THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CHS. 1 AND 3]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam

And Now, this 1st day of February, 2007, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rules of Procedure Nos. 110 and 302, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Rules of Procedure Nos. 110 and 302 shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

IN GENERAL

Rule 110. Entry of Appearance.

(A) Counsel for a Judicial Officer shall file an entry of appearance with the Clerk of the Court and shall serve a copy of the entry on the Board Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number. Admission Pro Hoc Vice shall be in accordance with the Pennsylvania Bar Admission Rules.

(C) An attorney's appearance for a Judicial Officer may not be withdrawn without leave of Court unless another attorney has entered or simultaneously enters an appearance for the Judicial Officer and the change of attorneys does not delay any stage of the proceedings.

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule 302. Contents of Board Complaint.

(A) For each charge against the Judicial Officer, the Board Complaint shall:

(1) state in plain and specific language the nature of the charge;

(2) specify the allegations of fact upon which the charge is based.

(B) The Board Complaint shall give notice to the Judicial Officer of the time period within which the Judicial Officer must file an omnibus motion pursuant to Rule 411.

(C) The Board Complaint shall be signed and verified by counsel for the Board.

[Pa.B. Doc. No. 07-232. Filed for public inspection February 16, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Order Amending Rules 403, 409, 414, 424, 430, and 454; No. 354 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 26th day of January, 2007, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 36 Pa.B. 2505 (May 27, 2006) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 865), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules of Criminal Procedure 403, 409, 414, 424, 430, and 454 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2008.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART B. Citation Procedures

Rule 403. Contents of Citation.

(A) Every citation shall contain:

(1) the name and address of the organization, and badge number, if any, of the law enforcement officer;

(2) the name and address of the defendant;

(3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

(4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to

the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within 10 days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of $50 as collateral for appearance at trial; or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the $50, the defendant must appear before the issuing authority to enter a plea; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation **or when required to appear pursuant to Rules 409(B)(3), 414(B)(3), or 424(B)(3)**; or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated **[disposition]** rehabilitative **disposition** program;

(3) that all checks forwarded for **the** fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the **[district justice] magisterial district judge** that, in addition to any fines, restitution, or costs, the **[district justice] magisterial district judge** may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

[If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail.] As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The **law enforcement** officer may specify the fine and costs **in the citation** only when the penalty provided by law does not include **a possible sentence of** imprisonment and the statute or ordinance fixes the specific amount for the fine. **[Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.]**

Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the **[fines] fine** and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 **(March 18, 2000)**.

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART B(1). Procedures When Citation Is Issued to Defendant

Rule 409. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)**.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of **the** fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment**; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and **the** fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and **[(b)] (B)**. The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For **the** procedure upon default in payment of **the** fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 430. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART B(2). Procedures When Citation Filed

Rule 414. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)**.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of **the** fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment**; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty

plea and **the** fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For **the** procedure upon default in payment of **the** fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 122 and 121.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 455. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)**.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of **the** fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment**; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sen-

tence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and **the** fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For **the** procedure upon default in payment of **the** fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 122 and 121.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

(1) the citation or summons is returned undelivered; or

(2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when:

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454**[(E)] (F)**(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of **the** fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of **the** fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (A)(1)(d) was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the change to the Rule 454 reference in paragraph (B)(1)(b) with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel; or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney

representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial**, except as provided in paragraph (E)**.

(E) **If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.**

(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs **[(E)] (F)**(1) through **[(E)] (F)**(3), and a copy of the order shall be given to the defendant.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph **[(E)] (F)**(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth**,** or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Under paragraph **[(E)] (F)**(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph **[(E)] (F)**(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461**,** the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460—462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986, effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994,

effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004**; amended January 26, 2007, effective February 1, 2008**.

Committee Explanatory Reports:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

FINAL REPORT[1]

Proposed Amendments to Pa.Rs.Crim.P. 403, 409, 414, 424, 430, and 454

Summary Guilty Pleas; Sentencing

On January 26, 2007, effective February 1, 2008, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 403, 409, 414, 424, 430, and 454 to permit delay in sentencing and the refusal of acceptance of the plea in appropriate cases involving the entry of guilty pleas to summary offenses.

BACKGROUND

The amendments to Pa.Rs.Crim.P. 403 (Contents of Citation), 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), and 454 (Trial in Summary Cases) address two issues concerning the entry of guilty pleas in summary cases: (1) the timing of sentencing in order to determine a defendant's eligibility for intermediate punishment; and (2) procedures for the entry of guilty pleas in cases in which there is a likelihood of a sentence of imprisonment or a mandatory sentence of imprisonment.

Intermediate Punishment

The first portion of the amendments provides that sentencing may be delayed to determine whether or not a defendant is eligible for intermediate punishment (IP). Specifically, under 42 Pa.C.S. § 9804 and § 9763, defendants may be sentenced to intermediate punishment for certain offenses, including violation of 75 Pa.C.S. § 1543(b) (driving with a license under a DUI-related suspension), but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment.[2] Often this information will not be available to the issuing authority at sentencing, especially when the defendant appears personally to enter a guilty plea.

Previously, Rules 409(C)(4), 414(C)(4), and 424(C)(4) required the sentence to be imposed at the time the plea is entered with no provision for delaying imposition of sentence to determine eligibility for intermediate punishment. With these amendments, the rules now permit the issuing authority the flexibility in the timing of sentencing to determine such eligibility.

Pleading Guilty by Mail in Cases with Sentences of Imprisonment

The second portion of the amendments address the situation that arises when a police officer cites a defendant for a summary offense, with a possible sentence of imprisonment, including a charge under 75 Pa.C.S. § 1543(b), that carries a mandatory sentence of imprisonment. There have been occasions in which, although the offense charged carries a likelihood of a sentence of imprisonment, the officer includes on the citation the total of the fines and costs. Because the fines and costs have been specified on the citation, and Rules 409(A)(2), 414(A)(2), and 424(A)(2) only require an appearance if the fines and costs are not specified, a defendant potentially could plead guilty by mail, not realizing that a sentence of imprisonment should be imposed. The Comment to Rule 403 contributed to the confusion by providing:

> If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail. The officer may specify the fine and costs only when the penalty provided by law does not include imprisonment and the statute or ordinance fixes the specific amount for the fine. Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.

This language in the Rule 403 Comment has been interpreted as meaning that a defendant who pleads guilty by mail because the police officer has listed the amount of the fines and costs on the citation may not be incarcerated. This interpretation not only frustrates the statutory intent but also is a usurpation of the judicial function of the issuing authority by the police.

II. DISCUSSION OF THE PROPOSED RULE CHANGES

To address the first issue, the summary guilty plea rules, Rules 409, 414, and 424, and Rule 454 are modified

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

[2] Under 42 Pa.C.S. § 9804 (County Intermediate Punishment Programs), a defendant punished under 75 Pa.C.S. § 1543(b) may only be admitted to an intermediate punishment program if he or she undergoes a drug or alcohol assessment and is determined to be in need of drug or alcohol treatment. This restriction also is contained in 42 Pa.C.S. § 9763 (Sentence of County Intermediate Punishment), which states that a defendant who is to be sentenced for a Section 1543(b) offense "may only be sentenced to county intermediate punishment after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments)."

to permit an issuing authority to delay the sentencing proceeding to investigate those cases in which intermediate punishment might be available to the defendant. Paragraph (C)(4) of Rules 409, 414, and 424, and Rule 454(E) are amended by the addition of language authorizing the issuing authority to delay sentencing for this purpose and the Comments provide further explanation.

