

THE COURTS

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 33]

Formal Advisory Opinion 2015-2

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has issued Formal Advisory Opinion 2015-2 Affiliation with Discriminatory Organizations which is set forth as follows.

EDWARD D. REIBMAN,
Chairperson
Ethics Committee
Pennsylvania Conference of State Trial Judges

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 33. CODE OF JUDICIAL CONDUCT

Subchapter B. FORMAL OPINIONS

§ 15-2. Affiliation with Discriminatory Organizations.

A function of the Ethics Committee of the Pennsylvania Conference of State Trial Judges (“the Committee”) is to provide guidance regarding ethical concerns to judicial officers subject to the Code of Judicial Conduct. The Code of Judicial Conduct that became effective on July 1, 2014, addressed, specifically, a judge’s affiliation with organizations that discriminate invidiously on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. The Committee issues this Formal Advisory Opinion to assist judges on a matter of general importance to judicial officers subject to the Code. This Formal Advisory Opinion is general in nature. It does not address a particular entity or group of persons, and is not in response to a specific request for an advisory opinion from a judicial officer. Therefore, the “rule of reliance” set forth in Preamble (8) of the new Code does not apply to this Formal Advisory Opinion.¹

I.

Prior to July 1, 2014, the Code of Judicial Conduct then in effect simply encouraged judges to promote “public confidence in the integrity and impartiality of the judiciary” and permitted judges to “participate in civic and charitable activities that do not reflect adversely upon their impartiality. . . .”² It did not specifically address membership in any organization or the use of its facilities.

However, the new Code, which became effective on July 1, 2014, addresses, specifically, a judge’s affiliation with organizations that discriminate invidiously on the basis of

race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. Rule 3.6 of the Code provides:

Affiliation with Discriminatory Organizations.

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A Judge’s attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge’s attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization’s practices.

And Comment (3) to the Rule states:

When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

II.

A. *The “Organization”*

The Rule does not purport to reach informal, social groups. It is directed to an affiliation with a discriminatory “organization.” Nor does the Code define “organization.” Whether a particular group of persons or entity is an “organization” under the Rule may depend upon its formal level of structure. For example, whether it has by-laws, officers, or a mission statement; whether it is part of a hierarchy; and whether its membership is consistent and how they are added or replaced may be relevant factors in determining whether the group or entity is an “organization.”

B. *Discrimination*

Use of the word “discrimination” often generates some confusion. As Robert K. Fullinwider wrote in *The Reverse Discrimination Controversy* (1980), at pp. 11-12:

The dictionary sense of ‘discrimination’ is neutral while the current political use of the term is frequently non-neutral, pejorative. With both a neutral and a non-neutral use of the word having currency, the opportunity for confusion in arguments about racial discrimination is enormously multiplied. For some, it may be enough that a practice is called discriminatory for them to judge it wrong. Others may be mystified that the first group condemns the practice without further argument or inquiry. Many may be led to the false sense that they have actually made a moral argument by showing that the practice discriminates (distinguishes in favor or against). The temptation is to move from ‘X discriminates’ to ‘X distinguishes in favor of or against’ to ‘X is wrong’ without being aware of the equivocation involved.

“Discrimination” simply means differentiation. Rule 3.6 requires a determination of whether any differentiation, i.e. separate treatment, is based on any of the following classifications: race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. Those classifications are referred to here as the “protected classifications.”

¹ Preamble (8) states:

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

² Canons 2 A and 5 B of the pre-July 1, 2014, Code of Judicial Conduct.

The Rule pertains to any practice of the organization that discriminates, or treats one differently, on the basis of any of the protected classifications. Separate treatment can take many forms, e.g. whether one can become or becomes a member of the organization, whether one is afforded a different class of membership within the organization, whether one is afforded access to the same facilities or other privileges of the organization, whether one can become an officer or director of the organization, etc. Any treatment that is different is discrimination, and the Rule addresses those practices that differentiate on the basis of any one of the protected classifications. It does not mean individuals who are members of a protected classification are entitled to preferential treatment; it means they are not to be treated differently because of their race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation.

