

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 the Pennsylvania Rules of Disciplinary Enforcement Relating to Safekeeping Property and Funds of Clients and Third Persons—Mandatory Overdraft Notification

On June 10, 2006, The Disciplinary Board of the Supreme Court of Pennsylvania published a Notice of Proposed Rulemaking, Volume 36, *Pennsylvania Bulletin*, page 2801. In light of the comments received in response to that Notice, the Disciplinary Board has made changes to the proposed amendments to Pennsylvania Rule of Professional Conduct 1.15 and Pennsylvania Rule of Disciplinary Enforcement 221.

Notice is hereby given that The Disciplinary Board is considering recommending to the Supreme Court that these Rules be amended as set forth in Annex A and Annex B. The changes to Rule of Professional Conduct 1.15 permit attorneys acting as fiduciaries to exercise appropriate fiduciary judgment, make prudent investments, and administer fiduciary assets in accordance with law and accepted practice. The definition of "Financial Institution" is broadened to permit deposit of IOLTA funds in various instrumentalities in addition to traditional banks and savings and loan associations to the extent that such instrumentalities chose to qualify as "Eligible Institutions" under Rule of Disciplinary Enforcement 221(h), as well as to permit investment of entrusted funds in or through such entities, consistent with the Prudent Investor Rule or other applicable law.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before March 1, 2007.

*By The Disciplinary Board of the
Supreme Court of Pennsylvania*

ELAINE M. BIXLER,
Secretary

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:
CLIENT-LAWYER RELATIONSHIP

Rule 1.15. Safekeeping Property.

(a) The following definitions are applicable to Rule 1.15:

(1) *Eligible Institution.* An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to Pa.R.D.E. 221(h).

(2) *Fiduciary.* A Fiduciary is a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position.

(3) *Fiduciary Funds.* Fiduciary Funds are Rule 1.15 Funds which the lawyer holds as a Fiduciary. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

(4) *Financial Institution.* A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(5) *Interest On Lawyer Trust Account (IOLTA Account).* An IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account.

(6) *IOLTA Board.* The IOLTA Board is the Pennsylvania Interest On Lawyers Trust Account Board.

(7) *Non-IOLTA Account.* A Non-IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:

(i) a separate client Trust Account for the particular client or matter on which the net income will be paid to the client or third person; or

(ii) a pooled client Trust Account with sub-accounting by the Eligible Institution or by the lawyer, which will provide for computation of net income earned by each client's or third person's funds and the payment thereof to the client or third person.

(8) *Nonqualified Funds.* Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order or other negotiable instrument, which are not Qualified Funds.

(9) *Qualified Funds.* Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(10) *Rule 1.15 Funds.* Rule 1.15 Funds are funds which the lawyer receives from a client or third

person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the lawyer receives in any of the foregoing capacities.

(11) **Trust Account.** A Trust Account is an account in an Eligible Institution in which a lawyer holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account.

(b) A lawyer shall hold all Rule 1.15 Funds and property [of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship] separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

(c) Complete records of the receipt, maintenance and disposition of [such] Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain, in electronic or hard copy form, with backup at least monthly on a separate electronic storage device, the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

(1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and

(2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.

[(b)] (d) Upon receiving Rule 1.15 Funds or property [of a client or third person in connection with a client-lawyer relationship], a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law.

(e) Except as stated in this Rule or otherwise permitted by law, or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding [such] the property.

[(c)] (f) When in [connection with a client-lawyer relationship a lawyer is in possession of] possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

[(d) In those parts of this Rule dealing with funds of clients or third persons which the lawyer receives in connection with a client-lawyer relationship, excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship, the following definitions are applicable:

(1) Trust Account means an interest-bearing account in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which the lawyer deposits such funds.

(2) Qualified funds means such funds when they are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(3) Nonqualified Funds means all other such funds.

(4) An Interest On Lawyer Trust Account (IOLTA Account) is an unsegregated Trust Account for the deposit of Qualified Funds by a lawyer.

(5) The IOLTA Board means the Pennsylvania Interest on Lawyers Trust Account Board.

(e)] (g) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held.

(h) A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying [bank services] service charges on that account, and only in an amount necessary for that purpose.

(i) A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

(j) At all times while a lawyer holds [funds of a client or third person in connection with a client-lawyer relationship] Rule 1.15 Funds, the lawyer shall also maintain another account that is not used to hold such funds.

[(f)] (k) All Nonqualified Funds which are not Fiduciary Funds shall be placed in a [Trust] Non-IOLTA Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

(l) All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

[(g)] (m) All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account. [The rate of interest payable on an IOLTA Account shall not be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts. In no event shall the rate of interest payable on an IOLTA Account be less than the rate paid by the financial institution

on negotiable order of withdrawal accounts (NOW) or super negotiable order of withdrawal accounts. An account shall not be considered an IOLTA Account unless the financial institution at which the account is maintained shall:

(1) Remit at least quarterly any interest earned on the account to the IOLTA Board.

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of interest remitted from the account and the average daily balance, if available.

(h)] (n) A lawyer shall be exempt from the requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account **which is not income producing**. Exemptions shall be granted if:

(1) the nature of the lawyer's practice does not require the routine maintenance of a Trust Account in Pennsylvania;

(2) compliance with this paragraph would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest **[financial institution] Eligible Institution**, or on other compelling and necessitous factors; or

(3) the lawyer's historical annual Trust Account experience, based on information from the **[financial institution] Eligible Institution** in which the lawyer deposits funds, demonstrates **that** the service charges on the account would significantly and routinely exceed any **[interest] income** generated.

(o) An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:

(1) Remit at least quarterly any income earned on the account to the IOLTA Board;

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of income remitted from the account, and the average daily balance, if available; and

(3) Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its non-IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any.

[(i)] (p) * * *

[(j)] (q) There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board, which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appoint-

ments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court. **[Additionally, upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA funds for the purpose set forth in this Rule.]**

(r) The IOLTA Board shall comply with the following:

(1) The IOLTA Board shall prepare an annual audited statement of its financial affairs.

(2) [Disbursement and allocation of IOLTA funds shall be subject to the prior approval of the Supreme Court.] The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program **[. Additionally, a copy of]** and the IOLTA Board's proposed annual budget **[will be provided to the Court]**, designating the uses to which IOLTA Funds are recommended.

(3) Upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA Funds.

[(k) Interest] (s) Income earned on IOLTA Accounts (IOLTA Funds) may be used only for the following purposes:

* * * * *

[(l)] (t) * * *

Comment

(1) A lawyer should hold property of others with the care required of a professional fiduciary. The obligations of a lawyer under this Rule apply when the lawyer has come into possession of property of clients or third persons because the lawyer is acting or has acted as a lawyer in a client-lawyer relationship with same person, **or when the lawyer is acting as a Fiduciary, or as an escrow agent, a settlement agent or a representative payee, or as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such.** Securities should be **[kept in a safe deposit box, except when some other form of safe-keeping is warranted by special circumstances]** **appropriately safeguarded.** All property which is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if **[monies] Rule 1.15 Funds**, in one or more Trust Accounts, **or, if a Fiduciary entrustment, in an investment authorized by applicable law or a governing instrument.** The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Whenever a lawyer holds **[funds of a client or third person] Rule 1.15 Funds**, the lawyer must maintain at least two accounts: one in which those funds are held and another in which the lawyer's own funds may be held.

(2) A lawyer should maintain on a current basis books and records in accordance with sound accounting practices consistently applied and comply with any recordkeeping rules established by law or court order, including those records identified in paragraph (c).

[(2) The following books and records shall be maintained for each Trust Account:

(i) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(ii) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(iii) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(3) The records required by this Rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

[(4)] (3) While normally it is impermissible to commingle the lawyer's own funds with [client] Rule 1.15 funds, paragraph [(e)] (h) provides that it is permissible when necessary to pay [bank] service charges on that account. Accurate records must be kept regarding [that part of] the funds [which are the lawyer's].

(4) A lawyer's obligations with respect to funds of clients and third persons depend on the capacity in which the lawyer receives them, on whether they are Fiduciary Funds as defined in paragraph (a)(3) and on whether they are Nonqualified Funds or Qualified Funds as defined in paragraphs (a)(8) or (9) respectively. If the lawyer receives them in one of the capacities identified in paragraph (a)(10), the obligations in paragraphs (b) through (h), such as safeguarding, notification, and recordkeeping, apply. Nonqualified Funds other than Fiduciary Funds are to be placed in a Non-IOLTA Account, as defined in paragraph (a)(7), in an Eligible Institution, as defined in paragraph (a)(1), unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or third person. Qualified Funds other than Fiduciary Funds must, subject to certain exceptions, be placed in an IOLTA Account defined in paragraph (a)(5).

(5) If the funds, whether Qualified Funds or Nonqualified Funds, are Fiduciary Funds, they may be placed in an investment authorized by the law applicable to the entrustment or authorized by the terms of the instrument governing the Fiduciary Funds. In such investment they shall be subject to the obligations of safeguarding, notification and recordkeeping.

(6) This Rule does not require a Fiduciary to liquidate entrusted investments or investments made in accordance with applicable law or a governing instrument or to transfer non-income producing fiduciary account balances to an IOLTA Account. This Rule does not prohibit a Fiduciary from making an investment in accordance with applicable law or a governing instrument. Funds which are controlled by a non-lawyer professional

co-fiduciary shall not be considered to be Rule 1.15 Funds for the purposes of this Rule.

