

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

In Re: Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 333 Judicial Doc.

Order

Per Curiam:

And now, this 10th day of September, 2009 it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the attached Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2010.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No.103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL SYSTEM PROVISIONS

CHAPTER 29. MISCELLANEOUS PROVISIONS

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

CHAPTER 35. BUDGET AND FINANCE

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

PART IV. FINANCIAL MATTERS

CHAPTER 17. GOVERNANCE OF THE SYSTEM

CHAPTER 35. BUDGET AND FINANCE

Subchapter A. General Provisions

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of

common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, Philadelphia Municipal Court and Philadelphia Traffic Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4)(as amended).

42 Pa.C.S. § 1725.1. Costs.

(a) Civil cases.—**In calendar year 2010**, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less	\$46.00
(2) Actions involving more than \$500 but not more than \$2,000	\$61.00
(3) Actions involving more than \$2,000 but not more than \$4,000	\$76.50
(4) Actions involving more than \$4,000 but not more than \$8,000	\$114.50
(5) Landlord-tenant actions involving less than \$2,000	\$69.00
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000	\$84.00
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000	\$114.50
(8) Order of execution	\$34.50
(9) Objection to levy	\$15.50
(10) Reinstatement of complaint	\$8.00
(11) Entering Transcript on Appeal or Certiorari	\$4.00

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) Custody cases.—**In calendar year 2010**, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

(1) Custody cases, except as provided in section 1725(c)(2)(v)	\$7.00
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(b) Criminal cases.—**In calendar year 2010**, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases	\$43.50
(2) Summary conviction, motor vehicle cases, other than paragraph (3)	\$34.50
(3) Summary conviction, motor vehicle cases, hearing demanded	\$41.50

(4) Misdemeanor	\$50.00
(5) Felony	\$57.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) Unclassified costs or charges.—**In calendar year 2010**, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary	\$8.00
(2) Marrying each couple, making record thereof, and certificate to the parties	\$38.50
(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse)	\$15.50
(4) Issuing a search warrant (except as provided in subsection (d))	\$15.50
(5) Any other issuance not otherwise provided in this subsection	\$15.50

42 Pa.C.S. § 3571. **In calendar year 2010**, Commonwealth portion of fines, etc.

* * *

(2) Amounts payable to the Commonwealth:	
(i) Summary conviction, except motor vehicle cases	\$15.30
(ii) Summary conviction, motor vehicle cases other than subparagraph (iii)	\$15.30
(iii) Summary conviction, motor vehicle cases, hearing demanded	\$15.30
(iv) Misdemeanor	\$20.00
(v) Felony	\$30.70
(vi) Assumpsit or trespass involving:	
(A) \$500 or less	\$19.20
(B) More than \$500 but not more than \$2,000 ..	\$30.50
(C) More than \$2,000 but not more than \$4,000	\$45.90
(D) More than \$4,000 but not more than \$8,000	\$76.35
(vii) Landlord-tenant proceeding involving:	
(A) \$2,000 or less	\$30.70
(B) More than \$2,000 but not more than \$4,000	\$38.15
(C) More than \$4,000 but not more than \$8,000	\$53.45
(viii) Objection to levy	\$7.75
(ix) Order of execution	\$23.00
(x) Issuing a search warrant (except as provided in section 1725.1(d)(relating to costs)) ..	\$10.85
(xi) Order of possession	\$15.00
(xii) Custody cases (except as provided in section 1725(c)(2)(v))	\$5.60

[Pa.B. Doc. No. 09-1768. Filed for public inspection September 25, 2009, 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE 211]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) Doc. No. 332

Order

Per Curiam:

And now, this 10th day of September, 2009, it Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price index for calendar year 2008 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2008 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4)(as amended). See, No. 332 Judicial Administration Docket.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 2008 was .1% percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 26, 2009.)

[Pa.B. Doc. No. 09-1769. Filed for public inspection September 25, 2009, 9:00 a.m.]

Title 207—JUDICIAL DISCIPLINE

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 5]

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

Order

Per Curiam:

And Now, this 15th day of September, 2009, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rule of Procedure No. 502(D), as more specifically hereinafter set forth, *It Is Hereby Ordered:*

That the amendments to Rule 502(D) shall become effectively immediately.

