

THE COURTS

Title 255—LOCAL COURT RULES

ERIE COUNTY

The Revision and Restatement of the Rules of Civil Procedure; Civil Division—Misc. Doc. No. 90024; Court Order 2007

Order

And Now, this 25th day of May, 2007, the following revisions and additions to the Rules designated as the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, are hereby approved, adopted and promulgated as the Rules of Court. These Rule changes, revisions and deletions shall become effective thirty (30) days after the publication of the same in the *Pennsylvania Bulletin* and they shall apply to all actions pending at the time.

ELIZABETH K. KELLY,
President Judge

Rule 206.4(c)(2). Petition. Rule to Show Cause

(2) Where the petitioner requests a stay of execution pending the disposition of a petition to open a default judgment, the Court shall promptly dispose of the request.

Rule 212.1(d). Pretiral Procedure

* (d) Certification For Trial

1. These certification procedures apply to all civil jury and non-jury cases.

2. In order to have a case assigned to a particular trial term, all counsel or parties must certify the case as ready for trial by filing with the Prothonotary and serving upon the Court Administrator a certification in substantially the form contained herein and designated "Certification I."

3. If a party has failed to comply with the timetables established in the CMO or has failed to sign a Certification I after being requested to do so in writing, a party wishing to place the case on the trial list must file a certification in substantially the same form contained herein and designated "Certification II."

4. A Certification I or II indicating readiness for trial shall be filed with the Office of Court Administration and the Prothonotary no later than the last Friday of the calendar month that precedes the month immediately before the beginning of the proposed trial term, unless a different deadline is established by notice published in the *Erie County Legal Journal*.

5. All "Certification II's" shall be forwarded to the assigned judge for disposition.

*Comment: To comply with this Rule, all counsel must certify that they have "met and discussed settlement of this matter." (See the Form for Certification I). One preferred method of alternative dispute resolution which would satisfy the requirements of this Rule is mediation. The Erie County Bar Association has established a Mediation Program; guidelines and forms can be obtained from the ECBA offices at (814) 459-3111, or on-line at www.eriebar.com.

Rule 236. Notice by Prothonotary of Entry of Judgment

When filing a request for entry of judgment, a party shall provide the Prothonotary with the original and sufficient copies of judgments and notices thereof, together with postage prepaid envelopes addressed to all parties entitled to notice thereof.

Rule 305(a-c). Duties of the Prothonotary

(a) The Prothonotary shall immediately stamp all papers filed with the date and time of such filings and make an appropriate entry for each filing in the docket pursuant to applicable rules of procedure, statute or Court Order. No entries shall be made in the docket except at the direction of the Prothonotary.

(b) The Prothonotary shall be responsible for the safekeeping of all records and papers belonging to that office. The Prothonotary shall permit no papers to be taken from the office without order of Court except for temporary removal by an attorney for the purpose of conducting an arbitration, for copying within the Court House or other recognized Court purpose. Those removing papers from the files of the Court shall sign them out on a form used for that purpose and shall be responsible for damages arising from any loss.

(c) The Prothonotary shall not accept for filing any paper filed by a person which shall not have endorsed thereon the address and telephone number of the person filing the paper. The Prothonotary shall consecutively number the cases each year.

Rule 311(c-d). Procedure in Statutory Appeals

(c) In cases where a party is entitled, as a matter of right, to have either a *de novo* evidentiary hearing in this Court, or to supplement the record made in the administrative proceedings, any party so entitled shall request for judicial assignment with the trial court administration and submit an appropriate motion to the assigned judge for hearing. Such a motion shall set forth with particularity the basis on which the movant claims a right to submit further evidence and shall contain a certificate that the motion has been served on all other parties.

(d) In cases where the Court may receive evidence for cause shown, or at the discretion of the Court, any party wishing to request that the Court receive evidence, shall file a request for judicial assignment with the trial court administrator and present an appropriate motion to the assigned judge within twenty (20) days after the docketing of the record of the administration proceeding being reviewed. The motion shall state with particularity the authority upon which movant relies and the particular factors which he believes indicate that the receipt of further evidence is justified. Where indicated by the circumstances, the following factors may be considered by the Court in acting upon such motions in addition to any otherwise applicable standard governing the exercise of the Court's discretion:

(1) Whether movant was represented by counsel before the administrative tribunal.

