

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5, 6 AND 8]

Proposed Revisions to the Comments to Pa.Rs.Crim.P. 590, 602 and 803

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania revise the Comments to Rules 590 and 803 to clarify the jury procedures that are available when a degree of guilt hearing is held before a jury. The proposal also recommends a revision to the Comment to Rule 602 to add a cross-reference to the case of *Commonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994), that requires the defendant's presence at trial of capital offenses. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 explanatory Reports.

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Jeffrey M. Wasileski, Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 601 Commonwealth Avenue, Suite 6200
 Harrisburg, PA 17106-2635
 fax: (717) 231-9521
 e-mail: criminalrules@pacourts.us

no later than Friday, Sept 7, 2012.

By the Criminal Procedural Rules Committee

PHILIP D. LAUER,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART H. Plea Procedures

(Editor's Note: See 38 Pa.B. 5429 (October 4, 2008) for the text of Rule 590.)

Rule 590. Pleas and Plea Agreements.

* * * * *

Comment

* * * * *

Paragraph (C) reflects a change in Pennsylvania practice, that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was

not statutorily authorized. The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See also *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006). **Any proceeding, held pursuant to paragraph (C), where the degree of guilt is determined by a jury should follow the procedures for jury trials contained in Chapter 6 Part C of these rules, Rules 631—649.**

Official Note: Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; amended September 18, 2008, effective November 1, 2008; **Comment revised , 2012, effective , 2012.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed Comment revisions concerning jury procedures at degree of guilt published with the Court's Order at 42 Pa.B. 4569 (July 21, 2012).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART A. General Provisions

Rule 602. Presence of the Defendant.

* * * * *

Comment

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, *see e.g., Commonwealth v. Vega*, 553 Pa. 255, 719 A.2d 227 (Pa. 1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) or from waiving the right to be present by his or her actions, *see e.g., Commonwealth v. Wilson*, 551 Pa. 593, 712 A.2d 735 (Pa. 1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present). **But see Commonwealth v. Ford**, 539 Pa. 85, 650 A.2d 433 (1994) ("[R]ight of defendant to be present at trial of capital offense is transformed into obligation due to gravity of potential outcome.")

Former Rule 1117(c) was moved to Rule 462 (Trial *de novo*) in 2000 as part of the reorganization of the rules.

Official Note: Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001; **Comment revised** , **2012, effective** , **2012.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed revision to the Comment cross-referencing Commonwealth v. Ford at 42 Pa.B. 4569 (July 21, 2012).

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

(Editor’s Note: See 38 Pa.B. 5429 for the text of Rule 803.)

Rule 803. Guilty Plea Procedure.

* * * * *

Comment

For the procedure for the entry of guilty pleas, see Rule 590. For the sentencing procedure if the crime is determined to be murder of the first degree, see Sentencing Code, 42 Pa.C.S. § 9711(b).

The 2008 amendment to paragraph (A) recognizes the Commonwealth’s right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that “the Commonwealth shall have the same right to trial by jury as does the accused.” See also *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006). **Any proceeding, held pursuant to paragraph (A), where the degree of guilt is determined by a jury should follow the procedures for jury trials contained in Chapter 6 Part C of these rules, Rules 631–649.**

Official Note: Original Rule 352 adopted September 22, 1976, effective November 1, 1976; amended May 26, 1977, effective July 1, 1977; rescinded April 2, 1978, effective immediately. Former Rule 352 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 353 February 1, 1989, effective July 1, 1989; renumbered Rule 802 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 803 June 4, 2004, effective November 1, 2004; amended September 18, 2008, effective November 1, 2008; **Comment revised** , **2012, effective** , **2012.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed Comment revisions concerning jury procedures at degree of guilt published with the Court’s Order at 42 Pa.B. 4569 (July 21, 2012).

REPORT

Proposed Revisions to the Comments to Pa.Rs.Crim.P. 590, 602, and 803

Jury Procedures in Degree of Guilt Hearings; Defendant’s Presence at Capital Trials

The Criminal Procedural Rules Committee recently examined some of the procedures relating to murder trials. As a result of this examination, the Committee is considering Comment revisions to address two questions. The first would clarify in the Comments to Rules 590 and

803 the jury procedures that are available when a degree of guilt hearing is held before a jury. The second proposal would recommend a revision to the Comment to Rule 602 to add a cross-reference to the case of *Commonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994), that requires the defendant’s presence at trial of a capital offense.

