

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Proposed Amendment of Pa.R.C.P. No. 1910.16-1

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania an amendment of Pa.R.C.P. No. 1910.16-1 governing calculation of support in cases of third parties seeking support for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Domestic Relations
Procedural Rules Committee*

DAVID J. SLESNICK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-1. Amount of Support. Support Guidelines.

(a) *Applicability of the Support Guidelines.*

(1) Except as [set forth in subdivision (2) below] provided in subdivisions (2) and (3), the support guidelines [set forth] determine the amount of support which a spouse or parent should pay based on the [basis of both] parties' combined net monthly incomes as defined in [Rule] Pa.R.C.P. No. 1910.16-2 and the number of persons being supported.

(2) If a person caring for or having custody of a minor child, who does not have a duty of support to the minor child, initiates a child support action as provided in Pa.R.C.P. No. 1910.3:

(i) the complaint shall identify the parent(s) as defendant(s).

(ii) in determining the basic child support amount, the monthly net income for the individual initiating the action shall be not be considered in the support calculation by the trier of fact.

(iii) the parents' monthly net incomes shall be combined and apportioned based on their respective net incomes consistent with Pa.R.C.P. No. 1910.16-4, and each parent shall pay the obligee their proportionate share of the Basic Child Support Schedule amount as a separate obligor.

(iv) as with other support actions, the trier of fact may make adjustments or deviations consistent with the support guidelines based on the evidence presented by the parties.

Example 1. The parties have one child, who is in the custody of the maternal grandmother. Mother's monthly net income is \$3,000 and Father's monthly net income is \$2,000 for a combined net monthly income of \$5,000. For purposes of the child support calculation, maternal grandmother's income is irrelevant and not part of the calculation. The Basic Child Support Obligation for one child and a combined net monthly income of \$5,000 is \$960 per month. Mother's percentage share of the combined monthly net income is 60% (\$3,000/\$5,000) and Father's percentage share of the combined monthly net income is 40% (\$2,000/\$5,000). Mother's preliminary monthly share of the child support obligation is \$576 (\$960 × 60%) and Father's preliminary monthly share of the child support obligation is \$384 (\$960 × 40%). Maternal grandmother is the obligee with Mother and Father as separate obligors owing \$576 and \$384 respectively to the maternal grandmother.

[(2)] (3) In actions in which the plaintiff is a public body or private agency pursuant to [Rule] Pa.R.C.P. No. 1910.3, the amount of the order shall be calculated under the guidelines based upon each obligor's net monthly income as defined in [Rule] Pa.R.C.P. No. 1910.16-2, with the public or private entity's income as zero. In such cases, each parent shall be treated as a separate obligor and a parent's obligation will be based upon his or her own monthly net income without regard to the income of the other parent.

(i) The amount of basic child support owed to other children not in placement shall be deducted from each parent's net income before calculating support for the child or children in placement, including the amount of direct support the guidelines assume will be provided by the custodial parent.

Example [1] 2. Mother and Father have three children and do not live in the same household. Mother has primary custody of two children and net income of \$2,000 per month. Father's net monthly income is \$3,000. The parties' third child is in foster care placement. Pursuant to the schedule [at Rule] in Pa.R.C.P. No. 1910.16-3, the basic child support amount for the two children with

Mother is \$1,369. As Father's income is 60% of the parties' combined monthly net income, his basic support obligation to Mother is \$821 per month. The guidelines assume that Mother will provide \$548 per month in direct expenditures to the two children in her home. The agency/obligee brings an action against each parent for the support of the child in placement. Father/obligor's income will be \$2,179 for purposes of this calculation (\$3,000 net less \$821 in support for the children with Mother). [**Because**] As the agency/obligee's income is zero, Father's support for the child in placement will be 100% of the schedule amount of basic support for one child at the \$2,179 income level, or \$520 per month. Mother/obligor's income will be \$1,452 for purposes of this calculation (\$2,000 [**net**] less \$548 in direct support to the children in her custody). Her support obligation will be 100% of the schedule amount for one child at that income level, or \$348 per month.

