Disposition by Court

The Prothonotary shall give notice to all counsel of record and to parties without counsel of record of all final Court Orders entered.

Rule 1915.32 Appendix

Any Order for custody, partial custody or visitation entered by the Court, either by stipulation or after hearing held, shall have affixed to it an appendix that shall be made a part of the Court Order. The appendix shall be substantially in the following form:

APPENDIX TO ORDER

Certain rules of conduct which generally apply to custody matters are set forth below and are binding on both parties, the breach of which could become the subject of contempt proceedings before this Court, or could constitute grounds for modification of this Order. If these general rules conflict with any specific provisions of the Order, the Order shall prevail.

1. In addition to the foregoing rights, both parties shall also have the following rights with respect to the children:

A. The right to reasonable telephone contact with the children when they are in the other parent's custody.

B. The right to be fully informed concerning the progress of the children in school and the children's medical status, including the right to obtain the necessary information directly from the children's school or medical practitioner; and

C. The right to be informed in advance before any important decisions are made concerning the children and the opportunity to participate in those decisions.

2. In the event of any serious illness of the children at any time, any party then having custody of the children shall immediately communicate with the other party by telephone or by any other means, informing the other party as to the nature of such illness, and during such illness, each party shall have the right to visit the children as he or she desires consistent with the proper medical care of the children.

3. Neither party shall alienate nor permit to attempt to alienate the children from the other party. While in the presence of the children neither parent shall make any remarks or do anything which is derogatory or uncomplimentary to the other and it shall be the duty of each parent to uphold the other parent as one the children should respect and love.

4. Both parties shall provide each other with their addresses and telephone numbers of their residences and anytime they take a trip with the children out of the jurisdiction of Berks County in excess of three (3) days.

5. The parties shall not conduct arguments or heated conversation when they are together in the presence of their children.

6. The parties shall at all times consider the children's best interests, and act accordingly. It is in a child's best interest to understand that he or she is trying to desperately cope with the fact of his or her parents' separation, and needs help in loving both parents, rather than interference or censure.

7. Neither party shall question the children as to the personal lives of the other parent except insofar as necessary to insure the personal safety of the children. By this we mean that the children will not be used as spies on the other party. It is harmful to a child to be put in the role of spy.

8. The parties should remember that they cannot teach their children proper moral conduct by indulging in improper conduct themselves. Children are quick to recognize hypocrisy, and the parent who maintains a double standard will lose the respect of his or her child.

9. Weekend and evening visitation shall be subject to:

A. Arrangements will be worked out beforehand between the parties without forcing the children to make choices and run the risk of parental displeasure. However, the children shall be consulted as to their schedules when appropriate.

B. Visitation rights shall be exercised at reasonable hours and under circumstances reasonably acceptable to the other party and to the need and desire of the minor children.

C. If a party finds himself or herself unable to keep an appointment, he or she should give immediate notice to the other party, so as to avoid subjecting the children to unnecessary apprehension and failure of expectations.

D. The party having custody of the children should prepare them both physically and mentally for the transfer of custody to the other party and have them available at the time and place mutually agreed upon.

E. If either party or a child has plans which conflict with a scheduled visit and wish to change such visitation, the parties should make arrangements for an adjustment acceptable to the schedules of every one involved. Pre-determined schedules are not written in stone, and both parties should be flexible for the sake of the children.

F. If a party shows up for a visit under the influence of alcohol or drugs, the visit may be considered forfeited on those grounds alone.

10. If either party feels the other party has violated this Order, they may petition the Court as set forth in Pa.R.C.P. 1915.12.

Rule 1915.33 Continuance Requests

Continuance requests for custody conferences before the Custody Master shall be faxed to the Custody Office in the form of a letter. The request shall include the docket number, the names of the parties, the date of the conference, the reason for the requested continuance, and an indication of whether or not the opposing party is in agreement with the request. The Custody Office shall notify the requesting party whether or not the request has been granted.

Divorce

Rule 1920.21 Bill of Particulars

No rule requiring a bill of particulars shall issue after the appointment of a Master except by agreement of counsel or by leave of court for cause shown.