To address the second issue, amendments to the summary guilty plea rules provide that an issuing authority must not accept a guilty plea that is mailed in when the offense charged has a mandatory sentence of incarceration, and that an issuing authority has the discretion to not accept guilty pleas in those cases when there is a possible sentence of incarceration. See Rules 409(B)(3)(a), (b), 414(B)(3)(a), (b), and 424(B)(3)(a), (b). The issuing authority is also required to notify the defendant (1) of the rejection of the guilty plea by mail, (2) to appear in person to enter the plea, and (3) of the right to counsel. The issuing authority also is required to notify the affiant that the guilty plea by mail has not been accepted. See Rules 409(B)(3)(c), 414(B)(3)(c), and 424(B)(3)(c). The Comments to the guilty plea rules provide additional guidance about this new procedure.

Rule 403(B)(2)(b)(ii) includes a cross-reference to the new provisions in Rules 409(B)(3), 414(B)(3), and 424(B)(3) concerning acceptance of guilty pleas by mail, and the Rule 403 Comment is revised to remove the troublesome language that the possibility of a jail sentence could be precluded by the police officer listing fines and costs on the citation. A cross-reference to Rule 454 that is contained in Rule 430 also has been corrected to reflect the new paragraph structure in Rule 454.

[Pa.B. Doc. No. 07-233. Filed for public inspection February 16, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Court; MsD. No. 07-40028

Administrative Order of Court

And Now, this 1st day of February, 2007, it is hereby ordered and decreed that Local Rules of Court pertaining to Family Court, adopted March, 2002 are *Rescinded* effective thirty days after publication of this notice in the *Pennsylvania Bulletin*.

It is further ordered and directed new Local Rules L1905, L1910.4, L1910.11, L1915.1—13 and L1920.33—.55 are *Adopted* effective thirty days after publication of the within Local Rules of Civil Procedure in the *Pennsylvania Bulletin*.

The Court directs the Court Administrator to:

1. File seven (7) certified copies of this Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of the Pennsylvania Courts.

2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rules Committee.

4. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the administrative office of the *Butler County Legal Journal* for publication.

5. Forward one (1) copy of this Administrative Order and within Local Rules of Civil Procedure to the Butler County Law Library.

6. Keep continuously available for public inspection copies of this Administrative Order of Court and the within Local Rules of Court in the Office of the Butler County Prothonotary, the Butler County Domestic Relations Section and the Office of the Court Administrator.

By the Court

THOMAS J. DOERR,
President Judge

LOCAL RULES OF COURT
FAMILY DIVISION

Introductory Comment—2006

The Court of Common Pleas of Butler County has traditionally utilized the services of masters in a variety of family law cases, most prominently in juvenile and divorce matters. These rules continue the evolution of that tradition.

Historically, in divorce cases, Butler County has tried two, almost conceptually opposite, methods for the selection of masters. For many years, any locally based attorney licensed to practice law was eligible for inclusion on the divorce master list maintained by the prothonotary. The system worked reasonably well when the local bar consisted of fewer than 60 attorneys, and the substantive law of divorce had not been materially reformed in 200 years.

Following the adoption of the Pennsylvania Divorce Code in 1980, with the introduction of new and complex concepts related to equitable distribution of marital property and alimony, and the virtual elimination of fault divorce which had been the exclusive focus of master's proceedings prior to that time, the court quickly realized that the all-inclusive master system could not continue. With a new and unfamiliar Divorce Code, and little or no appellate guidance at the time, family law was being reinvented constantly on a local level by countless masters with differing experience levels and personal viewpoints as to how the new Code should be interpreted. Long delays in the completion of master's proceedings and inconsistent legal interpretations were typical. Practitioners had little ability to forecast the outcome of a master's proceeding and consequent inability to advise clients appropriately. Reform of the system for appointing masters was generally conceded to be necessary.

Responding to the outcry for consistency and predictability which were paramount considerations at the time, the court adopted a very restricted standing master system. Individual attorneys applied for the post of standing master and, if selected, were required to relinquish their family law practice within the county. The Local Rules provided for compensation of standing masters at an hourly rate far below what the same individuals could command in their private practices. In general, the standing master system in divorce cases did achieve the continuity and consistency of decision making which was its raison d'étre.

Nevertheless, the local legal landscape continues to evolve. Butler County continues to grow and the demand for judicial time allocated to family law, civil, criminal,

Orphans' Court and miscellaneous types of cases grows along with the population. The number of cases assigned to each judge has increased, while pressure to dispose of cases expeditiously has intensified. At the same time, on a statewide level, we now have a full generation of appellate case law to guide us to reasonably nuanced interpretations of the Divorce Code.

The court believes that now is an appropriate time to experiment with changes to the existing standing master system. Based on the relative stability of the Divorce Code, and the abundance of appellate case law, the court is less concerned than previously with the probability of inconsistent legal interpretations of similar factual matrices, provided that the court is careful to limit the masters it appoints to practitioners with whom the court is familiar, and who possess both substantial family law experience and appropriate judicial temperament. Specifically, the court envisions appointing masters which the court is aware have particular expertise in the type(s) of issue(s) presented by the case requiring a master's appointment. The court also wants to permit the parties attorneys to mutually nominate a master to hear a particular issue, whom the court will appoint if the parties nominee meets the court's masters criteria.

Under these rules, the standing master system for divorces is replaced by a special master system. The court will still utilize standing masters in Juvenile cases. Standing masters and custody conciliators will still be prohibited from practicing family law in Butler County. However, other practitioners will be permitted to practice family law, in spite of their appointments from time to time as special masters.

Practitioners will also notice some changes to the custody rules. An additional Order is required at the time of filing directing registration and attendance at the divided families seminar. The issue of undue delay is addressed in several ways. In an effort to emphasize the importance of keeping cases from languishing in the evaluation phase of the process, a pre-trial conference will be scheduled as part of the original conciliation order, if evaluations are ordered. This emphasizes to all parties the need to comply with the schedule for arranging and completing any evaluations. Prior to the pre-trial conference, a type of pre-trail statement, with prescribed disclosures, will now be required. As of the pre-trial conference, such additional pre-trial disclosure as is mandated by the assigned judge will be discussed and ordered.

As an aid to understanding the new rules, and the court's perspective concerning the subject matter of the rules, footnotes have been inserted and comments have been appended at the end of the complete statement of a rule, when appropriate. This is consistent with Pa.R.C.P. No. 129(e). An asterisk (*) has been employed to direct the reader's attention to the inclusion of a comment related to a particular rule or a particular subsection of a rule.

PROTECTION FROM ABUSE

L1905 Orders

At any time that the Court of Common Pleas of Butler County is participating in any program to develop a data base for protection from abuse orders, only orders produced by that system shall be presented to the court for review and signature, if the system is operational. If the system used to produce orders is temporarily non-operational, orders created outside the system shall be integrated therein as soon as possible.

SUPPORT

L1910.4 Domestic Relations Fee Schedule

(a) A fee schedule for Domestic Relations administrative costs, the filing of support complaints, petitions to modify support orders, issuance of bench warrants, petitions for contempt, and other related fees shall be as established by order of court from time to time.

(b) Except for the filing of an initial support complaint, the fee shall be required to be paid in advance. All fees shall be collected and administered by Domestic Relations personnel.

L1910.11 Motions to Continue Support Conferences and Hearings; Use of Masters

(a) & (i) Support matters scheduled before the court or in the Domestic Relations section shall be continued only by leave of court, with good cause shown, presented at least 15 days before the actual support conference or hearing.[1]

CUSTODY AND VISITATION

L1915.1 Scope. Definitions.