(2) Whether previously undisclosed or newly discovered evidence exists which was not made available to the administrative tribunal prior to its decision.

(3) The overall adequacy for the purpose of appellate review of the record made before the administrative tribunal.

(4) The apparent regularity and fundamental fairness of the administrative proceedings, as disclosed by the record.

(5) Such other factors as may be considered in the interest of justice.

No motion contemplated by this section shall be acted upon until all interested parties have been given an opportunity to respond to the motion through argument. If, after argument, the Court denies, in whole, a motion under this section, the case shall proceed as provided in section (a) above.

In granting the relief requested in motions contemplated by this section, the Court may, unless otherwise indicated by applicable statutes, limit the evidence it will receive to matters which are not cumulative of material already included in the record made before the administrative tribunal, or impose other reasonable restrictions upon the scope or nature of the evidence to be received. The Court may, in its discretion, at the request of any party or on its own motion, require that any party intending to offer evidence pursuant to this Rule file a pre-hearing narrative statement fairly setting forth the nature of the evidence to be offered such that all parties may have adequate notice of the facts at issue prior to hearing and the scope and nature of the evidentiary proceeding.

Rule 442. Service in Magisterial District Judge Appeals

In appeals from judgements of Magisterial District Judges in Civil Matters as governed by Rules 1001 et seq. of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges, the appellant in a Magisterial District Judge proceeding, in lieu of service and proof of service pursuant to Rule 1005A and 1005B, may at appellant's option file with the notice of appeal a stamped envelope pre-addressed to the appellee at appellee's address as listed on the complaint form filed in the office of the Magisterial District Judge or as otherwise appearing in the records of that office, or the attorney of record, if any, of the appellee, and a stamped envelope pre-addressed to the Magisterial District Judge in whose office the judgement was rendered. Copies of the notice of appeal and, if any, Rule pursuant to Rule 1004B of the Magisterial District Judge Rules shall thereupon be mailed by the Prothonotary or Clerk by first class mail with such service and any return being noted on the Court's docket.

NOTE: Erie L.R. 442 implements the option authorized by Rule 1005C of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges as added March 27, 1992, effective June 25, 1992.

Rule 1018.1. Notice to Defend. Form

With respect to the notice to defend form required by Pa.R.C.P. 1018 the Erie County organization shall be:

Lawyer Referral & Information Service
P. O. Box 1792
Erie, PA 16507

814/459-4411
Mon—Fri
8:30 a.m.—Noon; 1:15 p.m.—3:00 p.m.

Rule 1940.10. Appointment of Parent Coordinator

(a) In appropriate custody cases, the Court of Common Pleas of Erie County Court may appoint a Parent Coordinator.

(b) A Parent Coordinator shall only be appointed upon written agreement of all parties to the custody action.

(c) The role and authority of the Parent Coordinator shall be specifically defined in the Order appointing the Parent Coordinator.

(d) The order appointing a Parent Coordinator shall be filed at the Office of Prothonotary of the Court of Common Pleas of Erie County, Pennsylvania, with copies distributed to the parties, each counsel, and the Erie County custody conciliation office.

(e) It is the intention of the court that when a Parent Coordinator is appointed, a judge shall be assigned to the family involved, and that judge shall continue to hear all custody matters for the family, regardless of later judicial assignments.

(f) The Erie County Court of Common Pleas adopts the guidelines for parenting coordination developed by the Association of Family and Conciliation Courts, May 2005 edition, as the model for the role of Parent Coordinators appointed by the court. However, in the event of any conflict between Erie County Rules and the AFCC guidelines, Erie County Rules shall control.

(g) For purposes of these rules, the terms "Parent" and "parties" shall apply to all parties involved in the custody order, regardless of biological or familial relationship.

Rule 1940.11. Qualifications and Scope of Authority

(a) A Parent Coordinator shall either be an attorney licensed to practice law in Pennsylvania with significant family law experience, or a Master's level family therapist, counselor, or licensed social worker, with substantial experience in family conflict cases.