Rule 1920.22 Interim Counsel Fees and Discovery

A party seeking interim counsel fees, or discovery under Pa.R.C.P. 1920.22(a), shall file a petition with the court, together with a proposed order for a rule to show cause, which shall be disposed of in accordance with B.R.C.P. 206-208.

Rule 1920.31(a)(1) Filing Claims for Alimony Pendente Lite, Child Custody, Partial Custody or Visitation, Child Support or Paternity

(A) A Confidential Family Court Cover Sheet shall be attached to any pleading under the Divorce Code, wherein a party asserts a claim for alimony pendente lite, child custody, partial custody or visitation, child support or paternity. The filing party shall certify the existence or non-existence of any former proceeding between the parties including the caption and term number thereof, and the nature of such prior proceeding on the Confidential Family Court Cover Sheet.

(B) If a claim for alimony pendente lite, child support or paternity, or pleadings responding to such claim, are filed in a divorce action, the party filing such pleading shall file such additional copies with the Domestic Relations Section as shall be required by the Berks County Rules pertaining to Support.

(C) If a claim for custody, partial custody or visitation is asserted in a divorce complaint or in a subsequent pleading, it shall receive the same term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. 1915.15. An additional filing fee in an amount as posted by the Prothonotary shall be required.

(D) Where pleadings under the Divorce Code asserting a claim for custody, partial custody or visitation, or pleadings responding to such claims, are filed, the party filing the same shall file such additional copies as shall be required by the Berks County Rules pertaining to child custody.

Rule 1920.31(a)(2) Sanctions

(A) The court may after reasonable notice enter an appropriate order if a party fails to file a timely income and expense statement and related papers required under Pa.R.C.P. 1920.31 or a sufficient inventory and appraisal required under Pa.R.C.P. 1920.33 including:

(i) An order refusing to allow the noncomplying party to support or oppose designated claims or defenses, or prohibiting such party from introducing into evidence designated documents, testimony, or other evidence, or from introducing evidence contrary to the claim of the party obtaining the order.

(ii) An order striking out pleadings, claims or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the noncomplying party.

(iii) An order imposing punishment for contempt.

(iv) After reasonable notice to the noncomplying party, and application by the complying party, an order directing the filing of the inventory and appraisal by a date certain.

(v) Such other order as it deems just under the circumstances.

(B) If, following the refusal, objection or failure of a party to comply with any provision of this rule, the court, after opportunity for hearing, enters an order compelling compliance and the order is not obeyed, the court, in a

subsequent motion for sanctions, may, if the motion is granted, require the noncomplying party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses, including attorneys' fees, incurred in obtaining the order of compliance and the order for sanctions, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(i) If the motion for sanctions is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(ii) If the motion for sanctions is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons.

(C) If the filing of a motion or making of an application is for the purpose of delay or in bad faith, the court may impose on the party making the motion or application, the reasonable costs, including attorneys' fees, actually incurred by the opposing party by reason of such delay or bad faith. The court may further order that a party upon whom such costs have been imposed may neither (1) take any further steps in the suit without prior leave of court so long as such costs remain unpaid, nor (2) recover such costs if ultimately successful in the action.

(D) The filing of interrogatories or answers thereof or any other discovery allowed by the court shall not relieve a party from the filing of the documents required by Pa.R.C.P. 1920.31 and 1920.33.

Rule 1920.31(b) Disposition of Alimony Pendente Lite, Child Support and Paternity Claims

(1) All pleadings under the Divorce Code asserting or responding to a claim for alimony pendente lite, child support or paternity shall comply with and be governed by the rules pertaining to Support. The claimant shall furnish any additional forms required by the Domestic Relations Section.

(2) Upon filing with the Domestic Relations Section as provided in subsection (1), the alimony pendente lite and/or child support claim shall proceed in accordance with the rules pertaining to Support.

Rule 1920.32 Disposition of Child Custody, Partial Custody or Visitation Claim

(a) All pleadings under the Divorce Code asserting or responding to a claim for child custody, partial custody or visitation shall comply with and be governed by the rules pertaining to child custody, including, but not limited to, the filing of an Order pursuant to Pa.R.C.P. 1915.3(b) at the time of the divorce filing so that the custody matter can be promptly scheduled.