STEWART L. KURTZ,
President Judge

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMER CHARGES

CHAPTER 5. TRIAL PROCEDURES

Rule 502. Trial. Stipulations of Fact. Conclusions of Law. Withdrawal of Complaints or Withdrawal of Counts.

* * * * *

D. Stipulations of Fact.

(1) In lieu of a trial, the parties may submit to the Court stipulations as to all facts necessary to a decision of the issues in the case. The stipulations shall be binding upon the parties and may be adopted by the Court as the facts of the case upon which a decision shall be rendered. When submitted, the stipulations shall be accompanied by a signed waiver of any right to trial granted under the Constitution and the Rules of this Court.

(2) The parties may submit stipulations as to issues of fact, but which do not resolve all relevant issues in the case. In this case, the parties shall be bound by the stipulations and the Court may adopt them and proceed to trial on all remaining factual issues.

(3) In the event the Court rejects stipulations submitted under subsection (1) or (2) above, the Court shall schedule a conference to determine whether the parties shall be afforded the opportunity to submit revised stipulations or whether the case should proceed to trial.

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[Pa.B. Doc. No. 09-1770. Filed for public inspection September 25, 2009, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1 AND 11]

In Re: Order Amending Rules 123 and 1123 of the Rules of Juvenile Court Procedure; No. 479; Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 16th day of September, 2009, upon the recommendation of the Juvenile Court Procedural Rules Committee and an Explanatory Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 123 and 1123 are approved in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

Rule 123. Subpoenas.

A. Contents. A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
2) order the witness to bring any items identified or described;
3) state on whose behalf the witness is being ordered to testify; and
4) state the identity, address, and phone number of the person who applied for the subpoena.

B. Service.

1) Method of Service. A subpoena shall be served upon a witness by:

- a) in-person delivery;
b) registered or certified mail, return receipt requested, or
c) by first-class mail.

2) Proof of Service. The following shall be prima facie evidence of service of the subpoena:

- a) A completed return receipt;
b) Hand signed receipt of personal delivery; or
c) Affidavit of in-person delivery signed by a process server.

C. Duration. A subpoena shall remain in force until the end of a proceeding.

D. Bench Warrant. If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

E. Parental notification.

1) Generally. If a witness is a minor, the witness's guardian shall be:

- a) notified that the minor has been subpoenaed; and
b) provided with a copy of the subpoena.

2) Exception. Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained ex parte.

Comment

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See In re Crawford, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishing juveniles for contempt.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

Official Note: Rule 123 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008. Amended May 12, 2008, effective immediately. **Amended September 16, 2009, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). **Final Report explaining the amendments to Rule 123 published with the Court's Order at 39 Pa.B. 5544 (September 26, 2009).**

Subpart B. DEPENDENCY MATTERS

Chapter 11. GENERAL

Rule 1123. Subpoenas.

A. **Contents.** A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested; or
- c) first-class mail.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

E. *Parental notification.*

1) *Generally.* If a witness is a minor, the witness's guardian shall be:

- a) notified that the minor has been subpoenaed; **and**
- b) **provided with a copy of the subpoena.**

2) *Exception.* Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

Comment

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

A *subpoena duces tecum* is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, *In re J.C.*, 412 Pa.Super. 369, 603 A.2d 627 (1992), and *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 1140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa. Super. 36, 519 A.2d 978 (1987) for punishment of contempt (children). See also *In re Griffin*, 456 Pa.Super. 440, 690 A.2d 1192 (1997) (foster parents), *Janet D. v. Carros*, 240 Pa.Super. 291, 362 A.2d 1060 (1976) (county agency), and *In re Rose*, 161 Pa.Super. 204, 54 A.2d 297 (1947) (parents) for additional guidance on contempt for other parties.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

Official Note: Rule 1123 adopted August, 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended March 19, 2009, effective June 1, 2009. **Amended September 16, 2009, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1123 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). **Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 5544 (September 26, 2009).**

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 123 & 1123. The changes are effective immediately.