(b) Communications to the Parent Coordinator by the parties, or among parties, counsel and the Parent Coordinator, are not protected by confidentiality, attorney/client privilege, or counselor/patient privilege. A Parent Coordinator shall have unlimited access to all persons involved with the family including but not limited to counselors, therapists, custody evaluators, school officials, and healthcare and mental healthcare providers. The Parent Coordinator may engage in ex parte communication, but will report to all parties concerning the nature of such communication.

(c) The scope of authority to the Parent Coordinator shall be specifically delineated in the Order appointing the Parent Coordinator, a sample of which is attached as Appendix A.

(d) The authority granted to the Parent Coordinator may include, but is not limited to, the following:

(i.) minor changes for clarifications of scheduled custody, partial custody or visitation including vacation, holidays, and temporary variations from existing court orders.

(ii.) Times, dates, places of exchange, and means of transportation and persons authorized to transport

(iii.) Minor healthcare management including appointment of medical, dental, orthodontic and vision care providers.

(iv.) Education or daycare choice including selection of school and school curriculum and testing.

(v.) Extra-curricular activities including sports, camps, jobs, and enrichment programs.

(vi.) Exchange of clothing, equipment and personal possessions of the children.

(vii.) Communications between parents and children including phone, email, and text messaging.

(viii.) Physical appearance of the children including haircuts, and body art.

(e) The Parent Coordinator shall not have authority to make decisions regarding physical, legal or primary residential custody of the children.

(f) The parties shall execute authorizations and releases permitting the Parent Coordinator to have unlimited access to all persons and entities with information relevant to the parties and the children including but not limited to health care professionals, mental health care professionals, schools, therapists, and substance abuse counselors.

(g) The Parent Coordinator shall be considered an officer of the court, with quasi-judicial immunity. The parties agree that the Parent Coordinator cannot be sued for his or her actions performed under the terms of this court appointment and the Stipulation and Order. The Parent Coordinator cannot be compelled to testify in any proceeding. However, the Parent Coordinator may elect to testify in proceedings regarding compliance with the enforcement of this Order; proceedings regarding the termination of the Parent Coordinator's services; or concerning the payment of a Parent Coordinator's fees. All testimony by the Parent Coordinator in conjunction with any such proceeding shall be deemed expert testimony, and paid accordingly.

Rule 1940.12. Fees

(a) Upon the appointment by the court of a Parent Coordinator, each party shall deposit the sum of \$500.00 with the appointed Parent Coordinator, to be held for Parent Coordinator fees.

(b) Parent Coordinators shall bill the parties for services rendered at a rate of \$125.00 per hour, with minimum billing unit of .10 hour.

(c) The Parent Coordinator shall submit monthly statements to the parties, and, unless otherwise approved by court, the parties will be equally charged for the services of the Parent Coordinator. (The Court of Common Pleas reserves the right to assess or apportion cost for parent coordinating based on cooperation shown by the parents in the process, financial considerations, or other relevant factors. The Court of Common Pleas may review fees upon motion of either party, or the Parent Coordinator.)

(d) The Parent Coordinator may charge for in-office or out-of-office time, client interviews, review of documents, court preparation, telephone and electronic communication including emails, travel time, and all other time actually spent in satisfaction of the Parent Coordinator role.

(e) The Parent Coordinator may request additional deposits by the parties without prior approval of court.

(f) The court may adjust the fees and retainer without amendment to these rules, either for a specific case or as a general policy.

(g) The court may adjust the fees and retainer without amendment to these rules, either for a specific case or as a general policy.

Rule 1940.13. Decisions by Parent Coordinator and Report to Court

(a) The Parent Coordinator may make an oral decision, which will be given the effect of a written decision and Order. The Parent Coordinator will issue a written expla-

nation of his or her decision, and disseminate it to the parties as quickly as possible. All agreements of the parties facilitated by the Parent Coordinator, shall be reduced to writing and entered as an amendment to the court custody order. All other decisions by the Parent Coordinator which are not agreed to by the parties, shall be in writing and shall also be entered as amendments to the custody order.

