

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendment of Rules 1915.1, 1915.3, 1915.4-1, 1915.4-2, 1915.4-3, 1915.5, 1915.6, 1915.7, 1915.10, 1915.11, 1915.12, 1915.13, 1915.14, 1915.15, 1915.16 and 1915.25 and Adoption of Rules 1915.3-2, 1915.11-2, 1915.17, 1915.19 and 1915.21 of the Rules of Civil Procedure; No. 586 Civil Procedural Rules Doc.

Amended Order

Per Curiam

And Now, this 1st day of August, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 41 Pa.B. 3719 (July 9, 2011) and *West's Pennsylvania Reporter*, 19 A.3d No. 4, Ct.R-3-28 (July 8, 2011):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1915.1, 1915.3, 1915.4-1, 1915.4-2, 1915.4-3, 1915.5, 1915.6, 1915.7, 1915.10, 1915.11, 1915.12, 1915.13, 1915.14, 1915.15, 1915.16 and 1915.25 of the Pennsylvania Rules of Civil Procedure are amended and Rules 1915.3-2, 1915.11-2, 1915.17, 1915.19 and 1915.21 of the Pennsylvania Rules of Civil Procedure are adopted in the following form.

Mr. Justice Saylor differs with the Court's decision to redefine "relocations," for purposes of 23 Pa.C.S. § 5337, to exclude uncontested relocations. *See* Pa.R.C.P. No. 1915.17(c). In Justice Saylor's view, the General Assembly obviously considered consensual relocations to be "relocations," under 23 Pa.C.S. § 5337, since the Legislature has specified that consent serves as a basis pursuant to which a relocation may occur, *see* 23 Pa.C.S. § 5337(b) ("No relocation shall occur unless . . . every individual who has custody rights to the child consents to the proposed relocation; or . . . the court approves the proposed relocation." (emphasis added)), and required formal confirmation of a child's relocation where no objection is filed, *see id.* § 5337(e). Justice Saylor also dissents relative to the partial suspension of the statute setting forth the duties and responsibilities of a guardian *ad litem*, and corresponding changes to the Rules of Civil Procedure. *See* Pa.R.C.P. Nos. 1915.11(a), 1915.11-2 & Note (reflecting the partial suspension of 23 Pa.C.S. § 5334), 1915.25 (same).

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on September 3, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY[, PARTIAL CUSTODY AND VISITATION] OF MINOR CHILDREN

Rule 1915.1. Scope. Definitions.

(a) [(1)] These rules govern the practice and procedure in all actions for **legal and physical custody**[, **partial**

custody and visitation] of minor children, including habeas corpus proceedings and claims for custody[, **partial custody or visitation**] asserted in an action of divorce [**or support**].

Official Note: The term custody includes [**legal custody, physical custody and shared custody**] **shared legal custody, sole legal custody, partial physical custody, primary physical custody, shared physical custody, sole physical custody and supervised physical custody**. *See* [**Definition Rule 1915.1(b)**] 23 Pa.C.S. § 5322(a). [**Divorce**] Rule 1920.32(a) provides that when a claim for custody is joined with the action of divorce, the practice and procedure governing the claim for custody shall be in accordance with these rules.

[(2) **If a claim for partial custody or visitation is raised during the course of an action for support, the court may**

(i) **enter an order with respect to the right to partial custody or visitation where there is**

(A) **proper venue under Rule 1915.2, and**

(B) **no current order of custody, partial custody or visitation outstanding, and**

(C) **no objection by a party to the determination of the claim, and**

(D) **no delay in the entry of the support order resulting from the determination of the claim; or**

Official Note: *See Myers v. Young*, 285 Pa. Super. 254, 427 A.2d 209, 211 (1981), which held that "the trial court properly declined to defer the entry of an order of support until satisfactory visitation rights had been established."

(ii) **require the commencement of a separate action pursuant to these rules.**

Official Note: *See* 23 Pa.C.S. § 4349 which authorizes custody and visitation proceedings to be consolidated with support proceedings "to facilitate frequent and unimpeded contact between children and parents" if the custody or visitation matter may be "fairly and expeditiously . . . determined and disposed of in the support action or proceeding."]

(b) As used in this chapter, unless the context of a rule indicates otherwise,

"action" means all proceedings for **legal and physical custody**[, **partial custody or visitation**,] and proceedings for modification of prior orders of any court;

* * * * *

"legal custody" means the [**legal**] right to make major decisions [**affecting the best interests of a minor**] **on behalf of the child**, including, but not limited to, medical, religious and educational decisions;

"partial physical custody" means the right to [**take possession of a child away from the custodial person for a certain period of time**] **assume physical custody of the child for less than a majority of the time;**

"person acting as parent" means a person other than a parent, including an institution, who has physical custody

of a child and who has either been awarded custody by a court or claims a right to custody;

“physical custody” means the actual physical possession and control of a child;

“primary physical custody” means the right to assume physical custody of the child for the majority of time;

“relocation” means a change in a residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights;

“shared legal custody” means the right of more than one individual to legal custody of the child;

“shared physical custody” means [shared legal or shared physical custody or both of a child in such a way as to assure the child of frequent and continuing contact, including physical access, to both parents; and] the right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child;

“sole legal custody” means the right of one individual to exclusive legal custody of the child;

“sole physical custody” means the right of one individual to exclusive physical custody of the child; and

“supervised physical custody” means custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

Official Note: The term “supervised visitation” in the prior statute has been replaced by the term “supervised physical custody.”

[“visitation” means the right to visit a child, but does not include the right to remove the child from the custodial person’s control.]

Official Note: The definitions of the terms of the various forms of legal custody[,] and physical custody [and shared custody] are taken from 23 [Pa.C.S.A. §§ 5302] Pa.C.S. § 5322(a).

For additional definitions, see the Uniform Child Custody Jurisdiction and Enforcement Act, 23 [Pa.C.S.A.] Pa.C.S. § 5402.

[Explanatory Comment—1994

Whatever context in which the claim for custody, partial custody or visitation will arise, subdivision (a)(1) provides that the proposed rules will govern the practice and procedure. The custody rule is reinforced by Divorce Rule 1920.32(a).

Subdivision (b) provides the necessary definitions for the rules. The rules adopt the terms “custody,” “partial custody,” and “visitation” suggested by Judge Spaeth in his concurring opinion in *Scott v. Scott*, 240 Pa. Super. 65, 368 A.2d 288, 291 (1976).]

* * * * *

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by subdivision (c), an action shall be commenced by filing a verified complaint substantially in the form provided by Rule 1915.15(a).

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Rule 1915.15(b).

Official Note: See § 5430(d) of the Uniform Child Custody Jurisdiction and Enforcement Act, 23 [Pa.C.S.A.] Pa.C.S. § 5430(d), relating to costs and expenses for appearance of parties and child, and 23 [Pa.C.S.A.] Pa.C.S. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A claim for custody[, partial custody or visitation] which is joined with an action of divorce shall be asserted in the complaint or a subsequent petition, which shall be substantially in the form provided by Rule 1915.15(a).

Official Note: [Divorce] Rule 1920.13(b) provides that claims which may be joined with an action of divorce shall be raised by the complaint or a subsequent petition.

(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody[, partial custody or visitation] must file a claim of paternity pursuant to 23 Pa.C.S. § 5103 and attach a copy to the complaint in the custody action.

Official Note: If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at Rule 1930.6.

(e) A grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. §§ [5313(b)] 5323 must plead, in paragraph [7] 9 of the complaint set forth at Rule 1915.15(a), facts establishing [the elements of a cause of action under §§ 5313(b)(1), (2) and (3)] standing under § 5324(3). A grandparent or great-grandparent seeking partial physical custody or supervised physical custody must plead, in paragraph 9 of the complaint, facts establishing standing pursuant to 23 Pa.C.S. § 5325.

[Explanatory Comment—2002

In *R.M. v. Baxter*, 777 A.2d 446 (Pa.2001), the Pennsylvania Supreme Court held that 23 Pa.C.S. § 5313(b) confers automatic standing on grandparents to seek physical and legal custody of a grandchild. However, establishing a cause of action under the statute requires the existence of the elements set forth at 23 Pa.C.S. §§ 5313(b)(1), (2) and (3).]

(Editor’s Note: The following rule is new and printed in regular type to enhance readability.)

Rule 1915.3-2. Criminal or Abuse History.

(a) *Criminal or Abuse History Verification.* The petitioner must file and serve with the complaint, or any petition for modification, a verification regarding any criminal or abuse history of the petitioner and anyone living in the petitioner’s household. The verification shall be substantially in the form set forth in subdivision (c) below. The petitioner must attach a blank verification form to a complaint or petition served upon the respondent. Although the respondent need not file a responsive pleading pursuant to Rule 1915.5, the respondent must file with the court a verification regarding any criminal or

abuse history of the respondent and anyone living in the respondent's household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition upon the respondent. Both parties shall file and serve updated verifications five days prior to trial.

(b) *Initial Evaluation.* At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. § 5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary.

Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.

Official Note: The court shall consider evidence of criminal or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal or abusive history of either party or members of their household. The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.

(c) *Verification.* The verification regarding criminal or abuse history shall be substantially in the following form:

(Caption)

CRIMINAL RECORD / ABUSE HISTORY VERIFICATION

I _____, hereby swear or affirm, subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that:

1. Unless indicated by my checking the box next to a crime below, neither I nor any other member of my household have been convicted or pled guilty or pled no contest or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307 to any of the following crimes in Pennsylvania or a substantially equivalent crime in any other jurisdiction, including pending charges:

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. Ch. 25 (relating to criminal homicide)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2702 (relating to aggravated assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2706 (relating to terroristic threats)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2709.1 (relating to stalking)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2901 (relating to kidnapping)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2902 (relating to unlawful restraint)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2903 (relating to false imprisonment)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3121 (relating to rape)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3122.1 (relating to statutory sexual assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3124.1 (relating to sexual assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3125 (relating to aggravated indecent assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3126 (relating to indecent assault)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3127 (relating to indecent exposure)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3129 (relating to sexual intercourse with animal)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3130 (relating to conduct relating to sex offenders)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3301 (relating to arson and related offenses)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4302 (relating to incest)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4303 (relating to concealing death of child)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4304 (relating to endangering welfare of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 4305 (relating to dealing in infant children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6301 (relating to corruption of minors)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6312 (relating to sexual abuse of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6318 (relating to unlawful contact with minor)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 6320 (relating to sexual exploitation of children)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

THE COURTS

<i>Check all that apply</i>	<i>Crime</i>	<i>Self</i>	<i>Other household member</i>	<i>Date of conviction, guilty plea, no contest plea or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	23 Pa.C.S. § 6114 (relating to contempt for violation of protection order or agreement)	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Driving under the influence of drugs or alcohol	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct including the following:

<i>Check all that apply</i>		<i>Self</i>	<i>Other household member</i>	<i>Date</i>
<input type="checkbox"/>	A finding of abuse by a Children & Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	Abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar statute in another jurisdiction	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	_____

3. Please list any evaluation, counseling or other treatment received following conviction or finding of abuse: _____

4. If any conviction above applies to a household member, not a party, state that person's name, date of birth and relationship to the child. _____

5. If you are aware that the other party or members of the other party's household has or have a criminal/abuse history, please explain: _____

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature

Printed Name

Rule 1915.4-1. Alternative Hearing Procedures for Partial Custody [**or Visitation**] Actions.

(a) A custody action shall proceed as prescribed by Rule 1915.4-3 unless the court, by local rule, adopts the alternative hearing procedure authorized by Rule 1915.4-2 pursuant to which an action for partial custody [**or visitation**] may be heard by a hearing officer, except as provided in subdivision (b) below.