(a) These rules govern all actions for custody, partial custody and visitation, including original actions, petitions for relocation, petitions to modify orders and petitions for contempt.

(b) These rules supplement the Pennsylvania Rules of Civil Procedure governing custody actions, Pa.R.C.P. No. 1915.1 et seq.

(c) These rules modify Rules L1915.1—L1915.13 of the Butler County Local Rules of Court

L1915.3 Commencement of Action. Complaint. Order. Service.

(a) All custody complaints shall be filed with the prothonotary.[2] In addition to the scheduling Order required by Pa.R.C.P. No. 1915.3, there shall be attached by the Conciliator's office, an additional Order with the following text:

"All adult parties to this action, who have not yet attended the seminar for divided families endorsed by the Butler County Family Court, shall within 5 days of receipt of this Order register to attend the next available seminar. Contact 724 XXX-XXXX to register.[3] Attendance at this seminar is mandatory, unless, within 5 days of receipt of the Order, a party seeks permission to attend a comparable program in another county, and within 10 days, permission is granted by the custody conciliator."

(b) In addition to the filing fees assessed by the prothonotary, an administrative fee for conciliation services shall be assessed by administrative order of court, and shall be submitted to the prothonotary at the time of the filing of the custody complaint unless otherwise directed by the court.

---

[1] The court will ordinarily consider the mutual written consent of the parties to be "good cause" for a continuance, regardless of the proximity to the scheduled conference or hearing date. However, motions for non-consensual postponements shall be filed at least 15 days before the scheduled Domestic Relations conference or court hearing. Butler County motions practice is described in Rule L208.3(a).

[2] The traditional alternative practice of ex parte presentation of custody complaints, custody modification or custody contempt petitions in motions court is discouraged. The practice originated because of the need to secure a judge's signature on the order scheduling a conciliation conference or hearing. However, experience indicates that the prothonotary and custody conciliator's offices can be relied upon to bring the proposed scheduling order to the court's attention promptly and efficiently, eliminating the waiting and presentation time of attorneys at motions court, and thereby reducing the parties expenses. The parties or attorneys may monitor the progress of their pleadings, within the system, by communications with the prothonotary and conciliator's offices.

[3] The phone number of the endorsed seminar (which could change from time to time) will be published by Administrative Order.

(c) After filing, all complaints or motions for conferences shall be immediately forwarded to the custody conciliator's office which shall set the time, date, and place for a custody conference. Said conference shall be held no less than 20, nor more than 40 days from the filing of the complaint/order or petition/order, unless the normal time interval is shortened or lengthened by the court, upon good cause shown.

(d) Within 5 days of service of any claim for custody, partial custody, or visitation, any party to an action who has not previously attended the education seminar for divided families shall register to attend said seminar. Information concerning the seminar shall be provided by the prothonotary of the Court of Common Pleas of Butler County, Pennsylvania, to the filing party. Said party shall be responsible for service of such information on the opposing party.

(1) Failure of either party to register for the seminar, prior to the conference, may subject the noncompliant party to such sanctions as may be appropriate, including an award of counsel fees.

(2) Unless otherwise requested by both parties, the parties will be scheduled for separate education seminar sessions.[4]

(e) Fees and policies pertaining to custody conciliation shall be adopted from time to time by administrative orders of court. A copy of said policies and fee schedule will be available at the Domestic Relations office/custody conciliator's office.

L1915.4

(a) The complaint/order or petition/order and the order to attend the divided families seminar, shall be served by the moving party in accordance with the Pennsylvania Rules of Civil Procedure.

(b) Proof of service of the complaint/order or the petition/order, and the Order to attend the divided parents seminar, shall be filed with the prothonotary prior to the custody conference.

L1915.4-1 Continuances of Conciliation Conferences or Custody Hearings

Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. For such a request to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

Comment: Butler County motions practice is described in Rule L208.3(a).

L1915.5 Jurisdiction, Venue, Standing, and Relocation Issues.

(a) The court may direct that issues pertaining to jurisdiction, venue, standing, and relocation be referred to custody conciliation.

(b) Alternatively, the court may schedule a hearing before the court for disposition of the jurisdictional, venue, standing or relocation issue, or the court may take such other action as may be prescribed by statute, compact or treaty.

Comment: The court will always dispose of interstate or international jurisdictional issues, outside the conciliation process. In such cases the court may defer to a foreign court the right to conduct a fact-finding hearing related to the jurisdictional issue.

L1915.7 Custody Conciliation Conference Consents and Recommendations.

(a) All parties named in an action for custody shall be present at the custody conciliation conference unless excused by the custody conciliator. Failure of a party to appear at the conference may result in the entry of a custody or visitation order by the court on the recommendation of the conciliator in the absence of that party. Unless ordered by the court for good cause shown, children shall not be brought to the conciliation and shall not be heard on the issues by the conciliator.[5]

(b) To facilitate the conciliation process and to encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties or their attorneys at the conference shall not be admissible as evidence at a later custody hearing. The custody conciliator shall not be a witness for or against any party.

(c) The court-appointed custody conciliator shall encourage consent agreements on the custody issues pending between/among the parties. If agreements are reached, they shall be reduced to writing and submitted to the court for adoption as an order. The parties will also be encouraged to equitably divide the custody administrative fee.

(d) If no consent agreement is reached, the conciliator shall file a report with the court within five days of the conference which may contain the following:

(1) recommendations that custody investigations, such as physical or mental evaluations, home studies, drug and alcohol evaluations, counseling, education seminars to be undertaken, and appointment of a guardian at litem, as well as equitable division of the fees for same. In order to insure that all studies and evaluations ordered, expert testimony supplied, and seminar attendance occur without delay, the Order directing such activities shall provide that each parties share of the relevant fees be paid as allocated in the Order, subject to reallocation at a later stage of the case as provided in Rule L1915.4(c). Evaluations shall proceed without the participation of a party who fails to timely pay his/her share of the evaluator's fee. A non-paying or non-participating party shall also be subject to the contempt powers of the court;

(2) conciliator's review of jurisdiction, venue, standing and relocation issues;

(3) progress, if any, on issues before the conciliator, as well as any recommendations for temporary custody/visitation orders, including the need for an expedited hearing in emergency cases.

(4) recommendations concerning an equitable division of the custody administrative fee among the parties.

[4] This rule is renumbered and changed. The previous Rule limited a party's right to request a separate seminar to cases in which abuse had been found or was alleged. The committee felt that many family situations not rising to the level of abuse might warrant a party seeking separate seminar registration. The goal is to promote and facilitate seminar attendance. Separate registrations cannot justifiably deter attendance; simultaneous registration might, even in non-abuse cases. The Court is advised that the practice of the current seminar provider is to schedule attendance of opposing parties on different dates. The Court endorses that practice.

[5] The previous Rule required children nine or older to attend the conference. The children were not usually part of the mainstream conciliation process. Participation was marginal and infrequent. School was missed. Only when both parties agreed to be bound by a child's stated preference did children's participation become meaningful. Bringing children to court, even the conciliator's office, invited parties to lobby the children for support at the expense of the other parent, often before the parents have attended the educational seminar which discourages such conduct. Lobbying also suggests to the children that their views may be more dispositive of the ultimate custody determination than is in fact the case, and does little to promote agreements or the orderly process of advancing those cases which are not resolved by agreement. On balance, under the new Rule, the court has chosen to excuse children from most conferences. If a party feels strongly that his/her child(ren) should attend, he/she may present a motion setting forth the basis of that belief and requesting an order for attendance.

(5) recommendations that a case be diverted to counseling.

(6) scheduling of pre-trial conferences, or requesting trial dates.