[(5)] (7) Lawyers often receive funds from which the lawyer's fee will be paid. **Unless the fee is non-refundable, it should be deposited to a Trust Account and drawn down as earned.** The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a Trust Account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[(6) Paragraph (c) also recognizes that third] (8) Third parties may have lawful claims against specific funds or other property in a lawyer's custody such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[(7)] (9) Other applicable law may impose pertinent obligations upon a lawyer independent of [any] and in addition to the obligations arising from this Rule. For example, a lawyer who [serves only] receives funds as an escrow agent [is governed by the law relating to fiduciaries even though the lawyer does not render legal service in the transaction and is not governed by this Rule. A lawyer who receives funds while serving as an executor or trustee remains subject to the formal accounting procedures and other supervision of the Orphans Court; when such funds are nominal in amount or reasonably expected to be held for such a short period that sufficient will not be generated to justify maintaining a segregated account such funds may, in the discretion of the lawyer, be deposited into the IOLTA account of the lawyer even though such deposit is not required.], a representative payee, or a Fiduciary remains subject to the law applicable to the entrustment, such as the Probate, Estates and Fiduciaries Code, Orphans' Court Rules, the Social Security Act, and to the terms of the governing instrument. When the lawyer who is serving as a Fiduciary reasonably expects that the funds cannot earn income for the client or third person in excess of the cost incurred to secure such income while the funds are held, the lawyer may, in the discretion of the lawyer, deposit the funds into the IOLTA Account of the lawyer.

[(8)] (10) A lawyer must participate in the Pennsylvania Lawyers Fund for Client Security established in Rule 503 of the Pennsylvania Rules of Disciplinary Enforcement. It is a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.

[(9)] (11) Paragraphs [(g)] (q) through [(l)] (t) provide for the Interest on Lawyer Trust Account (IOLTA)

program], and the definitions in paragraph (d) distinguish two types of funds of clients and third persons held by a lawyer: Qualified Funds, which must be placed in an IOLTA account, and Nonqualified Funds, which are to be placed in an interest bearing account unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or third person]. There are further instructions relating to the IOLTA program in Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement and in the Regulations of the Interest [on] On Lawyers Trust Account Board, 204 Pa. Code, § 81.1 et seq., which are referred to as the IOLTA Regulations.

Annex B

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

(a) For purposes of this rule, [a] the following definitions apply:

(1) **Eligible Institution.** An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section(h), *infra*.

(2) **Financial Institution.** A Financial Institution is an entity which is authorized by federal or state law licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(3) **Fiduciary Funds.** Fiduciary Funds are Rule 1.15 Funds which the lawyer holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary funds may be either Qualified Funds or Non-Qualified Funds.

(4) **Rule 1.15 Funds.** Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the lawyer receives in any of the foregoing capacities.

(5) **Trust Account.** A Trust Account [of an attorney] is an account in an Eligible Institution in which an attorney[, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits] holds Rule 1.15 funds [received from a client or a third person in connection with a client-lawyer

relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship]. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

(b) An attorney shall maintain a Trust Account with respect to his/her practice in this Commonwealth only in [a financial institution] an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for [financial institutions] Eligible Institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of [approved financial institutions] Eligible Institutions.

(c) [A financial institution shall be approved as a depository for Trust Accounts of attorneys if it shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

(1) whether the instrument is honored, or

(2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(d) For purposes of this Rule, a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(e) The term "financial institution" means banks, bank and trust companies, trust companies, savings and loan associations, credit unions, savings banks or foreign banking corporations, whether incorporated, chartered, organized or licensed under the laws of the Commonwealth of Pennsylvania or the United States, doing business in Pennsylvania and insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration or an alternative share insurer.]

All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds as defined in Rule 1.15(a)(9) of the Pennsylvania Rules of Professional Conduct, must be an IOLTA Account). Fiduciary Funds as defined in Rule 1.15(a)(3) of the Pennsylvania Rules of Professional Conduct may be placed in another investment which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

[(f)] (d) The responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

[(g) The] (e) An attorney shall maintain the following books and records [shall be maintained] for each Trust Account and for any other account in which Rule 1.15 Funds are held:

(1) [bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(2)] all transaction records [returned] provided to the attorney by the [financial institution] Financial Institution, [including] such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and

[(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.]

(2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.

[(h)] (f) The records required by this rule may be maintained in electronic or [other form if they can be retrieved in printed] hard copy form. [Electronic records must be regularly backed up by an appropriate storage device.] If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

[(i)] (g) The records required by this rule may be subject to subpoena and must be produced in connection with an investigation or hearing pursuant to these rules. Failure to produce such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f) (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

[(j) For purposes of this rule, funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the financial institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4107(b) (relating to items or deposits received after cutoff hour).

(k) For purposes of the rule, a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(l) No report need be made when the financial institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(m) A failure on the part of a financial institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.]

(h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board and shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

(1) whether the instrument is honored, or

(2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(i) For purposes of this rule:

(1) A Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the treatment of such funds by the Eligible Institution, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) A check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(j) No report need be made when the Eligible Institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(k) A failure on the part of an Eligible Institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.

[(n) Financial institutions] (l) Eligible Institutions shall be immune from suit for the filing of any reports required by this Rule or believed in good faith to be required by this Rule.

[(o) A financial institution] (m) An Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this rule.

[(p)](n) * * *

[(q)] (o) * * *

[(r)] (p) * * *

[Pa.B. Doc. No. 07-114. Filed for public inspection January 26, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BRADFORD COUNTY

Local Civil Rules 205.2(B); 206.4(C); 212.1; 229 and 1301

Order

And Now, November 28, 2006, the Court hereby amends its order of November 2, 2006, as follows:

The court hereby adopts the following local rules 212.1 and 229; and 1301, as amended, to be effective thirty (30) days after the publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall send seven (7) certified copies of these rules to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

With regard to Local Civil Rule 205.2(B) and 206.4(C), in compliance with Pa.R.C.P. 239.8(b), the court directs that the District Court Administrator shall transmit a copy of said rules to the Civil Procedural Rules Committee which shall then forward a copy to the Administrative Office of Pennsylvania Courts for publication on the Pennsylvania Judiciary's Web Application Portal. Said rules shall be effective upon publication on the Pennsylvania Judiciary's Web Application Portal.

It is further ordered that these local rules shall be kept continuously available in the Prothonotary's Office for public inspection and copying.

By the Court

JEFFREY A. SMITH,
President Judge

[Pa.B. Doc. No. 07-115. Filed for public inspection January 26, 2007, 9:00 a.m.]

DELAWARE COUNTY

Local Rule 1303(b)(5); No: 05-0193

Order

And Now, this 9th of January, 2007, it is hereby *Ordered and Decreed* that Delaware County Local Rule 1303(b)(5) is amended to read as follows:

Should an adverse decision be entered under this Rule against a Defendant who failed to appear, the Defendant may file a Motion for post-trial relief which may include a request for a new trial on the ground of satisfactory excuse for the Defendant's failure to appear.

By the Court

EDWARD J. ZETUSKY, Jr.,
President Judge

[Pa.B. Doc. No. 07-116. Filed for public inspection January 26, 2007, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Adoption of Local Criminal Rule 39-117; Misc. Doc. CP-28-AD-1-2007

Order of Court

January 9, 2007, local Criminal Action Rule 39-117 is hereby adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALHER,
President Judge

Rule 39-117. Continuous Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; Setting and Accepting Bail; Emergency Orders Under the Protection From Abuse Act

A. In both branches of the 39th Judicial District of Pennsylvania, all Magisterial District Judge offices shall be open for regular business on Mondays through Fridays, excluding holidays, from 8:30 a.m. to 4:30 p.m., prevailing time.

B. Magisterial District Judges shall be available twenty-four hours per day, every day of the calendar year, to provide continuous coverage for the issuance of search warrants, arrest warrants, warrants issued in summary cases, for the issuance of emergency orders under the Protection From Abuse Act, and for those services set forth in Pa.R.Crim.P. 117(A)(2)(a), (b), (c) and (d).

The Magisterial Judges shall satisfy this rule by remaining "on-call" during non-regular business hours on a rotating basis pursuant to a schedule prepared by the District Court Administrator and approved by the President Judge. The "on-call" schedule for each year shall be filed with the Clerk of Courts and be available for public inspection, as well as distributed and publicized pursuant to the order of the President Judge.

C. Magisterial District Judges, the Clerk of Courts and the Warden of the Franklin County Prison, or his designee, shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure, specifically Pa.R.Crim.P. 535.

[Pa.B. Doc. No. 07-117. Filed for public inspection January 26, 2007, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Adoption of Local Criminal Rule 39-150; Misc. Doc.
CP-28-AD-2-2007

Order of Court

January 9, 2007, local Criminal Action Rule 39-150 is hereby adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALHER,
President Judge

Rule 39-150. Bench Warrants

A. In all cases where an individual is committed to the Franklin County Prison pursuant to an executed bench warrant, the Warden, or his designee, shall promptly, or in no case later than the beginning of the next business day, notify the District Court Administrator who shall:

1. promptly schedule a hearing for bench warrants within the time permitted by Pa.R.Crim.P. 150.
2. give prompt notice of the hearing to the Office of the Public Defender, the District Attorney's Office, the Clerk of Courts and the Sheriff.

B. If the individual is committed to the Franklin County Prison pursuant to a bench warrant issued by another judicial district, the Warden, or his designee shall promptly notify the proper authorities in the judicial district of issuance.

C. Any judge of the Court of Common Pleas of the 39th Judicial District may conduct a bench warrant hearing if the judge who issued the bench warrant is unavailable. Any magisterial district judge within the 39th Judicial District may conduct a bench warrant hearing if the magisterial district judge who issued the bench warrant is unavailable.

D. If the bench warrant hearing does not occur within the time limit permitted by Pa.R.Crim.P. 150, the Franklin County Prison shall release said individual by operation of law.

[Pa.B. Doc. No. 07-118. Filed for public inspection January 26, 2007, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Civil Action Rule 39-1915.3;
Misc. Doc. 2007-46

Order of Court

January 4, 2007, Civil Action Rule 39-1915.3 is hereby amended as follows. Deletions are shown lined out and additions are shown as double underlined. This amendment is adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, both the Franklin County Branches, and will be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALHER,
President Judge

RULE 39-1915.3. COMMENCEMENT OF ACTION.
COMPLAINT. ORDER

(b) Reference to Conciliator and Assignment to Judge.