Jury Procedures in Degree of Guilt Hearings

Several questions were raised with the Committee concerning certain procedures in degree of guilt hearings held pursuant to Rules 590(C) and 803(A). Rule 590(C) provides that, in non-capital murder cases, when a defendant enters a guilty or *nolo contendere* plea to murder generally, the degree of guilt shall be determined by a jury unless the Commonwealth elects otherwise. Rule 803(A) has a similar provision in capital cases.

Among the questions the Committee considered was whether jurors in a degree of guilt hearing should be permitted to take notes as provided in Rule 644 or whether it was permissible to provide written jury instructions as provided in Rule 646. Neither Rule 644 nor 646 specifically addresses degree of guilt hearings. The concern that was articulated was that, because most of the rules regarding procedures during jury proceedings speak in terms of occurring “at trial,” degree of guilt hearings might not be considered “trials” under the rules and that a narrow reading might preclude jurors from using these procedures in degree of guilt hearings.

The consensus of the Committee was that these types of procedures should be available to jurors in degree of guilt hearings. During its discussion of these particular procedures, the members observed that most jury trial procedures would be applicable in degree of guilt hearings. The conclusion of the Committee was that the proposal be broadened to provide that jurors in these types of hearings should be allowed all the procedures available to jurors in regular trials.

The Committee concluded that such an approach would be consistent with the existing law regarding degree of guilt hearings that degree of guilt hearings are comparable to trials generally. In *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006), which recognized that the Commonwealth has a right to a jury in degree of guilt hearings, the Supreme Court held that:

A plea of guilty to murder generally is a unique plea, unlike anything else provided in statute or decisional law. . . In a guilty plea, no evidence is presented against the defendant. . . A Rule 590(C) proceeding, on the other hand still requires the presentation of evidence, the arguments of counsel and the finding of facts in support of a verdict. . . . This option, created by rule and available only to murder defendants, is not a simple guilty plea. It is instead a variation of a waiver trial. . .

Id. at 660.

The Supreme Court also held that the 1998 amendment to the Pennsylvania Constitution that granted the Commonwealth a right to jury trial equal to that of the defendant applied to degree of guilt hearings. It was the *White* case that prompted the addition of paragraph (C) to Rule 590 and paragraph (A) to Rule 803 in 2008.

A degree of guilt hearing, therefore, should be conducted in the same manner as a regular jury trial. The Committee examined the jury rules found in Chapter 6 Part C (Jury Procedures) and concluded that they would all be applicable in degree of guilt hearings before a jury.

The Comment to Rule 590 would be revised to state that the procedures for jury trial listed in Chapter 6 Part C, Rules 631—649, should be followed in degree of guilt hearings. Similarly, Rule 803(A) also contains a provision for degree of guilt hearings in capital cases. An identical proposed revision to the Comment to that rule would be added as well.

Waiver of Defendant's Presence in Capital Cases

The Committee also discussed the issue of whether a defendant in a capital case may waive his or her presence during trial in a capital case. Although unusual, there were a few reported instances recently where the defendant sought to be absent from the trial.

This issue was definitively addressed in *Commonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994). In *Ford*, one of the issues that the defendant in a capital murder case raised was the trial court's refusal to permit him to absent himself from the trial; the defendant claimed that his appearance was so menacing that fair trial could not be obtained with his presence. The Supreme Court held:

The Sixth Amendment to the United States Constitution, Article I Section 9 of the Pennsylvania Constitution, and the Pennsylvania Rules of Criminal Procedure 1117(a) guarantee the right of an accused to be present in court at every stage of a criminal trial. A defendant may waive this right as long as he is not charged with a capital offense. When charged with a capital offense, a defendant's right to be present at his own trial is transformed into an obligation because of the gravity of the potential outcome. See Pa.R.Crim.P. 1117(a); *Commonwealth v. Diehl*, 378 Pa. 214, 107 A.2d 543 (1954); *Diaz v. United States*, 223 U.S. 442, 32 S.Ct. 250, 56 L.Ed. 500 (1912). The trial court correctly required the appellant's presence as he had no right to exclude himself.

539 Pa. at 100, 650 A.2d at 440.

The Committee agreed that a cross-reference to *Ford* in the Comment to Rule 602 would be helpful. The cross-reference also includes a parenthetical describing the requirement of the defendant's presence in a capital case.