(e) As part of the order resulting from the initial conciliation conference, custody cases will ordinarily[6] be scheduled for a pre-trial within 120 days after service of the initial pleading, in those cases when evaluations are ordered by which time the evaluations are expected to be completed and available. The initial conciliation order shall also provide that the costs of any evaluations, home studies or tests, including the cost of in-court testimony needed to authenticate and explain expert reports of the results thereof, shall be shared by the parties, initially as allocated by the court in the post-conciliation order, but subject to reallocation as part of the pre-trial conference order and the final order in the case as the equities in the case may dictate. In cases where no agreement is reached, and no evaluations are ordered, and the case is not diverted to counseling on the Conciliator's recommendation, either party may request a Pretrial Conference within 30 days. See Rule L 1915.10, infra.

(f) At the request of either party, the report under subsection (c) shall be filed with the court before the judge assigned to that case and presented at his/her motion court. The parties and/or the attorneys shall be informed at the conclusion of the conference of the date of the applicable motion court session.

(g) Upon receipt of evaluation reports, the conciliator's office will make the same available to counsel of record, or pro se litigants where applicable.[7]

L1915.10. Request for Custody Pretrial Conference. Pretrial Conference. Decision

(a) A party may request a Custody Pretrial Conference anytime within 30 days after service of a Custody Order issued as a result of a Conciliation Conference, in cases where a comprehensive agreement is not reached at the Conference. The moving party shall deliver the Request to the chambers of the assigned judge for the scheduling of a Pretrial Conference. Said request shall be serverd on the opposing party, or counsel, if represented.[8] The assigned Judge will transmit the completed Pretrial Scheduling Order to the Prothonotary for filing and service.[9]

(b) The Request for Custody Pretrial Conference and Scheduling Order shall be substantially as follows:

[6] Delays may occur for various reasons, most commonly the untimely submission of court ordered custody evaluations. Custody evaluation reports are delayed for many reasons, some of which include deliberate delay in scheduling or postponing meetings with the evaluator or delay in the payment needed to secure release of the report, by a party perceiving him/herself to benefit from the status quo. Other reasons for delay are wholly innocent and beyond the control of either party, such as the press of other duties upon the custody evaluator. The court firmly believes that delay in resolving custody cases perpetuates stress on the parties and children involved, is harmful, and is to be eliminated. Consequently, the parties are charged with the knowledge that a finding of deliberate and unexcused conduct by him or her, which significantly delays the trial of the case may adversely affect that party's position in the litigation, because dilatory conduct is itself harmful to the children.

[7] The mandatory second conciliation contemplated in the prior rules is abandoned in favor of more judicial involvement in the form of a pre-trial conference. The pre-trial judge will determine if a second conciliation is likely to be helpful in resolving the case, in which case he/she may direct one, or if the matter should proceed to trial.

[8] The requirement of service is a matter of courtesy. The "Request" contemplated by the rule is in the nature of a Praecipe, requesting a ministerial act. The Court will not entertain argument as to the propriety of a scheduling order. If an opposing party believes that a Pretrial Conference is not appropriate, that party may present a motion to vacate the scheduling order, at which time the issue may be argued.

[9] Pursuant to Rule 1915.7(e) when Custody Evaluations *have* been ordered, a Pretrial Conference is automatically scheduled and a Request need not be filed.

Caption

REQUEST FOR CUSTODY PRETRIAL CONFERENCE

I, _____, hereby request a pretrial conference before the Court of Common Pleas. This Request is being filed within 30 days of the date of Service of the Custody Order.

The issues to be considered are:

Relocation

Time/Length/Number of Visits

Primary Residence

Other:

VERIFICATION

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

Date

Signature of Petitioner or
Petitioner's Counsel
Printed Name
Address
Telephone Number

Caption

SCHEDULING ORDER*

The above named parties and trial counsel are hereby ordered to appear in person on _____, 20 _____ at _____ .m. before the Honorable _____, in Courtroom _____ in the Butler County Government Center, for a Pretrial Conference. Counsel or the parties, if unrepresented, shall file a Pretrial Narrative at least seven days prior to the Pretrial Conference. The parties are required to attend the Pretrial Conference pursuant to Butler County L 1915.10 (d).

Seven days prior to the Pretrial Conference, each party or counsel shall file and submit a Pretrial Narrative to the chambers of the assigned judge. Copies shall be served on all parties. If no Pretrial Narrative is filed, the offending party may be fined or otherwise sanctioned by the Court. The Pretrial Narrative shall include:

(1) Names and addresses of all witnesses, including experts;

(2) Summary of each witness's anticipated testimony;

(3) Copies of all exhibits;

(4) Proposed custody arrangement;

(5) Requested stipulation of facts.

BY THE COURT:

Date: J.

(c) All parties and trial counsel shall be present at the Pretrial Conference unless otherwise provided by Order of Court. Failure of a party to appear at the Pretrial Conference may result in the entry of a custody/visitation order by the Court.

(d) Any agreement reached at the Pretrial Conference shall be reduced to writing and entered as an order of Court.

Comment: The language of the Scheduling Order will also be found as part of the Order following conciliations which result in evaluations.

L1915.12 Enforcement. Contempt.

(a) The custody conciliator may attempt to enforce existing custody/visitation orders upon receiving informal written objection from a party or attorney of record that said order is being misinterpreted or willfully disobeyed. Such objection shall be served upon the opposing party or attorney of record by the complaining party.

(b) Upon the filing of any motion or petition alleging violation of a custody, partial custody or visitation order, and seeking enforcement of the order, whether or not sanctions are requested, the court shall direct the parties to appear before the court for a 15 minute conference to conciliate the disagreement.*

(c) If the enforcement request is not disposed of at the initial judicial conciliation, the court shall direct appropriate additional proceedings, which may include a full conciliation with the conciliator, a direction to participate in counseling, temporary orders relative to interpretation of the existing order pending further conciliation or trial, scheduling of a trial date, or such additional matters as justice may require.

(d) Actions referred to the conciliator shall be subject to the administrative fees and conciliation procedures set forth in these Rules.

(e) If no agreement is reached at the scheduled enforcement conciliation conference, a conciliator's report shall be filed and the matter shall be scheduled before the court for hearing.

Comment: Subsection (b) of this rule is new. Experience has shown that numerous disagreements concerning the interpretation of the language of custody orders are amenable to simple clarification by the trial court, at a brief conciliation conference, without subjecting the court system to the burden of a full conciliation or trial, and without subjecting the parties to the expense and delays which were inherent under the previous system which required each case to be initially heard at the conciliator's office, before judicial intervention of any kind would be considered.

Subsections (c), (d), and (e) of the former Rule have been re-lettered and altered where appropriate to conform to the changed approach of attempting to conciliate all enforcement matters at the trial court level. For example, language in former subsection (c) suggesting that the conciliator might recommend that the court dispose of the contempt petition at motions court, by oral argument, no longer makes sense, in light of the fact that the court will have already heard the parties positions at an initial judicial conciliation, and the conciliator's office will have failed to bring the parties together at a second, full conciliation. In such cases, in which the parties have already been given two opportunities to argue their positions, it is obvious that only a hearing will resolve the matter.

L1915.13 Special Relief

(a) All petitions and motions for special relief may be referred to the custody conciliator, pursuant to these Rules, at the discretion of the court.

(b) Alternatively, the court may schedule a hearing to determine the appropriateness of such request for special relief. If a hearing is granted, the court may continue a scheduled custody conference until the court has rendered a decision on the request for special relief.