C. Invidious

Not all discrimination is unlawful, unethical or actionable under the Code. The Rule addresses discrimination that is “invidious.” The term “invidious” is not defined in the Code. *Black’s Law Dictionary* (7th ed.) defines “invidious discrimination” as “[d]iscrimination that is offensive or objectionable, esp. because it involves prejudice or stereotyping.” Definitions in other dictionaries include treating a class of persons unequally in a manner that is malicious, hostile or damaging; stigmatizing persons as inferior, odious or otherwise socially unacceptable; or in a way that is likely to arouse or incur resentment or anger. The court in *Farber v. City of Paterson*, 440 F.3d 131 (3d Cir. 2006), found discrimination invidious when the distinction is motivated by immutable characteristics which have no relationship to ability to perform or contribute to society.

Whether discrimination is “invidious” is a complex question that depends upon a variety of factors. Comment (2) to the Rule states:

[a]n organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of . . . [any of the protected classifications] persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization’s current membership rolls, but rather, depends upon how the organization selects its members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

Other factors may include the history or purpose of the organization, whether the practices of the organization have a rational basis toward a legitimate purpose, and whether such practices are narrowly tailored to further that legitimate purpose. In short, the focus should be on the legitimacy of the distinguishing criteria employed to accomplish the organization’s stated goals and interests, as opposed to stigmatizing or denigrating those who may be affected.

III.

The Committee recognizes the existence of competing interests at play. There is the “expressive associational right” of an organization to exclude persons whose views may impair the ability of the group to express its views.

There is the freedom of individuals to associate, which presupposes the freedom not to associate. There is the state’s interest in eliminating discrimination in education, employment, housing, public accommodations, etc. And there is the Supreme Court’s interest in having a “fair, honorable and impartial judiciary” as “indispensable to our system of justice,” by requiring judges to “avoid [] both impropriety and the appearance of impropriety in their professional and personal lives” by conducting themselves “in a manner that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence.”³

The overarching purpose, or rationale, for Rule 3.6 is stated in Comment (1) to the Rule:

A judge’s public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge’s membership in an organization that practices invidious discrimination creates the perception that the judge’s impartiality is impaired.

This reference to the appearance of impropriety and the public’s confidence in the integrity and impartiality of the judiciary relates back to Canon 1 and Rule 1.2 of the Code.

Canon 1 provides:

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 provides:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and appearance of impropriety.

In conducting any analysis, a judge must always be mindful of Canon 1 and Rule 1.2.⁴

In going through this analysis and applying these various factors, a judge must thoroughly investigate the history and purposes of the organization and fully understand the current policies and practices which are discriminatory. Also for a judge’s consideration are the role the local chapter, council, branch, lodge, agency, etc., plays in developing and implementing or enforcing those policies and practices, and the nature of the organization’s activities locally and in the broader geographic area where it operates.

Therefore, a judge must assess how the members of the public and the community which the judge serves perceive the organization and its policies and practices. A judge must determine whether membership would create in reasonable minds a perception that the judge violated the code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge. A judge should consider whether the perception of “reasonable minds” in the geographic area served by the judge might vary from that

³ Code of Judicial Conduct, Preamble (2) and (3).

⁴ Note, Comment (4) to the Rule provides that “[a] judge’s membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.”

of “reasonable minds” in other areas of Pennsylvania, and whether or not that could, or should, make a difference.

In addition to these comments, appellate courts may provide a source of information on whether membership limitations are constitutionally permitted or prohibited. *See, e.g., Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) (organization engaging in qualified right of “expressive association” not required to accept members who may impair organization’s ability to advocate for its viewpoint). However, a judge must be aware that consideration of a constitutional challenge alone does not end the analysis under the Code. The mere fact the organization may have the constitutional right to discriminate does not necessarily mean a judge may be a member of it. In promulgating Rule 3.6, the Supreme Court is advancing its interests in trying to ensure a fair and impartial judiciary in which all citizens can have confidence. As the United States Supreme Court said in *Dale*:

... the freedom of expressive association, like many freedoms, is not absolute. We have held that the freedom could be overridden “by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”

Id., 530 U.S. at 648. The advisory opinions of ethics committees of other states on the particular subject may also assist the judge, but they, of course, are not binding on our Supreme Court or the Committee.