(1) Assignment to Conciliator. The Court Administrator shall assign all custody actions to a Conciliator designated by the Court, who shall conduct a Conciliation Conference with both legal counsel and the parties. Further, the Court Administrator shall assign the Conciliator, date, time and place for the Conciliation Conference after the Order has been signed by the Court. The Order of Court and directive for Conciliation shall be in a form similar to Sample Form "A." ~~A copy of the signed Order shall be deposited with the Court Administrator.~~ (See Sample Form "A").

(2) Assignment to Judge. The Court Administrator shall assign all custody actions to a Judge after the Order has been signed by the Court and at the same time that the Court Administrator assigns the Conciliator, date, time and place for the Conciliation Conference.

(3) Conciliator. The Conciliator shall be a member of the Bar of this Court who, along with any other members of his/her professional practice, shall not be engaged in the practice of law in the field of Domestic Relations. The Conciliator shall not be subject to the subpoena power of this Court to force testimony regarding information revealed during the Conciliation Conference.

(4) Service. Counsel for the Moving Party shall serve a copy of the Complaint and Order for Conciliation upon the Non-Moving Party in accordance with the Pennsylvania Rules of Court. The Court Administrator shall notify the Conciliator of the list of cases scheduled for conciliation ~~and shall provide a copy of the Complaint and Order to the Conciliator.~~ The Moving Party shall serve a copy of the Complaint and Order for Conciliation upon the assigned Conciliator and shall certify service by filing a Certificate of Service with the Office of the Prothonotary.

(5) Administrative Fee. The Moving Party shall deposit a nonrefundable administrative fee of \$200.00 with the Office of the Prothonotary upon the filing of the Complaint. The Conciliator shall be compensated at the rate of \$200.00 for each custody conciliation scheduled. Each conference is expected to last one (1) hour. In the event the Conciliation lasts more than one hour, the Conciliator may petition the Court for additional compensation at the rate of \$100.00 per hour. This additional fee shall be added to the cost of the action and shall be collected by the Prothonotary as directed by the Court. The fee may be changed from time to time upon direction from the Court without the necessity for amending these Rules. The Prothonotary shall post the administrative fee for such filings in its office. The fee shall be paid to the Conciliator by the Prothonotary upon receipt of the conciliator's billing statement. In the event the Moving Party is unable to pay the administrative fee, such party may apply for an Order to Proceed In Forma Pauperis. If the Court authorized In Forma Pauperis status, the administrative fee shall be paid by the County of Franklin.

In the event a party files a request for an additional Conciliation, the party shall pay an additional administrative fee for such Conciliation Conference which must be paid prior to the scheduling of an additional Conciliation Conference.

In the event a party requests a general continuance of a scheduled Conciliation Conference, if the rescheduled Conciliation Conference is scheduled more than six months after the continued Conciliation Conference, the party shall pay an additional administrative fee of \$200.00 for such Conciliation Conference which must be paid prior to the scheduling of an additional Conciliation Conference.

(6) Authority of Conciliator. The Conciliator shall have the following authority and responsibility:

a. To conciliate custody cases which specifically includes meeting with the parties and children, if appropriate. If a party desires the children to be present at the Conciliation Conference, he/she shall make said request of the Conciliator no later than seven days prior to the scheduled conference. The Conciliator shall determine the appropriateness of the request on a case-by-case factual basis after consultation with counsel for both parties or with a pro se party;

b. To address the need for home studies, as appropriate;

c. To address the issue of utilization of expert witnesses, as appropriate; and

d. To recommend a resolution of the custody conflict which recommendation shall be included in the Summary Report and submitted to the Court for further action.

If the parties are not able to agree upon the need for home studies and/or the need for any other expert witnesses, either party may petition the Court pursuant to Pa.R.C.P. 1915.8 for the appointment of an expert and the payment of his or her fees.

(7) Memorandum by Parties. At least ~~three (3)~~ two (2) days prior to the scheduled Conciliation Conference, the Conciliator and counsel for the opposing party, or the pro se party individually, shall receive a Memorandum addressing the following:

- a. Factual background including a brief history of the case.
- b. Names and ages of the children.
- c. A Proposed Order for resolution of matters.
- d. Issues, both factual and legal, for resolution.
- e. Whether a home study is requested.
- f. Whether the party will agree to a particular psychologist/psychiatrist for evaluation or request psychological evaluations.

The parties are directed to supplement the Memorandum from time to time if new information becomes available prior to conciliation.

(8) Summary by Conciliator. Following the conclusion of each conference and within ~~three (3)~~ seven (7) business days thereof, the Conciliator shall ~~prepare file with the Prothonotary a Summary Report and proposed order of court if applicable in the original plus two (2) copies, a Summary Report together with a Proposed Order of Court for signature.~~ In the event the parties are unable to reach an agreement at the Conciliation Conference, the Proposed Order of Court shall address only the need for home studies and the need for psychological evaluations. In the event the parties reach an agreement at the Conciliation Conference, the Proposed Order of Court

~~shall reflect the terms of the agreement and shall be submitted to the Court for entry of a Final Order in the matter. Said Report and Proposed Order shall be submitted in its original form along with two (2) copies to the Prothonotary's office for forwarding to the Court for its approval. Said Order of Court shall be forwarded by the Prothonotary's Office.~~

a. In the event the parties reach a comprehensive agreement at the Conciliation Conference, the Summary Report shall so state and the Proposed Order of Court shall reflect the terms of the agreement and shall be titled a Final Order of Court.

b. In the event the parties reach a partial agreement, or fail to reach any agreement to modify the existing order, said Summary Report shall include the following:

i. Custody status at the time of conciliation;

ii. Summary of the parties' positions;

iii. Identification of legal and factual issues before the Court; and

iv. The Conciliator's recommendation and rationale therefore.

The Proposed Order of Court shall reflect the terms of any partial agreement reached and the need for home studies, psychological evaluations, or both.

The Prothonotary shall serve copies of the Summary Report and any Order entered upon the parties, or their legal counsel if represented in accordance with rule 236.

~~If no final agreement has been achieved, a Summary Report and Proposed Order shall be submitted to the Court and filed of record. The Summary Report shall include the following:~~

~~a. Custody status at the time of conciliation;~~

~~b. Summary of the parties' positions;~~

~~c. Identification of legal and factual issues before the Court; and~~

~~d. Conciliator's recommendation and the reasons therefor.~~

~~Copies of the Summary Report and Order of Court shall be provided to the parties and their legal counsel.~~

(c) Entry of Court Order. Upon review of the conciliator's Summary, the Court may issue an Order addressing the appropriate issues. A copy of said Order of Court shall be furnished to legal counsel for the parties or in the event a party is unrepresented, to the party directly, according to the procedures outlined in 29-1915.3(b)(8).

(d) Scheduling of Pre-Trial Conferences and Hearings. Upon the completion of home studies and psychological evaluations (if applicable) and at any time after the entry of the Order of Court approving the Conciliator's Summary, either party may present a Motion and Proposed Order for scheduling a Pre-Trial Conference with the Court. (See Sample Form "B") Every effort shall be made by the Court Administrator to schedule a Pre-Trial Conference within thirty (30) days of the submission of a Motion by either party requesting said conference taking into consideration the availability of the Court. Each party's presentation at the Pre-Trial Conference shall not exceed a time limit of fifteen (15) minutes. At least ~~three (3)~~ two (2) days prior to the

scheduled Pre-Trial Conference, a Pre-Trial Memorandum containing the following matters shall be filed of record:

- a. Statement of the case.
- b. Issues to be resolved.
- c. Stipulated issues and facts.
- d. Names and addresses of all factual witnesses, and a brief summary concerning the anticipated testimony of each listed witness and a certification by counsel that all witnesses listed have been directly contacted by counsel or by pro se party to confirm the substance of the testimony proffered.
- e. Names and addresses of all expert witnesses.
- f. Identification of exhibits for trial.
- g. Expected length of trial.

Failure to produce the information set forth in this Rule may be grounds for imposition of sanctions upon legal counsel or the party directly if appearing pro se.

At the scheduled Pre-Trial Conference, both counsel shall be present and the parties shall be personally present. In the event that neither legal counsel nor a party appears, the Pre-Trial Conference shall be held in that party's absence upon proof of service of the Order of Court for Pre-Trial Conference in accordance with the Pennsylvania Rules of Civil Procedure. Although the Court may not discuss the case with represented parties, they are directed to be present in the event issues arise where the parties' input may be beneficial.

In the event that an agreement is not reached at the Pre-Trial Conference, a hearing date shall be established by the Court Administrator at the conclusion of said conference.

SAMPLE FORM "A"

**IN THE COURT OF COMMON PLEAS OF THE
39TH JUDICIAL DISTRICT OF
PENNSYLVANIA—FRANKLIN/FULTON COUNTY
BRANCH**

,)	Civil Action- Law
Plaintiff)	
v.)	No. F.R.
)	
,)	Custody
Defendant)	_____
		J.

**ORDER OF COURT AND DIRECTIVE FOR
CONCILIATION**

NOW this ____day of _____, 20 __, This Order will notify _____, Defendant that you have been sued in court to obtain custody of the child(ren): _____, date of birth _____.

It is ordered and directed that _____, Esquire, the Court's child Custody Conciliation Officer, is hereby directed to conduct a Conciliation Conference on _____, 20 __, at _____ o'clock __.M. at the Assigned Room, Third Floor, Franklin County Courthouse, Chambersburg, Pennsylvania. The anticipated length of the Conciliation Conference is one (1) hour. The parties along with their legal counsel shall appear in person at the designated time for the Conciliation Conference. A Memorandum shall be furnished to the Conciliator at least three (3) ~~two~~ (2) days prior to the scheduled Conciliation Conference pursuant to 39th Judi-

cial District Civil Rule No. 1915.3(b)(8)(7). Failure to provide said Memorandum may result in the imposition of sanctions.