Explanatory Report September 2009

Act 98 of 2008 amended § 6333 of the Juvenile Act requiring that parents receive copies of their children's subpoenas.

The amendments to these rules reflect this change in the Juvenile Act by requiring that the guardian be given a copy of the subpoena.

[Pa.B. Doc. No. 09-1771. Filed for public inspection September 25, 2009, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 16 AND 18]

In re: Order Amending Rules 1607 and 1800 of the Rules of Juvenile Court Procedure; No. 480; Supreme Court Rules; Doc.

Order

Per Curiam

And Now, this 16th day of September the proposal having been published for public comment before adoption at 39 Pa.B. 9 (January 3, 2009), in the Atlantic Reporter (Second Series Advance Sheets, Vol. 960, No. 2, January 9, 2009), and on the Supreme Court's web-page, and an *Explanatory Report* to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 1607 and 1800 are approved in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Annex A

TITLE 237. JUVENILE RULES

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B. PERMANENCY HEARING

Rule 1607. Regular Scheduling of Permanency Hearings.

A. *Thirty days.* The court shall conduct permanency hearings within thirty days of:

1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;

2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or

4) a motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. *Six months.* The court shall conduct a permanency hearing within six months of:

1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody, or other disposition pursuant to Rule 1515, whichever is earliest;

or 2) each previous permanency hearing until the child is [returned to the child's guardian or] removed from the jurisdiction of the court pursuant to Rule 1613.

Comment

See 42 Pa.C.S. § 6351(e)(3).

Paragraph (A) provides when permanency hearings are to be held within thirty days. If the requirements of paragraph (A) do not apply, the court is to hold a permanency hearing every six months in every case until the child is removed from the jurisdiction of the court pursuant to paragraph (B). This includes cases when the child is not removed from the home or the child was removed and subsequently returned to the guardian, but the child is under the court's supervision.

See Rule 1800(11).

Official Note: Rule 1607 adopted August[,] 21, 2006, effective February 1, 2007. Amended September 16, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1607 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1607 published with the Court's Order at 39 Pa.B. (September 23, 2009).

CHAPTER 18. SUSPENSIONS

Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

1) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rule 1124, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rules 1127(A) & 1242(B)(2), which requires all proceedings to be recorded, except for shelter care hearings.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.

4) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian *ad litem*.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers taking a child into custody.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the child to shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.

9) The Act of December 19, 1990, P. L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides that a copy of the petition is to accompany a summons, is suspended only insofar as the Act is inconsistent with Rule 1360, which provides that the summons is to include a copy of the petition unless the petition has been previously served.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6351(e)(3)(i)(B), which provides for permanency hearings within six months of each previous permanency hearing until the child is returned home or removed from the jurisdiction of the court, is suspended only insofar as the Act is inconsistent with Rule 1607, which requires permanency hearings in all cases until the child is removed from the jurisdiction of the court.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 1102.

Official Note: Rule 1800 adopted August [,] 21, 2006, effective February 1, 2007. **Amended September 16, 2009, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1800 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). **Final Report explaining the amendments to Rule 1800 published with the Court's Order at 39 Pa.B. (, 2009).**

Introduction

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1607 and 1800. The changes are effective immediately.

EXPLANATORY REPORT September 2009

It was brought to the Committee's attention that courts are not reviewing cases in which the child either was not removed from the home or the child was removed and subsequently returned to the guardian, but the dependency case has not been terminated pursuant to Rule 1613.

Although the Juvenile Act provides for hearings in these cases, some counties disputed whether they were required to conduct such hearings.

Section 6351(e)(3)(i)(B) provides that the court shall conduct permanency hearings within six months of each previous permanency hearing until the child is returned to the child's guardian or removed from the jurisdiction of the court. *See* 42 Pa.C.S. § 6351(e)(3)(i)(B).

The adopted modifications to Rule 1607 provides for permanency hearings every six months in every case. This change of language clearly sets forth the standard for hearings in all cases so it is not confusing to the court or practitioner. If a child is under the court's supervision and living at home, the court shall review those cases to determine whether the situation that brought the child under the court's supervision has been resolved, whether the goals of the permanency plan are being met, and whether supervision continues to be necessary.