Ultimately, a judge must be guided by the underlying purposes of Rule 3.6 that membership in an organization by a judge must not give rise to the appearance of impropriety thus diminishing public confidence in the integrity and impartiality of the judiciary, nor must it create a perception that the judge’s impartiality is impaired. And, a judge should be mindful of the admonition of Rule 3.1(C) that a judge shall not “participate in activities that would reasonably appear to undermine the judge’s independence, integrity or impartiality.”

While the Committee acknowledges judges would like definitive answers to their questions as to whether they may or may not belong to particular organizations, the Committee is unable to do so. The Committee does not possess the resources to perform the kind of investigation that would be required to decide that issue properly among the myriad of organizations and almost infinite subchapters to which our judges belong or to engage in the type of balancing between the competing interests at play. Each judge must decide this issue on the relevant facts being mindful of the various interests at play.

This Formal Advisory Opinion is intended to provide judicial officers subject to the Code of Judicial Conduct with broad guidance regarding one of the Committee’s most difficult areas of inquiry. Judicial officers are reminded that to enjoy the rule of reliance on the Committee’s advice, or if they have a question concerning the application of these guidelines, they should make a written request for advice from a member of the Committee tailored to the particular situation confronted. The Code provides that although such opinions are not *per se* binding on the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, action taken in reliance thereon shall be considered in determining whether discipline should be recommended or imposed.

[Pa.B. Doc. No. 15-1404. Filed for public inspection July 31, 2015, 9:00 a.m.]

PART II. CONDUCT STANDARDS
[207 PA. CODE CH. 33]
Formal Advisory Opinion 2015-3

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has superseded Formal Opinion 2011-1 Certain Fundraising Activities and has replaced it with Formal Advisory Opinion 2015-3 Certain Fundraising Activities which is set forth as follows.

EDWARD D. REIBMAN,
Chairperson
Ethics Committee
Pennsylvania Conference of State Trial Judges

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 33. CODE OF JUDICIAL CONDUCT

Subchapter B. FORMAL OPINIONS

§ 11-1. (Reserved).

§ 15-3. Certain Fundraising Activities.

The Ethics Committee of the Pennsylvania Conference of State Trial Judges (“Ethics Committee”) regularly receives inquiries regarding the propriety of participating in fundraising events on behalf of civic and charitable activities in which judges are involved. Because of the frequency of such inquiries, the Ethics Committee has decided to issue this Formal Advisory Opinion in order to provide guidance to judicial officers subject to the Code of Judicial Conduct (“Code”).

Canon 3 of the Code addresses a judge’s involvement in personal and extrajudicial activities. It provides: “A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.”

Comment (1) under Rule 3.1 states:

... judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law[.]

and Comment (2) states:

[p]articipation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

Rules 3.1, 3.6 and 3.7 address the broad limitations and concerns regarding the circumstances in which judges may properly participate in such activities. For example, judges may not participate in extrajudicial activities that “will interfere with the proper performance” of their judicial duties; “lead to frequent disqualification;” “reasonably appear to undermine the judge’s independence, integrity, or impartiality;” “engage in conduct that would reasonably appear to be coercive;” “hold membership in,” or “use the benefits or facilities” of, an organization “that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation;” or be “an officer, director, trustee, or nonlegal advisor” of an organization that “is likely . . . to be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.”

This Formal Advisory Opinion addresses the nature and extent of fundraising activities held on behalf of civic and charitable organizations in which a judge's participation is permissible.

In pertinent part, Rule 3.7(B) of the Code provides:

* * * * *

(2) A judge shall not personally solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fundraising events that are not for the advancement of the legal system, but may attend such events.

(3) A judge shall not give investment advice to such an organization.