(c) If, in an emergency, the court grants ex parte special relief, the court shall conduct a hearing within ten days, to address the merits of the petition for special relief. The court may continue the hearing, if requested by the non-moving party, for a reasonable time to allow that party to seek counsel and/or prepare a defense to the petition.

DIVORCE

Introductory Comment—2006

The court, counsel and litigants have all expressed continuing concern with the expense and delay involved in finalizing divorce cases. These rules attempt to address both issues.

Expense. Often under prior practice, the trial court did not become involved with the substantive issues in a case until conducting a de novo review of a master's recommendation, after a full hearing had already occurred. Extensive master's fees and court reporting costs were incurred, sometimes unnecessarily. These rules address the problem by mandating a conciliation by the court, after discovery is closed and before a master is appointed. It is contemplated that some cases which would otherwise be tried will be resolved through the conciliation process. Other cases, which do not settle at the conciliation, will nevertheless be simplified by settlement of some issues, stipulations arrived at through the conciliation process, and clarification of the parties positions through full disclosure, which is the sine qua non of successful conciliation.

Delay. At the outset, it may be observed that delay is not always a bad thing. Reconciliations do occur. And even when they do not, the cooling of the parties emotions across time may permit a more focused and constructive approach to necessary litigation. It is also true that the divorce law as currently constituted provides incentives for (or at least permits) delay in fully consummating divorce cases under certain factual scenarios. To take one example, a dependent spouse might want to take full advantage of the two year waiting period under § 3301(d) before allowing a divorce to be finalized. It must be assumed that these incentives and opportunities for delay are well understood and intended as policy by the legislature. This court does not make policy. Consequently, these rules do not address policy driven/permitted delays.

However, there are other types of delays which can be addressed by the court in a variety of ways. These include the enforcement of existing temporal mileposts, such as the requirement of Pa.R.C.P. No. 1920.33(a) that each party file an inventory within 90 days after the filing of a claim for distribution of property, or the requirements of Pa.R.C.P. No. 4006(a)(2) and Pa.R.C.P. No. 4009.12(a) that interrogatories be answered or documents produced within 30 days. It is the responsibility of the parties to observe the time frames established by the rules, or secure written reasonable extensions. The court recognizes that many deadlines imposed by rule may be viewed as arbitrary. What is the difference between providing answers to interrogatories in 35 days instead of 30? In most instances, none. **However, the processes of disclosure and discovery which the rules abet are central to the problem of delay**. Delay is reduced, and settlements occur, when all appropriate information and documents have been exchanged, and not before. The court's goal is to promote settlements and process cases with a minimum of delay. Therefore, it is the policy of the court, as well as its duty, to insure compliance with the intent of the rules, and when necessary, impose sanctions.

From the standpoint of local rule making the court believes that the three keys to promoting settlements by

minimizing delay are: (1) terminating discovery in a reasonable and orderly fashion, (2) insisting on full compliance with the intent of Pa.R.C.P. No. 1920.33 (b) which requires the filing and prescribes the content of pre-trial statements, and (3) timely judicial conciliation.

Too often, cases languish for years before discovery is undertaken because it is apparent that one party will not consent to the divorce within the two-year period afforded by the legislature. It does seem reasonable, however, to afford the moving party an opportunity to complete the case within a reasonable time after the two-year period has elapsed, especially in view of the current legislative emphasis on non-bifurcated divorce. Therefore, these rules provide for the establishment of a cut off date for discovery, on application of a party, when both parties have conceded that the marriage is irretrievably broken, or when an affidavit has been filed that the parties have lived separate and apart within the meaning of the divorce code for at least 18 months. This does not imply that the parties will be unable to update asset values reasonably proximate to trial.

Too often, cases fail to settle because the parties pre-trial statements are incomplete or misleading. The court believes that the primary function of the pre-trial statement is to reduce surprise at trial, both as to the claims and contentions of the parties, the witnesses, and the documentary evidence each will present. The court expressly disapproves such practices as: (1) referring to but failing to attach expert reports; (2) attaching previously filed inventories already of record; (3) failing to expressly assert all claims a party intends to pursue at trial, some of which, such as real estate rental claims, or reduction of equity claims in consideration of projected sales expenses or taxes, may not be directly referred to in the Inventory or discovery materials; (4) making general references to "other witnesses identified" or "other documents furnished during discovery." Some attorneys set forth in the pre-trial statement a summary of their client's perspective relative to salient equitable distribution or alimony factors. While not contemplated by Pa.R.C.P. No. 1920.33 (b) such statements may be helpful to the master or court as a trial outline and are therefore acceptable. In its review of evidentiary objections, the court will be vigilant to protect the parties from unfair surprise created by noncompliant pre-trial statements.

Too often, cases fail to settle because the parties are unaware of (or labor in disbelief about) how certain factors are likely to influence the overall outcome of the trial, from the trial court's perspective. Examples might include the impact of marital misconduct, future prospects for inheritance by a party, directly or in trust, how to quantify goodwill in connection with business valuations of sole proprietorships or other entities, and so on. The court believes that disclosure of these issues through the discovery process and the filing of pre-trial statements, followed by frank discussion of the issues at a judicial conciliation attended by the parties, may result in many cases being settled which in the past would have been tried before the master, simply because the parties did not have access to the court's perspective on the most complex issues.

After consideration of the procedure followed in several other counties, some of which prescribe the use of additional forms not contemplated by the statewide rules, the court has elected, at this time, not to prescribe special forms. For example, some counties provide a form checklist of documents to be introduced at trial, requiring the opposing party to either consent or oppose to both authenticity and admissibility of each document. However, if the same documents are disclosed as part of a parties pre-trial statement, and the authenticity or admissibility of any document is questioned, those issues will be addressed at the pre-trial judicial conciliation and, as appropriate, ruled upon or preserved for trial. All that is needed is a sentence in the pre-trial order indicating that it is the responsibility of each party to identify all documents in the opposing parties pre-trial statement to which there will be some objection at trial. Alternatively, a party may obtain admissions as to authenticity during discovery.

Finally, the court recognizes that not all cases are susceptible of successful conciliation, in terms of a total settlement. Even so, many issues may be capable of resolution, permitting the master's proceedings to be less expensive and time-consuming. For those cases requiring the services of a master, every effort has been made to streamline the process and reduce costs, particularly court reporting expenses.

L1920.33(b) Pre-trial Procedures

(a) Either party may file an affidavit with the court alleging that the parties have lived separate and apart within the meaning of the Domestic Relations Code for a continuous period of 18 months prior to the filing of the affidavit. Upon either the filing of said affidavit, or the expiration of 18 months since the filing of a divorce complaint being acted upon in this County, or upon the filing by both parties of affidavits conceding that the marriage is irretrievably broken, either party may a present a motion to establish a deadline for the initiation and/or completion of pre-trial discovery. Upon consideration of the motion, and the arguments of counsel, the court shall establish a pre-trial discovery order, with appropriate deadlines.*

(b) After discovery is closed, the court shall conduct a pre-trial conciliation conference, which may be scheduled as part of the discovery order described in subparagraph (a). Ten (10) business days before the pre-trial conference, each party shall file with the Prothonotary, and serve upon opposing counsel, a pre-trial statement which complies in all material respects with the requirements of Pa.R.C.P. No. 1920.33(b).* At the pre-trial conference, each party shall notify the other party and the court of any exhibits attached to the opposing parties pre-trial statement to which there is an objection as to admissibility. The court may rule on the objections presented, or may allow the issue to be addressed by the master. The court shall enter an order following the pre-trial conference setting forth any rulings by the court, stipulations or agreements of the parties, or other directions or information which will be helpful to the master, if the case is not settled.