At the Conciliation Conference, an effort will be made to see if the issues can be resolved by an agreement between the parties. If an agreement cannot be reached, the Conciliator will assist in defining and narrowing the issues to reduce the time required for hearing by the Court. At the conclusion of the conference, the Conciliator will prepare a Conference Summary Report for further action by the Court.

You have the right to be represented by an attorney who may attend the Conciliation Conference with you. If you have not secured an attorney by the date of the scheduled Conciliation Conference, you shall nonetheless personally appear at the time scheduled for the Conciliation Conference without an attorney.

The Plaintiff has deposited the sum of \$200.00 with the Prothonotary for the cost of the Conciliation Conference and the Court reserves the right to further assign or divide these costs.

_____, Defendant, is notified that if you fail to appear as provided by this Order, an Order of Court for Custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

Pending the hearing, with emphasis placed on the arrangements for the six (6) months preceding the filing of this Complaint and with particular attention paid to the role of primary caretaker, the Court hereby establishes the following temporary Order for custody pending a hearing; (the appropriate language should be inserted at this point detailing the custody arrangements sought by the Plaintiff keeping in mind the emphasis to be placed upon the prior six (6) months and the role of primary caretaker.) (It is suggested one (1) inch of blank space be left for judge's comments or changes to the proposed Order)

Defendant is hereby notified that if (s)he disputes the Plaintiff's averments regarding the current status of the custody arrangement and this Order entered on the basis of those averments, (s)he has the right to request a prompt conference with the Court. If the matter of the temporary custody arrangements is not resolved at the conference, the Court may in atypical factual situations and its sole discretion schedule a brief hearing limited to the issues of determining temporary custody arrangements pending the scheduled Conciliation Conference.

The parties and their legal counsel, if applicable, are hereby directed to engage in meaningful negotiations to resolve this matter before the Conciliation Conference.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Pennsylvania Bar Association
Lawyer Referral Service
1-800-692-7375 (PA ONLY) or 1-717-238-6715

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Franklin 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.

BY THE COURT,

J.

SAMPLE FORM "B"

**IN THE COURT OF COMMON PLEAS OF THE
39TH JUDICIAL DISTRICT OF
PENNSYLVANIA—FRANKLIN/FULTON COUNTY
BRANCH**

,)	Civil Action- Law
Plaintiff)	
v.)	No. F.R.
)	
,)	Custody
Defendant)	_____

J.

ORDER OF COURT

AND NOW this ____ day of _____, 20 __, upon consideration of the within Motion,

IT IS HEREBY ORDERED that a Pre-Trial Conference in the above-captioned custody matter is scheduled for _____, 20 __, at _____ o'clock __.M. in the Chambers of the Honorable _____, Franklin County Courthouse, Chambersburg, Pennsylvania.

A Pre-Trial Memorandum shall be furnished to the Court at least three (3) ~~two (2)~~ days prior to the scheduled Pre-Trial Conference pursuant to 39th Judicial District Civil Rule No. 1915.3(d). Failure to provide said Pre-Trial Memorandum may be grounds for imposition of sanctions.

Failure of a party or legal counsel to appear upon proper notice shall result in the holding of the conference in absentia and the entry of an Order of Court that may be to the detriment of the absent party.

BY THE COURT,

J.

**IN THE COURT OF COMMON PLEAS OF THE
39TH JUDICIAL DISTRICT OF
PENNSYLVANIA—FRANKLIN/FULTON COUNTY
BRANCH**

,)	Civil Action- Law
Plaintiff)	
v.)	No. F.R.
)	
,)	Custody
Defendant)	_____

J.

**MOTION FOR SCHEDULING OF A PRE-TRIAL
CONFERENCE**

AND NOW comes _____, Esquire, legal counsel for the above-captioned Plaintiff and moves the Court as follows:

1. A Conciliation Conference in the above-captioned matter was held on _____.
2. A Summary Report and Proposed Order of Court was prepared by the Conciliator and filed of record on _____.

3. The Order of Court was signed on _____ containing further directives in this matter.

4. The undersigned legal counsel hereby certifies that all court-ordered directives have been complied with and the matter is now ready for a hearing.

5. Notification of this Motion has been given to _____, Esquire Attorney for (Plaintiff/Defendant) who concurs with/opposes the request.

WHEREFORE, it is respectfully requested that an Order be entered by the Court establishing a date and a time for a Pre-Trial Conference.

Date: _____
By _____
(Signature), Esquire
Counsel for (Plaintiff/Defendant)

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

Date: _____

[Pa.B. Doc. No. 07-119. Filed for public inspection January 26, 2007, 9:00 a.m.]

**WASHINGTON COUNTY
Local Rules; No. 2007-1**

Order

And Now, this 11th day of January, 2007; it is hereby Ordered that the Local Rules governing Petition for Approval of Settlements Where a Minor has an Interest (L-2039.1), Notice of Sale—Real Property (L-3129) and Filing of Certificate of Deposition (L-4017(d)) be moved from under the Divorce Rules title and re-titled as attached and that the Local Rules governing Divorce, Custody and Support be rescinded and re-stated as attached.

These rules will be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DEBBIE O'DELL SENECA,
President Judge

MINORS AS PARTIES

L-2039.1 PETITION FOR APPROVAL OF SETTLEMENTS WHERE A MINOR HAS AN INTEREST

a. A petition for settlement of a case in which a minor has an interest shall initially be filed with the Prothonotary. When a minor's settlement has been approved by a settlement conference or a Trial Judge, that Judge shall retain jurisdiction for judicial determination of the peti-

tion in accord with paragraph B. In all other cases, such petition will be determined by the Motions Court Judge.

b. The petition shall:

1. Set forth the factual circumstances of the case;
2. State the reasons why the settlement is a proper one; and

3. Be accompanied by the following:

a. A proposed order of distribution;

b. A written report of a physician;

c. A statement under oath by the guardian certifying (1) the present physical or mental condition of the minor, and (2) approval of the proposed settlement and distribution thereof.

d. A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and

e. In the event that the minor is sixteen years of age or over, his or her written approval of the proposed settlement and distribution thereof.

c. The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that such fees must be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Under normal circumstances a counsel fee in the amount of one-third of the net fund recovered shall be considered reasonable, subject to the approval of the Court. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as Blue Cross/Blue Shield.

d. The approving Judge, to whom the petition is submitted, may, at his or her discretion, require the personal appearance of the minor, his guardian, his doctor, or any other relevant party, as well as the production of any other evidence deemed necessary for approval of the Petition.

ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

L-3129—NOTICE OF SALE—REAL PROPERTY

a. The Plaintiff causing the issuance of the writ of execution for the sale of real property shall furnish to the sheriff, (1) a complete description of the property to be sold and the improvements, if any, with a brief recital of title, which complete description and recital shall be included in full in the deed executed pursuant to a sale; and (2) a brief description of the property to be sold, its location, the improvements, if any, and the name of the owner or reputed owners, with or without a brief recital of title, which shall be the description used in the notice of sale provided for in Subdivisions (a) and (b) of Pa. R.C.P. 3129.1, 3129.2.

b. The notice of sale provided in Subdivisions (a) and (b) of Pa.R.C.P. 3129.1, 3129.2 shall also include a notice of the terms and conditions of sale.

c. Execution sales of real property shall be held only in the Sheriff's Office or the meeting room of the Washington County Office Building on the first Friday of each month except August provided, however, that if the first Friday be a holiday, the sale shall be held the following Monday.

DEPOSITIONS AND DISCOVERY

L-4017(d)—FILING OF CERTIFICATE OF DEPOSITION

a. Upon completion of the stenographic transcription of any deposition, the stenographer before whom the deposition has been taken shall file with the Prothonotary a Certificate of Deposition. The Certificate of Deposition shall contain the following information and shall substantially conform to the form shown in Appendix K.

1. The name(s) of the person(s) deposed; and

2. That the witness was duly sworn; and

3. The total number of pages in each deposition; and

4. The date, time and place deposition was taken; and

5. The counsel present at deposition; and

6. The name of counsel who has received the original transcription and copies thereof.

b. The Prothonotary shall promptly file the Certificate and record its filing on the docket.

c. Custody and responsibility for original deposition transcript shall remain with the attorney who has received the original transcription until the case is terminated or the deposition has been filed pursuant to paragraph 4 herein.

d. The attorney having custody of the original deposition shall forthwith file the entire original deposition transcription with the Prothonotary whenever so directed by the Court.

ACTION OF DIVORCE OR ANNULLMENT OF MARRIAGE

L-1920.1 DEFINITIONS

(a) Reserved.

(b) Reserved.

(c) A copy of these rules shall be maintained by the Court Administrator's Office, and a copy shall be provided to the Prothonotary and County Law Library and be made generally available pursuant to Pa.R.C.P. 239(c)(5).

L-1920.2 RESERVED

L-1920.3 COMMENCEMENT OF ACTION

(a) A duplicate copy of the complaint shall be filed with the Prothonotary who shall forward it to the Civil Division of the Court Administrator's Office. Upon receipt of the complaint, the Court Administrator shall assign the case to a Judge based upon current administrative assignments.

(b) A duplicate copy of other pleadings and other documents shall be filed with the Prothonotary who shall forward it to the Civil Division of the Court Administrator's Office, specifically including petitions and orders to bifurcate proceedings.

(c) At the time of the filing of the complaint, the plaintiff will pay the non-refundable charge as set forth in Appendix G, Custody/Divorce Fee Schedule. Each item of relief requested in the original complaint or any future amended complaints shall be designated in a separate numbered count. The Prothonotary shall in the monthly report indicate the amount collected pursuant to this Rule. This amount is in addition to the Prothonotary's filing fees.

(d) When a request for appointment of a Master in Divorce or Child Custody Conference Officer is made, the request must be accompanied with proof of payment of

the non-refundable Master/Stenographic fee as set forth in Appendix G, Custody/Divorce Fee Schedule.