* * * * *

The prohibition against judges *personally* soliciting funds for any educational, religious, charitable, fraternal or civic organization, or using or permitting the use of the prestige of their office for that purpose, is a change from the Code of Judicial Conduct that was in effect prior to July 1, 2014. With respect to those types of organizations, the prior code stated "Judges should not solicit funds . . ." ¹ The current Code, effective July 1, 2014, added the word "personally." The prohibition applies regardless of how worthwhile the organization or its activities may be, and it prohibits judges from being the guest speaker or guest of honor at fundraising dinners or events that are not for the advancement of the legal system. Judges, however, may attend such events and contribute to them subject to the broader limitations of the Rules.

Faced with reduced budgets and shrinking charitable contributions, organizations have turned to novel and creative fundraising efforts to swell the crowd or otherwise raise money by involving judges. The Ethics Committee has been presented with a wide variety of such efforts. Without attempting to offer an all inclusive list of all the potential activities that fall within the ambit of Rule 3.7(B), they have included using a judge as an attraction or celebrity participant such as Dancing with the Stars, Competing with the Stars in Sporting Events, Celebrity Auctioneer and Celebrity Contributor. While celebrities and other government officials may lend their personal, professional or other forms of celebrity status to the fundraising efforts of an organization, such activity by a judge is prohibited. In sum, a judge may not permit an organization to capitalize on, exploit or showcase a judge's attendance at or participation in such events by advertising that fact or issuing invitations citing the judge's attendance or participation in advance of the event. A judge who allows himself or herself to be used in this manner is engaged in a solicitation of funds in violation of Rule 3.7(B)(2).

This does not mean that a judge is precluded from receiving a well-earned award from an organization or even being recognized at an event. It means the judge cannot allow his or her presence at the event or the fact that he/she will receive an award at it be used to promote a fundraising event unless the exception for the advancement of the legal system applies. The critical harm to be avoided is the exploitation of the judicial office.

Therefore, while judges may attend fundraising events that do not violate the broader prohibition of reflecting adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties, a judge should not be featured as a highlight of any such event. Accordingly, advertising the judge's presence, placing the judge in a strategic position to influence potential customers or contributors, having a judge endorse a fundraising event or product, or having a judge sell tickets, may each lead to effects the Code is designed to prevent. These include making people feel obligated to contribute or otherwise participate in the event; enabling them, or others, to believe they are currying favor with the judge; diminishing the office of judge by turning it into a marketing tool; and pressuring other judges into participating in similar causes. A judge who allows himself or herself to be used in this manner is engaged in the solicitation of funds in direct violation of Rule 3.7(B)(2). Because of the overall prophylactic purpose of this Rule, the worthiness of the cause for which the funds are being raised is irrelevant.

If, after considering the foregoing principles, a judge decides to attend or participate in a fundraising event, additional consideration must be given to the mandate of Rule 3.7(A) that a judge's "avocational activities do not detract from the dignity of their office". Accordingly, the indicia of the office of judge, including the judicial robe, gavel and courtroom, should never be utilized or depicted in any manner which would compromise respect for the judiciary or the judicial process. Attendance at, or participation in events that do so, would also be prohibited by Rule 3.7.

This Opinion is obviously not intended as an exhaustive discussion of all of the potential activities permitted or prohibited under the Code. Instead, its primary focus is to address how judges may participate in the fundraising aspects of civic and charitable activities without running afoul of Rule 3.7's prohibition against using or permitting the use of the prestige of the judicial office for the solicitation of funds on behalf of those organizations in which they are involved. By remaining sensitive to the potential exploitation of the judicial office—or more specifically, the "judge as judge"—the salutary purposes animating the Code will be better served and the preservation of an independent judiciary can continue to be assured.

Commonly referred to as "the rule of reliance," Preamble (8) of the Code of Judicial Conduct provides:

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not binding per se upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

To obtain the "rule of reliance," an individual subject to the Code of Judicial Conduct shall present to a member of the Ethics Committee a particular factual scenario, in writing, to which the inquirer seeks advice regarding his/her prospective conduct.