(c) If a party fails to comply with any requirement of this rule, the court, upon motion of a party or on its own motion, may make an appropriate order under any available rule or statute governing sanctions.

Comment: In general, the court's objective in setting the discovery schedule will be to have the case ready for trial (including the completion of the pre-trial conference) at the end of a two-year separation.

Comment: Practitioners must read the Introductory Comment, above, for the court's views on the purpose and acceptable content of pre-trial statements.

L1920.51(a) Masters Proceedings

(1) The court may appoint a master to receive evidence, make findings of fact, and recommend to the court a

disposition of all issues referred to the master. Masters may be appointed, in the court's discretion, in cases of divorce, equitable distribution, alimony, claims for counsel fees, expert fees, other litigation expenses, special relief for exclusive possession, and in any other type of matter authorized by law or rule of court. The issues to be determined by the master will be framed by the court's pre-trial order; accordingly, except with leave of court, there will not be a pre-trial conference before the master.

(2) The court may appoint as a master any attorney licensed to practice law in the Commonwealth of Pennsylvania, having 10 years experience as a lawyer, including significant trial experience, or who has 10 years combined experience as a lawyer with trial experience and as a judge, district justice, master or as a comparable judicial officer, and who possesses, in the court's opinion, appropriate knowledge of the legal subjects at issue, and an appropriate judicial temperament. A master appointed by the Court pursuant to this rule is not precluded from practicing family law in Butler County.

(3) Masters shall be compensated by the parties to the litigation based on a fee schedule published by the court from time to time by general administrative order. If, pursuant to Pa.R.C.P. No. 1920.51(a)(3), a party moves for appointment of a master, the moving party shall deposit a sum with the prothonotary to cover the master's initial fee. The amount of deposit shall be set from time to time by general administrative order. Pursuant to Pa.R.C.P. No. 1920.51(a)(2)(I), the master may direct the parties to deposit further amounts with the Prothonotary.

(4) A party filing a motion to compel discovery, a motion for sanctions, a motion to limit discovery or for a protective order, a motion in limine, or a motion to stay the master's hearing **must** address such application to the court. Other applications, by mutual consent, may be presented to the master; however, absent mutual consent all other applications shall be presented to the court.

(5) Once a master is appointed, any document subsequently filed with the court shall be served upon the master by the filing party. In addition, the prothonotary shall serve the master with copies of any orders issued.[10]

Comment: The current rule contemplates liberal use of masters, but only after the discovery process is concluded and judicial conciliation has failed to bring about a settlement. The master's focus will be on trying the case, not resolving discovery issues or providing conciliation services. Significantly, there is included for the first time within the local rules, express authority to utilize masters in certain special relief situations, such as applications for exclusive possession of the residence. Consistent with the concept of statewide practice, geographical limitations on the appointment of masters is eliminated. The court's focus in selecting masters will be to find practitioners with significant relevant knowledge and experience, as well as appropriate judicial temperament, to assist the court in managing its caseload. The parties may suggest to the court a mutually agreeable individual to serve as master. If the court agrees that the parties nominee meets the court's criteria for appointment, the court currently anticipates that it will typically accede to the parties recommendation. The parties may make private arrangements for compensation of a master in an amount or on terms different from those described in the general administrative order establishing said fees; however, such special arrangements will not be enforced by the court above and beyond the master's fees described in the administrative order, unless a stipulation bearing the signatures of both parties and all counsel to the litigation is filed of record.

[10] "Any document" is an all-inclusive term.

L1920.55-1

Unless the court orders otherwise, all divorce proceeding shall be referred to a master in accordance with Pa.R.C.P. No. 1920.55-2 except that the stenographic record which is (still) to be filed along with the master's report shall not be transcribed, unless exceptions to the Master's Report and Recommendation are filed. In such event, the party filing the exceptions shall simultaneously direct the court reporter to transcribe all those portions of the record which the excepting party in good faith believes are required for the proper disposition of the exceptions. Such direction shall be in writing, with a copy filed with the exceptions and served on the opposing party. The non-excepting party shall within 10 days make designation to the court reporter of any additional parts of the record which he/she in good faith believes are necessary to the proper disposition of the issue, in writing, with copies to the Court and the opposing party. Each party shall make timely arrangements for payment of the court reporter's transcription fees for those portions of the record designated for transcription by him/her, subject to reallocation of transcription fees by the court.*

In appropriate circumstances, either party or the master may request that the court order the case to proceed under Pa.R.C.P. No. 1920.55-3.[11]

Comment: The manifest purpose of the rule is to reduce the cost of master's proceeding by avoiding costly transcription fees when it is possible to do so. When cross-exceptions are filed, each party will be deemed to be the excepting party with respect to his/her exceptions, for purposes of this rule. The court will only consider the exhibits introduced at the master's hearing and the transcribed portions of the testimony in disposing of the exceptions. Therefore, it is incumbent on the parties to correctly specify those portions of the record which are pertinent to the disposition of the issues on exceptions. Parties contemplating an appeal to Superior Court may want to have the entire record transcribed, particularly when the exceptions involve general issues such as failure to properly assess or weigh the various equitable distribution criteria. However, even in those cases, arguments not asserted in the trial court are waived on appeal. Indeed, the Rules of Appellate Procedure only require the parties to reproduce those parts of the record applicable to the issues on appeal. We therefore conclude that the new procedure described in this rule, for partial transcription of the record, within the control of the parties, will adequately provide for proper appellate review. The possibility of reallocation of transcription fees, along with other available remedies, will enable the court to enforce the requirement that "good faith" accompany the designation of which portions of the record need to be transcribed for "the proper disposition of the issue."

[Pa.B. Doc. No. 07-234. Filed for public inspection February 16, 2007, 9:00 a.m.]

[11] The intent of this portion of the rule is to permit, by court approval, Pa.R.C.P. No. 1920.55-3 proceeding in cases with limited assets, in forma pauperis litigants, or other circumstances which merit consideration for streamlined proceedings without a record. In addition, the language of the rule does permit the court to hear those rare, novel or inordinately complex cases which the court should hear itself, in the interest of judicial economy.

CARBON COUNTY

Revision of Rule of Orphans Court Procedure 14.2—Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person; No. 07-9026

Amended Administrative Order 7-2007

And Now, this 1st day of February, 2007, pursuant to 18 Pa.C.S.A. § 6111.1(f), it is hereby

Ordered and *Decreed* that effective March 1, 2007, the Carbon County Court of Common Pleas hereby *Amends* Local Rule of Orphans Court Procedure Carbon Co. O.C.R. No. 14.2 governing the Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Orphans Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection a copy of the Order in the Register of Wills/Orphans Court Office.

By the Court

ROGER N. NANOVIC,
President Judge

RULE 14.2. ADJUDICATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN OF THE PERSON AND/OR ESTATE OF AN INCAPACITATED PERSON.

Concurrent to the filing of a petition to adjudicate an incapacity, the moving party/attorney shall complete the individual information on a Notification of Mental Health Commitment Form SP-4-131 and file it with the Orphan's Court Division.

[Pa.B. Doc. No. 07-235. Filed for public inspection February 16, 2007, 9:00 a.m.]

DELAWARE COUNTY

Fees of Clerk of Orphans' Court Division; No. 84-2007

Order

And Now, to Wit, this 31st day of January, 2007, in accordance with the provisions of Act 18 of April 21, 1994, upon the determination of the Clerk of the Orphans' Court that these fees are fair and reasonable, the following Bill of Costs is established to become effective on March 19, 2007, to be chargeable to the parties and to the Estates before this Court for settlement for all services of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Delaware County, in the transaction of the business of this Court.

