

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 1000]

In Re: Amendment of Rules 205.4 and 1007 and Adoption of Rule 205.5 of the Rules of Civil Procedure; No. 521; Civil Procedural Rules

Order

Per Curiam:

And Now, this 25th day of February, 2010, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been submitted without publication as the amendments are required in the interest of efficient administration, pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.C.P. Nos. 205.4 and 1007 are amended and Pa.R.C.P. No. 205.5 is adopted as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the changes adopted herein shall be effective in ninety days.

PATRICIA NICOLA,
Chief Clerk
Supreme Court of Pennsylvania

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 205.4. Electronic Filing and Service of Legal Papers.

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(h) A judicial district which implements an electronic filing system pursuant to this rule is exempt from the requirements of Rule 205.5 governing cover sheets, provided the electronic filing system has the capability of gathering and transmitting to the Administrative Office of Pennsylvania Courts all the information required by Rule 205.5(e).

Rule 205.5. Cover Sheet.

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

(i) actions pursuant to the Protection from Abuse Act, Rules 1901 *et seq.*

(ii) actions for support, Rules 1910.1 *et seq.*

(iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 *et seq.*

(iv) actions for divorce or annulment of marriage, Rules 1920.1 *et seq.*

(v) actions in domestic relations generally, including paternity actions, Rules 1930.1 *et seq.*

(vi) voluntary mediation in custody actions, Rules 1940.1 *et seq.*

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

Official Note: When a defendant in an action before a magisterial district court appeals the decision to the court of common pleas, the plaintiff in the action before the magisterial district court shall complete the cover sheet when filing the complaint with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

Official Note: Pa.R.C.P. No. 205.4 provides for electronic filing and service of legal papers. Rule 205.4(h) permits a judicial district which has implemented an electronic filing system to be exempt from the requirements of this rule provided that the information to be gathered by the cover sheet can be captured and transmitted to the Administrative Office of Pennsylvania Courts by the electronic filing system.

Pa.R.C.P. No. 239.9 provides for the promulgation of a local rule, numbered Local Rule 205.4, governing procedures for electronic filing specific to a judicial district.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the web site of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

Official Note: Cover sheets developed by a judicial district may be used in addition to the cover sheet required by this rule. See Rule 239.1, which requires a court that uses local cover sheets to promulgate a local rule, numbered Local Rule 205.2(b), setting forth the form of cover sheet, and Rule 239.8 for the requirements for adopting Local Rule 205.2(b).

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

VENUE AND PROCESS

Rule 1007. Commencement of Action.

An action may be commenced by filing with the prothonotary

(1) a praecipe for a writ of summons, **or**

(2) a complaint.

Official Note: For the form of the writ of summons, see Rule 1351, *infra*.

See Rule 205.5 governing the requirement for filing a cover sheet with the pleading commencing the action.

[Pa.B. Doc. No. 10-434. Filed for public inspection March 12, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

In Re: Amendment of Rule of Criminal Procedure
122; No. 388; Criminal Procedural Rules

Order

Per Curiam:

And Now, this 26th day of February, 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration 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 the *Comment* to Rule 122 of the Pennsylvania Rules of Criminal Procedure is revised as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2010.

PATRICIA NICOLA,
Chief Clerk
Supreme Court of Pennsylvania

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART B. Counsel

Rule 122. Appointment of Counsel.

* * * * *

Comment

* * * * *

In court cases, paragraph (A)(2) requires counsel to be appointed at least in time to represent the defendant at the preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the *Coleman* requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings that would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been appointed prior to the preliminary hearing stage of the proceedings[;], e.g., counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for appointed counsel. In such cases it is expected that the defendant's right to appointed counsel will be effectuated at the earliest appropriate time.

An attorney may not be appointed to represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

Paragraph (A)(3) retains in the issuing authority or judge the power to appoint counsel regardless of indigency or other factors when, in the issuing authority's or the judge's opinion, the interests of justice require it.