[Pa.B. Doc. No. 12-1337. Filed for public inspection July 20, 2012, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Civil Court; MsD No. 12-40169

Administrative Order of Court

And Now, this 29th day of June, 2012, it is hereby ordered and decreed that the following Local Rules of Court pertaining to Civil Court, adopted September 15, 2009 are hereby amended:

- L 205.2 (c) Cover Sheet
- L 402 Service of Notice
- L 1034 (a) Motion for Judgment on the Pleadings
- L 1035.2 (a) Motion for Summary Judgment
- L 1141 (b) Consumer Credit or Residential Mortgage Foreclosure Program

- L 1143 Commencement of Consumer Credit or Mortgage Foreclosure Action
- L1143.1 Conciliation Conference in Consumer Credit or Residential Mortgage Foreclosure Actions
- L3129.1 Notice of Sale of Real Property
- L 3256 Praeceptum for Writ of Mortgage Foreclosure

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

The Court directs the Court Administrator to:

1. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of the Pennsylvania Courts.
2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*
3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rules Committee.
4. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the administrative office of the *Butler County Legal Journal* for publication.
5. Forward one (1) copy of this Administrative Order and 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

BUTLER COUNTY LOCAL RULES OF CIVIL PROCEDURE

Rule L205.2 (c). Cover Sheet.

All consumer credit collection and residential mortgage foreclosure complaints must be filed with a Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Form in the format set forth as follows:

Date of Service: _____
Manner of Service: _____
By: _____

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

Plaintiff(s)

vs.

Defendant(s)

AD No.

NOTICE OF CONSUMER CREDIT/RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM PURSUANT TO BUTLER COUNTY LOCAL RULE OF CIVIL PROCEDURE L205.2 (c) AND L3129.1

A Complaint in Consumer Credit or Residential Mortgage Foreclosure has been filed with the Court that could cause you to lose your assets or home.

You may be able to participate in a court-supervised conciliation conference in an effort to resolve this matter with your lender.

If you do not have an attorney, you must take the following steps to be eligible for and to remain in the program. First, within ten (10) days of the date noted above, you must contact the Butler County Consumer Credit/Residential Mortgage Foreclosure Diversion Program information line at 724-431-0081. You must schedule and attend either group mortgage assistance program or credit assistance program, as instructed. These classes are available to you at NO CHARGE. Attendance at one of these classes is mandatory for your continued participation in the Court Conciliation program.

After attending the class, a housing or credit counselor may be available to work with you to review your finances and attempt to work with your lender to try to resolve the claims in this lawsuit. Eligibility for counseling is based upon financial guidelines, which will be discussed at the group class. If you are scheduled to meet with a counselor, you must appear and you must provide the counselor with all requested financial information so that a loan resolution proposal can be prepared on your behalf. If you are not eligible for counseling, you will receive further instructions during the class concerning your obligation to communicate with the lender.

If you are represented by a lawyer, it is not necessary for you to call the information line. However, you and your attorney are responsible to communicate with the lender in advance of the conciliation conference.

To obtain admission to the Consumer Credit/Residential Mortgage Foreclosure Diversion Program, you or your attorney must complete a Request For Conciliation Conference form as provided at Butler County Local Rule L-1143 (b), file the same with the Prothonotary, and serve a copy of said Request, by mail to the Plaintiff's address set forth below.

* For further information you may also go to www.co.butler.pa.us or www.butlercountypabar.org/credit-crunch-program or call the Butler County Bar Association at 724-841-0130 *

IF YOU WISH TO PARTICIPATE IN THIS DIVERSION PROGRAM, YOU MUST ACT QUICKLY AND TAKE THE STEPS REQUIRED BY THIS NOTICE. THIS PROGRAM IS FREE.

Plaintiff must complete:

DISCLOSURE OF PLAINTIFF CONTACT INFORMATION

(person authorized to discuss case status and resolution options with the Defendant and/or the Defendant's representative)

Name: _____

Address: _____

Phone number: _____

Fax number: _____

Email: _____

Rule L-402. Service of Notice.

Upon the filing of a consumer credit or residential foreclosure complaint, the Sheriff shall serve both the complaint and the "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program" upon the named defendants in accordance with Pennsylvania Rule of Civil Procedure 402, Service of Original Process. In the

event the Sheriff is unable to personally serve the defendants with the civil action papers and the Notice, the Sheriff shall post the property with the "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program". The Sheriff's return shall reflect the date and manner of posting said Notice on the property. The posting of Notice on the property shall constitute service of said "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program" upon the defendants for purposes of compliance with these local rules concerning the Consumer Credit or Residential Mortgage Foreclosure Diversion Program.

Rule L1034 (a). Motion for Judgment on the Pleadings.

(1) A motion for judgment on the pleadings shall be filed with the Prothonotary. A brief in support of the motion shall be filed at the same time as the motion for judgment on the pleadings is filed. Briefs for the non-moving parties shall be filed and served one (1) week prior to the scheduled submission or argument date.