(b) On a regular basis, and as requested by court, the Parent Coordinator will file a report with the Administrative Judge of the Family Division of the Court of Common Pleas of Erie County, Pennsylvania indicating the status of the Custody Order, and the parents' cooperation in the parent coordination process. These reports shall be disseminated to the parties and counsel for the parties. Under no circumstances shall the Parent Coordinator be called as a witness by either party in legal proceedings. The Parent Coordinator shall not have ex parte communication with any judge regarding a case for which he or she is appointed.

(c) Reports and informal memoranda of the Parent Coordinator shall not be filed of record with the Prothonotary, but shall be placed into the parties' files at the Erie County Custody Office.

Rule 1940.14. Term of Appointment

(a) The court shall appoint a Parent Coordinator for a specific term of service, not to exceed twelve (12) months. The parents may request that the Parent Coordinator continue for additional terms of service. The Parent Coordinator may resign his or her assignment in a particular case prior to the end of the term of service with fourteen (14) days notice to the parties, respective counsel, and the court. The parties may not terminate the services of the Parent Coordinator except by written agreement, and with leave of court.

Rule 1940.15. Judicial Review

(a) Absent egregious abuse of discretion or substantial and unexpected change in circumstances, no party may request a judicial review of the appointment of the Parent Coordinator, nor of any decision of the Parent Coordinator, within the first six months of the date of the appointment of the Parent Coordinator. Thereafter, judicial review shall be consistent with the terms set forth herein.

(b) In the event of a dispute arising from the decision of the Parent Coordinator, the parties shall first attempt to resolve the issue directly with the Parent Coordinator. Any agreement arising from the informal resolution process shall be reduced to writing and filed as an Order by the Parent Coordinator.

(c) If a party continues to object to a decision by the Parent Coordinator, that party may file a motion for review with the court and schedule a hearing pursuant to Erie County Rule to Show Cause procedures. The court will make an independent determination, following an evidentiary hearing, if necessary, only as to the Parent Coordinator's decision at issue. The court shall award attorney fees and costs to the non-moving party if it determines that a review sought within the first six months is inappropriate.

Rule 1940.16. Grievances

(a) A party may file a grievance with the Parent Coordinator concerning only the performance of the Parent Coordinator and his or her participation with the family. Said grievance must be in writing and, immedi-

ately after receipt of a grievance, the Parent Coordinator will schedule a formal meeting with all parties and counsel.

(b) If a grievance or complaint is not resolved at this meeting, the complaining party may file a formal request with the court by motion and rule to show cause, requesting that the court consider the removal of the Parent Coordinator. An answer may be filed by the non-complaining party.

(c) The court shall then determine if a hearing is necessary, or such other action as may be appropriate, to determine the future of the parent coordinating process for the particular family.

(d) A Parent Coordinator will only be removed for cause. A Parent Coordinator may only be removed upon good cause shown, such as the Parent Coordinator has acted outside the scope of his or her authority, as an irreconcilable conflict of interest, is unable to be impartial, or has acted contrary to the child(ren)'s best interest. Disappointment with the Parent Coordinator's decision is not grounds for removal.

Rule 2056. Procedure When Incapacity of a Party is Ascertained

Unless otherwise directed by the Court, any notice required under Pa.R.C.P. 2056(b) shall be given in accordance with Pa.R.C.P. 402 and 403. If notice cannot otherwise be given, then notice shall be given in accordance with Pa.R.C.P. 430.

Rule 3252. Writ of Execution—Money Judgments

A writ of execution shall contain the following designation as the organization available to receive requests for free legal help:

Lawyer Referral & Information Service
P. O. Box 1792
Erie, PA 16507

814/459-4411
Mon—Fri
8:30 a.m.—Noon; 1:15 p.m.—3:00 p.m.

Rule 3304. Writ for the Attachment of Wages

(c) Paragraph 4.b of the writ of attachment of wages provided in Pa.R.C.P. 3313 shall provide as follows: The check must be made payable to the above named Judgment Creditor-Landlord Plaintiff.

[Pa.B. Doc. No. 07-1034. Filed for public inspection June 15, 2007, 9:00 a.m.]