Pursuant to paragraph (B)(2), counsel retains his or her appointment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 573 Pa. 375, 825 A.2d 630 ([Pa.] 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

See *Commonwealth v. Alberta*, 601 Pa. 473, 974 A.2d 1158 (2009), in which the Court stated that “[a]ppointed counsel who has complied with *Anders* [*v. California*, 386 U.S. 738 (1967),] and is permitted to withdraw discharges the direct appeal obligations of counsel. Once counsel is granted leave to withdraw per *Anders*, a necessary consequence of that decision is that the right to appointed counsel is at an end.”

For suspension of Acts of Assembly, see Rule 1101.

Official Note: Rule 318 adopted November 29, 1972, effective 10 days hence, replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004; *Comment* revised March 26, 2004, effective July 1, 2004; *Comment* revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 1, 2005; **Comment revised February 26, 2010, effective April 1, 2010.**

Committee Explanatory Reports

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 12, 2004 editorial amendment to paragraph (C)(3), and the *Comment* revision concerning duration of counsel's obligation, published with the Court's Order at 34 Pa.B. 1671, 1672 (March 27, 2004).

Final Report explaining the March 26, 2004 *Comment* revision concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1929, 1931 (April 10, 2004).

Final Report explaining the April 28, 2005 changes concerning the contents of the appointment order published with the Court's Order at 35 Pa.B. 2855, 2859 (May 14, 2005).

Final Report explaining the February 26, 2010 revision of the Comment adding a citation to Commonwealth v. Alberta published at 40 Pa.B. 1396, 1397 (March 13, 2010).

FINAL REPORT¹

Revision of the Comment to Pa.R.Crim.P. 122

**WITHDRAWAL OF COUNSEL:
COMMONWEALTH v. ALBERTA**

On February 26, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the *Comment* to Rule of Criminal Procedure 122 (Assignment of Counsel) to add a citation to *Commonwealth v. Alberta*, 601 Pa. 473, 974 A.2d 1158 (2009).

The Committee under took a review of *Commonwealth v. Alberta*, *supra*, at the request of the Court. The Court asked the Committee to consider “amending Rule 122 to clarify that during the course of a direct appeal, once counsel has been permitted to withdraw pursuant to *Anders*, a defendant is not entitled to the appointment of subsequent counsel.”

The Committee discussed two approaches—amending the text of Rule 122 or revising the Rule 122 *Comment*. The Committee was concerned that an amendment to the text of the rule adding procedures related to withdrawal of counsel pursuant to *Anders* could lead to confusion about the extent of the application of *Alberta* to post-conviction collateral and appellate proceedings. Ultimately, the Committee concluded the best approach would be to add a citation to *Alberta* to the Rule 122 *Comment*. Accordingly, the Rule 122 *Comment* has been revised by adding the citation to *Alberta* and a quotation from the holding explaining that “appointed counsel who has complied with *Anders* and is permitted to withdraw discharges the direct appeal obligations of counsel. Once counsel is granted leave to withdraw per *Anders*, a necessary consequence of that decision is that the right to appointed counsel is at an end.” The new *Comment* provision also includes a citation to *Anders v. California*, 386 U.S. 738 (1967) because *Anders* is not cited anywhere else in Rule 122.

[Pa.B. Doc. No. 10-435. Filed for public inspection March 12, 2010, 9:00 a.m.]

[234 PA. CODE CHS. 2 AND 5]

In Re: Amendment of Rules of Criminal Procedure 202 and 507; No. 387; Criminal Procedural Rules

Order

Per Curiam:

And Now, this 26th day of February, 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration and a Final Report to be published with this *Order*:

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*.

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendment to Rule of Criminal Procedure 507 and the revisions of the *Comments* to Rules of Criminal Procedure 202 and 507 are approved as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2010.

JOHN A. VASKOV,
Deputy Prothonotary

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 202. Approval of Search Warrant Applications by Attorney for the Commonwealth—Local Option.

* * * * *

Comment

For reasons set forth in the *Comment* to Rule 507, this rule authorizes the adoption and withdrawal of the prior approval requirement on a local option basis.

Other principles and comments concerning this rule, including the intended meaning of “attorney for the Commonwealth,” **and the use of advanced communication technology or other electronic methods to convey the approval of the search warrant application**, are set forth in the Rule 507 *Comment*.