(b) Promptly after the parties' initial contact with the court as set forth in Rule 1915.4(a), a party may move the court for a hearing before a judge, rather than a hearing

officer, in an action for partial custody [**or visitation**] where:

* * * * *

Explanatory Comment—1994

These [**new**] rules provide an optional procedure for using hearing officers in partial custody [**and visitation**] cases. The procedure is similar to the one provided for support cases in Rule 1910.12: a conference, record hearing before a hearing officer and argument on exceptions before a judge. The terms "conference officer" and

“hearing officer” have the same meaning here as in the support rules.

It is important to note that use of the procedure prescribed in Rules 1915.4-1 and 1915.4-2 is optional rather than mandatory. Counties which prefer to have all partial custody [**and visitation**] cases heard by a judge may continue to do so.

* * * * *

Rule 1915.4-2. Partial Custody. [**Visitation.**] Office Conference. Hearing. Record. Exceptions. Order.

(a) *Office Conference.*

* * * * *

(3) The conference officer may make a recommendation to the parties relating to partial custody or [**visitation**] **supervised physical custody** of the child or children. If an agreement for partial custody or [**visitation**] **supervised physical custody** is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to the court together with the officer’s recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

(4) At the conclusion of the conference, if an agreement relating to partial custody or [**visitation**] **supervised physical custody** has not been reached, the parties shall be given notice of the date, time and place of a hearing before a hearing officer, which may be the same day, but in no event shall be more than forty-five days from the date of the conference.

(b) *Hearing.*

* * * * *

(3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing a recommendation with respect to the entry of an order of partial custody or [**visitation**] **supervised physical custody**. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or [**visitation**] **supervised physical custody**.

* * * * *

Rule 1915.4-3. Non-Record Proceedings. Trials.

(a) *Non-Record Proceedings.* In those jurisdictions [**which**] **that** utilize an initial non-record proceeding such as a conciliation conference or office conference, if no agreement is reached at the conclusion of the proceeding, the conference officer or conciliator shall promptly notify the court that the matter should be listed for trial.

* * * * *

Rule 1915.5. Question of Jurisdiction or Venue. No Responsive Pleading by Defendant Required. Counterclaim. Discovery.

* * * * *

(b) A party may file a counterclaim asserting the right of **physical or legal custody**[, **partial custody or visitation**] within twenty days of service of the complaint upon that party or at the time of hearing, which

ever first occurs. The claim shall be in the same form as a complaint as required by Rule 1915.3.

* * * * *

Rule 1915.6. Joinder of Parties.

(a)(1) If the court learns from the pleadings or any other source that a parent whose parental rights have not been previously terminated or a person who has physical custody of the child is not a party to the action, it shall order that the person be joined as a party. Such person shall be served with a copy of all prior pleadings and notice of the joinder substantially in the form prescribed by Rule 1915.16(a).

* * * * *

(3) The person joined may file a counterclaim asserting a right to **physical or legal custody**[, **partial custody or visitation**] in the form required for a complaint by Rule 1915.3. A copy of the counterclaim shall be served upon all other parties to the action as provided by Rule 440.

(b) If the court learns from the pleadings or any other source that any other person who claims to have [**custody or visitation**] **custodial** rights with respect to the child is not a party to the action, it shall order that notice be given to that person of the pendency of the action and of the right to intervene therein. The notice shall be substantially in the form prescribed by Rule 1915.16(b).

Explanatory Comment—1994

The position taken by the rules is that a person in physical custody of the child and a parent whose parental rights have not been terminated are necessary parties to a custody determination. While it may be desirable to have other persons who claim custody [**or visitation**] rights as parties to the action, their joinder is not a prerequisite to a custody determination.

Rule 1915.7. Consent Order.

If an agreement for custody[, **partial custody or visitation**] is reached and the parties desire a consent order to be entered, they shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.

Rule 1915.10. **Decision. Order.**

(a) The court may make the decision before the testimony has been transcribed. **The court shall state the reasons for its decision either on the record in open court, in a written opinion, or in the order.**

(b) **The terms of the order shall be sufficiently specific to enforce the order. The court’s decision shall include safety provisions designed to protect an endangered party or a child in any case in which the court has found that either is at risk of harm.**

(c) **Any custody order shall include notice of a party’s obligations pursuant to 23 Pa.C.S. § 5337 dealing with a party’s intention to relocate with a minor child.**

(d) No motion for post-trial relief may be filed to an order of **legal or physical custody**[, **partial custody or visitation**].

[*Official Note:* See 23 Pa.C.S. § 5301 et seq. for provisions relating to the award of sole or shared

custody (§§ 5303, 5304), counseling and the temporary award of custody pending counseling (§ 5305), submission of a plan to implement a custody order (§ 5306), removal of a party or child from the Commonwealth (§ 5308), access to records of the child (§ 5309), and modification of existing custody orders (§ 5310).

The statute also provides that the court shall state on the record its reasons when it declines to enter an award of custody as agreed to by the parents or under the plan developed by them (23 Pa.C.S. § 5307.)]

[Explanatory Comment—1981

Subdivision (a) attempts to balance the right of the parties to be informed of the bases for the court's decision with the burden that right imposes upon the court. The rule imposes a minimal burden by requiring the court to give the reasons for its decision in contested cases involving custody and partial custody. The court may give its reasons in contested cases involving visitation, but it is not required to do so. The reasons may be stated in narrative form.

The decision differs significantly from the opinion which will be required if an action is appealed to the Superior Court. In that event, the trial judge must file "a complete and comprehensive opinion which contains a thorough analysis of the record and specific reasons for the court's ultimate decision." *In re Jennifer Lynn Arnold*, 286 Pa. Super. 171, 428 A.2d 627 (1981).

Except for enforcement or contempt proceedings, there is no post-trial practice. Subdivision (a) provides that the order entered by the lower court is "a final order for purposes of appeal." Subdivision (c) (now, subd. (b)) prohibits the filing of exceptions to the order of custody, partial custody or visitation.

The court need not wait until the testimony has been transcribed to make its decision and enter the order. This may be done at the conclusion of the hearing.]

Explanatory Comment—2013

The custody statute, at 23 Pa.C.S. § 5323(d), requires the court to delineate the reasons for its decision on the record in open court or in a written opinion or order. Subdivision (b) further defines and reinforces the requirements found in 23 Pa.C.S. § 5323(e). Examples of safety provisions include, but are not limited to: supervised physical custody, supervised or neutral custody exchange location, neutral party presence at custody exchange, telephone or computer-facilitated contact with the child, no direct contact between the parties, third-party contact for cancellations, third-party transportation and designating secure, neutral location for a child's passport. The statute, at 23 Pa.C.S. § 5323, requires that any custody order must include notice of a party's obligations when there is a proposed relocation under 23 Pa.C.S. § 5337. Rule 1915.17 also addresses relocation.

Rule 1915.11. Appointment of Attorney for Child. Interrogation of Child. Attendance of Child at Hearing or Conference.

(a) The court may on its own motion, or the motion of a party, appoint an attorney to represent the child in the

action. Counsel for the child shall represent the child's legal interests and zealously represent the child as any other client in an attorney-client relationship. Counsel for the child shall not perform the role of a guardian ad litem or best interests attorney. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The order appointing an attorney to represent the child shall be in substantially the form set forth in Rule 1915.19.

* * * * *

[Explanatory Comment—1981

Rule 1915.11 does not address the question of the right of the child to separate counsel. It merely recognizes that if the circumstances of a particular case warrant counsel for the child, the court may appoint an attorney on its own motion or on the motion of a party.

The Superior Court has prescribed a procedure for the interrogation of a child who is the subject of a custody action. In *Gerald G. v. Theresa G.*, 284 Pa. Super. 498, 426 A.2d 157 (1981), the court stated that: "when a hearing judge interviews a child in a custody case, certain procedures must be generally met: (1) counsel must be present; (2) counsel must have the opportunity to question the child; and (3) the testimony must be transcribed and made a part of the record." Subdivision (b) incorporates this procedure.

There may be cases in which it is appropriate to interrogate the child in open court or in the presence of the parties. To accommodate these occasions, subdivision (b) leaves these matters to the discretion of the trial judge.]

Explanatory Comment—1991

Rule 1915.15(b) provides a form of order to appear at a conference or hearing in an action for custody, partial custody or visitation of minor children. Prior to its recent amendment, the form required that one or more children who are the subject of the action attend the hearing or conference.

However, the presence of a child in court is not always necessary or desirable. The experience may be traumatic and disruptive. Consequently, the child should not be required to attend a hearing or conference in every case. When the presence of a child is required and the custodial party does not voluntarily bring the child, the court may issue an order for the child's attendance.

[**New subdivision**] Subdivision (c) has been added to Rule 1915.11 to provide that, in the absence of an order of court, a child who is the subject of the action need not be brought to a conference or a hearing before the court. The form of order to appear provided by Rule 1915.15(b) has been revised to implement this policy.

(*Editor's Note:* The following rule is new and printed in regular type to enhance readability.)

Rule 1915.11-2. Appointment of Guardian Ad Litem.

(a) The court may, on its own motion or the motion of a party, appoint a guardian ad litem to represent the best interests of the child in a custody action. The guardian ad litem shall be a licensed attorney or licensed mental health professional. The guardian ad litem shall not act as the child's counsel or represent the child's legal interests. Prior to appointing a guardian ad litem, the

court shall make a finding that the appointment is necessary to assist the court in determining the best interests of the child.

(b) The court may order either or both parties to pay all or part of the costs of appointing a guardian ad litem.

(c) The guardian ad litem shall file of record and provide copies of any reports prepared by the guardian ad litem to each party and the court not later than 20 days prior to trial. The admissibility of the report shall be determined at the hearing. Prior to disclosure to the parties of confidential information prohibited by 23 Pa.C.S. § 5336, the court shall make a determination of whether the information may be disclosed. The guardian ad litem shall attend all proceedings and be prepared to testify. The guardian ad litem shall be subject to cross-examination if called to testify by either party or the court.

(d) The order appointing a guardian ad litem shall be in substantially the form set forth in Rule 1915.21.

Official Note: 23 Pa.C.S. § 5334 is suspended insofar as it (1) requires that a guardian ad litem be an attorney, (2) permits the guardian ad litem to represent both the best interests and legal interests of the child, (3) provides the guardian ad litem the right to examine, cross-examine, present witnesses and present evidence on behalf of the child, and (4) prohibits the guardian ad litem from testifying.

Rule 1915.12. Civil Contempt for Disobedience of Custody Order. Petition. Form of Petition. Service. Order.

(a) A petition for civil contempt shall begin with a notice and order to appear in substantially the following form:

NOTICE AND ORDER TO APPEAR

Legal proceedings have been brought against you alleging you have willfully disobeyed an order of court for [(custody) (partial custody) (visitation)] custody. If you wish to defend against the claim set forth in the following pages, you may but are not required to file in writing with the court your defenses or objections. Whether or not you file in writing with the court your defenses or objections, you must appear in person in court on _____, at _____m., in Courtroom _____, (Day and Date) (Time) _____ (Address)

* * * * *

If the court finds that you have willfully failed to comply with its order [for (custody) (partial custody) (visitation)], you may be found to be in contempt of court and committed to jail, fined or both.

* * * * *

(b) The petition shall allege the facts which constitute [wilful] wilful failure to comply with the custody[, partial custody or visitation] order, a copy of which shall be attached to the petition.

(c) The petition shall be in substantially the following form:

(Caption)

PETITION FOR CIVIL CONTEMPT FOR DISOBEDIENCE OF [(CUSTODY) (PARTIAL CUSTODY) (VISITATION)] CUSTODY ORDER

The Petition of _____, respectfully represents:

1. That on _____, Judge _____ entered an Order awarding (Petitioner) (Respondent) [(custody) (partial custody) (visitation)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the minor child(ren)

(Name(s) of Child(ren))

* * * * *

(e) After hearing, an order committing a respondent to jail for contempt of a custody[, partial custody or visitation] order shall specify the condition which must be fulfilled to obtain release of the respondent.