Example [2] 3. Mother and Father have two children in placement. Father owes child support of \$500 per month for two children of a former marriage. At the same income levels as [**above**] in **Example 2**, Father's income for determining his obligation to the children in placement would be \$2,500 (\$3,000 less \$500 support for two children of prior marriage). His obligation to the agency would be \$848 per month (100% of the schedule amount for two children at the \$2,500 per month income level). Mother's income would not be diminished as she owes no other child support. She would owe \$685 for the children in placement (100% of the schedule amount for two children at the \$2,000 income level).

(ii) If the parents reside in the same household, their respective obligations to the children who remain in the household and are not in placement shall be calculated according to the guidelines, with the parent having the higher income as the obligor, and that amount shall be deducted from the parents' net monthly incomes for purposes of calculating support for the child(ren) in placement.

Example [3] 4. Mother and Father have four children, two of whom are in placement. Mother's net monthly income is \$4,000 and Father's is \$3,000. The basic support amount for the two children in the home is \$1,628, according to the schedule [**at Rule**] in **Pa.R.C.P. No. 1910.16-3**. As Mother's income is 57% of the parties' combined net monthly incomes, her share would be \$928, and Father's 43% share would be \$700. Mother's income for purposes of calculating support for the two children in placement would be \$3,072 (\$4,000 less \$928). She would pay 100% of the basic child support at that income level, or \$1,032, for the children in placement. Father's income would be \$2,300 (\$3,000 less \$700) and his obligation to the children in placement would be \$782.

(iii) In the event that the combined amount the parents are required to pay exceeds the cost of placement, the trier of fact shall deviate **the support amount downward** to reduce each parent's obligation in proportion to his or her share of the combined obligation.

[(3)] (4) The support of a spouse or child is a priority obligation so that a party is expected to meet this obligation by adjusting his or her other expenditures.

* * * * *

PUBLICATION REPORT Recommendation 159

The Committee is proposing the amendment to Pa.R.C.P. No. 1910.16-1, Amount of Support. Support Guidelines, as the rule relates to the procedure for calculating support when an individual third party, i.e., not a public body or private agency, is seeking child support from the child's parent(s).

Pursuant to Pa.R.C.P. No. 1910.3(a), a person having custody of a child or caring for a child may initiate a support action against the child's parent(s). The current rule addresses the issue when a public body or private agency has custody, but is silent with regard to an individual third party, e.g., grandparent. Without specific guidance by the rules, domestic relations sections use various methodologies in awarding support.

To bring uniformity to the practice, the Committee proposes amending Pa.R.C.P. No. 1910.16-1 by adding a new subdivision (a)(2) and renumbering the current (a)(2) regarding calculating support for a public body or private agency to (a)(3). In addition, an example illustrating the new (a)(2) calculation is proposed, as well.

The proposed (a)(2) excludes the income of the third party, as that person does not have a duty of support to the child, but uses the combined monthly net income of the parents to determine the basic child support amount, which is then apportioned between the parents consistent with their respective percent of the combined monthly net income in much the same manner as a parent vs. parent support action. However, each parent would be an obligor and pay the obligee their proportionate share under a separate support order.

The proposed amendment correlates to subdivision (a)(1) with the exception that the third party's income is not part of the calculation. Unlike a public body or private agency, an individual third party may incur additional expenses, such as child care and unreimbursed medical expenses, which would also be apportioned accordingly to the parents. As such, the Committee opted not to use the method of calculating support owed a public body or private agency, which treats these types of actions as two separate actions, one against each parent as separate obligors.