Official Note: Rule 2002A adopted December 11, 1981, effective July 1, 1982; amended August 9, 1994, effective January 1, 1995; renumbered Rule 202 and amended March 1, 2000, effective April 1, 2001; **Comment revised February 26, 2010, effective April 1, 2010.**

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6, 18 (January 4, 1992); Final Report published with the Court’s Order at 24 Pa.B. 4325, 4342 (August 27, 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 February 26, 2010 Comment revision regarding electronic approval published with the Court’s Order at 40 Pa.B. 1397, 1398, (March 13, 2010).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

Rule 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

* * * * *

(C) If an attorney for the Commonwealth disapproves a police complaint, arrest warrant affidavit, or both, the attorney shall furnish to the police officer who prepared the complaint, affidavit, or both a written notice of the disapproval, in substantially the following form, and the attorney shall maintain a record of the written notice.

D.A. File Number _____

COMMONWEALTH OF PENNSYLVANIA
COUNTY

NOTICE AND RECORD OF DISAPPROVAL

Commonwealth of Pennsylvania vs. Complaint/Affidavit/ Application of:

vs.

Charge: Police Number: Police Department: Occurrence Date: Time: Location:

SUMMARY OF FACTS AND PROBABLE CAUSE

[PCIC] CLEAN/NCIC check reveals no outstanding warrants.

Date: Source of Information:

REASON(S) FOR DISAPPROVAL (Please check appropriate reason)

- IC= Insufficient Corroboration, IE= Insufficient Evidence, II= Identification Inconclusive, IJ= Interest of Justice, IS= Inadmissible Evidence, IP= Insufficient Probable Cause, LP= Lacks Prosecutorial Merit, UW= Unavailable or Uncooperative Witness, LJ= Lacks Jurisdiction, UV= Unavailable or Uncooperative Victim, WC= Witness Credibility/Contradicted, ID= Inadequate Description of Persons, Premises, or Property, NS= Insufficient Cause for Nighttime Search

Other:

DISAPPROVED BY: ATTORNEY FOR COMMONWEALTH DATE:

(D) No defendant shall have the right to relief based solely upon a violation of this rule.

Comment

This rule gives the district attorney of each county the option of requiring that criminal complaints and/or arrest warrant affidavits filed in that county by police officers, as defined in Rule 103, shall have the prior approval of an attorney for the Commonwealth. Under the rule, the district attorney may elect to require prior approval of police complaints, or arrest warrant affidavits (see Rule 513), or both. In addition, the district attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the district attorney may specify that prior approval will be required only if a felony is charged, or that prior approval will be required for all cases [;], i.e., whenever a misdemeanor or felony is charged.

* * * * *

As used in this rule, "attorney for the Commonwealth" is intended to include not only the district attorney and any deputy or assistant district attorney in the county, but also the Attorney General, and any deputy or assistant attorney general, in those cases which the Attorney General is authorized by law to prosecute in the county.

Nothing in this rule is intended to preclude the use of advanced communication technology or other electronic methods to convey the approval of the complaint or affidavit by the attorney for the Commonwealth to the police officer acting as affiant.

See Rule 202 for a similar option as to search warrant applications.

See Rule 544 for the procedures requiring the written approval of the attorney for the Commonwealth for the refiling of a complaint.

Official Note: Rule 101A adopted December 11, 1981, effective July 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 107 and amended August 9, 1994, effective January 1, 1995; Comment revised October 8, 1999, effective January 1, 2000; renumbered Rule 507 and amended March 1, 2000, effective April 1, 2001; Comment revised February 26, 2010, effective April 1, 2010.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4325, 4342 (August 27, 1994).

Final Report concerning the October 8, 1999 Comment revision published with the Court's Order at 29 Pa.B. 5505, 5509 (October [8] 23, 1999).

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 26, 2010 Comment revision regarding electronic approval published with the Court's Order at 40 Pa.B. 1397, 1398 (March 13, 2010).