It was never intended that the court could have children under its supervision and not review those cases. If the court does not need to supervise the case, then the case should be closed pursuant to Rule 1613.

When the child has been removed from the home, the court shall continue to conduct permanency hearings and make findings consistent with 42 Pa.C.S. § 6351(f) & (f.1).

To ensure compliance with this change, Rule 1800 (11) suspends the Juvenile Act only insofar as it is inconsistent with this rule change.

[Pa.B. Doc. No. 09-1772. Filed for public inspection September 25, 2009, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated August 6, 2009, under Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which they are assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective September 5, 2009, for Compliance Group 3 due December 31, 2008.

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

Allen, David Alexander
Oak Brook, IL

Bendall, Jennifer L.
Middletown, VA

Bishow, Lauren Estee
Los Angeles, CA

Bohn, Theodore R.
New York, NY

Bounds, Bruce M.
Miami, FL

Carter, Michelle Alicia
Troy, MI

Chernosky, David Joseph
Westlake, OH

Cindrich Jr., Frank John
Arlington, VA

Cohen, Philice Krevolin
Skillman, NJ

Console, Richard P.
Mount Laurel, NJ

D'Arrigo, Cristen Philip
Bridgeton, NJ

Daitz, Jeffrey Michael
River Edge, NJ

DeSumma, Shannon Dawn
Mount Laurel, NJ

Degnan, Philip J.
Pennsauken, NJ

Evans, Mechelle
Morristown, NJ

Gandhi, Samir R.
Metuchen, NJ

Gibson, Christopher R.
Haddonfield, NJ

Glason, Joyce E.
Saint Croix, Virgin Islands

Hally, Jennifer Leigh
Florham Park, NJ

Hauck, Bryan Glen
New Castle, DE

Healey, William Henry
Rumson, NJ

Hemming, Keith Robert
Newark, NJ

Holt, Jason
East Orange, NJ

Ivery, Nicole Thompson
Columbia, SC

Johnston, Nancy Babick
San Diego, CA

Latsko, John M.
Dublin, OH

Manesis, Dennis J.
Chicago, IL

Markey, Nancy Pennington
White Plains, NY

McKinley, Karen Marie
Washington, DC

Mitchell, Suzanne M.
Austin, TX

Moores, Elizabeth C.
Arlington, VA

Moubry, James Grant
Saint Louis, MO

Nappen, Evan Feit
Eatontown, NJ

Pacheco, Beatrice
Arlington, VA

Peery II, Gordon F.
Boston, MA

Quigley, Marissa Lenore
Princeton, NJ

Rich, Archie Leon
Washington, DC

Scott, Mark Edward
Alpharetta, GA

Suber, Elke Flores
Redmond, WA

Viggiano, Monica Michelle
Haddonfield, NJ

Walker, Stephen Mitchell
Chattanooga, TN

West Jr., Thomas C.
Washington, DC

White, Francine Monique
Marlton, NJ

Woods, Wendy Zoe
Arlington, VA

SUZANNE E. PRICE,
Attorney Registrar
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 09-1773. Filed for public inspection September 25, 2009, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Court; MsD No. 09-40249; Administrative Order of Court

Administrative Order of Court

And Now, this 9th day of September, 2009, it is hereby ordered and decreed that Local Rules of Court listed below pertaining to Family Court, adopted February 1, 2007 are hereby amended:

- L1915.4-1—Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to attend Conference.
- L1915.7—Custody Conciliation Conference Consents and Recommendations.
- L1915.10—Request for Pretrial Conference. Pretrial Conference. Decision.

These amendments are effective thirty days after publication of this notice and the within Amendments to Local Rules in the *Pennsylvania Bulletin*.

It is further ordered and directed new Local Rules L1915.11, L1915.18 and L1930.2 are hereby *Adopted*. These Local Rules shall be effective thirty days after publication of this notice and 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 the 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 Order of the *Butler County Legal Journal* for publication.
5. Forward one (1) copy of this Administrative Order and the 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

Explanatory Comment—2009 Amendments

Children's Fast Track Appeals

On January 13, 2009, the Supreme Court amended the appellate court rules, designating special procedures and compressed deadlines in appeals from any order involving dependency, termination of parental rights, adoptions, custody or paternity. Such appeals are now known as "children's fast track appeals."