Official Note: [See 23 Pa.C.S.A. § 4346 relating to contempt for noncompliance with visitation or partial custody order.]

See the Uniform Child Custody Jurisdiction and Enforcement Act, 23 [Pa.C.S.A.] Pa.C.S. §§ 5443 and 5445, relating to registration and enforcement of custody decrees of another state, and 23 [Pa.C.S.A.] Pa.C.S. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

[Explanatory Comment—1981

In *Cahalin v. Goodman*, 280 Pa. Super. 228, 421 A.2d 696 (1980), the Superior Court imposed upon custody proceedings the five-step contempt procedure mandated by *Crislip v. Harshman*, 243 Pa. Super 349, 365 A.2d 1260 (1976), in actions for support.

Rule 1915.12 provides a streamlined contempt procedure. Subdivision (a) prescribes the nature of the petition. It will begin with a notice and order in the nature of an extended notice to defend. The notice includes the time and location of the hearing upon the petition and the consequences of a failure to appear. The petition must contain facts showing a "willful" failure to obey the custody, partial custody or visitation order.

The prothonotary or another person designated by the court is to serve the petition upon the defendant by regular mail. Safeguards are provided by subdivision (c) for continuance of the hearing when the defendant fails to appear. The court is then given the option of either ordering personal service of the petition with a notice of a new hearing date or issuing a bench warrant as may be appropriate. If personal service is ordered, it shall be by the sheriff. If a bench warrant is issued, the rule directs that the warrant provide for producing the defendant in court and not for imprisonment in the county jail. The object of the warrant is to bring the defendant before the court and not to have the defendant languish in jail overnight or over a weekend.

The defendant is not required to answer the petition and he is given a period of at least seven days in which to defend.

Subdivision (d) continues the present case law requirement that the order state the condition which must be fulfilled so that the defendant will be released from prison.]

Rule 1915.13. Special Relief.

At any time after commencement of the action, the court may on application or its own motion grant appropriate interim or special relief. The relief may include, but is not limited to, the award of temporary legal or physical custody[, partial custody or visitation]; the issuance of appropriate process directing that a child or a party or person having physical custody of a child be brought before the court; and a direction that a person post security to appear with the child when directed by the court or to comply with any order of the court.

Official Note: This rule supplies relief formerly available by habeas corpus for production of the child.

Explanatory Comment—1981

Rule 1915.13 contains a broad provision empowering the court to provide special relief where appropriate. In a custody proceeding, such special relief might include relief in the nature of a writ of ne exeat, directing the parties not to leave the jurisdiction and not to remove the child from the jurisdiction.

The rule catalogs several types of relief which might be granted, including the entry of a temporary order of custody, partial custody or visitation. The rule specifically provides that the power of the court to grant special relief shall not be limited to the types of relief cataloged.

Rule 1915.14. Disobedience of Order. Arrest. Contempt.

If a person disobeys an order of court other than a custody[, partial custody or visitation] order, the court may issue a bench warrant for the arrest of the person and if the disobedience is [wilful] willful may, after hearing, adjudge the person to be in contempt.

Official Note: For disobedience of a custody[, partial custody or visitation] order, see Rule 1915.12.

[Explanatory Comment—1981

Rule 1915.14 governs disobedience of orders of court other than an order of custody, partial custody or visitation. Contempt of a custody, partial custody or visitation order is governed by Rule 1915.12.

Although general in terms, the rule will apply primarily to a party who fails to appear before the judge at the hearing.

The failure to obey a court order includes the failure of a party to bring a child to a hearing as required by order of court as well as the failure to appear in person.

The failure to obey an order of court is itself sufficient to cause the court to issue a warrant. However, the finding of contempt may be made only after a hearing at which it is determined that the failure to obey the order was wilful.]

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a [Partial] Custody [or Visitation] Order.

(a) The complaint in an action for custody[, partial custody or visitation] shall be in substantially the following form:

(Caption)

COMPLAINT FOR [(CUSTODY) (PARTIAL CUSTODY) (VISITATION)] CUSTODY

* * * * *

3. Plaintiff seeks [(custody) (partial custody) (visitation)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the following child(ren):

* * * * *

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have [custody or visitation] custodial rights with respect to the child. The name and address of such person is: _____.

* * * * *

8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child have been named as parties to this action. All other persons, named below, who are known to have or claim a right to custody [or visitation] of the child will be given notice of the pendency of this action and the right to intervene:

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. (a) If the plaintiff is a grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5323, you must plead facts establishing standing pursuant to 23 Pa.C.S. § 5324(3).

(b) If the plaintiff is a grandparent or great-grandparent who is seeking partial physical custody or supervised physical custody pursuant to 23 Pa.C.S. § 5325, you must plead facts establishing standing pursuant to § 5325.

(c) If the plaintiff is a person seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5324(2) as a person who stands in loco parentis to the child, you must plead facts establishing standing.

10. I have attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. No. 1915.3-2.

Wherefore, plaintiff requests the court to grant [(custody) (partial custody) (visitation)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child.

* * * * *

(b) A petition to modify a [partial] custody [or visitation] order shall be in substantially the following form:

(Caption)

PETITION FOR MODIFICATION OF A [PARTIAL] CUSTODY [OR VISITATION] ORDER

1. The petition of _____ respectfully represents that on _____, [19] 20 ____ an Order of Court was entered for [(PARTIAL CUSTODY) (VISITATION)] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody), a true and correct copy of which is attached.

* * * * *

WHEREFORE, Petitioner requests that the Court modify the existing Order [for (PARTIAL CUSTODY) (VISITATION)] because it will be in the best interest of the child(ren).

* * * * *

(c) The order to be attached at the front of the complaint or petition for modification shall be in substantially the following form:

(Caption)

ORDER OF COURT

You, _____, (defendant) (respondent), have been sued in court to (OBTAIN) (MODIFY) [custody, partial custody or visitation] (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child(ren): _____.

* * * * *

If you fail to appear as provided by this order, an order for custody[, partial custody or visitation] may be entered against you or the court may issue a warrant for your arrest.

You must file with the court a verification regarding any criminal record or abuse history regarding you and anyone living in your household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation) but not later than 30 days after service of the complaint or petition.

No party may make a change in the residence of any child which significantly impairs the ability of the other party to exercise custodial rights without first complying with all of the applicable provisions of 23 Pa.C.S. § 5337 and Pa.R.C.P. No. 1915.17 regarding relocation.

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

* * * * *

Rule 1915.16. Form of Order and Notice. Joinder. Intervention

(a) The order and notice joining a party in an action under Rule 1915.6(a) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody[, partial custody and visitation] of the following child(ren): _____.

The Court has learned you may have a legal interest in custody[, partial custody or visitation] of the child(ren) named.

A hearing will be held in Courtroom _____ of the Court of Common Pleas, _____, on _____ (Address)

_____, at _____, ____ .M. (Day and Date) (Time)

If you wish to [have custody, partial custody or visitation of the child(ren)] protect any legal interest you may have or wish to present evidence to the

Court on those matters, you should appear at the place and time and on the date above.

If you have the child(ren) in your possession or control, you must appear and bring them to the Courthouse with you.

If you wish to claim [**the**] a right [**to**] of custody[, **partial custody or visitation**], you may file a counterclaim.

If you fail to appear as provided by this order or to bring the child(ren), an order for custody[, **partial custody or visitation**] may be entered against you or the Court may issue a warrant for your arrest.

* * * * *

(b) The order for notice of the pendency of the action and the right to intervene required by Rule 1915.6(b) shall be substantially in the following form:

(Caption)

ORDER AND NOTICE

A complaint has been filed in the Court of Common Pleas of _____ County concerning custody[, **partial custody and visitation**] of the following child(ren): _____ .

The Court has learned you claim [**custody, partial custody or visitation**] **custodial** rights with respect to the child(ren) named.

A hearing will be held in Courtroom _____ of the Court of Common Pleas, _____, on _____, at _____, _____.M.
(Day and Date) (Time)

If you wish to assert your claim to [**custody, partial custody or visitation**] **custodial** rights with respect to the child(ren) or wish to present evidence to the Court on those matters, you should petition the Court, on or before the above date, for leave to intervene in the proceedings.

* * * * *

[**Explanatory Comment—1981**

See Explanatory Comment following Rule 1915.15.]

(*Editor's Note:* Rules 1915.17, 1915.19 and 1915.21 are new and printed in regular type to enhance readability.)

Rule 1915.17. Relocation. Notice and Counter-Affidavit.

(a) A party proposing to change the residence of a child must notify every other person who has custodial rights to the child and provide a counter-affidavit by which a person may agree or object. The form of the notice and counter-affidavit are set forth in subdivisions (i) and (j) below. The notice shall be sent by certified mail, return receipt requested, addressee only or pursuant to Pa.R.C.P. No. 1930.4, no later than the sixtieth day before the date of the proposed change of residence or other time frame set forth in 23 Pa.C.S. § 5337(c)(2).

(b) If the other party objects to the proposed change in the child's residence, that party must serve the counter-

affidavit on the party proposing the change by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of the notice required in subdivision (a) above. If there is an existing child custody case, the objecting party also shall file the counter-affidavit with the court.

(c) If no objection to a proposed change of a child's residence is timely served after notice, the proposing party may change the residence of the child and such shall not be considered a "relocation" under statute or rule.

(d) The procedure in any relocation case shall be expedited. There shall be no requirement for parenting education or mediation prior to an expedited hearing before a judge.

(e) If the party proposing the relocation seeks an order of court, has served a notice of proposed relocation as required by 23 Pa.C.S. § 5337, has not received notice of objection to the move and seeks confirmation of relocation, the party proposing the relocation shall file:

(1) a complaint for custody and petition to confirm relocation, when no custody case exists, or

(2) a petition to confirm relocation when there is an existing custody case and

(3) a proposed order including the information set forth at 23 Pa.C.S. § 5337(c)(3).

(f) If the party proposing the relocation has received notice of objection to the proposed move after serving a notice of proposed relocation as required by 23 Pa.C.S. § 5337 et seq., the party proposing relocation shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a copy of the notice of proposed relocation served on the non-relocating party;

(3) a copy of the counter-affidavit indicating objection to relocation; and

(4) a request for a hearing.

(g) If the non-relocating party has been served with a notice of proposed relocation and the party proposing relocation has not complied with subdivision (f) above, the non-relocating party may file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a counter-affidavit as set forth in 23 Pa.C.S. § 5337(d)(1), and

(3) a request for a hearing.

(h) If a non-relocating party has not been served with a notice of proposed relocation and seeks an order of court preventing relocation, the non-relocating party shall file:

(1) a complaint for custody or petition for modification, as applicable;

(2) a statement of objection to relocation; and

(3) a request for a hearing.

(i) The notice of proposed relocation shall be substantially in the following form:

(Caption)

NOTICE OF PROPOSED RELOCATION

You, _____, are hereby notified that _____ (party proposing relocation) _____ proposes to relocate with the following minor child(ren): _____.

To object to the proposed relocation, you must complete the attached counter-affidavit and serve it on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4 within 30 days of receipt of this notice. If there is an existing child custody case, you also must file the counter-affidavit with the court. If you do not object to the proposed relocation within 30 days, the party proposing relocation has the right to relocate and may petition the court to approve the proposed relocation and to modify any effective custody orders or agreements. FAILURE TO OBJECT WITHIN 30 DAYS WILL PREVENT YOU FROM OBJECTING TO THE RELOCATION ABSENT EXIGENT CIRCUMSTANCES.