By the Court

EDWARD J. ZETUSKY, Jr.,
President Judge

Accounts of Executors and Administrators, of Trustees, Guardians of Minors and Incapacitated Persons, filing, advertising and adjudication costs:

In estates not exceeding in value $5,000	$116.00
Over $5,000 and not exceeding $10,000	$149.00
Over $10,000 and not exceeding $25,000	$198.00
Over $25,000 and not exceeding $50,000	$231.00
Over $50,000 and not exceeding $100,000	$281.00
Over $100,000 and not exceeding $250,000	$400.00
Over $250,000 and not exceeding $500,000	$500.00
Over $500,000 and not exceeding $750,000	$600.00
Over $750,000 and not exceeding $1,000,000	$800.00
Each succeeding $500,000 or fraction thereof $350 additional	
In addition to the above fees for filing, there will be a fee for recording, per page	$3.00
Accounts, readvertising	$90.00
Accounts, certified copy of, per page (in addition to $20.00 for certificate)	$3.00
Accounts, without Adjudication, filing of	$150.00
Adjudication, certified copy of, per page (in addition to $20.00 for certificate)	$3.00
Adoption, report of intention to adopt	$25.00
Counseling surcharge	$75.00
Adoption, petition for, and order, per child	$90.00
Certification of Adoption	$20.00
Report of intermediary	$50.00
Foreign adoptions, filing of	$90.00
Petition and Order for Involuntary and Voluntary relinquishment	$50.00
Order and Motion for Appointment of Counsel re: Adoption	$25.00

Order to Vacate	$25.00
Leave to Petition for Petition Re: Adoption	$50.00
Petition for Release of Non-identifying information	$100.00
Petition for Releases of Identifying information	$200.00
Petition to Confirm Consent	$50.00
Allowance, petition for and order	$50.00
Answer, filing of	$40.00
Appearance bond on attachment	$20.00
Appeal to Supreme or Superior Court, certificate of record and bond	$150.00
Assignment, filing of	$20.00
Attachment, petition and writ	$50.00
Auditor, order to	$25.00
Auditor's report, filing	$25.00
Award of real estate, certified copy	$20.00
Birth record, certified copy	$15.00
Delayed petition for (Act of 1941) and certified copy	$25.00
Certified copy (Act of 1941)	$15.00
Bond, refunding, filing of	$20.00
Certificate and Seal	$10.00
Citation	$15.00
Citation, petition for and order (including citation)	$65.00
Claim, filing of	$30.00
Declaratory Judgment, petition for	$50.00
Decree, certified copy of, per page (in addition to $20.00 for certificate)	$3.00
Deed, execution of	$75.00
Deed of Trust, filing of (in addition to $3.00 for recording per page)	$40.00
Discharge of executor or administrator, petition for	$50.00
Disclaimer	$30.00
Election to take under or against will, filing of	$40.00
Exceptions (filing of) or objections	$40.00
Exemplification of record per page	$3.00
Exemplification Certificate (under Act of Congress)	$50.00
Family Settlement	$150.00
Financial Statement, filing of and fiduciary qualification	$25.00
Guardian, filing petition for, and bond (for a minor)	$50.00
Inventory, filing, per page	$20.00
+3.00 each additional page	
Proof of deposit	$10.00
Guardian, petition for discharge, with account annexed	$50.00
Incapacitated person, filing petition for citation and bond (including citation and Emergency petitions)	$65.00
Emergency Guardianship, Filing of Extension Petition	$50.00
Inventory, filing, per page	$20.00
+3.00 each additional page	
Annual Reports	$25.00
Short Certificate	$10.00
Informal Settlement, notice of filing of,	$150.00
Injunction, order in nature of and bond filing	$25.00
Interrogatories	$25.00
Joinder, filing of	$20.00
Marriage License	$60.00
Consent of parent or guardian	$20.00
Decree of Court, filing (including affidavit)	$20.00
Application for marriage license, certified copy of Application for and dup. cert. of marriage lic., certified copy	$25.00
Application for and dup.cert. of marriage lic., exemp. copy of	$30.00
Interpreter's Affidavit	$20.00
Marriage Clearance Certificate	$50.00
Non-resident Affidavit of Marriage outside of Commonwealth of Pa	$30.00
Replacement License Fee	$30.00
Search Re: Divorce	$40.00
Special Services: By Order of Court Only.	
Application of Marriage License (outside office)(mileage IRS rate)	$125.00
Waiver	$25.00
Minor's certificate and oath	$20.00
Money paid into court:	
Commission 2% of every dollar under $1000.	
Commission 1% of every dollar exceeding $1000.	
Mortgage, filing petition for leave, etc. including one description and bond	$50.00
Each additional description	$15.00

Opinion, filing of	$30.00
Oral depositions, notice of taking	$30.00
Order to continue	$25.00
Order to pay, petition for and order	$50.00
Orphans' Court Computerization Fee	$15.00
Power of Attorney (first 4 pages)	$40.00
Each additional page	$3.00
Petition, filing of, for additional security or waiver of additional security	$50.00
Praecipe	$25.00
Presumed decedent, filing petition for and decree	$50.00
Purchase money, filing petition for and bond	$50.00
Receipt, filing	$10.00
Redating short certificates	$8.00
Release, filing of, per name	$10.00
Report of guardian and Trustee Ad Litem	$25.00
Rule, petition for, and order (same as citations)	$65.00
Renunciation	$15.00
Sale of Real Estate, filing petition and bond and Decree	$50.00
Each additional description	$10.00
Satisfaction of Award (if not in accord with Adjudication)	$20.00
Schedule of Distribution, filing	$40.00
Search and certificate	$40.00
Small Estates, distribution, filing petition for estates less than $25,000	$50.00
Special Short Certificate	$10.00
State Judicial Computer System Fee	$10.00
Stipulation, filing of	$25.00
Subpoena	$10.00
Trustee, filing petition for, and bond	$50.00
Trustee Short Certificate	$10.00
Family Exemption, filing claim for and recording (personal estate)	$30.00
Real estate, one description	$20.00
Each additional description	$10.00
Waiver of fiduciary commission	$20.00
Withdrawal of Petition	$25.00

Instruments not specifically listed will be charged at a rate comparable to this schedule for a like instrument, as determined by the Clerk of Orphans' Court Division.

[Pa.B. Doc. No. 07-236. Filed for public inspection February 16, 2007, 9:00 a.m.]

DELAWARE COUNTY

Fees of Register of Wills; No. 83-2007

Order

And Now, To Wit, this 31st day of January, 2007, in accordance with the provisions of Act 69 of December 3, 1993, upon the determination of the Register of Wills that these fees are fair and reasonable, the following Bill of Costs is established to become effective on March 19, 2007, to be chargeable to the parties and to the Estates for probating of Wills and Testaments, and for all services of the Register of Wills of this County, in the transaction of the business of his office.