As the term implies, children's fast track appeals are to be processed more quickly than other appeals. A comprehensive recitation of all of the shortened deadlines associated with children's fast track appeals is beyond the scope of this comment. However, one of the rule changes invites a local rule response, specifically, that the Certified Record is to be transmitted to the appellate court within 30 days after the appeal is filed, instead of the normal 60 days.

This change places a premium on rapid transcription of the trial testimony. Pa.R.A.P. 904(c) already requires that an Order for Transcript accompany the filing of the Appeal, and that the Order for Transcript be served on the court reporter by the appellant. Rule of Judicial Administration 5006 authorizes court reporters to require deposits towards the estimated cost of transcription, and specifically authorizes the adoption of local rules specifying the recipients of those deposits. Court reporters are authorized to retain completed transcripts until payment is fully made or adequate security for payment posted.

At this time, the court chooses to exercise its local rule making authority in an effort to abet the intention of the children's fast track appeal rule changes, to insure timely payment of transcription expenses in such cases, and to clarify for the bar the appropriate procedure to be followed when ordering transcripts for children's fast track appeals in Butler County.

The new appellate rules relating to children's fast track appeals apply to a variety of cases outside the context of existing local rules, such as dependency and termination of parental rights. Rather than set up additional rule sets for each type of matter affected, and separately amending each set of existing rules affected, the decision was made to add a single Local Rule 1930.2 which would have global effect in all matters affecting children, including those encompassed within the definition of children's fast track appeals.

Custody Rule Changes

For some years there has been a trend toward requiring courts to dispose of custody matters efficiently, albeit with due regard for the need to conduct a searching inquiry into the facts. One aspect of that inquiry which the court invariably finds helpful is the input of court appointed evaluators. The local rules adopted in 2006 attempted to insure that evaluator's reports would be available to the parties in time for the pretrial conference. This has not always occurred because the evaluators have not always been informed of the pretrial conference date in a timely fashion. A simple rule change requiring notice by the prothonotary, to the evaluator, of the date of the pre-trial conference addresses this problem. The prothonotary is also charged with sending the evaluator any order scheduling a custody trial.

Another "housekeeping" change involves requests for refunds of conciliator fees, when the parties settle prior to conciliation. Although refunds are not required by rule or law, they have been customarily granted as a matter of course; however, there comes a point in time when too long delayed refunds adversely affect budgeting considerations within the judicial system and related considerations within the county budget office. Therefore, the court elects to impose a time limit within which a party seeking a refund of the conciliator's fees must apply for that refund.

A new rule provides that if the moving party to a custody action fails to appear at a conciliation conference, the conciliator will so report, and the action will be dismissed of record.

Another new rule clarifies the court's ability to require deposits from time to time to insure that guardian's *ad litem* are paid in a timely fashion and without the necessity for collection procedures.

The conciliator's office and the court have received questions from custody evaluators concerning fee arrangements for in-court testimony, refunds or partial refunds when the case settles before the testimony is given, and the availability of the evaluators to counsel for the parties, both during the evaluations and between the release of the evaluator's report and trial. The court is somewhat reluctant to address such matters by hard and fast rules, as the circumstances often vary significantly from case to case, and different evaluators have different preferences. However, certain principles do apply.

Counsel should not initiate contact with an evaluator after the evaluation is ordered for any purpose which could be construed as attempting to influence the course

or outcome of the evaluation. Any such contact should be reported to the conciliator's office, and by the conciliator to the court.

Evaluators should provide the conciliator's office with a schedule of fees for the evaluation and for trial testimony. Such fees should provide a daily rate and a half day rate and the time, prior to trial, by which payment will be required to secure the evaluator's availability in court. Both the daily rate and half day rate should include time for a 1 hour telephone or in-person preparation session with counsel who will be a proponent of the evaluator's report at trial. The cost of additional preparation time, if needed, is a contractual matter between the evaluator and counsel. Advance preparation of the evaluator's direct testimony does assist the court by insuring a well thought out presentation. The evaluator's cancellation and refund policies should also be stated in the fee schedule provided to the conciliator's office.