MONTGOMERY COUNTY

**Rescission of Rule of Civil Procedure 2039(a)*—
Compromise, Settlement, Discontinuance and
Distribution; Adoption of Rule of Civil Procedure
2039(a)*—Minor's Compromise; No. 07-00001**

Order

And Now, this 22nd day of May, 2007, the Court rescinds Montgomery County Local Rule of Civil Procedure 2039(a)*—Compromise, Settlement, Discontinuance and Distribution, and approves and adopts the following Montgomery County Local Rule of Civil Procedure 2039(a)*—Minor's Compromise. This Amendment shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further 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 Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and one (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

RICHARD J. HODGSON,
President Judge

Rule 2039(a)*. Compromise, Settlement, Discontinuance and Distribution

Rescinded.

Rule 2039(a)*. Minor's Compromise

No personal injury action in which a minor has an interest shall be settled without court approval.

(1) Contents of Petition, Exhibits, and Proposed Decrees:

(A) **Petition.** A petition for approval of settlement shall set forth:

(1) The date of birth, social security number, and address of the minor plaintiff, the name and address of the minor's parent(s) or guardian(s);

(2) The facts out of which the cause of action arose;

(3) The elements and items of damages sustained;

(4) A list of all expenses incurred or to be incurred, whether or not they have been paid, by whom payment was made, and arrangements for payment of unpaid bills;

(5) Any limits on the financial responsibility of the defendant(s);

(6) A statement as to whether or not a lien or claim has been raised on behalf of any health care supplier, medical supplier, health insurer, worker's compensation carrier or government entity, including the Department of Public Welfare;

(7) The fees of counsel, which shall not exceed 25% of the present value of a structured settlement, or 25% of the gross recovery of any other settlement, unless counsel has rendered extraordinary services;

(8) The present status of the minor's health and injuries; and

(9) Any other circumstances relevant to the propriety of granting the petition.

(B) **Exhibits.** The petition shall also contain the following exhibits:

(1) A written report from attending health care providers stating the extent of the injury, the treatment given and the prognosis for the injured minor, except that in cases where the gross settlement does not exceed \$5,000, or in other cases where the Court is satisfied that the treating physician's office notes and/or records set forth adequately the injury, the treatment given and the prognosis, such notes and/or records may be provided in lieu of a written report;

(2) The written consent of the minor, if (s)he is sixteen (16) years of age or older; and

(3) Copies of counsel's time sheets and other supporting documentation showing the nature and extent of services rendered, if counsel is claiming fees in excess of 25%.

(C) **Decrees.** If the gross settlement exceeds \$2,500, counsel shall submit both a preliminary decree setting a hearing date and a proposed final decree setting forth the proposed distribution of the settlement proceeds. If the gross settlement is \$2,500 or less, counsel need submit only the proposed final decree.

(2) **Filing of Petition.** In any action where a civil suit has been initiated by writ of summons or complaint, the petition shall be filed with the Prothonotary under the caption of the civil suit. No motions court cover sheet is required. In any action where no civil suit has been initiated, the petition shall be filed with the Clerk of the Orphans' Court under the caption "ABC, a minor."

(3) **Hearing.** All petitions for gross settlements in excess of \$2,500 shall be set for hearing before a Judge of the Orphans' Court. The minor's presence is required at the hearing, unless (s)he is excused by the Court for cause shown. Petitions for settlements of \$2,500 or less may be approved without hearing, unless the Judge assigned to the matter, in his or her discretion, determines that a hearing is necessary.

(4) **Affidavit of Deposit.** When a compromise settlement is approved by the Court, an Affidavit of Deposit of Minor's Funds shall be filed with the division of the Court where the petition was filed within 30 days of the date of the order approving the settlement. The Affidavit shall be substantially in the following form:

[Pa.B. Doc. No. 07-1035. Filed for public inspection June 15, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated May 30, 2007, Thomas J. Bucknum is Disbarred on Consent from the practice of law in this Commonwealth, effective June 29, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 07-1036. Filed for public inspection June 15, 2007, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated May 30, 2007, Lawrence E. Andrews is Suspended on Consent from the Bar of this Commonwealth for a period of two years, to be effective June 29, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 07-1037. Filed for public inspection June 15, 2007, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated June 1, 2007, Michael Levine is suspended on consent from the Bar of this Commonwealth for a period of 1 year to run consecutive to the suspension ordered by the Supreme Court on June 20, 2006. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 07-1038. Filed for public inspection June 15, 2007, 9:00 a.m.]