L-1920.4 SERVICE

(a) When service is made by registered or certified mail, restricted delivery, return receipt requested, the return receipt card shall be attached to the affidavit of service.

(b) When a special order for service is sought, a motion, or petition, shall be presented to the Court, setting forth what attempts have been made to serve the defendant, as well as the nature and extent of the good faith search to locate the defendant.

(c) The affidavit of service required under section 3301(d) of the Divorce Code may be served with the complaint.

(d) The affidavit of service must set forth with particularity the pleadings, attachments and documents so served.

L-1920.5—L-1920.30 RESERVED

L-1920.31 JOINDER OF RELATED CLAIMS. CHILD AND SPOUSAL SUPPORT. ALIMONY. ALIMONY PENDENTE LITE. COUNSEL FEES. EXPENSES.

(a) Reserved.

(b)(1) The Civil Division of the Court Administrator's Office shall route all applications for child support to the Domestic Relations Section. If there is an existing/pending action for child support in the Domestic Relations Section, it shall be incorporated by the Master in Divorce into his report. The Civil Division of the Court Administrator's Office shall route requests for APL and counsel fees, costs, and expenses to a Master in Divorce for consideration upon assignment of the Master to the case. A request for APL may be heard by a Support Hearing Officer pursuant to Local Rule 1910.10-2.

(b)(2) Reserved.

(c) Reserved.

(d) Reserved.

L-1920.32 JOINDER OF RELATED CLAIMS. CUSTODY. HEARING BY COURT.

(a) All complaints containing a Custody Count and all Counts of Custody filed separately must be accompanied with a scheduling order found at Appendix E if the moving party is seeking to have the Custody Count immediately addressed by the Court. The order shall be processed in accordance with L-1915.3. If the moving party does not seek to have the Custody Count immediately addressed by the Court, the party may subsequently seek Court action on the Custody Count by presenting a scheduling order to the Civil Division of the Court Administrator's Office.

(b) The Custody Count shall follow the practice and procedures governing Custody by filing a custody complaint or petition and scheduling order at the divorce case number in the Prothonotary's Office.

L-1920.42 AFFIDAVIT AND DECREE UNDER § 3301(c) OR § 3301(d) OF THE DIVORCE CODE. NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE IN § 3301(c) AND § 3301(d) DIVORCES. COUNTER-AFFIDAVIT.

(a) Reserved.

(b) Reserved.

(c) Where both parties have filed affidavits under § 3301(c) of the Divorce Code evidencing consent to the entry of a final decree, the plaintiff shall file at the Prothonotary's Office a Praeceptum to Transmit Record indicating whether a marital settlement agreement should be incorporated or merged into the decree. See L-1920.73.

(d) If a complaint has been filed requesting a divorce on the grounds of irretrievable breakdown and the plaintiff has filed an affidavit under § 3301(d) of the Divorce Code, the averments of which the defendant has either admitted or not denied, the plaintiff shall file at the Prothonotary's Office a Praeceptum to Transmit Record indicating whether a marital settlement agreement should be incorporated or merged into the decree. See L-1920.73.

L-1920.43 SPECIAL RELIEF

(a) Requests for injunctive relief shall be presented to the Family Court Judge to whom the case is assigned and not to the Master in Divorce. All motions must be presented to the Family Court Judge to whom the case is assigned including motions to continue Master's Hearings.

(b) Reserved.

L-1920.44 RESERVED

L-1920.45 COUNSELING

(a) Reserved.

(b) The Civil Division of the Court Administrator's Office will maintain a list of counselors approved for use by the court. The parties may agree to use the services of a counselor or agency not on the list approved by the court.

(c) In the event the parties cannot agree on any or all of the following issues, the moving party shall petition the Court to determine:

(1) Which party shall pay for counseling or how the payments for counseling shall be apportioned;

(2) The counselor or agency to be utilized;

(3) The number of counseling sessions—see Divorce Code § 3302.

(d) Reserved.

L-1920.46—L-1920.50 RESERVED

L-1920.51 HEARING BY THE COURT. APPOINTMENT OF MASTER. NOTICE OF HEARING.

(a) Any divorce case may be referred to a Master. Standing and Special Masters may be appointed by the Court. The Court may assign a case to a particular Standing Master rather than conduct assignments on a strictly rotational basis.

(1) The Standing Masters in Divorce shall be assigned by the Court. Before a Master is appointed by the Court, the moving party shall pay to the Prothonotary the non-refundable Master/Stenographic fee as set forth in Appendix G, Custody/Divorce Fee Schedule. Proof of this payment must accompany the Motion to Appoint a Master.

(i) The Motion to Appoint a Master shall be delivered to the Civil Division of the Court Administrator's Office along with an Appointment Order. See PA.R.C.P. 1920.74. The Civil Division of the Court Administrator's Office will assign a Standing Master and will deliver the Motion to Appoint a Master and the Appointment Order to the

Family Court Judge to whom the case is assigned. When the Motion to Appoint a Master is signed by the Family Court Judge to whom the case is assigned, the Civil Division of the Court Administrator's Office will contact the moving party to pick up the Motion and Order. The moving party will then file the Motion and Order in the Prothonotary's Office and will provide a copy of the Motion and Order to the Civil Division of the Court Administrator's Office. The Civil Division of the Court Administrator's Office will not file Motions, Petitions, Orders, or other documents on behalf of a party.

(ii) Upon the written agreement of counsel for the parties or the parties the Court may appoint a Special Master in appropriate cases. The parties shall present the written agreement by way of a Motion to the Family Court Judge to whom the case is assigned. The Motion shall specify the payment terms of the Special Master, including the apportionment of the payment and the terms and conditions of the payment. The Motion shall also address the provisions made by the parties for private, stenographic services and shall set forth the apportionment and terms and conditions of the payment for these services. The Special Master shall comply with all Rules of Civil Procedure and the Local Rules of Court. The moving party shall provide a copy of the Motion and Order to the Civil Division of the Court Administrator's Office.

(b) A Master in Divorce shall give counsel of record at least 10 days notice before conducting any conference or hearing.

(c) A Master in Divorce shall give a party who is not represented by counsel at least 10 days notice before conducting any hearing or conference.

(d) Reserved.

(e) Reserved.

(f) Payment of the Master/Stenographic fee shall entitle the parties to a maximum of two Preliminary Conferences, a one-hour Hearing on Preliminary Issues, if necessary, and a maximum of a one-day hearing or two half-day hearings. If the Master determines that additional testimony is required, then the Master shall assign payment of costs at the current rate to either the plaintiff or the defendant or shall apportion the costs between the parties as deemed appropriate. Upon the recommendation of the Master the assignment of costs will be made in an Interim Interlocutory Order signed by the Family Court Judge to whom the case is assigned. The issue shall be addressed in the final Master's Report. A Master shall conduct no more than three full-day hearings or five half-day hearings in any case, except upon specific approval of the Family Court Judge to whom the case is assigned. The party or parties seeking an additional hearing(s) must, within seven days of the last scheduled hearing in the case, present a Motion to the Family Court Judge to whom the case is assigned specifying the need for the additional hearing(s). The moving party will file the Motion and resulting Order at the Prothonotary's Office and will provide a copy of the order and proof of payment of the costs to the Civil Division of the Court Administrator's Office. If the Motion is granted, the costs will be apportioned at the same rate established by the Master for previous hearings in the same matter. The costs will be payable to the Prothonotary's Office at the time the Motion and resulting Order are filed. If the Motion is granted, the Civil Division of the Court Administrator's Office will schedule the hearing.

(g) Motions for continuances of proceedings before a Master will be presented by the moving party to the

Family Court Judge to whom the case is assigned in Motions Court prior to the scheduled proceeding. The order granting or denying the continuance will be filed in the Prothonotary's Office. A copy of an order granting a continuance will be delivered by the moving party to the Civil Division of the Court Administrator's Office.

(1) A \$25.00 fee will be charged for continuances. Except in the case of an emergency, when a party seeks and receives a continuance on the day of a scheduled conference or hearing the party will be charged a \$75.00 fee. The fee will be paid by the moving party to the Prothonotary's Office when the Motion and Continuance Order are filed. The fee shall be paid in the form of a check or money order payable to the Washington County Prothonotary.

(2) Motions for continuances shall be set forth in writing containing the following information:

(i) A clear, concise, and certain reason for the request.

(ii) A statement that opposing counsel or the opposing party, if unrepresented, has no objection to the request for continuance, if applicable.

(iii) A statement of the number of prior continuances, if any.

(iv) If another court appearance is the reason for the request, a copy of the notice or Order of the conflicting hearing shall be attached.

(3) The Notice of Presentation of the Continuance Motion shall include the date of service of the motion upon the opposing counsel or the opposing party, if unrepresented.

L-1920.52 RESERVED

L-1920.53 HEARING BY MASTER. REPORT.

Subject to the direction and control of the Court, the court-appointed Master shall have procedural and administrative control of the proceedings in regard to the detention of witnesses for examination and the general course of the proceedings. The Master shall rule on objections to the competency or relevance of testimony, as well as the admissibility of evidence. If the Master sustains the objection, the testimony shall not be heard or reported. Parties may file exceptions to the Master's rulings in accordance with L-1920.55.

L-1920.54 HEARING BY MASTER. REPORT. RELATED CLAIMS.

(a) The Master shall subdivide the report into separate sections, one for each claim for relief raised in the proceedings.

(b) Reserved.

(c) Reserved.

(d) The Master may afford the parties the opportunity to submit suggested findings of fact and/or conclusions of law within 30 days of the close of testimony.

(e) The Master shall file the original and two copies of the report and recommendations with the Prothonotary who shall mail notice of the filing and a copy of the report and recommendations to counsel of record or to a party, if unrepresented.