Address of the proposed new residence: _____

Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).

Mailing address of intended new residence (if not the same as above) _____

Check here if the address is confidential pursuant to 23 Pa.C.S. § 5336(b).

Names and ages of the individuals who intend to reside at the new residence:

Name	Age
_____	_____
_____	_____
_____	_____

Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).

Home telephone number of the new residence: _____

Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).

Name of the new school district and school the child(ren) will attend after relocation: _____

Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).

Date of the proposed relocation: _____

Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).

Reasons for the proposed relocation: _____

Check here if the information is confidential pursuant to 23 Pa.C.S. § 5336(b) or (c).

Proposed modification of custody schedule following relocation: _____

Other information: _____

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

(j) The counter-affidavit that must be served with the relocation notice shall be substantially in the following form as set forth at 23 Pa.C.S. § 5337(d):

(Caption)

COUNTER-AFFIDAVIT REGARDING RELOCATION

This proposal of relocation involves the following child/children:

Child's Name	Age	Currently residing at:
_____	_____	_____
Child's Name	Age	Currently residing at:
_____	_____	_____
Child's Name	Age	Currently residing at:
_____	_____	_____

I have received a notice of proposed relocation and (check all that apply):

1. I do not object to the relocation
2. I do not object to the modification of the custody order consistent with the proposal for modification set forth in the notice.
3. I do not object to the relocation, but I do object to modification of the custody order.
4. I plan to request that a hearing be scheduled by filing a request for hearing with the court:
 - a. Prior to allowing (name of child/children) to relocate.
 - b. After the child/children relocate.
5. I do object to the relocation
6. I do object to the modification of the custody order.

I understand that in addition to objecting to the relocation or modification of the custody order above, I must also serve this counter-affidavit on the other party by certified mail, return receipt requested, addressee only, or pursuant to Pa.R.C.P. No. 1930.4, and, if there is an existing custody case, I must file this counter-affidavit with the court. If I fail to do so within 30 days of my receipt of the proposed relocation notice, I understand that I will not be able to object to the relocation at a later time.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

_____	_____
(Date)	(Signature)

Rule 1915.19. Form of Order Appointing Counsel for the Child.

The order appointing an attorney to represent a child in a child custody action pursuant to Rule 1915.11 shall be in substantially the following form:

(Caption)

ORDER OF COURT

AND NOW, THIS ____ day of _____, 20 __, it is hereby ordered as follows:

Pursuant to Pa.R.C.P. No. 1915.11, _____ is appointed as attorney for the minor child _____ (D.O.B. ____) in connection with the civil proceedings related to the custody of the minor child.

Counsel for the child shall zealously represent the legal interests of the child as any other client in an attorney-client relationship and shall not act as the child's guardian ad litem or best interests attorney. The child's attorney shall not be called to testify and communications between the child's attorney and the child shall be privileged, consistent with the attorney-client relationship.

It is ordered and decreed that all relevant schools, police departments, hospitals and social service agencies including home and school agencies who have records, reports and/or information pertaining to the child relevant to the custody of the child, shall allow the child's attorney access to all files and records in its possession, custody or control and shall cooperate in responding to all relevant inquires. These files/records may include but are

not limited to medical, psychological or psychiatric charts including evaluations and progress notes and records, X-rays, photographs, tests, test evaluations, intake and discharge summaries, police records, and school records including report cards, educational assessments and educational plans, relevant to this custody dispute and/or relevant to any special needs or requirements of the child. The child's attorney shall have the right to copy any part of the files and records maintained in connection with the child.

It is further ordered and decreed that the child's attorney shall be permitted to see and speak with the child, and family, medical and/or social service providers connected with this case, and take all steps appropriate to and consistent with this order.

The fees for the child's attorney shall be paid as follows: _____

This appointment shall terminate upon the entry of a final order resolving the petition pending as of the date of this order or as provided in subsequent order of court.

BY THE COURT:

_____ J.

Rule 1915.21. Form of Order Appointing Guardian Ad Litem.

The order appointing a guardian ad litem in a child custody action pursuant to Rule 1915.11-2 shall be in substantially the following form:

(Caption)
ORDER OF COURT

AND NOW, THIS _____ day of _____, 20____, it is hereby ordered as follows:

Pursuant to Pa.R.C.P. No. 1915.11-2, _____ is appointed as guardian ad litem for the minor child _____ (D.O.B. _____) in connection with the civil proceedings related to the custody of the minor child.

The child's guardian ad litem shall represent the best interests of the child. The guardian ad litem shall not act as the child's attorney or represent the child's legal interests.

It is ordered and decreed that all relevant schools, police departments, hospitals and social service agencies including home and school agencies who have records, reports and/or information pertaining to the child relevant to the custody of the child, shall allow the guardian ad litem access to all files and records in its possession, custody or control and shall cooperate in responding to all relevant inquires. These files/records may include but are not limited to medical, psychological or psychiatric charts including evaluations and progress notes and records, X-rays, photographs, tests, test evaluations, intake and discharge summaries, police records, and school records including report cards, educational assessments and educational plans, relevant to this custody dispute and/or relevant to any special needs or requirements of the child. The guardian ad litem shall have the right to copy any part of the files and records maintained in connection with the child.

It is further ordered and decreed that the guardian ad litem shall be permitted to see and speak with the child, and family, medical and/or social service providers connected with this case, and take all steps appropriate to and consonant with this order.

The guardian ad litem shall provide copies of any reports prepared by the guardian ad litem to each party, or to their counsel, and to the court not later than 20 days prior to trial. The guardian ad litem shall attend all proceedings and be prepared to testify. The guardian ad litem shall be subject to cross-examination if called to testify by either party or the court.

The fees for the guardian ad litem shall be paid as follows: _____

This appointment shall terminate upon the entry of a final order resolving the petition pending as of the date of this order or as provided in subsequent order of court.

BY THE COURT:

J.

Rule 1915.25. Suspension of Acts of Assembly.

* * * * *

Official Note: Rule 1915.6(b) provides that a person not a party who claims to have custody or visitation rights with respect to the child shall be given notice of the pendency of the proceedings and of the right to intervene.

23 Pa.C.S. § 5334 is suspended insofar as it (1) requires that a guardian ad litem be an attorney, (2) permits the guardian ad litem to represent both the best interests and legal interests of the child, (3) provides the guardian ad litem the right to examine, cross-examine, present witnesses and

present evidence on behalf of the child, and (4) prohibits the guardian ad litem from testifying.

[Pa.B. Doc. No. 13-1511. Filed for public inspection August 16, 2013, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 8]

Order Adopting New Rules 840—845, Amending Rules 568, 800, 807 and 809 and Approving the Revision of the Comment to Rule 808 of the Rules of Criminal Procedure; No. 437 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 31st day of July, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 42 Pa.B. 6254 (October 6, 2012), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 967), 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 new Pennsylvania Rules of Criminal Procedure 840 through 845 and the amendments to Pennsylvania Rules of Criminal Procedure 568, 800, 807, and 809 are adopted and the revision to the Comment to Pennsylvania Rule of Criminal Procedure 808 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2013.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G. Procedures Following Filing of Information

Rule 568. Notice of Defense of Insanity or Mental Infirmary; Notice of Expert Evidence of a Mental Condition.

(A) NOTICE BY DEFENDANT

* * * * *

(2) Notice of Expert Evidence of Mental Condition

[A] Except as provided in Rule 841, a defendant who intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing (1) on the issue of guilt, or (2) in a capital case, on the issue of punishment, shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer this expert evidence, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

* * * * *

Comment

This rule, which is derived from paragraphs (C)(1)(b), (c)—(f), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise a defense of insanity or mental infirmity, or introduce evidence relating to a mental disease or defect or any other mental condition at trial.

For the procedures related to the determination of mental retardation precluding imposition of a sentence of death, see Chapter 8 Part (B).

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

* * * * *

Official Note: Adopted January 27, 2006, effective August 1, 2006; **amended July 31, 2013, effective October 1, 2013.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the July 31, 2013 amendment to paragraph (A)(2) and Comment revisions regarding notice of mental retardation published with the Court’s Order at 43 Pa.B. 4722 (August 17, 2013).

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

PART A. GUILT AND PENALTY DETERMINATION PROCEDURES

Rule 800. Applicability of [Subchapter] Part A.

Except as provided in Rule 801, the rules [of this chapter] in Part A shall apply to the guilt and penalty determination phases of all cases in which the imposition of a sentence of death is authorized by law.

Comment

The 1990 amendment to this rule [makes] made it clear that **Part A of Chapter 8** applies to both the guilt determination and sentencing phases of cases in which the death penalty is authorized. **The chapter was amended in 2013 by the addition of Part B providing special procedures for seeking to preclude imposition of a sentence of death by reason of the defendant’s mental retardation.**

Except as provided in [this chapter] Part A, trial and retrial procedures in death penalty cases are governed by the Rules of Criminal Procedure generally.

For sentencing generally in death penalty cases, see the Sentencing Code, 42 Pa.C.S. § 9711.

The sentencing procedures in [this chapter] Part A and in the Sentencing Code also apply when the trial court orders a new sentencing proceeding, or when the Supreme Court vacates a sentence of death and remands a case for redetermination of sentence pursuant to 42 Pa.C.S. § 9711(h)(4).

When a jury is empaneled for the first time for sentencing, or for resentencing, the jury trial rules (Chapter 6) apply. See, for example, Rule 631 (Examination and Challenges of Trial Jurors).

[This chapter] Part A does not provide procedures for those cases in which the Supreme Court vacates a

sentence of death and remands the case to the trial court for the imposition of a life imprisonment sentence. See 42 Pa.C.S. § 9711(h)(4).

For post-verdict procedures in cases in which a sentence of death is authorized by law, see Rule 811.

Official Note: Previous Rule 351 adopted September 22, 1976, effective November 1, 1976; rescinded April 2, 1978, effective immediately. Present Rule 351 adopted July 1, 1985, effective August 1, 1985; Comment revised February 1, 1989, effective July 1, 1989; amended October 29, 1990, effective January 1, 1991; renumbered Rule 800 and amended March 1, 2000, effective April 1, 2001; amended October 1, 2012, effective November 1, 2012; **amended July 31, 2013, effective October 1, 2013.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the July 31, 2013 adoption of the new rules establishing the procedures for challenging the defendant’s competency to be executed published with the Court’s Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 807. Sentencing Verdict Slip.

(A) JURY

(1) [In] Except as provided in paragraph (2), in all cases in which the sentencing proceeding is conducted before a jury, the judge shall furnish the jury with a jury sentencing verdict slip in the form provided by Rule 808.

(2) In cases in which the jury is to determine if imposition of a sentence of death is precluded due to the defendant’s mental retardation, the judge shall furnish the jury with the sentencing verdict slip in the form required by Rule 845. If the jury subsequently does not find unanimously that the defendant is mentally retarded, the judge then shall furnish the jury with a jury sentencing verdict slip in the form provided by Rule 808.

(3) Before the jury retires to deliberate, the judge shall meet with counsel and determine those aggravating and mitigating circumstances of which there is some evidence. The judge shall then set forth those circumstances on the sentencing verdict slip using the language provided by law.

[(3)] (4) The trial judge shall make the completed sentencing verdict slip part of the record.

(B) TRIAL JUDGE

(1) In all cases in which the defendant has waived a sentencing proceeding before a jury and the trial judge determines the penalty, including those in which the defendant seeks to have the imposition of a sentence of death precluded by reason of mental retardation, the trial judge shall complete a sentencing verdict slip in the form provided by Rule 809.

(2) The trial judge shall make the completed sentencing verdict slip part of the record.