(b) Upon filing of a pleading under the Divorce Code containing a claim for child custody, partial custody or visitation, the prothonotary shall deliver a copy of said pleading to the Custody Master.

(c) Upon referral to the Custody Master as provided in subsection (b), the child custody, partial custody or visitation claim shall proceed in accordance with the rules pertaining to child custody.

Rule 1920.33(c) Sanction for Failure to File Inventory and Appraisal

See B.R.C.P. 1920.31(a)(2).

Rule 1920.42 Filing of Praecepto to Transmit Record

(a) When the divorce decree is requested under Section 3301(c) of the Divorce Code, at least twenty (20) days prior to filing a praecipe to transmit the record under Pa.R.C.P. 1920.42, the moving party shall serve all counsel of record and any unrepresented party with a copy of said praecipe and the proposed decree, and written notice of the intention to file the praecipe and proposal decree, substantially in the form set forth in Pa.R.C.P. 1920.73 unless such notice is not required in accordance with Pa.R.C.P. 1920.42(e). Written objections, if any, shall be filed and served on all counsel of record and on any unrepresented party on or before the filing date.

(b) When the divorce decree is requested under Section 3301(d) of the Divorce Code, Pa.R.C.P. 1920.42(d) and 1920.72(d) shall be followed.

(c) An administrative fee of \$50.00, in addition to any fees imposed by the Commonwealth, shall be paid upon the filing of the praecipe to transmit the record.

(d) The party filing the praecipe to transmit the record shall file therewith an original and two copies of the proposed decree and stamped envelopes addressed to each attorney of record and to any unrepresented party. The envelopes shall have the return address of the Prothonotary, Berks County Courthouse, Sixth and Court Streets, Reading, PA 19601, and shall be of adequate size and bear sufficient postage for any attachments to the proposed decree.

(e) Upon submission of a praecipe to transmit the record, the file will be reviewed for procedural compliance. If procedural compliance had been achieved, a Divorce Decree will be entered in the normal course. If procedural defects are found to exist, counsel and unrepresented parties will receive a form indicating the defects found and sixty (60) days to correct the defects. If the defects are not corrected within sixty (60) days, the file will be returned to the Prothonotary's Office and a new praecipe to transmit the record together with the administrative fee will be required to be filed.

Rule 1920.45 Request for Counseling

(a) A request for counseling under the Divorce Code shall be made to the court by written motion, and the court shall thereafter enter an order requiring a maximum of three (3) counseling sessions within the appropriate time period provided in the Divorce Code.

(b) Where the court requires counseling as provided in the Divorce Code, a report shall be made to the court by the qualified professional stating whether the parties attended.

Rule 1920.46 Affidavit of Non-Military Service. Appointment of Counsel for Defendant in Military Service.

(a) The affidavit regarding military service where required to be filed under Pa.R.C.P. 1920.46 shall set forth the facts establishing that the defendant is not in the military service of the United States. If unable to file such affidavit, plaintiff shall file certifications from the five branches of the armed services that defendant is not a member.

(b) When counsel is appointed by the court for a defendant in the military service, said attorney shall file a brief report of the services performed and shall receive a fee for such services as determined by the court.

Rule 1920.51 Divorce Masters to be Appointed

A Divorce Master shall be appointed by the court to hear testimony and make a report and recommendation

as to divorce and annulment actions under the Divorce Code (except claims for divorce under Section 3301(c) or Section 3301(d)(1)(i) of the Divorce Code), and as to related claims except claims for child custody or visitation, child support or paternity.

Rule 1920.51.1 Divorce Masters

The court will maintain a list of Divorce Masters. The Divorce Masters shall be members of the bar of this court, appointed to such position by the court.

Rule 1920.51.2 Appointment and Duties of Divorce Masters

The court shall appoint a Divorce Master to hear contested divorce and annulment actions and ancillary claims. The Divorce Master shall hear testimony on all outstanding issues and shall file a report and recommendation in compliance with Pa.R.C.P. 1920.53 and 1920.54.