(f) The Master may file a preliminary report and recommendations concerning matters such as the basis for the divorce or the payment of counsel fees and expenses.

L-1920.55—L-1920.55-1 RESERVED

L-1920.55-2 MASTER'S REPORT. NOTICE. EXCEPTIONS. FINAL DECREE.

- (a) Reserved.
- (b) Reserved.

(c)(1) Exceptions to the Master's Report and Recommendations shall be filed with the Prothonotary and a copy shall be delivered to the Civil Division of the Court Administrator's Office. The Family Court Judge to whom the case is assigned will then schedule argument on the exceptions or order that the matter will be decided on the briefs. The Civil Division of the Court Administrator's Office will mail notices of the date and time of the exceptions argument by first class mail to the counsel for the parties or to the parties if unrepresented.

(c)(2) Exceptions may be filed to a Preliminary Master's Report and Recommendations only if the Preliminary Report and Recommendations addresses the underlying basis for the divorce and must be limited to that issue only. In such a case, exceptions must be filed within 10 days of the filing in the Prothonotary's Office of the Preliminary Report and Recommendations. The parties must then comply with paragraphs (c)(3) and (c)(4) below. No exceptions may be taken to any other issues included in the Preliminary Master's Report and Recommendations. Such issues will be included in the Final Master's Report and Recommendations, and parties may take exceptions thereto.

(c)(3) The excepting party must file its brief with the Family Court Judge to whom the case is assigned no later than 20 days before the scheduled argument, and the non-excepting party must file its brief with the Family Court Judge to whom the case is assigned no later than 10 days before the scheduled argument. If both parties file exceptions, the first party to file the exceptions must file its brief no later than 20 days before the scheduled argument, and the opposing party must file its brief no later than 10 days before the scheduled argument. The Court may order submission on the briefs or the parties may agree to submit to the Court on the briefs without argument.

(c)(4) Oral arguments shall be restricted to issues addressed in written briefs.

(c)(5) The Family Court Judge to whom the case is assigned may remand the case to the Master for further review, may hear argument, or may conduct an evidentiary hearing.

L-1920.56—1920.61 RESERVED

L-1920.62 PROCEEDINGS BY INDIGENT PARTIES

Petitions regarding indigency and requesting relief from payment of costs shall be addressed to the Family Court Judge to whom the case has been assigned and must contain a request that the Court require the other party to pay the costs of the action. The Court may order the other party to pay all or part of such costs.

L-1920.63—1970-72 RESERVED

L-1920.73 NOTICE OF INTENTION TO REQUEST ENTRY OF DIVORCE DECREE. PRAECIPE TO TRANSMIT RECORD. FORMS.

- (a) Reserved.
- (b) When the grounds for divorce are based on § 3301(c) or § 3301(d) of the Divorce Code, the Praecipe to Transmit Record shall include the follow:

6. Check applicable box:

- (a) Section 3301(c) with incorporation of property/marital settlement Yes () No ()
- (b) Section 3301(d) with incorporation of property/marital settlement Yes () No ()

L-1920.74 SETTLEMENT AGREEMENTS AND STIPULATIONS.

Property/Marriage Settlement Agreements or Stipulations which include a provision or provisions concerning child support shall be subject to Local Rules 1910.17-3 and 1910.17-4.

L-1930.5 DISCOVERY IN DOMESTIC RELATIONS MATTERS

(a) Applications for discovery contemplated by Pa R.C.P. 1930.5(a) shall be presented to the Family Court Judge to whom the case is assigned and shall not be presented to the Master in Divorce or Child Custody Conference Officer.

APPENDIX J

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA CIVIL DIVISION

,)
)
 Plaintiff,)
)
 vs.) No.
)
 ,)
)
 Defendant.)

MOTION FOR APPOINTMENT OF MASTER

_____ (Plaintiff) (Defendant), moves the court to appoint a master with respect to the following claims:

- () Divorce () Distribution of Property
- () Annulment () Support
- () Alimony () Counsel Fees
- () Alimony Pendente Lite () Costs and Expenses

and in support of the motion states:

(1) Discovery (is) (is not) complete as to the claims(s) for which the appointment of master is requested.

(2) The non-moving party (has) (has not) appeared in the action (personally) (by his attorney, _____, Esquire).

(3) The statutory ground(s) for divorce (is) (are)

(4) Delete the inapplicable paragraph(s):

(a) The action is not contested.

(b) An agreement has been reached with respect to the following claims:

(c) The action is contested with respect to the following claims:

(5) The action (involves) (does not involve) complex issues of law or fact.

(6) The hearing is expected to take _____ (hours) (days)

(7) Additional information, if any, relevant to the motion: _____

(8) Attached to this motion is proof of payment of the Master/Stenographer fee or request to proceed in forma pauperis.

Date: _____

Attorney for (Plaintiff) (Defendant)

ACTIONS FOR CUSTODY, PARTIAL CUSTODY, AND VISITATION OF MINOR CHILDREN

L-1915.1 SCOPE

(a) These Rules shall apply to actions for custody, partial custody and visitation of minor children and to modification of existing orders relating thereto as governed by the Pa.R.C.P. 1915.1—1915.25 and by reference, 1920.32.

(b) A copy of these rules shall be maintained by the Court Administrator's Office and a copy shall be provided to the Prothonotary and County Law Library and be made generally available pursuant to Pa.R.C.P. 239(c)(5).

L-1915.2 RESERVED

L-1915.3 COMMENCEMENT OF ACTION, COMPLAINT, ORDER

(a) All actions raising custody, partial custody, visitation or modification of existing orders for minor children shall be commenced by the filing of a verified complaint or, in the case of a custody count in a divorce complaint, a petition and a separate scheduling order as set forth in Appendix E. The scheduling order located in Appendix E must also be filed and processed in accordance with this rule when any Divorce Complaint with a Custody Count is filed or when any Custody Count is filed separately.

(b) The moving party shall proceed to the Civil Division of the Court Administrator's Office with an original and two (2) copies of the complaint or petition and the separate scheduling order for an assignment of a date and a time for the Pre-Custody Conciliation Meeting. The Pre-Custody Conciliation Meeting shall be scheduled for a date and a time not later than forty-five (45) days after the filing of the complaint or petition. The Civil Division of the Court Administrator's Office will present the complaint or petition to the Family Court Judge to whom the case is assigned for signature and return the signed complaint or petition to the moving party. The moving party will file the complaint or petition with the Prothonotary's Office. The Civil Division of the Court Administrator's Office will not file complaints or petitions on behalf of parties. A copy of the scheduling order will then be delivered by the moving party to the Civil Division of the Court Administrator's Office. The Civil Division of the Court Administrator's Office will give parenting program information as well as the Parent Plan form to the moving party. The moving party shall attach copies of each to the filed, time-stamped copies of the complaint or petition and serve the defendant(s) with the complaint or petition, the parenting program information and a copy of the Parent Plan form.

(c) The moving party shall file proof of service of the complaint or petition with the Washington County Prothonotary and provide a copy of the proof of service of the

complaint or petition, the parenting program information, and a copy of the Parent Plan form to the Civil Division of the Court Administrator's Office prior to the Pre-Custody Conciliation Meeting.

(d) The presentation of the pleadings referred to in subdivision (a) shall be the responsibility of the moving party and if necessary, may be ex parte. The moving party shall be responsible for filing and serving the pleadings in accordance with Pa.R.C.P. 1915.3 and 1915.4. The moving party shall insure that a minimum of seven (7) days notice of the meeting or conference or any other appropriate proceeding is afforded to any interested parties. In the event seven (7) days' notice cannot be afforded to any interested parties, the moving party shall notify the Civil Division of the Court Administrator's Office forthwith.

(e) All appropriate costs and fees shall be paid at the time of filing.

(f) A duplicate copy of other pleadings and other documents shall be filed with the Prothonotary who shall forward it to the Civil Division of the Court Administrator's Office, specifically including petitions and orders to bifurcate proceedings.

L-1915.4 PARENTING PROGRAM

As a prerequisite to court involvement in a custody matter, all parties to the action are ordered to attend the mandatory parenting program prior to the Pre-Custody Conciliation Meeting. Failure of a party to attend the parenting program will result in sanctions against the party up to and including being prohibited from proffering evidence in the Meeting or Conference, or being held in contempt by the Court. See Administrative Regulation 2002-1.

L-1915.5 MOTIONS

(a) Objections to jurisdiction or venue, motions concerning discovery, joinder of parties, psychological or psychiatric examinations, and appointment of counsel for minors shall be presented to the Family Court Judge to whom the case is assigned.

(b) If the issue of paternity is raised, the parties shall immediately apply for appropriate relief to the Family Court Judge to whom the case is assigned, with all Custody proceedings to be stayed pending resolution of the paternity issue.

L-1915.6—1915.7 RESERVED

L-1915.8 PHYSICAL AND MENTAL EXAMINATION OF PERSONS

Issues concerning physical and mental examinations of persons will be addressed directly to the Family Court Judge to whom the case is assigned who will follow the procedures set forth in Pa.R.C.P. 1915.8.

L-1915.9—L-1915.11 RESERVED

L-1915.12 CONTEMPT

All petitions for contempt for failure to comply with an Order related to custody shall be presented to the Family Court Judge to whom the case is assigned. The Family Court Judge to whom the case is assigned may refer the Petition, at his/her discretion, to the Child Custody Conference Officer for conference and review. If a resolution of the matter cannot be made promptly, the Child Custody Conference Officer will refer the contempt proceeding to the Family Court Judge to whom the case is assigned, and a date for a hearing will be set by the

Court. The petition for contempt shall begin with a notice and order conforming with Pa.R.C.P. 1915.12.