By the Court

EDWARD J. ZETUSKY, Jr.,
President Judge

Administration

*For granting Letters Testamentary, Letters of Administration and Letters of Administration C.T.A., including filing, probating and recording of Will one page	
estate not exceeding $250	$23.00
Over $250 and not exceeding $ 1,000	$39.00
Over $1,000 and not exceeding $5,000	$55.00
Over $5,000 and not exceeding $10,000	$83.00
Over $10,000 and not exceeding $25,000	$138.00
Over $25,000 and not exceeding $50,000	$165.00
Over $50,000 and not exceeding $100,000	$198.00
Over $100,000 and not exceeding $200,000	$237.00
Over $200,000 and not exceeding $300,000	$275.00
Over $300,000 and not exceeding $ 400,000	$330.00
Over $400,000 and not exceeding $500,000	$400.00

Over $500,000 and not exceeding $600,000	$500.00
Over $600,000 and not exceeding $700,000	$600.00
Over $700,000 and not exceeding $800,000	$700.00
Over $800,000 and not exceeding $900,000	$800.00
Over $900,000 and not exceeding $1,000,000	$900.00
Each succeeding $100,000 or fraction thereof $125 additional	
For each additional page of Will	$3.00
* No probate accepted without death certificate	
Affidavit, filing of, in relation to debts, etc.	
In estates of non-resident decedents	$25.00
Short certificate, non-resident decedent	$10.00
Affidavit	$15.00
Answer, filing of	$40.00
Appeal, filing of	$50.00
Bond—Non-resident Executor's or Administrator's filing	$20.00
Caveat—filing and recording	$100.00
Bond, filing	$20.00
Withdrawal	$20.00
Certificate, short	$10.00
Redating short certificate	$8.00
Certificate, special short	$10.00
Certification under Act of Congress (Exemplification Cert.)	$50.00
Each additional page	$3.00
Certified copy of Will, Inventory and appraisement or account per page	
(In addition to $20.00 for certificate)	$3.00
Certifying record to Orphans' Court on appeal	$50.00
Citation, Petition for and order (including Citation)	$65.00
*Commission to take testimony of Executor or Administrator	$60.00
*Commission to take oath of witnesses	$60.00
Commission from Registers for witnesses, execution of	$30.00
Filing and Recording exemplified copies of Will, or of Letters of Administration, etc.,	
whether recorded or not	$50.00
Each page	$3.00
Hearing, to schedule	$100.00
Inheritance Tax Certification	$30.00
Inheritance Tax Return Fee	$20.00
Supplemental Filing	$15.00
Inventory, filing	$20.00
Each additional page or fraction of page	$3.00
Miscellaneous Estate—No letters granted, including statement of debts and deductions	$55.00
Name Search (per name)	$25.00
Non-appearing witness affidavit	$15.00
Order	$25.00
Petition and Order—including Letter Petitions	$50.00
Register of Wills Automation fee	$15.00
Renunciation, filing	$15.00
State judicial computer system fee	$10.00
Subpoena (Register of Wills)	$10.00
Supplemental Letters Testamentary	$90.00
Special Services: By Order of Court Only.	
Probate of Will (outside office) (mileage IRS rate)	$125.00
Affidavit of witness (mileage IRS rate)	$125.00
*Refers to Commissions sent to other counties	

Instruments not specifically listed will be charged at a rate comparable to this schedule for a like instrument, as determined by the Register of Wills

[Pa.B. Doc. No. 07-237. Filed for public inspection February 16, 2007, 9:00 a.m.]

LACKAWANNA COUNTY

Repeal and Adoption of Rules of Civil Procedure; No. 94 CV 102

Order

And Now, this 19th day of January, 2007, it is hereby *Ordered* and *Decreed* that the following Lackawanna County Rule of Civil Procedure is amended as follows:

1. Lacka. Co. R.C.P. 1301(a) is amended as reflected in the attached rule;

2. Pursuant to Pa.R.Civ.P 239(c), the following Local Rule shall be disseminated and published as follows:

(a) Seven certified copies of the Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two certified copies of the Local Rule and a computer diskette containing the text of the Local Rule in MS-DOS, ASCII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One certified copy of the Local Rule and a computer diskette containing the text of the Local Rule in MS-DOS, ASCII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be filed with the Civil Procedural Rules Committee which shall then forward a copy to the Administrative Office of the Pennsylvania Courts (AOPC) for publication on the AOPC web site;

(d) The Local Rule shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division and upon request and payment of reasonable costs of reproduction and/or mailing the Clerk of Judicial Records shall furnish to any person a copy of the requested Local Rule(s);

(e) A computer diskette containing text of the following Local Rule in either MS-DOS, ACSII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association;

(f) The Local Rule shall be published on the web site of the Lackawanna Bar Association (www.lackawanna bar.com) and the web site of the Administrative Office of the Pennsylvania Courts (http://ujsportal.pacourts.us/);

(g) The following amendment to Local Rule 1301(2) shall become effective thirty (30) days after the date of its publication in the *Pennsylvania Bulletin* as per Pa.R.Civ.P. 239(d).

By the Court

CHESTER T. HARHUT,
President Judge

Rule 1301. Arbitration

(a) All civil actions brought in the Court of Common Pleas of Lackawanna County in which the amount in controversy is **[$30,000.00] $50,000.00** or less shall first be submitted to arbitration and heard by a panel of three arbitrators selected from members of the bar of this court in accordance with the provisions of this rule, with the exception of:

(1) cases involving title to real estate; and

(2) cases which have been consolidated for trial with cases in which the amount in controversy exceeds **[$30,000.00] $50,000.00**.

[Pa.B. Doc. No. 07-238. Filed for public inspection February 16, 2007, 9:00 a.m.]

MONTGOMERY COUNTY

Amendments to Local Rules of Civil Procedure Governing Custody Mediation Orientation Program

Order

And Now, this 22nd day of January, 2007, the Court approves and adopts the following Amendments to the Montgomery County Local Rules of Civil Procedure Governing Custody Mediation Orientation Program. These Amendments shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

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

By the Court

RICHARD J. HODGSON,
President Judge

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

(a) Except as provided in (c) below, in an action for custody, partial custody or visitation, the parties shall attend a custody mediation orientation session prior to the scheduled Custody Conciliation Conference.

(b) . . .

(c) . . .

Rule *1940.4. Minimum Qualifications to be a Mediator Under Local Rule 1940.3.

(a) . . .

(b) . . .

(c) Custody mediators must maintain a Montgomery County office address for Court assignment purposes pursuant to these Rules.

[Pa.B. Doc. No. 07-239. Filed for public inspection February 16, 2007, 9:00 a.m.]

MONTGOMERY COUNTY

Bail Money Applied to Fines, Costs and Restitution; AD 15-07

Order

And Now, this 18th day of January, 2007, this Court's Administrative Order No. AD 302-2006, dated October 20, 2006, regarding "Bail Money Applied to Fines, Costs and Restitution" is hereby *Vacated*.

By the Court

RICHARD J. HODGSON,
President Judge

[Pa.B. Doc. No. 07-240. Filed for public inspection February 16, 2007, 9:00 a.m.]

WARREN AND FOREST COUNTIES

Local Rule of Juvenile Procedure; Dependency Matters; Rule 1167; No. 8 of 2007 Miscellaneous

Order

And Now, this 30th day of January, 2007, the Court approves and adopts the following Warren/Forest Local Rule of Juvenile Procedure—Dependency Matters—Rule 1167—Service of Court Orders and Notices. The Rule shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator of the 37th Judicial District is directed to:

1. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.

4. File one (1) copy with the Prothonotaries of the Court of the 37th Judicial District.

By the Court

WILLIAM F. MORGAN,
President Judge

Rule L1167. Service of Court Orders and Notices

All Orders and Court Notices in juvenile dependency matters which are filed with the Clerk of Courts, shall be served promptly by Forest-Warren Human Services (Children and Youth) in accordance with the requirements and methods set forth in Rule 1167 of the Pennsylvania Rules of Juvenile Court Procedure.

[Pa.B. Doc. No. 07-241. Filed for public inspection February 16, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Hearing

A Petition for Reinstatement to the active practice of law has been filed by M. Abraham Ahmad and will be the subject of a hearing on March 28, 2007 before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District I Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, PA 19103, (215) 560-6296, on or before March 16, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-242. Filed for public inspection February 16, 2007, 9:00 a.m.]