FINAL REPORT¹

Revisions to the Comments to Pa.Rs.Crim.P. 202 and 507

ELECTRONIC APPROVAL OF SEARCH WARRANT AFFIDAVITS AND COMPLAINTS BY THE ATTORNEY FOR THE COMMONWEALTH

On February 26, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revisions to the Comments to Rules of Criminal Procedure 202 (Approval of Search Warrant Applications by Attorney for the Commonwealth—Local Option) and 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) clarifying that an attorney for the Commonwealth is not precluded from providing approval of search warrant applications, complaints, and arrest warrant affidavits electronically.

These changes were the result of a question presented to the Committee by the Pennsylvania District Attorney's

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.

Association. Specifically, they asked whether, under Rule 507, an attorney for the Commonwealth's approval for the filing of a criminal complaint could be done electronically and, if not, they asked that the rule be changed to permit the practice.

Rule 507 provides that, on a county-by-county basis, a district attorney may require that the police obtain the approval of an attorney for the Commonwealth before filing criminal complaints, arrest warrant affidavits, or both. Rule 507 requires the creation of a local rule to effectuate this procedure.

Although not explicitly required in the rule, the current practice is for that approval to be documented by the attorney for the Commonwealth signing the complaint. The current complaint form maintained by the AOPC effectuates this practice by referencing the Rule 507 approval option and providing a space for an approval signature.

The Committee concluded that permitting this approval to be provided electronically is an efficient use of resources and not inconsistent with the intention of the rules. For example, the rules authorize electronic signatures on legal documents generated by the court so it seems reasonable that the attorney for the Commonwealth's signature approving a complaint similarly could be electronically generated.²

The Committee also has learned that some counties currently permit the approval process to be done electronically, with no noted problems. Additionally, the AOPC has been working with the Pennsylvania State Police and several jurisdictions, including Allegheny County, on the creation of a system for the electronic preparation and transmission of criminal complaints. When this system is put in place, attorney for the Commonwealth approval by electronic signature will be a necessary component.

Therefore, the Committee developed a revision to the *Comment* to Rule 507 to provide that nothing under the rule precludes an attorney for the Commonwealth from using advanced communication technology³ or other electronic methods to convey the approval of the complaint to the affiant.

In developing this proposal, the Committee also determined that the concept underlying the proposed revision to the Rule 507 *Comment* is equally applicable to Rule 202 that provides for local approval procedures for search warrant applications similar to the Rule 507 local approval procedures for complaints. Therefore, a comparable provision has been added to the Rule 202 *Comment*.

Finally, there is also a minor change to the form portion of Rule 507, replacing the abbreviation "PCIC" with the more current "CLEAN" which is the abbreviation preferred by the Pennsylvania State Police to reference to the Commonwealth Law Enforcement Assistance Network utilized to conduct criminal history checks.

[Pa.B. Doc. No. 10-436. Filed for public inspection March 12, 2010, 9:00 a.m.]

² Rule 103 provides the following definition of "Signature":

SIGNATURE, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules.

³ Rule 103 defines "advanced communications technology" as:

ADVANCE COMMUNICATIONS TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

In Re: Civil Rules of the Court of Common Pleas; Rules Doc. No. 1 of 2010

Order of Court

And Now, to-wit, this 25th day of February, 2010, It Is Hereby Adjudged, Ordered and Decreed that the following Rule of the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division, adopted by the Board of Judges on January 28, 2010, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Civil Procedure Rule 1915.17 Appointment of Parenting Coordinator

By the Court

DONNA JO McDANIEL,
President Judge

1915.17. Appointment of Parenting Coordinator.

(a) In cases involving repeated or intractable conflict affecting implementation of a Final Custody Agreement, Parenting Plan or Order, concerning custodial parenting time or responsibility, the Court may, on the application of either party or its own motion, appoint a Parenting Coordinator to assist the parties in implementing the custodial arrangement set forth in the Custody Agreement/Parenting Plan/Order and in resolving related parenting issues about which they do not agree. Appointment of a Parenting Coordinator shall occur when the Court concludes that such action serves the best interests of the child(ren).

(b) The Parenting Coordinator shall discuss relevant parenting issues with both parties and other persons as needed, and shall attempt to facilitate a mutually accepted resolution.

(c) If the parties are unable to resolve the issue(s), the Parenting Coordinator is authorized (but is not required) to decide the issue.