L-1915.13 SPECIAL RELIEF

Motions for special relief should be for matters of an emergency nature and shall be presented to the Family Court Judge to whom the case is assigned. A Complaint for Custody or petition must be prepared if one has not already been filed, a Child Custody Conference Officer appointed and a Pre-Custody Conciliation Meeting date set, which then is presented to the Judge with the motion for special relief. After presentation of the motion for special relief, the moving party shall file the complaint and scheduling order and shall effect service forthwith. Other matters of a non-emergency nature, as set forth in Local Rule 1915.32, shall be disposed of in accordance with that Rule. Special Relief may be denied without a hearing.

L-1915.14—L-1915.25 RESERVED

L-1915.26 CHILD CUSTODY CONFERENCE OFFICER

The position of Child Custody Conference Officer is hereby established. The Child Custody Conference Officer shall be appointed by the Court and shall be a member in good standing of the Pennsylvania Bar.

L-1915.27 PROCESS

(a) Where a claim for custody, partial custody, or visitation is joined with an action of divorce, having been raised by complaint, counterclaim, or a subsequent petition, this claim will not be heard by the Court unless the matter is placed at issue by either of the parties filing a Complaint or Petition for Custody in accordance with Local Rule 1915.3.

(b) A petition to modify a custody order will be assigned to the Child Custody Conference Officer who handled the original custody complaint when possible.

L-1915.28 CONTINUANCES

(a) Motions for continuances of proceedings before the Child Custody Conference Officers will be presented by the moving party to the Family Court Judge to whom the case is assigned in Motions Court prior to the scheduled proceeding. The order granting or denying the continuance will be filed in the Prothonotary's Office. A copy of an order granting a continuance will be delivered by the moving party to the Civil Division of the Court Administrator's Office.

(b) A \$25.00 fee will be charged for continuances. Except in the case of an emergency, when a party seeks and receives a continuance on the day of a scheduled meeting or conference the party will be charged a \$75.00 fee. The fee will be paid by the moving party to the Prothonotary's Office when the Motion and Continuance Order are filed. The fee shall be paid in the form of a check or money order payable to the Washington County Prothonotary.

(c) Motions for continuances shall be set forth in writing containing the following information:

1. A clear, concise, and certain reason for the motion.
2. A statement that opposing counsel or the opposing party, if unrepresented, has no objection to the request for continuance, if applicable.
3. A statement of the number of prior continuances, if any.

4. If another court appearance is the reason for the request, a copy of the notice or Order of the conflicting hearing shall be attached.

(d) The Notice of Presentation of the Continuance Motion shall include the date of service of the motion upon the opposing counsel or the opposing party, if unrepresented.

L-1915.29 PRE-CUSTODY CONCILIATION MEETING PROCEDURE

(a) The parties shall make a good faith effort to resolve the custody and/or visitation issues prior to the meeting. If resolution occurs prior to or at the time of the meeting, a proposed order shall be drafted in accordance with Pa.R.C.P. No. 1915.7 and submitted to the Court for approval through the Child Custody Conference Officer.

(b) The Civil Division of the Court Administrator's Office will give counsel of record at least ten (10) days notice before any proceeding is conducted.

(c) The Civil Division of the Court Administrator's Office will give a party who is not represented by counsel at least ten (10) days notice before any proceeding is conducted.

L-1915.30 PRE-CUSTODY CONCILIATION MEETING

(a) Each parent shall file a Washington County Parent Plan form with the Civil Division of the Court Administrator's Office no later than thirty (30) days from the filing of the Custody Complaint or Modification Petition. The Parent Plan form may be found at Appendix F. The finder of fact may draw a negative inference against the party who fails to comply with this requirement.

(b) The parties may also at any time present a Consent Custody Order to the Family Court Judge to whom the case is assigned.

(c) If no Consent Custody Order pursuant to subsection (b) is presented to the Family Court Judge to whom the case is assigned, the Pre-Custody Conciliation Meeting shall proceed as originally scheduled.

(1) All parties shall be present at the Pre-Custody Conciliation Meeting unless otherwise ordered by the Court.

(2) The Child Custody Conference Officer will attempt to mediate the differences between the parties using mediation skills to come to an amicable settlement of those differences.

(3) The Child Custody Conference Officer will insure that the parties have submitted the completed Parent Plan form. The finder of fact may draw a negative inference against the party who fails to comply with this requirement. The Child Custody Conference Officer shall also insure that the mandated parenting program has been completed by the parties and certification presented.

L-1915.31 CUSTODY CONCILIATION CONFERENCE

(a) All parties and any child for whom custody or visitation is sought shall be present at the Custody Conciliation Conference, unless otherwise ordered by the Court. Failure of a party to appear at the Custody Conciliation Conference may result in the entry of a custody or visitation order by the Court on the recommendation of the Child Custody Officer in the absence of that party. The absent party may also be subject to contempt proceedings, if appropriate.

(b) The Child Custody Conference Officer will conduct informal proceedings and allow the parties and their witnesses to participate. The Child Custody Conference Officer shall control the presentation of evidence and will determine the amount of time allotted to each party for presentation of his/her case. Counsel, or the party himself/herself if unrepresented, may summarize his/her case to the Child Custody Conference Officer. The Child Custody Conference Officer may take testimony from the parties and any witnesses by swearing in said parties and having said parties offer testimony under oath. The proceeding will not be transcribed. At the discretion of the Child Custody Conference Officer, a witness(es) may be permitted to participate via telephone pursuant to Administrative Order 2004-1, In Re Family Court, dated October 26, 2004, pertaining to telephone testimony and subject to subsection (d) below. The conference will last no longer than one-half (1/2) day unless the Child Custody Conference Officer deems one or more issues complex in which event additional proceedings may be scheduled. If an agreement is reached, the agreement shall be prepared and signed in the form of a Custody Consent Order. If no agreement can be reached, the Child Custody Conference Officer will prepare a Summary Report and Recommended Order and forward same to the Court for the Court's consideration.

(1) The Summary Report and Recommended Order will be prepared and presented to the court within ten days of the date of the proceeding. The Summary Report will include the following:

a. The results of mental and physical evaluations and home studies, if any.

b. Findings of fact on jurisdiction or venue issues, if in question.

c. Recommendations for custody/visitation.

(c) The Recommended Order will normally be signed by the Family Court Judge to whom the case is assigned.

(1) The Recommended Order will become a final order unless a Request for Custody Trial De Novo and Pretrial Conference is filed within twenty (20) days after the Recommended Order is mailed or received by the parties, whichever occurs first. A copy of the order shall be provided to the parties by the Prothonotary in accordance with Pa.R.C.P. 236 with a copy to the Civil Division of the Court Administrator's Office.

(2) If a party makes a timely request for a Trial De Novo and Pretrial Conference, the Recommended Order will remain in effect pending further order of the Court.

(d) After the Family Court Judge to whom the case is assigned signs the Recommended Order, the attorneys representing the parties, or the parties if acting pro se, may review the Summary Report in the Court Administrator's Office—Civil Division within the twenty (20) day time period specified in paragraph (c)(1) above. The Summary Report will not be filed in the Prothonotary's Office. It will not be released from the Court Administrator's Office—Civil Division, nor may parties or attorneys make copies of the Summary Report.

(e) A party requesting to participate by telephone shall submit written consent from the opposing party (parties) to the Civil Division of the Court Administrator's Office. If represented by counsel, counsel shall provide written consent to the Civil Division of the Court Administrator's Office at least ten (10) days prior to the conference. If no consent is given by the opposing party to the requesting party (parties), relief must be obtained from the Custody

Conference Officer or Hearing Officer pursuant to Administrative Order 2004-1, In Re Family Court, dated October 26, 2004, pertaining to telephone testimony. The requesting party shall contact the Civil Division of the Court Administrator's Office to seek such relief.

L-1915.32 INTERIM ORDERS

(a) At the time of the initial custody meeting where issues regarding the temporary rights of the parties to custody or visitation of a non-emergency nature, as well as the arrangements for psychiatric or psychological examinations, home evaluations, and/or drug testing, are presented to the Child Custody Conference Officer, the Officer may submit to the Family Court Judge to whom the case is assigned a proposed interim order which will be reviewed by the Court and signed, if the Court deems the order appropriate. A copy of this signed order will be provided to the parties by the Prothonotary in accordance with Pa.R.C.P. 236 with a copy to the Civil Division of the Court Administrator's Office.

(b) Any person not satisfied with the interim order may pursue an application for special relief in accordance with Local Rule 1915.13.

L-1915.33 REQUEST FOR CUSTODY TRIAL DE NOVO AND PRETRIAL CONFERENCE

(a) A party may file a Request for Custody Trial De Novo and Pretrial Conference in the Washington County Prothonotary's Office within twenty (20) days after the Recommended Order issued following the Custody Conciliation Conference is mailed or received by the parties, whichever occurs first. The request must be presented to the Family Court Judge to whom the case is assigned for the scheduling of the Pretrial Conference. Form of Order may be found at Appendix G.

(b) A copy of the filed request with the scheduled Pretrial Conference date and time must be served on the other counsel, or if the party is a pro se litigant, the request must be served on the party. A copy must be delivered to the Civil Division of the Court Administrator's Office.

(c) A Trial De Novo will be scheduled, barring extenuating circumstances, within ninety (90) days of the request. The Pretrial Conference shall be held during the period between the request for Custody Trial De Novo and the scheduled hearing. Any psychological reports ordered should be obtained during the same period and presented to the Family Court Judge to whom the case is assigned, along with the parties' Pretrial Statements, at least forty-eight (48) hours in advance of the Pretrial Conference.

L-1915.34 PRETRIAL CHILD CUSTODY CONFERENCE BEFORE THE COURT

(a) All parties and any child for whom custody or visitation is sought shall be present at the judicial pretrial custody conference unless said required attendance is waived by way of Court Order. Failure of a party to appear at the judicial pretrial custody conference may result in the entry of a custody/visitation order by the court.

(b) The court will attempt to obtain a consent agreement on any pending custody issues. Any agreement shall be reduced to writing and entered as an order of court. Upon request, the Family Court Judge to whom the case is assigned will meet privately with the parties' counsel in an attempt to better define the issues and settle the custody dispute.