To reiterate, the purpose of this Formal Advisory Opinion is to provide guidance on a matter of general

¹ Canon 5B(2) of the "old" Code of Judicial Conduct.

importance to the Conference. It is not a substitute for an advisory opinion by the Ethics Committee to an individual judicial officer on specific facts.

[Pa.B. Doc. No. 15-1405. Filed for public inspection July 31, 2015, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rules 1915.3, 1915.3-2, 1915.12, 1915.15 and 1915.17 of the Rules of Civil Procedure; No. 629 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 20th day of July, 2015, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 44 Pa.B. 5828 (September 13, 2014):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1915.3, 1915.3-2, 1915.12, 1915.15 and 1915.17 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on September 1, 2015.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

* * * * *

(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. § 5323 must plead, in paragraph 9 of the complaint set forth at Rule 1915.15(a), facts establishing 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.

(f) An unemancipated minor parent may commence, maintain or defend an action for custody of the minor parent's child without the requirement of the appointment of a guardian for the minor parent.

Rule 1915.3-2. Criminal **Record** or Abuse History.

(a) *Criminal Record or Abuse History Verification.* [**The petitioner**] **A party** must file and serve with the

complaint, [**or**] any petition for modification, **any counterclaim, any petition for contempt or any count for custody in a divorce complaint or counterclaim** a verification regarding any criminal **record** or abuse history of [**the petitioner**] **that party** and anyone living in [**the petitioner's**] **that party's** household. The verification shall be substantially in the form set forth in subdivision (c) below. The [**petitioner**] **party** must attach a blank verification form to a complaint, **counterclaim** or petition served upon the [**respondent**] **other party**. Although the [**respondent**] **party served** need not file a responsive pleading pursuant to Rule 1915.5, [**the respondent**] **he or she** must file with the court a verification regarding [**any criminal or abuse history of the respondent and anyone living in the respondent's**] **his or her own criminal record or abuse history and that of anyone living in his or her 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**]. **A party's failure to file a Criminal Record or Abuse History Verification may result in sanctions against that party.** 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 **record** or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal **record** 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

* * * * *

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

* * * * *

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

* * * * *

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

(Caption)
PETITION FOR CIVIL CONTEMPT FOR DISOBEDIENCE OF CUSTODY ORDER

The Petition of _____, respectfully represents:

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

(Name(s) of Child(ren))

A true and correct copy of the order is attached to this petition.

2. Respondent has willfully failed to abide by the order in that

3. Petitioner has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. No. 1915.3-2.

WHEREFORE, Petitioner requests that Respondent be held in contempt of court.

(Attorney for Petitioner) (Petitioner)

I verify that the statements made in this [complaint] petition 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

Petitioner

* * * * *

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a Custody Order.

(a) The complaint in an action for custody shall be in substantially the following form:

(Caption)
COMPLAINT FOR CUSTODY

1. The plaintiff is _____, residing at

(Street) (City) (Zip Code) (County)

2. The defendant is _____, residing at

(Street) (City) (Zip Code) (County)

* * * * *

[The mother] A parent of the child is _____, currently residing at _____.

[She] This parent is (married) (divorced) (single).

[The father] A parent of the child is _____, currently residing at _____.

[He] This parent is (married) (divorced) (single).

* * * * *

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

* * * * *

(b) A petition to modify a custody order shall be in substantially the following form:

(Caption)
PETITION FOR MODIFICATION OF A CUSTODY ORDER

1. The petition of _____ respectfully represents that on _____, 20__ an Order of Court was entered for (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.

2. This Order should be modified because: _____

3. Petitioner has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. No. 1915.3-2.

WHEREFORE, Petitioner requests that the Court modify the existing Order because it will be in the best interest of the child(ren).

(Attorney for Petitioner) (Petitioner)

I verify that the statements made in this [complaint] petition 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 Petitioner

* * * * *

Rule 1915.17. Relocation. Notice and Counter-Affidavit.

(a) A party proposing to change the residence of a child **which significantly impairs the ability of a non-relocating party to exercise custodial rights** 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).