As a condition precedent to the scheduling of a motion for judgment on the pleadings for court action in a consumer credit or residential mortgage foreclosure action, the plaintiff/lender must file an Affidavit of Service indicating the manner and date of service of said notice upon the defendant/borrower. (form follows local rule L-1143(e))

(2) Upon the filing of motion for judgment on the pleadings, oral argument or submission without oral argument will be scheduled by the court. Any party may submit a request for argument on their motion for judgment on the pleadings. Upon receipt of a request for argument, a time for argument will be assigned for the scheduled submission date.

Rule L1035.2 (a). Motion for Summary Judgment.

(1) A motion for summary judgment shall be filed with the Prothonotary. A brief in support of the motion shall be filed at the same time as the motion for summary judgment is filed. Briefs for the non-moving parties shall be filed and served no later than one (1) week prior to the scheduled submission or argument date.

As a condition precedent to the scheduling of a motion for summary judgment for court action in a consumer credit or residential mortgage foreclosure action, the plaintiff/lender must file an Affidavit of Service indicating the manner and date of service of said notice upon the defendant/borrower. (form follows local rule L-1143(e))

(2) Upon the filing of motion for summary judgment, oral argument or submission without oral argument will be scheduled by the court. Any party may submit a request for argument on their motion for summary judgment. Upon receipt of a request for argument, a time for argument will be assigned for the scheduled submission date.

Rule L-1141 (b). Consumer Credit or Residential Mortgage Foreclosure Program.

In consumer credit or residential mortgage foreclosure proceedings, local procedural requirements shall apply to accomplish the implementation of the Consumer Credit or Residential Mortgage Foreclosure Diversion Program. Local rules affected in relation to residential mortgage foreclosure proceedings are as follows:

- | | |
|------------|----------------------------|
| L205.2 (c) | L1143 (a)(b)(c)(d)(e) |
| L402 | L1143.1 (a)(b)(c)(d)(e)(f) |
| L1034 (a) | L3129.1 |
| L1035.2(a) | L3256 |

Rule L1143. Commencement of Consumer Credit or Mortgage Foreclosure Action.

(a) In all consumer credit and residential mortgage foreclosure actions, the complaint shall include a "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program" in the format set forth in Local Rule 205.2(c).

(b) To participate in the Consumer Credit or Residential Mortgage Foreclosure Diversion Program the defendant/borrower or his/her legal counsel shall follow Butler County Local Rule of Civil Procedure 1143.1 program requirements and file a Request for Conciliation Conference in the format set forth below. The Request for Conciliation Conference shall be filed with the Prothonotary within thirty 30 days of service of the Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program and shall be served upon the plaintiff/lender.

(c) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a case management order. Conciliation conferences shall be scheduled and conducted in conformity with Butler County Local Rule of Civil Procedure L-11431.1, et seq.

(d) Service of process.

For complaints filed and served before November 2, 2009, the "Notice Of Consumer Credit or Residential Mortgage Foreclosure Diversion Program" may be served by certified mail to the record address of the Defendant or to Defendant's legal counsel of record, if any. The date of service shall be the date when the certified mail is delivered to Defendant or Defendant's counsel. However, if original service of the complaint has not been completed, service of the Notice shall be as per Butler County Local Rule of Civil Procedure L-402.

(e) Before any matter will be scheduled for consideration before the assigned judge or for arbitration, the plaintiff/lender must file an Affidavit, which discloses: the date and manner of service of the "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program"; whether or not the defendant/borrower has requested to participate in the Consumer Credit Residential Mortgage Foreclosure Diversion Program; and, whether or not there is a present, court-ordered stay in effect. The format for said Affidavit is set forth below.

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

Plaintiff(s)

vs.

AD No.

Defendant(s)

**REQUEST FOR CONCILIATION CONFERENCE
(Butler County Local Rule of Civil Procedure L-1143(b))**

Pursuant to the local rules governing the Butler County Consumer Credit or Residential Mortgage Foreclosure Diversion Program, the undersigned hereby certifies as follows:

1. This action involves consumer credit, or the Defendant is the owner of the residential property if this is mortgage foreclosure action; and

2. If a residential mortgage foreclosure action, Defendant physically lives in the subject property, which is defendant's primary residence; and

3. Defendant has been served with a "Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program" and

a. If Defendant is self-represented:

(1) Defendant is scheduled to attend the _____ mortgage or credit assistance (date)

class as instructed by the Butler County Consumer Credit/Residential Mortgage Foreclosure Diversion Program information line; and

(2) Defendant will attend any follow up conference scheduled with the credit or housing counselor after the mortgage or credit assistance class; and

(3) Defendant will personally attend the court conciliation conference as scheduled by the Court. Or

b. If Defendant is represented by counsel:

(1) I _____ am legal counsel of record for the Defendant.