(d) The Parenting Coordinator has authority to decide issues concerning partial physical custody and visitation to the extent set forth in the Custody Agreement/Parenting Plan/Order appointing the Parenting Coordinator. The following specific issues are excluded from the Parenting Coordinator's function and decision-making authority:

(1) A change in legal custody decision-making authority set forth in the Custody Agreement/Parenting Plan/Order;

(2) A change in primary physical custody (residential parenting time) as set forth in the Custody Agreement/Parenting Plan/Order;

(3) A change in the court-ordered custody schedule (parenting time) that substantially reduces or expands the child(ren)'s time with one or both parties;

(4) A change in the geographic residence of the child(ren)'s (relocation) that would render implementation of the current Custody Agreement/Parenting Plan/Order impossible or impracticable;

(5) Determination of financial issues, other than allocation of the Parenting Coordinator’s fees.

The Parties may mutually agree in writing to submit any of the excluded issues set forth above to the Parenting Coordinator for facilitation and recommendation which recommendation shall only become binding upon written agreement of the parties.

(e) The Parenting Coordinator shall be either:

(1) a licensed mental health professional with a master’s degree (or equivalent or higher degree) who has practiced at least 5 years; or

(2) a licensed attorney practicing family law for at least 5 years.

(f) The Parenting Coordinator’s qualifications shall include, at a minimum:

(1) Training or experience in family dynamics, childhood development, custody, separation and divorce; and

(2) Training in the parenting coordination process and family law as established by the Pennsylvania Supreme Court; and

(3) Forty hours of mediation training under Pa.R.Civ. P. § 1940.4, excluding mediation supervision under Pa.R. Civ.P. § 1940.4(a)(4); and

(4) Training in the dynamics of domestic violence; and

(5) Completion of at least ten continuing education credits in any topic related to Parenting Coordination in each two year period.

(g) Protocols for the Parenting Coordination process shall be set forth in the Order appointing the Parenting Coordinator and/or by separate agreement between the parties and Parenting Coordinator.

In cases where abuse (as defined under 23 Pa.C.S. § 6102) is alleged, the protocols should include measures for the safety and protection of the participants, unless the Court deems the measures unnecessary.

(h) A Court-appointed Parenting Coordinator is an officer of the Court, and has quasi-judicial immunity.

(i) Communications with the Parenting Coordinator are not confidential.

(j) The Parenting Coordinator’s decisions may be provided to the parties verbally, but shall be communicated in writing as soon as practicable and filed in the prothonotary’s office at the parties’ custody docket.

(k) Decisions made by the Parenting Coordinator shall be binding upon the parties pending further Order of Court.

(l) Any party seeking judicial review of the Parenting Coordinator’s Decision must file a Petition for *de novo* hearing within 20 days of the filing of the Decision stating specifically the issue(s) to be reviewed and attaching a copy of the Decision. The Petition must be served on the other party(ies) and the Parenting Coordinator, in accordance with the Rules of Civil Procedure. The hearing before the Court shall be *de novo*. The Court shall hear the case on the record, and shall render a decision within the time periods set forth in Rule 1915.4.

(m) The parties shall share the cost of the Parenting Coordinator pursuant to the parties’ respective financial circumstances or as the Parenting Coordinator or Court may otherwise direct.

(n) In allocating costs, the Parenting Coordinator or Court may consider whether one party has caused a disproportionate need for the services of the Parenting Coordinator.

(o) In review proceedings under subsection (l), the Court may elect to impose counsel fees and/or the Parenting Coordinator’s fees upon the non-prevailing party, upon cause shown.

(p) The Court may maintain a roster of individuals it deems qualified to serve as Parenting Coordinators, and may establish training and grievance procedures if it deems them appropriate.

(q) The Order entered pursuant to this Rule shall be substantially in the following form:

Comment To The Rule

Following the entry of a final Custody Order, some cases involve repeated or intractable conflict. These cases involve repetitive filings and litigation that detrimentally affect the children and disproportionately consumes limited judicial resources.