Although the amended rules insure that the evaluator will be notified by the prothonotary of the scheduling of a trial, it remains the responsibility of the party advocating on behalf of the report to arrange for the evaluator's testimony at trial at the earliest possible date. The evaluator is not expected to assume, merely because he/she is notified of a trial date that his/her expert testimony will be required.

The evaluator is not obligated to discuss the case with the party or counsel who will not be advocating on behalf of the report at trial; however, the evaluator may elect to do so at least 10 days before trial, for a fee to be agreed between the evaluator and the non-advocating party. In such event, the evaluator should promptly provide an oral summary of said conference to counsel for the party (or the party, if unrepresented) advocating on behalf of the report, at no additional charge to that party. If the evaluator does not agree to speak with the party or attorney opposing the evaluator's report, or refuses to read correspondence from either of them, such refusal will not support an inference that the evaluator is biased against such party or is uncertain of his/her conclusions and opinions.

Finally, while it is legal to secure the attendance of any witness, including an evaluator, through the compulsion of a subpoena, to do so is essentially fruitless in terms of compelling the witness to testify to the conclusions and opinions set forth in the report. The witness can only be required to state legally admissible facts—his/her expert opinions cannot be compelled. Accordingly, potential payment problems should be addressed frankly and in advance with the evaluator so that, if possible, arrangements can be made to secure his/her expert testimony at trial. Counsel is encouraged to extend the professional courtesy of granting as much time as possible to the evaluator to ensure that the evaluator's schedule can be set to allow for testimony before the court. It remains within the discretion of the trial court to determine if sufficient notice has been provided to the evaluator to permit appearance at trial.

L1915.4-1. Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to Attend Conference.

(a) Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. General continuances will not be granted. A date certain for the rescheduled conference will be included in every order continuing a conciliation conference. For a request for a continuance

to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

(b) Except in the case of a documented medical emergency, or upon consent of both parties, motions to continue, cancel or withdraw a custody conciliation conference must be presented at least 10 days prior to the scheduled conciliation.

(c) If the case is withdrawn from the conciliators consideration prior to any conciliation conference occurring, and the party paying the initial conciliators fee seeks a refund thereof, he/she shall present a motion requesting a refund not later than 10 days after the last scheduled conciliation conference.*

(d) If the party seeking the imposition of an initial custody order, or the modification of a custody order already in existence, i.e. the moving party, fails to appear at a scheduled custody conference, the court will dismiss the case, and the conciliator's fee will not be refunded.

Comment: Requests for refund presented more than 10 days after the conciliation conference will not be granted. The intent of this rule is to process refunds in a timely manner consistent with budgeting and accounting needs of the judicial system and the county.

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

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

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.

alcohol evaluations, counseling, and education seminars be undertaken, as well as equitable division of the fees for same. In order to ensure 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). A non-paying or non-participating party shall 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.

(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 ordinarily⁶ 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*. A copy of the order scheduling the pre-trial conference shall be mailed to the custody evaluator by the prothonotary, to insure that the evaluator's report is available to counsel for the parties at least 15 days prior to the pre-trial conference.*

(f) At the request of either party, the report under subsection (d) 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

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.

Comment: The 2006 rule is restated here in its entirety. The only change effected by the 2009 amendment is the addition of the language in bold print added to subsection (e).

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 served 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:

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:

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.

- (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.

(e) The Court will enter an order scheduling a trial if the case is not resolved at the Pre-trial Conference. The prothonotary shall mail a copy of the trial scheduling order to the evaluator appointed in the case.*

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

Comment: The 2006 rule is restated here in its entirety. The only change effected by the 2009 amendment is the addition of the language in bold print added as subsection (e).

L1915.11. Fees for Guardian *ad litem*.