Rule 1920.51.3 Rescinded**Rule 1920.51.4 Motion and Order for Appointment of Divorce Master**

(a) When the action is at issue any party may file a motion for the appointment of a Divorce Master substantially in the form provided by Pa.R.C.P. 1920.74.

(b) The court shall appoint a Divorce Master, in accordance with the claims to be determined as set forth in the motion.

(c) At least ten days prior to filing the motion for the appointment of a Divorce Master, the moving party shall serve all counsel of record and any unrepresented party with a copy of said motion and written notice of intention to file the motion. Written objections, if any, shall be filed and served on all counsel of record and any unrepresented party prior to the filing date. A copy of the notice shall be attached to the motion for appointment when it is filed.

Rule 1920.51.5 Deposit of Costs to Accompany Motion for Appointment of Divorce Master

Upon filing a motion for the appointment of a Divorce Master, the moving party shall pay a deposit of costs in the amount of \$500.00.

Rule 1920.51.6 Rescinded**Rule 1920.51.7 Review of Pleadings by Divorce Master**

Before appointing the time and place of taking testimony, the Divorce Master shall examine the pleadings and determine whether the court has jurisdiction and whether the matter is ready for hearing, and if so shall schedule the hearing in accordance with B.R.C.P. 1920.51.8. If the matter is not ready for hearing, the Divorce Master shall either report to the court or notify counsel and suspend further action for a reasonable time to enable the necessary corrections to be made. Upon the expiration of said time without such corrections having been made, the Divorce Master shall report this to the court, and seek advice on how to proceed with the matter.

Rule 1920.51.8 Rescinded**Rule 1920.53 Hearing by Divorce Master**

(a) The Divorce Master shall have the same powers, in reference to hearing witnesses and admitting testimony, as a judge sitting without a jury, subject to the direction of the court from time to time, upon motion of either party. When objection is made to the competency or relevancy of testimony, the Divorce Master shall rule upon its admissibility. The testimony before a Divorce

Master shall be recorded in the manner as from time to time approved by the court. The testimony shall be transcribed in the event a party files timely exceptions to the report of the Divorce Master, as set forth in B.R.C.P. 1920.55.

(b) The Divorce Master shall give at least 20 days' written notice of any hearing to all counsel of record and at least 25 days' written notice to any unrepresented party. Notice of the hearing shall be given in accordance with Pa.R.C.P. 1920.51.

(c)(i) If, at least 10 days prior to the date for hearing, a party gives all other parties written notice of intention to offer documentary evidence, including a written report, bill, statement, estimate of value, worth or cost, or report of any appraiser, medical, valuation or other expert witness, or official or certified record of any governmental or judicial body, the same may be admitted into evidence without further proof; provided, however, any other party may, at least 2 days prior to the date for hearing, object to the admission of such documentary evidence without further proof, whereupon the document may be admitted only in compliance with the rules of evidence. Costs of subpoena and production of documentary evidence may be assessed against any party or partly on each.

(ii) If the documentary evidence objected to is substantiated at the time of hearing and if it appears that the objection to the admission of said evidence was made in bad faith, the cost of producing the witness may be assessed against the party compelling the witness' production.

Rule 1920.53(c) Rescinded

Rule 1020.53.1 Divorce Master's Compensation

Divorce Masters shall be compensated as determined from time to time by the Court.

Rule 1920.53.2 Preparation of Divorce Master's Report

(a) After completion of the hearing or hearings, the Divorce Master shall prepare a report and recommendation in accordance with either Pa.R.C.P. 1920.53 or 1920.54 as applicable. The Divorce Master shall make specific findings of fact. The papers shall be submitted in the following order from top to bottom:

- (1) Decree Recommended
- (2) Index
- (3) Divorce Master's Report
- (4) Copy of Docket Entries
- (5) Consents and other relevant papers in chronological order according to filing date with the most current on top (including non-military affidavit where required).

(b) The report shall be filed no later than thirty (30) days following the date of the final hearing in accordance with Pa.R.C.P. 1931 unless a motion to extend time for decision to sixty (60) days has been granted by the assigned Judge.