Comment

The purpose of this rule is to provide statewide, uniform jury and trial judge sentencing verdict slips in death penalty cases. The jury sentencing verdict slip is not intended to replace those jury instructions required by law. See Sentencing Code, 42 Pa.C.S. § 9711(c). For the sentencing procedure under paragraph (B), see Sentencing Code, 42 Pa.C.S. § 9711(b).

Official Note: Rule 357 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 806 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 807 June 4, 2004, effective November 1, 2004; **amended July 31, 2013, effective October 1, 2013.**

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 July 31, 2013 amendments regarding cases in which the defendant has introduced evidence of mental retardation published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 808. Form for Jury Sentencing Verdict Slip.

* * * * *
Comment
 * * * * *

The list of aggravating and mitigating circumstances completed by the judge in Part I, and by the jury foreperson in Part II, should use the language provided by law for each circumstance. See Sentencing Code, 42 Pa.C.S. § 9711(d) and (e). The judge's instructions on the weighing of aggravating and mitigating circumstances must comply with *Mills v. Maryland*, 108 S.Ct. 1860 (1988).

See Rule 845 for the jury verdict slip form to be used when the jury is to determine if imposition of the death penalty is precluded due to the defendant's mental retardation.

Official Note: Rule 358A adopted February 1, 1989, effective July 1, 1989; renumbered Rule 807 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 808 June 4, 2004, effective November 1, 2004; **Comment revised July 31, 2013, effective October 1, 2013.**

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 July 31, 2013 Comment revision cross-referencing Rule 845 published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 809. Form for Trial Judge Sentencing Verdict Slip.

IN THE COURT OF COMMON PLEAS
 OF _____ COUNTY, PENNSYLVANIA
 CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
 vs. : NO. _____
 :

FIRST DEGREE MURDER
 SENTENCING VERDICT SLIP

* * * * *

C. The findings on which the sentence of life imprisonment is based are:

_____ **A sentence of death is precluded because the defendant is mentally retarded.**

OR

- _____ 1. No aggravating circumstance exists.
- _____ 2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

* * * * *

Official Note: Rule 358B adopted February 1, 1989, effective July 1, 1989; renumbered Rule 808 and Comment revised March 1, 2000, effective April 1, 2001; renumbered Rule 809 June 4, 2004, effective November 1, 2004; **amended July 31, 2013, effective October 1, 2013.**

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 July 31, 2013 amendment regarding findings of mental retardation published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

PART B. PROCEDURES FOR SEEKING TO PRECLUDE IMPOSITION OF A SENTENCE OF DEATH BY REASON OF THE DEFENDANT'S MENTAL RETARDATION

(Editor's Note: Rule 840—845 are new and printed in regular type to enhance readability.)

- Rule 840. Scope.
- 841. Notice of Mental Retardation Precluding Imposition of Sentence of Death.
- 842. Examination of the Defendant by Mental Health Expert.
- 843. Optional Pretrial Hearing.
- 844. Sentencing Procedures in Cases in which the Defendant's Mental Retardation is Asserted.
- 845. Form for Sentencing Verdict Slip in Cases in which the Defendant's Mental Retardation is Asserted.

Rule 840. Scope.

The rules in Part B provide the procedure for determining if imposition of the death penalty is precluded due to the defendant's mental retardation.

Comment

These rules are intended to apply only to cases arising within the context of the United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), that held that the execution of a mentally retarded criminal is cruel and unusual punishment prohibited by the Eighth Amendment. Pursuant to *Atkins*, the Pennsylvania Supreme Court held in *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24 (2011), that a convicted defendant found mentally retarded is ineligible for the death penalty.

Official Note: New Rule 840 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 841. Notice of Mental Retardation Precluding Imposition of Sentence of Death.

(A) Notice of Mental Retardation Precluding Imposition of a Sentence of Death

A defendant who intends to offer evidence of mental retardation that would preclude the imposition of a sentence of death shall file with the clerk of courts not later than 90 days after arraignment, or within such other time as allowed by the court upon cause shown, a

notice of the intention to offer the evidence and certification of service on the attorney for the Commonwealth.

(1) The notice and certification shall be signed by the attorney for the defendant or the defendant if unrepresented.

(2) The notice shall contain specific available information as to the nature and extent of the alleged mental retardation and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call to establish mental retardation.

(B) Notice of Expert Evidence of Mental Retardation

A defendant who intends to introduce expert evidence relating to mental retardation that would preclude imposition of a sentence of death shall file with the clerk of courts not later than 90 days after arraignment, or within such other time as allowed by the court upon cause shown, a notice of the intention to offer the expert evidence and a certification of service on the attorney for the Commonwealth.

(1) The notice and certification shall be signed by the attorney for the defendant or the defendant if unrepresented.

(2) The notice shall contain specific available information as to the nature and extent of the alleged mental retardation, and the names and addresses of the expert witness(es) whose evidence the defendant intends to introduce.

(C) Reciprocal Notice of Witnesses

Within 30 days after receipt of the defendant's notice of mental retardation that would preclude the imposition of a sentence of death or notice of expert evidence of mental retardation or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon the defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of mental retardation.

(D) If prior to or during trial a party learns of an additional witness or additional information which, if known, should have been included in the notice furnished under paragraphs (A), (B), or (C), the party shall promptly notify the other party's attorney, or if unrepresented, the other party, of the existence and identity of such additional witness.

(E) After docketing the notice, the clerk of courts immediately shall transmit the notice to the trial judge.

Comment

This rule sets forth the notice procedures when a defendant intends to assert his or her mental retardation to preclude imposition of the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24 (2011). Notices filed in accordance with this rule fall within the definition of "motion" in Rule 575 and must comply with the provisions of Rules 575 and 576.

The requirement in paragraph (B) for a separate notice of intention to introduce expert evidence is intended to alert the Commonwealth that there will be expert evidence. See Rule 842 regarding the requirement that any expert who has examined the defendant must prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

Paragraph (E) emphasizes the requirement that the trial judge be informed of the filing of the notice at the earliest time to ensure the prompt collection of all materials relevant to the issue of the defendant's mental retardation.

Nothing in this rule precludes the trial judge from raising the issue of the defendant's mental retardation *sua sponte*.

Official Note: New Rule 841 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 842. Examination of the Defendant by Mental Health Expert.

(A) EXAMINATION OF DEFENDANT

(1) BY AGREEMENT

(a) The defendant, the defendant's counsel, and the attorney for the Commonwealth may agree to an examination of the defendant by the mental health expert(s) designated in the agreement for the purpose of determining mental retardation that would preclude imposition of a sentence of death.

(b) The agreement shall be in writing and signed by the defendant, the defendant's counsel, and the attorney for the Commonwealth, or made orally on the record.

(c) Unless otherwise agreed, the mental health expert(s) promptly shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(2) BY COURT ORDER

(a) If the defendant has provided notice of mental retardation that would preclude the imposition of a sentence of death or notice of intention to introduce expert evidence relating to mental retardation that would preclude imposition of a sentence of death, upon motion of the attorney for the Commonwealth, the court shall order that the defendant submit to an examination by one or more mental health experts specified in the motion by the Commonwealth for the purpose of determining the condition of mental retardation put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court on the record shall advise the defendant in person and in the presence of the defendant's counsel:

(i) of the purpose of the examination and the contents of the court's order;

(ii) that the information obtained from the examination may be used at trial; and

(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).

(c) The court's order shall:

(i) specify who may be present at the examination; and

(ii) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(ii),

shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(B) DISCLOSURE OF REPORTS BETWEEN PARTIES

(1) The mental health experts' reports shall be confidential, and not of public record.

(2) Any mental health expert whom either party intends to call to testify concerning the defendant's condition of mental retardation must prepare a written report. No mental health expert may be called to testify concerning the defendant's condition of mental retardation until the expert's report has been disclosed as provided herein.

(3) The court shall set a reasonable time after the Commonwealth's expert's examination for the disclosure of the reports of the parties' mental health experts.

(C) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the disclosure of a report or reports be restricted or deferred for a specified time, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made *in camera*.

(D) SANCTIONS FOR NON-COMPLIANCE

At any time during the course of the proceedings, if the court determines there has been a failure to comply with this rule, upon motion or *sua sponte*, the court may order compliance, may grant a continuance, or may grant other appropriate relief. Upon motion, any hearing to determine if there has been a failure to comply may be held *in camera* and the record sealed until after disposition of the case.

Comment

This rule establishes the procedures for the examination of the defendant by a mental health expert(s) retained by the prosecution pursuant to an agreement by the parties, see paragraph (A)(1), or a court order, see paragraph (A)(2), in cases in which the defendant's mental retardation has been raised to preclude the imposition of a sentence of death.

"Mental health expert," as used in this rule, includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning his or her mental retardation.

Examination of Defendant

Paragraph (A)(1) is intended to encourage the defendant, the defendant's counsel, and the attorney for the Commonwealth to agree to an examination of the defendant by the Commonwealth's mental health expert(s).

When the defendant, the defendant's attorney, and the attorney for the Commonwealth agree that the defendant will be examined under this rule, at a minimum, the agreement should specify the time, place, and conditions of the examination, who may be present during the examination, and the time within which the parties will disclose the reports of their experts.

It is intended that the examining mental health expert(s), whether appointed pursuant to the agreement of the parties or order of court, have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing

as the examining mental health expert(s) considers appropriate, within the limits of non-experimental, generally accepted medical, psychiatric, or psychological practices.

Nothing in this rule is intended to limit the number of examining experts the defense may use, nor is it to be construed as a limitation on any party with regard to the number of other expert or lay witnesses they may call to testify concerning the defendant's mental retardation.

The court is required in paragraph (A)(2)(b) to inform the defendant, in person on the record, about the request for a compelled examination. See Rule 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about the defendant's mental condition specifically with regard to mental retardation. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

Paragraph (A)(2)(d) requires that the examining mental health expert(s) promptly prepare a written report and sets forth the minimum contents of that report. It is intended that the scope of the mental health expert's report be limited in the court's order to matters related to the defendant's mental retardation.

Disclosure of Reports

After the examination of the defendant by the Commonwealth's mental health expert(s) is completed and the mental health expert's report has been prepared, the defendant and the Commonwealth are required in paragraph (B) to disclose the reports that are made by any experts either party intends to call to testify concerning the defendant's mental retardation. The reports must be in writing, and should comply with the content requirements in paragraph (A)(2)(d). An expert witness, whether or not the expert witness has examined the defendant, cannot testify until the report is disclosed as provided in paragraph (B)(2) and (3). There may be situations in which the court would have to call a short recess to permit the expert to complete a written report and to give the parties an opportunity to review the report, such as when a mental health expert(s) is observing the defendant during the trial and will be called to testify on these observations.

When the parties agree to the examination, the time for the disclosure of the reports should be set by the agreement of the parties. The agreement should permit adequate time to review the reports and prepare for the proceeding. If the parties cannot agree, in cases proceeding pursuant to court order under paragraph (A)(2), the court should set the time for the disclosure of reports, which should afford the parties adequate time to review the reports and prepare for the proceeding.

Establishing a reasonable time frame and providing for the reciprocal disclosure are intended to further promote the fair handling of these cases. In no case should the disclosure occur until after the defendant has been examined by the Commonwealth's mental health expert(s) and the mental health expert(s) has prepared and submitted a written report.

There may be cases in which, although proceeding pursuant to a court order, the parties, with the court's

approval, agree to an earlier time for disclosure consistent with the purposes of this rule. This rule would not preclude such an agreement.

The procedures in paragraph (C) are similar to the existing procedures for protective orders in Rule 573(F).

Because the question of whether the imposition of a sentence of death is precluded due to the defendant's mental retardation ordinarily is a question reserved for sentencing, use of information obtained from the examination of a defendant by a Commonwealth's expert is not to be disclosed or used until after the defendant has been found guilty. This may require that the Commonwealth's examination should be sealed until the penalty phase of the defendant's trial takes place. See *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000). However, where the parties have agreed to a pretrial determination of the issue pursuant to Rule 843, earlier disclosure may be required.