Parenting Coordination can be an effective tool to prevent escalation of conflict between the parties, including (but not limited to) cases where domestic violence is or has been involved. The Parenting Coordinator’s initial role is to attempt an agreed resolution of disputes between the parties. Failing that, the Parenting Coordinator is authorized to make decisions as set forth in Rule 1915.17 (d). As Pennsylvania law precludes mediation in cases where domestic violence is alleged, the methods used by the Parenting Coordinator must conform to that prohibition where applicable.

Plaintiff,	:	
	:	IN THE COURT OF COMMON PLEAS
	:	_____, COUNTY,
vs.	:	PENNSYLVANIA
	:	
	:	NO. _____
	:	
	:	
Defendant	:	CIVIL ACTION—CUSTODY

[AGREEMENT, PARENTING PLAN AND] ORDER FOR PARENTING COORDINATION

AND NOW, [the above-captioned Parties agreeing and] the Court finding that it is in the best interest of the child[ren], [NAMES OF CHILDREN, DOB], that a Parenting Coordinator be appointed to assist the parties in implementing the custodial arrangement set forth in the Custody Agreement/Parenting Plan/Order dated and in resolving related parenting issues about which they do not agree, the following is [STIPULATED AND] ORDERED:

1. APPOINTMENT AND TERM:

_____ is appointed as the Parties’ Parenting Coordinator for a term of [__] months, or until the resignation of the Parenting Coordinator or termination of the appointment by the Court, whichever first occurs. The Parenting Coordinator’s Terms of Engagement are attached hereto and are incorporated into this [Custody Agreement/Parenting Plan/Order]. The Court shall have authority to sanction a party for non-compliance with the Parenting Coordinator’s Terms of Engagement.

Legal counsel for _____ [or either party, if pro-se] shall provide copies of all Orders, Pleadings and Custody Evaluations in this case to the Parenting Coordinator within ten (10) days of the date hereof.

2. ROLE OF THE PARENTING COORDINATOR:

A. Parenting Coordination involves two components:

1) The Parenting Coordinator shall attempt to resolve issues arising out of the custody order/court approved agreement/parenting plan through facilitation, mediation, consultation, coaching and education, all of which are non-decision-making functions;

2) If it is apparent to the Parenting Coordinator that continued similar efforts are unlikely to resolve the issue(s), the Parenting Coordinator shall have the authority to resolve the dispute by providing a Decision for the parties on the issue(s).

B. The Parenting Coordinator will not function as the psychotherapist, counselor, attorney or advocate for the parties, or the parties' child[ren], or family. However, the Parenting Coordinator is permitted and encouraged to facilitate communication and agreement between the parties whenever possible, and shall always act in a manner conducive to the best interests of the child[ren].

3. PARENTING COORDINATOR'S AUTHORITY:

The Parenting Coordinator, in order to implement the custodial arrangement set forth in the Custody Agreement/Parenting Plan/Order and resolve related parenting issues about which they do not agree, is authorized to make decisions about issues that may include, but are not limited to, the following:

A. Dates, times, places and conditions for transitions between households;

B. Temporary variation from the schedule for a special event or particular circumstance;

C. Minor adjustments to the physical custody schedule as set forth in the current Custody Order/Agreement/Parenting Plan;

D. School issues, apart from school selection;

E. Child[ren]'s participation in recreation, enrichment, and extracurricular activities, programs and travel;

F. Child-care arrangements;

G. Clothing, equipment, toys and personal possessions of the child[ren];

H. Behavioral management of the child[ren];

I. Information exchange (school, health, social, etc.) and communication with or about the child[ren];

J. Coordination of existing or court-ordered services for either of the parties or child[ren] (e.g. Psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management, parenting class, etc.);

K. Other related custody issues that the parties mutually agree, in writing, to submit to the Parenting Coordinator.

4. EXCLUSIONS FROM PARENTING COORDINATOR'S AUTHORITY:

A. The following specific issues are excluded from the Parenting Coordinator's function and decision-making authority, except as provided in subparagraph (B) hereinbelow:

1) A change in legal custody decision-making authority set forth in the Custody Agreement/Parenting Plan/Order;

2) A change in primary physical custody (residential parenting time) set forth in the Custody Agreement/Parenting Plan/Order;

3) A change in the Court-ordered custody schedule (parenting time) that substantially reduces or expands the child[ren]'s time with one or both parties;

4) A change in the geographic residence of the child[ren]'s (relocation) that would render implementation of the current Custody Agreement/Parenting Plan/Order impossible or impracticable;

5) Determination of financial issues, other than allocation of the Parenting Coordinator's fees;

6) Other: _____ .