[Pa.B. Doc. No. 16-1668. Filed for public inspection September 30, 2016, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Proposed Amendment of Pa.R.C.P. No. 1915.11-1 and New Rules Pa.R.C.P. Nos. 1915.22 and 1915.23

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 1915.11-1 governing Parenting Coordination, and two additional forms in Pa.R.C.P. Nos. 1915.22 and 1915.23, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of

those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

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DAVID J. SLESNICK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.11-1. [Elimination of] Parenting Coordination.

[Only judges may make decisions in child custody cases. Masters and hearing officers may make recommendations to the court. Courts shall not appoint any other individual to make decisions or recommendations or alter a custody order in child custody cases. Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective. Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective.]

If a judicial district implements a parenting coordination program, the court shall maintain a roster of qualified individuals to serve as parenting coordinators. The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties and, if unable to reach an agreement, recommend a resolution to the court.

(a) *Appointment of a Parenting Coordinator.*

(1) After a final custody order has been entered, a judge may appoint a parenting coordinator to resolve parenting issues in cases involving repeated or intractable conflict between the parties affecting implementation of the final custody order. A parenting coordinator should not be appointed in every case. The appointment may be made on the motion of a party or on the court's own motion.

(2) Unless the parties consent and appropriate safety measures are in place to protect the partici-

pants, including the parenting coordinator and other third parties, a parenting coordinator shall not be appointed when:

(i) the parties to the custody action have a protection from abuse order in effect; or

(ii) the court makes a finding that a party has been the subject of domestic violence perpetrated by a party in the custody matter, either during the pendency of the action or within 24 months preceding the filing of the action.

(3) The appointment of a parenting coordinator shall be for a specified period of time, which shall not exceed 12 months. A party may petition the court for an extension of the appointment or the court in its discretion may extend the appointment for an additional period.

(4) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall petition the court and provide a copy to the parties or the parties' attorney.

(5) The parenting coordinator shall set forth in a separate written agreement with the parties:

(i) the amount of any retainer;

(ii) the hourly rate to be charged;

(iii) the process for invoices and payment for services;

(iv) information on the parenting coordination process; and

(v) provide a signed copy of the agreement to the parties prior to initiating any services.

(b) *Qualifications of the Parenting Coordinator.* A parenting coordinator:

(1) shall be an attorney licensed to practice law in the Commonwealth of Pennsylvania;

(2) shall have practiced family law for at least five years;

(3) shall have a minimum of five hours training in the parenting coordination process in a program approved by an appropriate provider;

(4) shall have a minimum of ten hours of family mediation training in a program approved by an appropriate provider;

(5) shall have a minimum of five hours of training in domestic violence in a program approved by an appropriate provider; and

(6) shall complete a minimum of ten continuing education credits in any topic related to parenting coordination in each two-year period after initial appointment. A minimum of two hours in each two-year period must be on the issues of domestic violence.

(c) *Appointment Order.* The parenting coordinator's authority as delineated in subdivision (d) shall be included in the order appointing the parenting coordinator, which shall be substantially in the form set forth in Pa.R.C.P. No. 1915.22.

(d) *Scope of Authority of the Parenting Coordinator.* The parenting coordinator shall have the authority to recommend resolutions to the court on issues ancillary to the custody order, if the parties are unable to reach an agreement.

(1) In order to implement the custody order and resolve related parenting issues about which the parties cannot agree, the parenting coordinator is authorized to recommend resolutions to the court about issues that include, but are not limited to:

- (i) Places and conditions for custodial transitions between households;
- (ii) Temporary variation from the custodial schedule for a special event or particular circumstance;
- (iii) School issues, apart from school selection;
- (iv) The child(ren)'s participation in recreation, enrichment, and extracurricular activities, including travel;
- (v) Child-care arrangements;
- (vi) Clothing, equipment, toys, and personal possessions of the child(ren);
- (vii) Information exchanges (e.g. school, health, social) between the parties and communication with or about the child(ren);
- (viii) Coordination of existing or court-ordered services for the child(ren), e.g. psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management;
- (ix) Behavioral management of the child(ren); and
- (x) Other related custody issues that the parties mutually have agreed in writing to submit to the parenting coordinator, which are not issues excluded in subdivision 2.