See the Pennsylvania Rules of Evidence concerning the admissibility of the experts' reports and information from any examinations of the defendant by an expert.

Sanctions

The sanctions authorized by paragraph (D) may be imposed on any person who has failed to comply with any of the provisions of this rule, including the attorney for the Commonwealth, the defendant, the defendant's counsel, or an expert.

When the defendant has refused to cooperate in the examination by the Commonwealth's mental health expert(s), before imposing a sanction, the court should consider whether the defendant's failure to cooperate (1) was intentional, (2) was the result of the defendant's mental condition, and (3) will have an adverse and unfair impact on the Commonwealth's ability to respond to the defendant's claim. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation.

Official Note: New Rule 842 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 843. Optional Pretrial Hearing.

(A) If the parties agree, the issue of the defendant's mental retardation precluding imposition of a sentence of death shall be determined by the judge after a pretrial evidentiary hearing.

(B) The defendant shall appear in person with counsel at the hearing.

(C) The defendant shall have the burden of going forward with the evidence.

(D) No later than the beginning of the evidentiary hearing, the judge shall advise the defendant that, by agreeing to have the issue of his or her mental retardation decided pretrial, the defendant, if found not mentally retarded and later convicted, will not be permitted to seek a preclusion of the imposition of a sentence of death due to mental retardation with a jury. In these cases, however, the defendant may introduce relevant evidence concerning his or her mental state at the guilt phase and the penalty phase, including evidence in support of statutory mitigation.

(E) The attorney for the Commonwealth and the defendant's attorney may introduce evidence and cross-examine any witness, including the examining mental health experts. The judge may call and interrogate witnesses as provided by law.

(F) Within 30 days of the completion of the evidentiary hearing, the judge shall enter an order finding either that the defendant is mentally retarded and therefore is precluded from receiving a sentence of death or that the defendant is not mentally retarded.

Comment

In *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24 (2011), the Pennsylvania Supreme Court held that, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), the parties may agree to a pretrial determination of the defendant's ineligibility for the death penalty to be made by the trial judge. The defendant has the burden of proof by a preponderance of the evidence to prove mental retardation. See *Commonwealth v. Sanchez*, 614 Pa. at 65, 36 A.3d at 62-63. If the trial judge finds the defendant is eligible for the death penalty, the defendant may still introduce relevant evidence concerning his or her mental state during the guilt and penalty phases of trial, including evidence in support of statutory mitigation.

Official Note: New Rule 843 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 844. Sentencing Procedures in Cases in which the Defendant's Mental Retardation is Asserted.

(A) Unless the issue is decided pretrial pursuant to Rule 843, in a case in which the defendant has asserted that imposition of a sentence of death is precluded by reason of his or her mental retardation, after a return of a verdict of guilty of murder in the first degree, a sentencing hearing shall be held in which all sentencing evidence shall be presented, including, but not limited to, evidence of the defendant's mental retardation and evidence of aggravating and mitigating circumstances.

(B) In cases in which the defendant has asserted his or her mental retardation as provided in paragraph (A) and the sentencing hearing is conducted before the jury, the following procedures shall apply:

(1) After presentation of the evidence, the judge shall determine if sufficient evidence exists for the jury to decide whether the imposition of a sentence of death should be precluded by reason of mental retardation.

(a) If the judge determines sufficient evidence exists for the jury to consider the issue of the defendant's mental retardation, the case will proceed according to the procedures in paragraphs (B)(2)—(6).

(b) If the judge determines that there is not sufficient evidence for the jury to consider the issue of the defendant's mental retardation, the case will proceed as any other capital case.

(2) After the presentation of evidence, each party shall be entitled to present one closing argument addressing all sentencing issues, including the defendant's alleged mental retardation and arguments for or against a sentence of death. The defendant's argument shall be made last.

(3) Upon completion of argument, the judge shall instruct the jury solely upon the issue of the defendant's

mental retardation and shall submit a special issue to the jury as to whether the defendant is mentally retarded.

(4) The question of the defendant's mental retardation shall be considered and answered by the jury prior to the consideration of any other sentencing issue and the determination of sentence.

(5) If the jury determines the defendant to be mentally retarded, the judge shall sentence the defendant to life imprisonment.

(6) If the jury does not find the defendant mentally retarded, the judge shall instruct the jury on the mitigating and aggravating circumstances and the jury shall deliberate on whether or not to impose the death penalty.

(C) In cases in which the defendant has asserted his or her mental retardation as provided in paragraph (A), and the defendant waives a sentencing proceeding before a jury and the trial judge determines the penalty, the following procedures shall apply:

(1) After the presentation of evidence, each party shall be entitled to present one closing argument addressing all sentencing issues, including the defendant's alleged mental retardation and arguments for or against a sentence of death. The defendant's argument shall be made last.

(2) The trial judge shall consider and answer the question of the defendant's mental retardation prior to the consideration of any other sentencing issue and the determination of sentence.

(3) If the trial judge determines the defendant to be mentally retarded, the trial judge shall sentence the defendant to life imprisonment.

(4) If the trial judge does not find the defendant to be mentally retarded, the trial judge will evaluate the mitigating and aggravating circumstances and determine whether or not to impose a sentence of death.

Comment

In *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24 (Pa. 2011), the Pennsylvania Supreme Court held that, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), a determination that a defendant is precluded from receiving the death penalty by reason of mental retardation is to be made as the first issue in sentencing. This rule provides the procedures for that determination whether made by a jury or a judge when the issue has not been decided pretrial pursuant to Rule 843.

Paragraph (B) addresses sentencing proceedings before a jury. The rule contemplates that a single capital sentencing hearing will be held in such cases but the jury's deliberations will be conducted sequentially with the defendant's mental retardation decided first. If the jury finds the defendant not mentally retarded, the judge will instruct the jury on the issues related to the imposition of a sentence of death, including the mitigating and aggravating circumstances, after which the jury will deliberate on the sentence.

Paragraph (C) addresses sentencing proceedings before a judge. See Rule 809 for the form of the trial judge sentencing verdict slip when the defendant has waived a jury for the sentencing proceeding.

Except as otherwise provided in Part B of this Chapter, sentencing shall proceed as provided in Chapter 7.

Official Note: New Rule 844 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Rule 845. Form for Sentencing Verdict Slip in Cases in which the Defendant's Mental Retardation is Asserted.

IN THE COURT OF COMMON PLEAS
OF _____ COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
vs. : NO. _____
:

FIRST DEGREE MURDER

SENTENCING VERDICT SLIP

FINDINGS REGARDING MENTAL RETARDATION

INSTRUCTIONS:

Indicate whether you unanimously agree that the defendant has proven that he or she is mentally retarded.

Upon completion of deliberations on the question of the defendant's mental retardation, return to the courtroom for further instructions from the judge.

FINDINGS:

_____ We, the jury, unanimously find that the defendant has proven by a preponderance of the evidence that the defendant is mentally retarded.

_____ We, the jury, unanimously find that the defendant has not proven by a preponderance of the evidence that the defendant is mentally retarded.

_____ We, the jury, cannot agree unanimously that the defendant is mentally retarded.

_____ DATE _____ JURY FOREPERSON

Comment

The verdict slip form was created in 2013 to provide for those cases in which the question of a defendant's mental retardation that would preclude imposition of the death penalty is determined by the jury. See *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24 (2011). See also Rule 844. For optional procedures for a pretrial determination of the defendant's mental retardation, see Rule 843.

The judge should caution the jury that the verdict slip is to be used to record the findings as to mental retardation and that the slip should be completed only after their deliberations are concluded.

Official Note: New Rule 845 adopted July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the July 31, 2013 adoption of the new rule providing the jury verdict slip form in cases involving a determination of mental retardation precluding imposition of the death penalty published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

FINAL REPORT¹

Proposed New Pa.Rs.Crim.P. 840—845
Proposed Amendments to Pa.Rs.Crim.P. 568, 800,
807, and 809
Proposed Revision of the Comment to
Pa.R.Crim.P. 808

Procedures for Seeking to Preclude Imposition of a Sentence of Death by Reason of Defendant's Mental Retardation

On July 31, 2013, effective October 1, 2013, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rules 840—845, amendments to Rules 568, 800, 807, and 809, and revision to the Comment to Rule 808 to provide procedures for asserting a claim of mental retardation that would preclude imposition of the death penalty.

Pursuant to directions from the Court, the Committee undertook the development of notice procedures for seeking to preclude the imposition of a sentence of death by reason of the defendant's mental retardation. As described more fully below, the Committee concluded that the bench and bar would benefit from having a more detailed procedural framework for asserting these claims. Therefore, the amendments address, in addition to the notice requirements, procedures for examination of the defendant, for disclosure of information, for conducting the optional pre-trial determination, for conducting the sentencing hearing in cases in which the issue is determined by the jury as well as a model jury slip.

Background

The question of the availability of the death penalty for mentally retarded individuals convicted of a capital offense was definitively decided by the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Atkins*, the United States Supreme Court found that the execution of the mentally retarded is "cruel and unusual punishment" within the meaning of the Eighth Amendment's prohibition. In this decision, however, the U.S. Supreme Court did not adopt a definition of mental retardation or a prescribed method of how the issue should be determined. Instead, the Court left those tasks to the individual states to develop, specifically noting that states are "left the task of developing appropriate ways to enforce the constitutional restriction upon execution of sentences." *Id.* at 317. The concept of individual state action on *Atkins* issues was reaffirmed in the case of *Schriro v. Smith*, 546 U.S. 6 (2005), that held that the states must develop their own legal definition of mental retardation. There is currently no statute that provides for an *Atkins* determination in Pennsylvania.³

In the absence of action by the Legislature, the Pennsylvania Supreme Court addressed most of the substantive questions regarding adjudication of *Atkins* claims in *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011). *Sanchez* provides that the decision regarding this issue will be made by the jury as the first issue to be determined at sentencing, with the requirement that the finding of mental retardation for death penalty preclusion must be unanimous. However, the parties may agree to have the issue decided by the judge pre-trial. The burden of proof

is on the proponent of the *Atkins* claim, usually the defendant, to prove mental retardation by a preponderance of the evidence.

Development of the Rule Changes

As directed by the Court, the Committee's examination initially focused on the question of the timing for raising this issue. The Committee considered a time limit similar to that used for the Rule 568 (Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of a Mental Condition)—the motion to be filed no later than the time required for filing an omnibus pretrial motion, that is 30 days after arraignment. After further discussion, the Committee concluded that the time limit should not be tied to the omnibus pretrial motions rules but should be based on the arraignment date. This would be consistent with the requirements for the notice of aggravating circumstances in Rule 802. The members settled on the time to be a period of ninety days after arraignment, concluding that this is reasonable given the amount of information that must be gathered in order to present a good faith notice of mental retardation.

In addition to determining the timing for providing the notice, the Committee considered other procedures related to notice that should be addressed. These procedures include the provision for an extension of this time limitation for cause shown, and the provision for encouragement of the early involvement of the trial judge, soon after the notice was filed, in order to provide appropriate supervision of the discovery and examination process. The Committee agreed that the new notice procedures should provide for a response time of 30 days. This would be comparable to the procedures for the notice of insanity defense that served as a model for these notice procedures.

In further discussions, the Committee agreed that procedures comparable to the procedures in Rule 568 (Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of a Mental Condition) should be added to provide a continuing duty to disclose and reciprocal notice. Lastly, the Committee also considered whether the new procedures should provide for the Commonwealth to obtain an examination of the defendant by a mental health expert similar to the procedures in Rule 569.