* * * * *

[Pa.B. Doc. No. 15-1406. Filed for public inspection July 31, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Accelerated Rehabilitative Disposition in Summary Cases; No. CP06 AD 000024-2015 Clerk of Courts

Administrative Order

And Now, this 24th day of June, 2015, pursuant to Pennsylvania Rules of Criminal Procedure 300—302, it is Ordered that the following amended procedures are adopted for an Accelerated Rehabilitative Disposition program for certain summary cases in the Magisterial District Courts within the Twenty-third Judicial District of Pennsylvania.

The District Court Administrator of Berks County is Ordered and Directed to provide copies to the appropriate entities pursuant to Pa.R.Crim.P. 105:

1. File one (1) certified copy of this Administrative Order and Local Rule with the Administrative Office of Pennsylvania Courts.

2. Distribute two (2) certified paper copies of this Administrative Order and Local Rule and one (1) computer diskette or CD-ROM containing this Order and Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of the Administrative Order and Local Rule on the Unified Judicial System’s web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

4. Keep continuously available for public inspection copies of the Administrative Order and Local Rule in the office of the Prothonotary or Clerk of Courts.

This Administrative Order shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

PAUL M. YATRON,
President Judge

Accelerated Rehabilitative Disposition (ARD)

Rule 300. Accelerated Rehabilitative Disposition in Summary Cases.

1. Upon request of the District Attorney of Berks County, a defendant with no prior criminal record, charged with his/her first summary offense, except offenses arising under Title 34 (Game and Wildlife Code)

and Title 75 (Vehicle Code), shall be eligible for Summary Case Accelerated Rehabilitative Disposition (hereinafter ARD) to be supervised by the Magisterial District Judge (hereinafter MDJ) pursuant to Pa.R.Crim.P. 300—302 and 42 Pa.C.S.A. § 1520.

Rule 301. Procedures for Accelerated Rehabilitative Disposition in Summary Cases before the Minor Judiciary.

1. The cost of the ARD program for summary cases is \$100.00.

2. The defendant shall make written application to the MDJ for admission into the summary ARD program.

a. Upon receipt of the application for admission into the summary ARD program, the MDJ shall forward to the District Attorney a copy of the defendant's application.

b. The District Attorney shall review said application and notify the MDJ of a decision to either approve or deny the application. If the District Attorney denies the application, the MDJ shall be notified of the reason(s) for denial.

3. If the District Attorney denies the defendant's application, the MDJ shall notify the defendant that his/her application has been denied and the case shall then proceed in accordance with Chapter 4 of the Pennsylvania Rules of Criminal Procedure. If the District Attorney approves the defendant's application, the MDJ shall notify the defendant of such approval and shall set a hearing date for admission into the program.

4. A defendant accepted into ARD may be referred to any of the following programs and shall pay any costs associated with a program. If a defendant is referred to any of the following programs, the defendant shall contact the office or agency administering the program to ascertain the cost of the program and acceptable method of payment.

- a. The Underage Drinking Program of Berks County
- b. STOPLIFT Adult Shoplifting Intervention Program
- c. STOPLIFT Juvenile Shoplifting Intervention Program
- d. Adult Probation Community Service Program

- e. Juvenile Probation Community Service Program
- f. A recommended program subject to approval by the District Attorney.

5. Community service program hours shall be assigned in 4-hour increments and shall not exceed 40 hours for offenders referred to the Adult Probation Community Service Program or shall not exceed 20 hours for offenders referred to the Juvenile Probation Community Service Program.

6. All costs and restitution, if any, must be paid before completion of the ARD program.

7. If the MDJ deems that the defendant has met all of the requirements of the ARD program, the summary charge filed against the defendant shall be dismissed. In the MDJS, the summary case appears "ARD Open" while the defendant is on ARD. Upon completion of the ARD program, the MDJ shall record a "Dismissed by ARD" disposition to close the case. If the MDJ deems that the defendant has failed to complete all of the requirements of the ARD Program, the defendant shall be terminated from the ARD program, and the case shall proceed in accordance with Chapter 4 of the Pennsylvania Rules of Criminal Procedure. No summary case shall remain active for purposes of ARD supervision in excess of six (6) months.