(c) In the event the Divorce Master fails to file the report within the time frame set forth in (b) above, a statement shall be filed with the court setting forth the reason therefor.

Rule 1920.55 Rescinded

Rule 1920.55-2 Exceptions to Divorce Master's Report

(a) If exceptions are filed to the report of a Divorce Master, the excepting party shall within ten (10) days arrange for the transcribing of the testimony for filing

with the court and pay to the stenographer within said time the estimated cost thereof, unless the court on motion shall grant an extension for cause shown. The completed transcript shall be filed within thirty (30) days of the filing of the exceptions unless the court on motion shall grant an extension for cause shown.

(b) Absent good cause shown, failure of the excepting party to act promptly in accordance with (a) above to pay the cost and secure the transcript shall result in the dismissal of said exceptions by the court upon motion.

Rule 1920.73 Rescinded

Rule 1920.74 Form of Motion for Appointment of Divorce Master

The form of Motion for Appointment of Divorce Master shall be substantially as set forth in Pa.R.C.P. 1920.74 provided that the following shall be added:

I certify that the notice required by B.R.C.P. 1920.51.8(b) was mailed on _____ and a copy is attached hereto.

Rule 1920.75 Rescinded

Rule 1920.93 Parties Continuing to Reside Together

If the record dictates that the plaintiff and defendant are residing together, the court may conduct a hearing and issue such order or decree as it deems appropriate under the circumstances.

Rule 1920.94 Bifurcation

(a) By agreement of the parties or upon petition of either party for cause show, the court may permit bifurcation, therefore separating the divorce and economic claims. Upon separation of the claims the divorce decree may be entered upon compliance with divorce procedures even though economic claims may still be outstanding. For purposes of this rule, bifurcation means decreeing a divorce when economic claims are outstanding.

(b) Where bifurcation is allowed, the decree shall be indexed in the judgment docket to give notice of the divorced spouses' equitable interest in the property of the other.

(c) The decree in divorce in such circumstances shall give notice of the outstanding claims in the manner set forth in Pa.R.C.P. 1920.76.

(d) Bifurcation shall have no effect on any order for support or alimony pendente lite. Such order shall continue until final disposition of all outstanding claims unless modified or terminated by the court for cause shown.

Rule 1920.95 Stay of Proceedings

Except as provided in Pa.R.C.P. 1531, no stay of proceedings shall be granted by the court unless for cause shown and upon notice to all counsel of record as well as any unrepresented party with an opportunity to be heard.

Rule 1930.1 Form of Pleadings. Form of Caption

To clearly identify the type of action under the unified docketing system, all Family Court pleadings shall contain a notation in the caption as to whether the pleading pertains to PROTECTION FROM ABUSE; CHILD CUSTODY; SUPPORT; OR DIVORCE.

Voluntary Mediation In Custody Actions

Rule 1940.1 Applicability of Rules to Mediation

(a) The rules in this chapter shall apply to all court-established custody mediation programs and to any court-

ordered mediation of individual custody cases and such other family law matters as the parties may agree.

(b) Except as otherwise provided by these local rules, the court shall apply the mediation rules as set forth in Pa.R.C.P. 1940.1 et seq.

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

(a) Except as provided in (b), the court may order the parties to attend an orientation session at any time upon motion by a party, stipulation of the parties, or the court's own initiative.

(b) The court may not order an orientation session if a party or a child of either party is or has been the subject of domestic violence or child abuse from the other party or person affiliated with the other party either during the pendency of the action or within 24 months preceding the filing of the action.

(c) Following the orientation session and with the consent of the parties, the parties may begin mediation. The mediation may address any issues agreed to by the parties unless limited by court order.

Rule 1940.4 Minimum Qualifications of the Mediator

In addition to meeting the qualifications set forth in Pa.R.C.P. 1940.4, mediators in Berks County who are attorneys shall certify to the Court in their application for inclusion on the list of court-approved mediators that the attorney is a member in good standing of the Bar of the Supreme Court of Pennsylvania as of the date of the application.

Rule 1940.10 Confidentiality of Mediation Subsequent to Initial Orientation Session

42 Pa.C.S.A. § 5949 shall govern confidentiality in admissibility issues.

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).

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