Because of the additional elements, particularly the disclosure and examination provisions, the Committee realized that the proposal was extending beyond notice procedures. The Committee determined that an expanded proposal, setting forth as many of the procedures for making an *Atkins/Sanchez* determination as possible, would be helpful to the bench and bar and agreed to examine procedures for how this determination is to be made, either by the jury or, upon agreement of the parties, as a pretrial determination by the trial judge.

Rule Changes

Originally, the Committee considered placing these procedures in Rule 802. Given the increased scope of the proposal, placement in a single rule would make that rule very unwieldy. The Committee concluded that the best structure for these procedures would be as a series of separate rules grouped in a new subchapter B in Chapter 8.

Therefore, new subchapter B includes new Rules 840 (Scope), 841 (Notice of Mental Retardation Precluding Imposition of the Death Penalty), 842 (Examination of Defendant by Mental Health Expert), 843 (Optional Pre-trial Hearing), 844 (Sentencing Procedures in Cases in

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

² "Mental retardation" was defined in Pennsylvania in *Commonwealth v. Miller*, 585 Pa. 144, 888 A.2d (2005) which held that a defendant may establish mental retardation as defined by either the American Association of Mental Retardation or *Diagnostic and Statistical Manual Disorders*, 4th Ed. (DMS-IV)

which the Defendant's Mental Retardation is Asserted), and 845 (Form for Sentencing Verdict Slip in Cases in which the Defendant's Mental Retardation is Asserted).

New Rule 840 establishes that the rules in Part B provide the procedure for determining the defendant's ineligibility to be executed by reason of mental retardation. The Comment to Rule 840 includes citations to *Atkins* and *Sanchez*.

New Rule 841 provides for the timing of the filing of the notices. The rule also contains a reciprocal notice provision as well as a continuing duty to disclose. The disclosure requirements in Rule 841 are based on those for the competency to stand trial determination procedures found in Rule 568.

Additionally, Rule 841 contains in paragraph (B) provisions for the filing of the separate notice of expert evidence provision. As this proposal is modeled on the notice of insanity defense procedures, the Committee decided to retain this separate notice of expert evidence to keep the examination procedures for mental retardation similar to those for insanity.

Paragraph (E) of Rule 841 requires the clerk of courts immediately to send a copy of the notice to the trial judge to ensure the judge's supervision of the discovery and examination process at an early stage.

The notices filed under this rule are considered "motions." To make this clear, the Comment contains a cross-reference to Rules 575 and 576 for motion procedures and explains that the term "notices" as used in the rule fall within the definition of "motion" in Rule 575.

Rule 842 provides the procedures by which the Commonwealth may obtain an examination of the defendant by a mental health expert. These procedures are almost identical to those found in Rule 569 with the only differences being changes necessary to conform to the mental retardation procedures.

New Rule 843 provides the procedures for the optional pre-trial hearing for the determination of the issue but only if all the parties agree, as provided in *Sanchez*. If the parties agree, the judge shall hear the issue as provided in this rule. Rule 843 also requires that, within 30 days of the completion of the evidentiary hearing, the judge enter an order finding the defendant either is or is not competent to be executed due to mental retardation. Paragraph (D) requires that the judge advise the defendant that, by agreeing to have this issue decided pretrial, the defendant would not be able to argue for capital punishment preclusion with a jury but only may introduce mental retardation evidence for purposes of mitigation.

The Committee conducted a lengthy examination of the manner in which a sentencing hearing would proceed when the issue of the defendant's mental retardation has not been decided pretrial pursuant to Rule 843. This procedure is detailed in Rule 844. First, after the guilt determination, a single capital sentencing hearing is held in which all sentencing evidence is to be presented, including evidence of the defendant's mental retardation. Under Rule 844(B), the trial judge makes an initial determination that the evidence of the defendant's mental retardation that has been presented is sufficient to raise a question for the jury to determine. If the trial judge determines that sufficient evidence of the defendant's mental retardation had not been presented, the case proceeds as in any other capital case. If the trial judge determines that sufficient evidence has been presented, each party would be permitted to make a single argument encompassing all sentencing issues. At the conclusion of

the arguments, the judge will instruct the jury on the mental retardation issue only. The jury then will deliberate on that single issue. If the jury finds the defendant not mentally retarded, the trial judge will instruct them on the mitigating and aggravating circumstances and the jury will deliberate on that phase of sentencing.

Paragraph (C) provides the procedures to be followed when the defendant has waived sentencing before a jury and is sentenced before the trial judge. As with a jury sentencing proceeding, one hearing would be held and each party would be permitted one argument addressing all sentencing issues. The judge would then consider the question of the defendant's mental retardation prior to the consideration of any other sentencing issue.

In cases in which the jury is asked to make a determination as to the defendant's mental retardation, a new separate jury verdict slip, contained in new Rule 845, would be used to record the jury's determinations regarding mental retardation. Since this is a distinct determination, the slip in Rule 845 poses only one question, whether the jury unanimously finds the defendant was mentally retarded at the time of the murder. If the jury finds the defendant mentally retarded, the jury would not need to consider aggravating or mitigating factors. If the jury does not find the defendant mentally retarded or if the jury cannot unanimously agree that the defendant was mentally retarded, the jury would proceed, after further instruction by the trial judge, to the capital determination guided by the jury slip in Rule 807.

In cases in which the defendant has waived sentencing before a jury and has not sought a pretrial determination of mental retardation as contemplated in Rule 844(C), the judge sentencing verdict slip in Rule 809 has been modified to incorporate this possibility and correlative changes also have been made to Rule 807(B).

Finally, correlative changes to Rule 800 indicating the addition of new Part B to Chapter 8 as well as to Rule 568 to indicate that procedures for *Atkins/Sanchez* determinations are in Chapter 8 Part B have been added.

[Pa.B. Doc. No. 13-1512. Filed for public inspection August 16, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Rule of Civil Procedure 206.1(a)—Amendment; Administrative Order No. 60A of 2013

Order of Court

And Now, this 5th day of August, 2013, to correct an error regarding the publishing requirement for the change of Adams County Rule of Civil Procedure 206.1(a) described in Administrative Order 60 of 2013, the rule change shall become effective upon the publication of the rule change on the Pennsylvania Judiciary's Web Application Portal.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 13-1513. Filed for public inspection August 16, 2013, 9:00 a.m.]

BUCKS COUNTY

**Order Promulgating Rule of Civil Procedure
205.4—Electronic Filing and Service of Legal
Papers**

Order

And Now, this 31st day of July, 2013, Bucks County Rule of Civil Procedure 205.4—Electronic Filing and Service of Legal Papers, is promulgated as follows:

**Bucks County Rule 205.4. Electronic Filing and
Service of Legal Papers.**

(a)(1) Any legal paper permitted to be filed under the Pennsylvania Rules of Civil Procedure may be filed electronically under the procedures set forth in this rule.

(b)(1) All legal papers to be electronically filed shall be presented in portable document format (".pdf") as authorized by Pa.R.C.P. No. 205.4(b)(1).

(b)(2) Legal papers may be submitted to the Prothonotary in a hard copy format. In that event, the Prothonotary shall electronically scan such legal paper into .pdf format and maintain it in that format. Any hard copies filed under this subsection will be retained by the Prothonotary.

(c)(1) All legal papers that are filed electronically shall be filed through the Prothonotary's Electronic Filing System ("Electronic Filing System"). General access to the Electronic Filing System shall be provided through a link appearing on the Prothonotary's website, at www.buckscounty.org/government/rowofficers/prothonotary/index.aspx.

(c)(2) Parties who are not attorneys shall register with the Electronic Filing System in order to file legal papers electronically. Registrants shall provide their name, mailing address, e-mail address, phone number, and other identifying information as required by the Office of the Prothonotary.

(d)(1) The Prothonotary shall accept the following credit and debit cards for payment of all filing fees: Discover, MasterCard and Visa. The Prothonotary shall not accept advance deposit on account of future filing fees.

(e) (Reserved)

(f)(1) Upon receipt of an electronically filed legal paper, the Prothonotary shall provide the filing party with an acknowledgement, which includes the date and time the legal paper was received by the Electronic Filing System. The Prothonotary shall also provide the filing party with notice that the legal paper was accepted for filing. If the legal paper is not accepted upon presentation for filing or is refused for filing by the Electronic Filing System, the Prothonotary shall immediately notify the party presenting the legal paper for filing the date of presentation, the fact that the document was not accepted or refused for filing by the system, and the reason therefor. All acknowledgements and notices under this subsection will be sent to the e-mail address provided by the filing party.

(f)(2) The Prothonotary shall maintain an electronic copy of all legal papers filed. In addition, the Prothonotary shall maintain a hard copy of any legal papers filed under subsection (b)(2) hereof.

This new Rule shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

Final written approval for implementation of the Electronic Filing System as described within Bucks County Rule 205.4 shall be issued by the Court.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

[Pa.B. Doc. No. 13-1514. Filed for public inspection August 16, 2013, 9:00 a.m.]

ERIE COUNTY

**Constable Review Board Rules for the Sixth Judicial
District of Pennsylvania; No. 90026-13**

Administrative Order

And Now, to wit, this 31st day of July, 2013 it is hereby *Ordered* that Erie County Rule of Judicial Administration 1907.2, Constable Review Board Procedures, is hereby adopted as a Rule of this Court, effective thirty (30) days after the date of its publication in the *Pennsylvania Bulletin*.

ERNEST J. DISANTIS, Jr.,
President Judge

Rule 1907.2. Constable Review Board Procedures.

Rule 1. Definitions

a. "*Constable.*" Any elected or appointed constable or deputy constable performing judicial duties for the Erie County Court of Common Pleas or any magisterial district court within the Sixth Judicial District.

b. "*Judicial Duties.*" Services performed pursuant to 44 Pa.C.S.A. §§ 7161—7161.1 and further defined by the Pennsylvania Unified Judicial System's Constable Policies, Procedures and Standards of Conduct published by the Administrative Office of Pennsylvania Courts.

Rule 2. Scope

a. Constables are elected and perform numerous functions at the municipal level, apart from the services performed as independent contractors for the judiciary. The Constable Review Board's jurisdiction extends only to constables in the performance of judicial duties.

b. Consistent with the Pennsylvania Unified Judicial System's Constable Policies, Procedures and Standards of Conduct, the Constable Review Board may receive complaints by or against constables regarding:

1. the performance of judicial duties;
2. financial/payment disputes; or
3. other matters relevant to a constable's judicial duties.

c. The Constable Review Board does not have the authority to revise the Constable Policies, Procedures and Standards of Conduct issued by the Administrative Office of Pennsylvania Courts.

d. Nothing in these rules precludes any person or surety of a constable from filing a verified petition in accordance with 44 Pa.C.S. § 7172 alleging that a constable is incompetent to discharge official duties.

Rule 3. Authority

a. The Constable Review Board may make recommendations to the President Judge regarding the judiciary's continued use of a constable's services.

b. If a matter involves a financial dispute or other matter within Erie County's control, the Constable Review Board may make recommendations to the Erie County Executive regarding payment for services.

c. The Constable Review Board shall forward any findings of suspected criminal activity to the Erie County District Attorney.

d. The President Judge remains the ultimate authority with regard to a constable's performance of judicial duties within the Sixth Judicial District. In that respect, the President Judge may, at any time, temporarily place a moratorium on the use of a particular constable pending review and recommendation of the Constable Review Board on any pending complaint.