(a) If the court imposes the cost of a guardian *ad litem* against one or both of the parties, the court shall specify an amount the responsible part(ies) shall pay to the prothonotary as a deposit to cover the anticipated cost of the guardian's initial investigation of the case. The court shall also specify the time within which such deposit is due. A guardian *ad litem* may from time to time request additional deposits by motion, presented in motions court.

L1915.18. Custody Evaluator's Fee Schedules and Communication Restrictions.

Every court appointed custody evaluator shall maintain with the Butler County conciliator's office a fee schedule for in-court testimony, indicating at least ½ day and full day fees. The evaluator's advance deposit requirements and cancellation/refund policies shall also be clearly stated. Such fee schedule and policies may be amended from time to time at the discretion of the evaluator.

Both before and after the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to any substantive issues, without the consent or direct participation of counsel for the other party. This prohibition shall not prevent the evaluator from communicating with counsel for the purpose of preparing to present the evaluator's in-court testimony in support of the evaluator's report.

L1930.2. Procedure for Fast Track Appeals.

Each party filing a children's fast track appeal as defined in Pa.R.A.P. 102 shall:

- (A) Attach an Order for Transcript to the Notice of Appeal; and
- (B) Serve a copy of the Order for Transcript on the court reporter(s) involved; and

(C) Within 3 days after written notice from the court reporter of the estimated cost of transcript preparation, post with the court reporter one half of the estimated cost, unless proceeding *in forma pauperis*; and

(D) Within 3 days after written notice from the court reporter that the transcript has been completed, pay to the court reporter the full amount due for the costs of preparation, or post security for payment in a form and amount approved by the court, unless proceeding *in forma pauperis*.

Upon payment of all costs for preparation of the transcript (except in *in forma pauperis* cases), the court reporter shall immediately file the transcript of testimony. In *in forma pauperis* cases the transcript shall be filed immediately upon its completion.

When cross-appeals are filed in children's fast track appeal cases, the court may allocate the transcript preparation costs between the parties, upon Motion of the first appellant; however, the first appellant shall remain fully responsible to timely pay all transcription costs unless and until a ruling by the court allocates (or retroactively reallocates) such costs between the parties.

[Pa.B. Doc. No. 09-1774. Filed for public inspection September 25, 2009, 9:00 a.m.]

CHESTER COUNTY

In Re: Partial Payment Processing Fee for Summary Cases Filed in the Magisterial District Courts of the Fifteenth Judicial District; No. 5-2009

Administrative Order

And Now, this 9th day of September, 2009, it is Ordered, pursuant to the provisions of 42 Pa.C.S. § 1725.1(c)(5), relating to unclassified costs, a fifteen dollars and fifty cents (\$15.50) partial payment processing fee to cover administrative costs related to such processing, is hereby imposed for all summary cases within the Magisterial District Courts of the Fifteenth Judicial District when the defendant in the summary case requests and is permitted to make installment payments as provided in Pa.R.Crim.P. 409(C)(5), 414(C)(5), 424(C)(5), 454(F)(1) and 456(C)(3)(a).

It is Further Ordered that the assessed fee shall increase annually based upon the increase of the Consumer Price Index as provided for in Act 113 of 2001 which renews and extends authorization for annual court costs and fee increases and was first provided for by Act 167 of 1992. The fee shall be rounded to the next fifty cents (\$.50) for purposes of accounting and operational efficiency.

This Order shall take effect thirty (30) days after its publication in the *Pennsylvania Bulletin* and shall apply to all installment payment plans issued on or after the effective date.

It is Further Ordered that:

One (1) certified copy of this Order shall be filed by the Court Administrator of Chester County with the Administrative Office of Pennsylvania Courts;

Two (2) certified copies and a computer diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

And a copy shall be posted on the Unified Judicial System's web site.

By the Court

PAULA FRANCISCO OTT,
President Judge

[Pa.B. Doc. No. 09-1775. Filed for public inspection September 25, 2009, 9:00 a.m.]

ERIE COUNTY

In the Matter of the Revision and Restatement of the Erie County Orphans' Court Rules

Motion

And Now, this 18th day of August, 2009, comes the Orphans' Court Rules Committee of the Erie County Bar Association, by and through its Chairperson, Raymond A. Pagliari, Esq., and hereby moves this Honorable Court to approve, adopt and promulgate the attached proposed and recommended revisions and amendments to the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania.