B. The Parties may mutually agree in writing to submit any of the excluded issues set forth above to the Parenting Coordinator for facilitation and recommendation which recommendation shall only become binding upon written agreement of the parties.

5. NON-CONFIDENTIALITY OF COMMUNICATIONS:

No communications of the parties and/or their lawyers with the Parenting Coordinator are confidential. The Parenting Coordinator may communicate in writing with the Court regarding any matter, and shall send contemporaneous copies of any such communication to [the parties (if pro-se)] legal counsel.

6. SOURCES OF INFORMATION:

Each party shall provide the Parenting Coordinator with all information that the Parenting Coordinator requests, including signed HIPAA releases and other forms requested. The Parenting Coordinator is authorized to contact any professional or other individual as the Parenting Coordinator deems necessary (e.g., the children, therapists, physicians, childcare providers, teachers, family members, etc.).

7. COMMUNICATION WITH THE PARENTING COORDINATOR:

A. Protocol:

The Parenting Coordinator shall determine the protocol of all communications, interviews, and sessions, including who shall or may attend the sessions (including the children), and whether the sessions will be conducted in person or by other means. Where domestic violence or abuse, as defined under 23 Pa.C.S. § 6102, is alleged, the protocols should include measures addressing the safety of all participants, unless the Court deems the measures unnecessary.

B. Oral and Written Communications With The Parenting Coordinator:

The parties and their attorneys shall have the right to receive, but not to initiate, oral *ex-parte* (one-sided) communications from the Parenting Coordinator, but the fact of such communication shall be known to the other party. Any party or legal counsel may communicate in writing with the Parenting Coordinator provided a copy is sent to the other party simultaneously. Any documents, tape recordings or other material which one party gives to the Parenting Coordinator must also be made available to the other party or his/her legal counsel for inspection and copying. In accordance with paragraph 5 hereinabove, no such communications are confidential.

C. Written Communications Between the Parenting Coordinator and Appointing Judge

(1) The Parenting Coordinator will have the ability to initiate written communication with the Appointing Judge, and shall contemporaneously send copies to both attorneys

(a) in the event of non-compliance of a party with any provision of this Appointment Order (including provisions relating to the compensation of the Parenting Coordinator); and/or

(b) detailing the Parenting Coordinator's reasons for withdrawing from service in the case.

(2) Absent an emergency affecting the child[ren]'s health or welfare, any communication from the Parenting Coordinator to the court shall be in writing, and shall be copied simultaneously to the parties (or, if represented, counsel). If the Parenting Coordinator has communicated orally with the Court on an emergency basis, the Parenting Coordinator promptly shall communicate to the parties (or, if represented, counsel) in writing the substance of the oral communication.

8. PARENTING COORDINATION DECISION-MAKING PROCESS

A. Prior to the Parenting Coordinator making a Decision, the Parenting Coordinator shall provide a notice and opportunity for each of the parties to be heard, unless exigent circumstances render contact with both parties impracticable or potentially dangerous to a party and/or the child[ren]. In the event a party is given advance written notice of a session but does not attend, the Parenting Coordinator may make a Decision despite that party's absence.

B. Decisions:

1) The Parenting Coordinator's Decisions may be communicated to the parties orally, but must be confirmed in writing as soon as practicable and filed in the Prothonotary's Office at the parties' above-captioned custody docket;

2) The Parenting Coordinator's Decisions shall be binding upon the parties unless and until revised by Court Order.

9. JUDICIAL REVIEW:

A. Review of Decisions:

Any party seeking judicial review of a Parenting Coordinator's Decision must file a Petition for a *de novo* hearing within 20 days of the filing of the Decision, specifically stating the issue(s) and attaching a copy of the Decision. The Petition must be served on the other party(ies) and Parenting Coordinator in accordance with the Rules of Civil Procedure. The hearing before the Court shall be *de novo*. The Court shall hear the case on the record, and shall render a decision within the time periods set forth in Rule 1915.4.