Rule 4. Membership of the Constable Review Board

- a. The Administrative Judge of the Trial Division
b. The current President of the Magisterial District Judge Association of Erie County
c. The District Court Administrator
d. A Constable selected by the President Judge
e. The County Controller or his/her designee

Rule 5. Filing a Complaint

a. The complaint shall be in writing, signed by the complainant, and contain a statement of the alleged misconduct, financial dispute, or other matter related to the performance of judicial duties.

b. The complaint may be submitted by mail, e-mail, fax, or any other electronic means by which a paper copy may be generated. The contact information for filing the complaint is as follows:

Assistant Court Administrator
Erie County Courthouse
140 West Sixth Street, Room 205
Erie, PA 16501
Fax: 814-451-6223
Email: CRBAdm@eriecountygov.org

c. The written complaint shall substantially conform to the form set forth at Rule 8 herein.

d. The complaint shall initially be forwarded to the Assistant Court Administrator. Upon receipt of a complaint, the Assistant Court Administrator shall:

- 1. Note the date of receipt on the Complaint.
2. Create a file to contain the complaint and all subsequent communications regarding the complaint.
3. Within three (3) business days, the Assistant Court Administrator shall forward a copy of the complaint to the respondent constable, if the complaint is against a constable or to any other respondent if the complaint is by a constable.
4. At the same time as the transmission of the copy of the complaint to the constable/or respondent, the Assistant Court Administrator shall provide written notice to the constable/respondent that he or she must provide to the Assistant Court Administrator a written response to the complaint within 20 days, or less if the President Judge so orders, from the date of such notice. The notice shall further provide that if a constable/respondent fails to respond, such failure may result in a decision by the judiciary based on the information available for review.

Rule 6. Constable Review Board Action

a. Upon receipt of a respondent's written response, or expiration of the response period, whichever comes first,

the Assistant Court Administrator shall, within three (3) business days forward a copy of the complaint, response, and all corroborating documentation to each Constable Review Board member for review.

b. Within 30 days of receipt of the file information, the Constable Review Board shall:

1. in matters falling outside the Constable Review Board's authority, forward the complaint file to the President Judge with written notification to the President Judge, and the complainant, that the complaint falls outside the scope of the Board's authority and list the reason(s) for that finding.

2. in matters involving payment and or possible termination or suspension of the Court's use of a constable, interview the complainant, the constable and all other relevant witnesses. If scheduling conflicts prevent the Board from meeting to conduct interviews before the Board as a whole, the Board may request the President Judge to select two Board members to conduct interviews who shall prepare and submit a report to the Board. Unless the President Judge grants an extension of time, interviews shall be completed and a recommendation to the President Judge shall be made within the 30 day time period.

3. in all other matters, the Constable Review Board may conduct interviews or make a recommendation to the President Judge based exclusively upon the complaint, response, and all other written documentation submitted.

Rule 7. Notice by President Judge

a. Within thirty (30) days of receipt of the Constable Review Board's recommendation, the President Judge shall issue a written notice to the complainant and any constable of the Court's decision.

Rule 8. Form Complaint—See next page

CONSTABLE REVIEW BOARD FOR THE 6TH JUDICIAL DISTRICT OF PENNSYLVANIA COMPLAINT

A. COMPLAINANT:

Your Name: _____
Address: _____
Telephone # _____

B. CONSTABLE COMPLAINED OF:

Name: _____
Contact Info: _____
(if known) _____

C. STATEMENT OF COMPLAINT: PLEASE BE SPECIFIC, relevant dates, names of witnesses and any relevant documents. Explain the conduct or practice complained of, the date(s), names of witnesses and attach copies of relevant documents. You may attach as many additional pages as necessary to fully set forth your complaint.

MONROE COUNTY MORTGAGE FORECLOSURE COVER SHEET

Pursuant to the Administrative Order dated March 2013, pertaining to the Residential Mortgage Foreclosure Diversion Program, I hereby certify that:

1. The property in this case is known and numbered as:

Property Address: _____

2. The property is:

A. ____ Owner-occupied residential

B. ____ Non-owner occupied residential

____ four units or less

____ over four units

C. ____ Commercial

D. ____ Other (explain) _____

3. If owner-occupied residential, the name, address and telephone number of a representative of the lending institution with authority to bind the plaintiff to a stipulation:

4. That the URGENT NOTICE and CERTIFICATE OF PARTICIPATION are being served upon the defendant(s) along with the complaint in mortgage foreclosure.

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 unsworn falsification to authorities.

Date:

Signature of Plaintiff or Counsel for Plaintiff

Address:

Exhibit "B"

URGENT NOTICE

IMPORTANT NOTICE TO DEFENDANT(S)
YOU MAY RECEIVE HELP THAT MIGHT SAVE YOUR HOME

MONROE COUNTY RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM

You have been sued. The Plaintiff alleges you have defaulted on your mortgage.

The court has a program that may help save your home from foreclosure if: 1) you are an owner (or an heir to a deceased owner) of the property, 2) you live in the property and 3) the property is your principal residence.

You must complete and return the attached Certificate of Participation to the Prothonotary (3rd Floor, Monroe County Courthouse, Stroudsburg, PA 18360) immediately. When you file this form, an order staying the mortgage foreclosure case against you will be entered by the court.

A conciliation conference before the court will be scheduled with you, your attorney if you have one, and a representative of your lender.

You will be required to submit a complete, written application and proposal for modification of your mortgage, along with supporting financial and employment documentation to the Plaintiff's attorney no later than THIRTY (30) DAYS FROM THE DATE OF THE COURT ORDER SCHEDULING YOUR CONCILIATION CONFERENCE. Further information about the application package may be found at www.monroepacourts.us under the Monroe County Residential Mortgage Foreclosure Diversion Program sub-heading. Any question about the use of these forms and the borrower's rights should be referred to an attorney as the court does not give legal advice.

You may have an attorney of your choosing assist you in making your application and proposal to your lender. If you do not have an attorney, you may contact the Monroe County Bar Association ((570)424-7288, www.monroebar.org for a list of attorneys who will represent homeowners in the Monroe County Residential Foreclosure Diversion program for a fee.

You may also call a housing counselor for assistance. The PENNSYLVANIA HOUSING FINANCE AGENCY (PHFA) maintains a list of agency-approved housing counselors providing services in Monroe County at http://www.phfa.org/consumers/homeowners/mdp.aspx. PHFA's toll-free telephone number is 1-800-635-4747. The housing counselor's services are at no cost to you. Neither the Court nor the County of Monroe endorses any particular housing counselor or program.

THE COURTS

EXHIBIT "C"

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

Plaintiff,
vs.
Defendant(s).
: No. Civil 201__
:
:
:
:
:
: Mortgage Foreclosure

CERTIFICATION OF PARTICIPATION

I wish to participate in the Monroe County Residential Mortgage Foreclosure Diversion Program.

I am the owner of the property listed below:

Premises Address: _____

_____, Monroe County, PA

This property is my primary residence. It is the subject of foreclosure, and I would like to try to save my residence from foreclosure.

WITHIN THIRTY (30) DAYS OF THE DATE OF THE COURT ORDER SCHEDULING MY CONCILIATION CONFERENCE, I will submit a complete, written application and proposal for modification of my mortgage to the Plaintiff's counsel (the lawyer for my mortgage lender).

Note: Further information about the application package may be found at www.monroepacourts.us under the Monroe County Residential Mortgage Foreclosure Diversion Program sub-heading. Any question about the use of these forms and the borrower's rights should be referred to an attorney as the court does not give legal advice.

I understand that I may have an attorney of my choosing assist me in submitting this plan to my lender and that if I do not have an attorney, the Monroe County Bar Association (570) 424-7288, www.monroebar.org, has a list of attorneys who will represent mortgage borrowers in the Monroe County Mortgage Foreclosure Diversion Program for a fee.

I also understand that I may seek the assistance of a housing counselor. The Pennsylvania Housing Finance Agency (PHFA) maintains a list of agency-approved housing counselors providing services in Monroe County at http://www.phfa.org/consumers/homeowners/mdp.aspx. I understand that their services are at no cost to me.

I understand that neither the Court nor the County of Monroe endorse any particular housing counselor or program.

_____, Date: _____
Signature

_____,
Printed Name

_____, Date: _____
Signature

_____,
Printed Name

_____,
Mailing Address

_____,
Telephone number

This form must be filed to obtain a stay of this mortgage foreclosure action and a Conciliation/Case Management Conference under the Monroe County Residential Mortgage Foreclosure Diversion Program. This certification is only for Defendants with a case caption of 2011 or later. For those with captions before 2011, a Petition must be filed with the court requesting inclusion in the program, explaining the reasons why participation may lead to a successful modification of the mortgage without undue delay of a foreclosure. The court may also require a petition to be filed if a case is within six months of a scheduled sheriff's sale.

File this form with:

GEORGE J. WARDEN, PROTHONOTARY, THIRD FLOOR
MONROE COUNTY COURTHOUSE
STROUDSBURG, PA 18360
(570) 517-3370

Exhibit "D"

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

Plaintiff, : No. Civil 201__
:
:
vs. :
:
Defendant(s). : Residential Mortgage Foreclosure

CONCILIATION/CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 20__, a complaint having been filed to foreclose upon a residential mortgage, and the defendant(s) having opted into the Monroe County Residential Mortgage Foreclosure Diversion Program, IT IS ORDERED pursuant to Pa.R.C.P. 212.3 and 1141:

1. A Conciliation/Case Management Conference is scheduled for _____, 20__, at _____ a.m./p.m. in Hearing Room No. _____, Monroe County Courthouse, Stroudsburg, PA 18360. Counsel for the Plaintiff must be present and either (i) have actual authority to modify the mortgage, or to enter into an alternative payment agreement, or to offer another alternative to mortgage foreclosure, or (ii) must have a designated agent of the Plaintiff who has such authority present in person or by telephone. Following the initial conference, the conciliator may require the designated agent to be present in person at future conferences. Defendant(s) are also required to attend the Conciliation/Case Management Conference.

2. Within THIRTY (30) DAYS FROM THE DATE OF THIS ORDER, the Defendant(s) must submit a complete written proposal to modify their mortgage, along with supporting financial and employment information and documentation, to the Plaintiff's counsel.

FAILURE TO SUBMIT A COMPLETE PROPOSAL AND SUPPORTING DOCUMENTATION TO THE PLAINTIFF WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS ORDER MAY RESULT IN YOU BEING DISMISSED FROM THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

3. The Defendants are urged to obtain help from a housing counselor or an attorney in preparing and submitting their proposal and supporting documents so that their submission is not delayed.

Although an attorney is not required, the Defendant(s) may work with an attorney of their choosing to prepare their case for conciliation. If the Defendant(s) do not have an attorney, a list of attorneys who have agreed to provide assistance for a fee is available from the Monroe County Bar Association, (570) 424-7288, www.monroebar.org.

Housing counselors may also assist the Defendant(s) in addressing their mortgage delinquency. The Pennsylvania Housing Finance Agency (PHFA) maintains a list of agency-approved housing counselors providing services in Monroe County at http://www.phfa.org/consumers/homeowners/mdp.aspx. Their services are at no cost to you.

The court does not endorse any particular housing counselor or program.

Forms which may be useful in submitting a proposal for mortgage modification can be found at www.monroepacourts.us under the Monroe County Residential Mortgage Diversion Program sub-heading.

4) PENDING FURTHER ORDER OF COURT, ALL PROCEEDINGS ARE STAYED EXCEPT FOR SERVICE OF ORIGINAL PROCESS; DEFENDANT(S) NEED NOT FILE AN ANSWER TO THE COMPLAINT; AND NO DEFAULT JUDGMENT MAY BE TAKEN OR SHERIFF'S SALE SCHEDULED OR HELD.

5) Failure to Comply with this order may result in an order lifting the stay of proceedings and allowing the case to proceed to judicial disposition, including the taking of a default judgment or Sheriff's sale.

BY THE COURT:

J.

[Pa.B. Doc. No. 13-1516. Filed for public inspection August 16, 2013, 9:00 a.m.]