In the MDJS, "ARD Open" and "Dismissed by ARD" shall not be used for any summary case that is not processed through the District Attorney's ARD program for summary cases.

8. Each MDJ shall submit to the District Attorney a monthly report on the disposition of all cases eligible for ARD, where applications were submitted for admission into the program. The District Attorney shall compile these monthly reports and monitor the cases. The monthly report submitted by each MDJ shall include: a record of defendants who participate in the ARD program; those who were eligible but not admitted to ARD and the reasons for not admitting the defendant; those who complete the ARD program; those who do not complete the program; and those defendants that pay in full the costs associated with the program.

9. The ARD application referred to in paragraph 2 shall be in substantially the following form:

Commonwealth of Pennsylvania	:	Magisterial District 23- _____
vs.	:	Docket No.: _____
	:	
	:	

APPLICATION FOR ACCELERATED REHABILITATIVE DISPOSITION (ARD)
FOR A SUMMARY CASE

Defendant is applying for ARD for a summary case and represents the following:
(Please print the requested information.)

- 1. Defendant's present address and telephone number: _____
- 2. Defendant's date of birth: _____
- 3. Prior Arrest(s): (Circle one) _____ YES ___/___ NO _____
- 4. Date citation filed: _____
- 5. Law Enforcement Officer: _____
- 6. Offense: _____

COPY OF CITATION MUST BE FILED WITH APPLICATION

I am requesting that my summary case be considered for ARD. I understand that if the District Attorney denies my application for ARD, my summary case will then proceed in accordance with Chapter 4 of the Pennsylvania Rules of Criminal Procedure.

Signature of Defendant

Date

This application for ARD has been _____ approved _____ denied.

Reason: _____

Signature of District Attorney

Date

[Pa.B. Doc. No. 15-1407. Filed for public inspection July 31, 2015, 9:00 a.m.]

CLINTON COUNTY

Courthouse and Garden Building Security; No. AD-1-2015

Administrative Order of Court

And Now, this 26th day of May, 2015, intending to preserve order, ensure the fair administration of justice and provide for the safety of all persons conducting business in the Clinton County Courthouse and the Garden Building, *It Is Hereby Ordered and Decreed* that the provisions of 18 Pa.C.S.A. § 913 shall be enforced by the Clinton County Sheriff. Possession of firearms and other dangerous weapons are strictly prohibited except as allowed by the Clinton County Firearms or other Weapons in Court Buildings Policy.

All packages, briefcases and other containers in the immediate possession of persons entering the Courthouse or Garden Building shall be subject to inspection. A search shall be conducted by requiring persons and property to be passed through a walk-through metal detector or x-ray machine and the use of a hand-held metal detector being moved by hand in close proximity to all areas of the body of the person being searched and in close proximity to all areas of a package being searched. In the event that the detector emits an alert signal, the search of a person shall be expanded to include a pat-down of the immediate area of the body of the person being searched which had activated the signal. A pat-down search shall be conducted by an officer or deputy

and witnessed by another officer or deputy. A written report shall be completed by the officer or deputy conducting the search. Said report shall be maintained by the Sheriff. Any package which indicates that suspicious materials, substances or contraband may be contained therein, shall be opened by an officer or deputy for a more thorough examination.

When the term weapon is used in this Order, it shall be defined as including any firearm, any knife, any explosive or incendiary device (whether real or hoax) or any object that is designed, made or adapted for the purpose of inflicting bodily injury and any weapon defined as such by the Pennsylvania Crimes Code.

One or more signs shall be posted at each public entrance in a location and of a size and design reasonably calculated to draw the attention of persons entering the building and giving notice that: (a) no weapons or explosives may be brought into the building; (b) all persons entering the building are subject to search for weapons or explosives; and (c) all packages, briefcases and other containers are subject to search prior to entering the building.

By the Court

CRAIG P. MILLER,
President Judge

[Pa.B. Doc. No. 15-1408. Filed for public inspection July 31, 2015, 9:00 a.m.]