Respectfully Submitted,

RAYMOND A. PAGLIARI Jr., ESQ.,
Chairperson

Order

And Now, this 20th day of August, 2009, upon consideration of the foregoing Motion, it is hereby *Ordered, Adjudged and Decreed*, that the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania are hereby Amended and Revised in accordance with the annexed Motion.

Amended Rules are: Rules 6.10.1(g) and 6.14.

New Rule is: Rule 5.6.2.

Petitioner shall take all steps necessary to publish these amendments in accordance with the applicable law. Such amendments shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

ELIZABETH K. KELLY,
President Judge

RULE 6

ACCOUNTS AND DISTRIBUTIONS

6.10.1 Objections to Account, Audit Statement or Statement of Proposed Distribution. Form, Notice and Time.

(g) Within twenty days of filing an objection, the objecting party or his/her attorney shall schedule a hearing thereon pursuant to Erie L.R. 304 allowing ample time for the objection to be heard. The accountant or his/her attorney may (but is not required to) schedule a hearing during the same period pursuant to the same procedure. The party scheduling the hearing shall notify all other parties and the Orphans' Court Auditor of the date and time thereof. Upon the failure of the objecting party or his/her attorney to schedule a hearing within the required time period and in the absence of the scheduling of a hearing by the accountant or his/her attorney within that same period then the accountant (or the court) may (after issuance of "Notice of Default By Reason of Failure to Schedule Hearing" and service thereof by delivery or

mail upon the objecting party or his/her attorney not less than ten days prior) file a praecipe (or an order if the notice was issued by the Court or at its direction) with the Clerk of the Orphans' Court to enter judgment of non pros if a hearing has not been scheduled during the ten-day period allowed in the Notice. Upon the entry of such judgment the audit of the account shall proceed as if the objection had not been filed. The Notice shall conform to that provided under Pa.R.C.P. Rule 237.1 except that the phrase "...you have failed to schedule a hearing upon your objection..." shall be substituted for the phrase "...you have failed to file a complaint..." and the heading for the said notice shall be as stated above. The Court's Auditor may periodically identify accounts for which objections have been filed and no hearing scheduled to the Court and send the Notice if so directed by the Court.

6.14 Receipts for Disbursements.

Disbursement receipts or canceled checks of one thousand dollars (\$1,000.00), or more, or reproduced copies of either, shall be presented with the account; except corporate fiduciaries in lieu thereof may file copies of their ledger sheets showing disbursements. In the case of inheritance taxes, bequests and distributive shares, all receipts or canceled checks or reproduced copies of either shall be filed with the account without regard to the amount thereof.

If counsel for the fiduciary certifies that a receipt or cancelled check executed by the distributee is not available despite good faith efforts to obtain same, a photocopy of the front of the check accompanied by evidence of payment by the bank shall be acceptable or alternative verification at the discretion of the Orphans' Court Auditor.

With respect to deposits, expenses, purchases, and sales made through an investment account with a broker, insurance company, trust company, or similar entity, a copy of the periodic statements furnished by said entity shall constitute an acceptable evidence of such transactions.

RULE 5

NOTICE

5.6.2 Procedures for Scheduling Hearings Upon Objections to Accounts and Dismissal of Objections for Which No Hearing is Scheduled.

In the event that a decedent had attained the age of fifty-five (55) years prior to his death, the Personal Representative shall, not later than the last date for service of notice required pursuant to State Rule 5.6, serve notice upon the Department of Public Welfare pursuant to 55 Pa. Code Chapter 258 "Medical Assistance Estate Recovery" in accordance with the requirements of the Code. Not later than ten days after the expiration of the period for response under the regulations, the Fiduciary shall file a Certificate of Service setting forth:

- (a) The content of the notice by a copy thereof;
- (b) The method of service;
- (c) The date of service;
- (d) A copy of any response received; or
- (e) A statement of no response.

[Pa.B. Doc. No. 09-1776. Filed for public inspection September 25, 2009, 9:00 a.m.]