B. New Court Proceedings:

Prior to filing any new motion, petition or complaint with the Court involving non-emergency custody or parenting of the child[ren] within the scope of the Parenting Coordinator's authority, the parties shall participate in no fewer than two sessions with the Parenting Coordinator to attempt resolution of the specific disputed issue[s] (and to permit a Decision to be made to the extent authorized by paragraph 3 hereinabove).

C. The procedures set forth in this Section 9 are mandatory, and may not be waived by the parties.

10. QUASI-JUDICIAL IMMUNITY:

In accordance with Pa.R.Civ.P. § 1915.17, the Court-appointed Parenting Coordinator is an Officer of the Court, and has quasi-judicial immunity. As such the Parenting Coordinator cannot be sued based on his/her actions performed within the scope of this [Custody Agreement/Parenting Plan/Order].

11. CHILD ABUSE REPORTING:

The Parenting Coordinator is a person required to report suspected child abuse pursuant to 23 Pa.C.S.A. § 6311.

12. TESTIMONY:

The Parenting Coordinator cannot be compelled to testify in any proceeding absent a Court Order. In the event the Parenting Coordinator elects or is required to testify, he/she shall be compensated commensurate with his/her rate by one or both of the parties as the Court deems appropriate.

13. ALLOCATION OF FEES:

The parties will share the obligation to pay the fees of the Parenting Coordinator: ___ % Mother, ___ % Father. Fees may be reallocated by the Court or the Parenting Coordinator if he/she determines that one party has disproportionately caused the need for the service. The Parenting Coordinator may, in his/her discretion charge parties for missed sessions or sessions cancelled less than twenty-four hours prior to the scheduled session.

14. TERMINATION/WITHDRAWAL OF PARENTING COORDINATOR:

A. Neither party may unilaterally terminate the Parenting Coordinator's services without Court approval, nor may the parties do so by mutual agreement without Court approval.

B. The Parenting Coordinator may withdraw from service at any time, upon ten days' written notice to [the parties], all counsel of record, and the Court.

C. Dissatisfaction with the Parenting Coordinator's Decisions is not grounds for termination. The opposing party and Parenting Coordinator shall be given notice of any petition for termination. The Court may rule on the petition(s) submitted, or may schedule argument or an evidentiary hearing.

[15. ACCEPTANCE:

A. The parties acknowledge that each has reviewed this Agreement and had the opportunity to consult with legal counsel.

B. Each party agrees to the appointment of as Parenting Coordinator, and agrees to fully cooperate with the Parenting Coordinator in compliance with this Custody Agreement/Parenting Plan/Order.]

16. This Custody Agreement/Parenting Plan/Order shall not be effective until accepted by the Parenting Coordinator as evidenced by his/her signature below:

[SIGNATURES:

Mother: _____

Father: _____

Date: _____

Date: _____

Attorney for Mother: _____

Attorney for Father: _____

Other Party (if any): _____

Date: _____

I agree to my appointment as the Parenting Coordinator for the parties as set forth above.

_____]
Date Parenting Coordinator]

ORDER

[The above Agreement is entered as a Court Order.]

SO ORDERED.
BY THE COURT:

_____, Judge
Date

Distribution:
Plaintiff [Attorney For Plaintiff]:
Defendant [Attorney For Defendant]:
Parenting Coordinator: _____

[Pa.B. Doc. No. 10-437. Filed for public inspection March 12, 2010, 9:00 a.m.]

Title 255—LOCAL
COURT RULES

VENANGO COUNTY
In Re: Local Rule 310—ARD

And Now, February 25, 2010, it is hereby Ordered that the above-stated Venango County Local rule be removed from publication in the Pennsylvania Bulletin pending review of the Criminal Procedural Rules Committee pursuant to Pennsylvania Rule of Criminal Procedure 105(D).

By the Court

OLIVER J. LOBAUGH,
President Judge

[Pa.B. Doc. No. 10-438. Filed for public inspection March 12, 2010, 9:00 a.m.]