The undersigned verifies that the statements made herein are true and correct. I understand that false statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unworn falsification to authorities.

Signature of Defendant/Defendant's Counsel

Date

Person who Plaintiff should contact to discuss status of case and options to resolve:

Name _____ Office _____

Relationship to Defendant _____ Address _____

Phone _____ E-Mail _____

Fax # _____

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

Plaintiff(s)

vs.

AD No.

Defendant(s)

AFFIDAVIT OF SERVICE AND STATUS OF CONSUMER CREDIT OR RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM

(Butler County Rule of Civil Procedure L-1143 (e) and L-1034 (a) 1 and L-1035.2 (a) (1) and L-3129.1 (b) and L-3256)

I, _____, counsel for Plaintiff, in the above action, do hereby certify that on _____ the Defendant(s) was served with (date)

"Notice of Consumer Credit or Residential Mortgage Foreclosure Diversion Program by _____

_____, and that:

(method of service and by whom)

(1) 30 days have passed since service of the Notice;

(2) The Defendant(s) has not filed a Request for Conciliation Conference (Butler County Local Rule of Civil Procedure L-1143b); or

(3) If a Request for Conciliation Conference has been filed, there is no present Court ordered Stay in effect.

Respectfully submitted,

(date)

(Plaintiff counsel)

Rule L-1143.1. Conciliation Conference in Consumer Credit or Residential Mortgage Foreclosure Actions.

(a) 1. To be eligible to participate in the program, a self-represented/borrower must call the Butler County

Consumer Credit/Residential Mortgage Foreclosure Diversion Program information line to obtain instructions to schedule and attend either the mortgage or credit assistance class. In addition, if eligible, Defendants must meet with a credit counselor and complete the financial information necessary for the plaintiff/lender. The self-represented borrower must also file a Request for Conciliation Conference on the form set forth in Butler County L.R.C.P. L-1143(b).

2. If the defendant/borrower is represented by counsel, the defendant/borrower need not attend the mortgage or credit assistance class or meet with any counselors as a condition precedent to filing a Request for Conciliation Conference. Counsel for the defendant must complete the Request for Conciliation Conference form, Butler County L.R.C.P. L-1143(b).

(b) Once a Request for Conciliation Conference is filed, a Case Management Order shall issue, scheduling the case for the next available conciliation conference.

(c) Immediately following the filing of Request for Conciliation Conference, the defendant/borrower must communicate with the plaintiff/lender by contacting the contact person listed in the Notice of Consumer Credit Residential Mortgage Foreclosure Diversion Program form. Upon receipt of communication on behalf of the defendant, the plaintiff/lender shall immediately advise the defendant or credit counselor of all information needed to consider work out resolutions for the pending litigation. The defendant shall respond to the request for information in advance of the scheduled conciliation conference date. A failure by plaintiff or defendant to communicate as set forth herein, may result in the case being removed from the conciliation program or dismissal of the complaint.

(d) At the conciliation conference, the parties and their counsel shall be prepared to discuss all available resolution options.

(e) The parties and legal counsel, if any, must attend the conciliation conference. An authorized representative of the plaintiff/lender must either attend the conciliation conference in person or be readily available by telephone during the course of the conciliation conference. The representative of the plaintiff/lender, who participates in the conciliation conference, must possess the actual authority to reach a mutually acceptable resolution. The court, in its discretion, may, by special order, require the personal attendance of the authorized representative of the plaintiff/lender at any conciliation conference.

(f) If the defendant/borrower has previously participated in, and been removed from, the Consumer Credit or Residential Mortgage Foreclosure Diversion Program, the plaintiff/lender or the defendant/borrower may request the court to readmit the case to the program for good cause shown by presenting an appropriate Motion before the Court. Readmission to the program following removal is not automatic and not subject to Butler County L.R.C.P. L-1143(a)(b).

Rule L3129.1. Notice of Sale of Real Property.

Before any residential property may be listed for Sheriff's sale, the plaintiff/lender must have filed an Affidavit of Service, (L1143(e)), with the Prothonotary at either the Appearance Docket, Common Pleas Docket or Execution Docket.

Rule L-3256. Praecipe for Writ of Mortgage Foreclosure.

In a residential mortgage foreclosure proceeding, if no Butler County L.R.C.P. L-1143(e) Affidavit of Service (L-1143(e)) has been previously filed at either the Appearance Docket, Common Pleas Docket or Execution Docket, no further court action will be available to the plaintiff/lender, until such time as the plaintiff/lender files an Affidavit of Service (L-1143(e)).

[Pa.B. Doc. No. 12-1338. Filed for public inspection July 20, 2012, 9:00 a.m.]