(3) Where the party is a recipient of cash assistance from any state's Department of Public Welfare;

(4) Where any action requiring a fee is taken by the IV-D Attorney; or

(5) Where the Court otherwise directs.

L-1910.5 COMPLAINT. ORDER OF COURT. CONTINUANCES

(a) Reserved.

(b) Reserved.

(c) Reserved.

(d) Motions for continuances of proceedings before the Hearing Officer or Conference Officers will be presented by the moving party to the Family Court Judge to whom the case is assigned in Motions Court prior to the scheduled proceeding. The order granting or denying the continuance will be filed in the Domestic Relations Section.

(e) A \$25.00 fee will be charged for continuances. Except in the case of an emergency, when a party seeks and receives a continuance on the day of a scheduled conference or hearing the party will be charged a \$75.00 fee. The fee will be paid by the moving party to the Domestic Relations Section when the Motion and Continuance Order are filed. The fee shall be paid in the form of a check or money order payable to the Washington County Domestic Relations Section.

(f) Motions for continuances shall be set forth in writing containing the following information:

1. A clear, concise and certain reason for the motion.

2. A statement that opposing counsel or the opposing party, if unrepresented, has no objection to the request for continuance, if applicable.

3. A statement of the number of prior continuances, if any.

4. If another court appearance is the reason for the request, a copy of the notice or Order of the conflicting hearing shall be attached.

(g) The Notice of Presentation of the Continuance Motion shall include the date of service of the motion upon the opposing counsel or the opposing party, if unrepresented.

L-1910.6—L-1910.10 RESERVED

L-1910.10-1 HEARING PROCEDURE

(a) The alternative hearing procedure of Pa.R.C.P. 1910.12 is adopted in all actions for support through the Domestic Relations Section.

(b) If the parties are unable to reach an agreement during the support conference, the procedures of Pa.R.C.P. 1910.12(b)(1) shall be followed and an interim order of support entered pending hearing before the Hearing Officer.

(c) Subject to the provisions of Rule L-1910.4(b), a party wishing to confirm and preserve a scheduled de novo hearing before the Hearing Officer shall pay costs in

the amount of \$50.00 to the Domestic Relations Section within twenty (20) days of the mailing of the interim order. Failure to pay such costs shall result in any scheduled hearing being administratively cancelled and the interim order being made final.

(d) *[Rescinded due to 2006 amendments to the Pennsylvania Rules of Civil Procedure.]*

L-1910.10-2 ALIMONY PENDENTE LITE

(a) If the parties to a support action have filed a Complaint in Divorce in which a claim is raised for alimony pendente lite, the Hearing Officer may hear the alimony pendente lite claim at the request of either party, provided however, that both a Master in divorce has been appointed and the Master's fee has been paid to the Prothonotary. Counsel requesting the hearing of an alimony pendente lite claim by the Hearing Officer shall provide documentary evidence of this appointment and payment of the fee to the Hearing Officer.

(b) If the Hearing Officer proceeds under this Rule and hears a claim for alimony pendente lite, the party moving for hearing of this claim by the Hearing Officer shall file with the Domestic Relations Section Docket Clerk a copy of the Complaint in Divorce raising the issue of alimony pendente lite within three (3) days of the hearing before the Hearing Officer. If the Complaint in Divorce is not filed within this time, the Recommendation of the Hearing Officer shall not be issued until a copy of the Complaint is properly filed.

L-1910.11 RESERVED

L-1910.12 OFFICE CONFERENCE. HEARING. RECORD. EXCEPTIONS. ORDER.

(a)—(e) Reserved.

(f) All exceptions must be in writing and shall be filed with the Domestic Relations Section Docket Clerk. Any party filing exceptions shall provide an original and two (2) copies when filing. Further, the party filing exceptions shall provide to the Docket Clerk a receipt indicating that the \$50.00 deposit required by subsection (j) of this rule has been paid (subject to the provisions of Rule L-1910.4(b)) unless an attorney filing the exceptions on behalf of the party certifies in writing that no transcript is required.

(g) Reserved.

(h) Reserved.

(i) The party filing exceptions shall serve opposing counsel or the opposing party, if unrepresented, with copies of the exceptions by the end of the next business day following the filing of the exceptions.

(j) Any party filing exceptions shall order from the court reporter the transcript of testimony unless the attorney for the party filing exceptions certifies in writing that the transcript is not required. Any party ordering the transcript shall pay a deposit of \$50.00 to the Domestic Relations Section for the court reporter before the transcript is prepared. The deposit shall be applied against the total cost of the transcript. The Family Court Judge to whom the case is assigned will not be provided with a copy of the transcript unless the same has been ordered and paid for in full by a party or counsel.

(k) Briefs in support and in opposition to the exceptions shall be filed with the Domestic Relations Section Docket Clerk not later than the dates directed in the order of court setting the argument date on the exceptions. Each party filing a brief shall serve a copy of the brief on the opposing party and counsel not later than the end of the next business day following the filing of the brief with the Domestic Relations Section Docket Clerk. Every brief filed with the Domestic Relations Section Docket Clerk shall contain an original and one (1) copy.

(l) If the party filing exceptions fails to file a brief in support of those exceptions by the designated filing date, the responding party shall not be required to file a brief in opposition to those exceptions, but may file a brief if desired. However, if the responding party has filed exceptions in response to the other party's exceptions filing, the responding party shall file a brief in support of those cross or counter exceptions by the date directed in the argument notice.

L-1910.13—L-1910.17 RESERVED

L-1910.17-1 ADMINISTRATIVE SERVICE FEE

Except as provided herein, every order of support shall require the payment of a \$25.00 annual administrative service fee to the Domestic Relations Section. This fee shall be charged to the defendant in a support action processed through the Domestic Relations Section. This fee shall be charged on any case in which the defendant is under an order of support of at least \$50.00 per month, in either a single or multiple support action. This fee shall be paid by the defendant only once yearly regardless of the number of cases involved. Only those defendants who have an active support order as of April 15 of that year shall be charged this fee. Payment shall be due within 45 days of the date of the mailing of the fee notice and shall be paid directly to the Domestic Relations Section and not to the Pennsylvania Support Collections and Disbursement Unit (SCDU). This fee shall be in addition to the amount of support which the defendant is ordered to pay.

L-1910.17-2 CONSENT SUPPORT ORDERS

(a) All consent support orders should be prepared on current forms provided by the Domestic Relations Section in conformance with the Pennsylvania Child Support Enforcement System (PACES).

(b) The order must be clear and concise and shall adhere to both procedural and substantive statutory and case law requirements.

(c) If a support action has not yet been initiated for the case for which the consent support order is being filed, the consent support order shall include along with filing the current intake information sheet and a properly completed Complaint for support and shall also include the appropriate filing fee.

L-1910.17-3 MARRIAGE SETTLEMENT AGREEMENTS

In existing support cases where a marriage settlement agreement is signed following the entry of the support order which modifies the terms of the current support obligation, counsel for either party shall file the marriage settlement agreement and a copy of the divorce decree with the Domestic Relations Section. Upon filing of this marriage settlement agreement, a new order of support in

conformance with the marriage settlement agreement and divorce decree shall be drafted by the Domestic Relations Section and forwarded to the Court for entry. If the marriage settlement agreement does not resolve the issue of medical coverage, including medical expense reimbursement, for the involved dependents, the Domestic Relations Section will schedule a Conference with the parties to address medical coverage.

L-1910.17-4 STIPULATIONS BEFORE THE DIVORCE MASTER

In existing support cases where the parties enter into a stipulation before the Divorce Master following the entry of the support order which modifies the terms of the current support obligation, counsel for either party shall file the stipulation and a copy of the divorce decree with the Domestic Relations Section. Upon filing of this stipulation, a new order of support in conformance with that stipulation and divorce decree shall be drafted by the Domestic Relations Section and forwarded to the Court for entry. If the stipulation does not resolve the issue of medical coverage, including medical expense reimbursement, for the involved dependents, the Domestic Relations Section will schedule a Conference with the parties to address medical coverage.

L-1910.18 RESERVED

L-1910.19 SUPPORT, MODIFICATION, TERMINATION, GUIDELINES AS SUBSTANTIAL CHANGE IN CIRCUMSTANCES.

(a)—(f) Reserved.

(g) A filing fee as set forth in Rule L-1910.4 shall be charged for all petitions to modify an order of support. This fee shall be assessed against the party filing the petition to modify, except as provided in Rule L-1910.4(b). The petitioner shall file an original and three (3) copies of the petition with the Domestic Relations Section Docket Clerk.

(h) The Domestic Relations Section shall not accept for filing a petition which seeks any of the following without leave of court:

(1) To decrease an order of \$50.00 or less;

(2) To modify an order that is on appeal to the court pursuant to a recommended order; or,

(3) To modify an order which has been entered within the past six (6) months.

(i) The Domestic Relations Section shall provide notice of the refusal to the party seeking the modification.

(j) A party who's petition has been refused must personally present to the Family Court Judge to whom the case is assigned a motion to permit the filing of the modification, on forms provided by the Domestic Relations Section. Notice of presentment of the motion must be given to the opposing party in accordance with L-200.5(e).

(k) If leave of court is granted to file the petition for modification, the date of the first attempted filing shall be used as the filing date.

L-1910.20—L-1910.50 RESERVED

[Pa.B. Doc. No. 07-120. Filed for public inspection January 26, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated December 12, 2006, under the Pennsylvania Rules of Disciplinary Enforcement 219 which requires that all attorneys admitted to practice in any court of this Commonwealth must pay an annual assessment of \$175.00. The Order became effective January 11, 2007.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Awojobi, Adekunle B.
Greenbelt, MD

Lowans, David Lynn
Washington, DC

Scanlon, Dennis L.
Annapolis, MD

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

[Pa.B. Doc. No. 07-121. Filed for public inspection January 26, 2007, 9:00 a.m.]