(2) The following issues are excluded from the parenting coordinator's scope of authority:

- (i) A change in legal custody as set forth in the custody order;
- (ii) A change in primary physical custody as set forth in the custody order;
- (iii) Except as set forth in subdivision (d)(1)(ii), a change in the court-ordered custody schedule that reduces or expands the child(ren)'s time with a party;
- (iv) A change in the residence (relocation) of the child(ren);
- (v) Determination of financial issues, other than allocation of the parenting coordinator's fees as set forth in subdivision (f)(1);
- (vi) Major decisions regarding the health, education, religion, or welfare of the child(ren).

(3) Unless the parties consent, the parenting coordinator shall not contact collateral sources or speak with the child(ren). Any communications with the child(ren) or collateral sources shall be limited to the issue(s) currently before the parenting coordinator. To effectuate this provision, the parties shall execute releases, as necessary, authorizing the parenting coordinator to communicate with the appropriate individuals.

(e) *Communications. No Testimony.*

(1) Communication between the parties or their attorneys and the parenting coordinator is not confidential.

(2) A party or a party's attorney may communicate in writing with the parenting coordinator, but shall contemporaneously send a copy of the written communication to the other party or the other party's attorney. Documents, recordings, or other material that one party gives to the parenting coordinator shall be promptly made available to the other party or the other party's attorney for inspection and copying.

(3) The parties and their attorneys may receive, but not initiate, oral *ex parte* communication with the parenting coordinator. A parenting coordinator may initiate oral communication with a party or party's attorney, but shall promptly advise the other party or the other party's attorney of the communication.

(4) Absent an emergency affecting the child(ren)'s health or welfare, communication between the parenting coordinator and the court shall be in writing and a copy of the written communication shall be contemporaneously sent to the parties or the parties' attorneys. If the parenting coordinator has communicated orally with the court on an emergency basis, the parenting coordinator shall promptly communicate in writing the substance of the oral communication to the parties or the parties' attorneys.

(5) A party cannot compel the testimony of a parenting coordinator without an order of court.

(f) *Recommendations. Objecting to the Recommendation. Judicial Review. De Novo Record Hearing.*

(1) The parenting coordinator shall provide to the parties notice and an opportunity to be heard on the issues.

(2) The parenting coordinator's recommendation shall be in writing on the Summary and Recommendation of the Parenting Coordinator form set forth in Pa.R.C.P. No. 1915.23 and sent to the court for review within two days after hearing from the parties on the issues. The parenting coordinator shall serve a copy of the Summary and Recommendation to the parties or, if represented, to their counsel.

(3) A party objecting to the recommendation shall file a petition for a *de novo* record hearing before the court within ten days of service of the filed Summary and Recommendation of the Parenting Coordinator form. The petition must specifically state the issues to be reviewed and include a demand for a *de novo* record hearing. A copy of the recommendation shall be attached to the petition. In accordance with Pa.R.C.P. No. 440, the petition shall be served upon the other party, if represented, the party's attorney, and the parenting coordinator.

(4) If the parties do not file an objection within ten days of receipt of the parenting coordinator's recommendation, the court shall:

- (i) accept the recommendation by order;
- (ii) modify the recommendation by order;
- (iii) send the recommendation back to the parenting coordinator for more specific information; or
- (iv) vacate the recommendation and conduct a *de novo* record hearing on the issues.

(5) As soon as practical, the court shall conduct a *de novo* record hearing on the issues specifically set

forth in the petition. The court shall render a decision within the time set forth in Pa.R.C.P. No. 1915.4(d).

(6) The recommendation shall become a final order of court unless:

(i) a party timely files with the court a petition objecting to the parenting coordinator's recommendation; or

(ii) the court vacates the recommendation and conducts a *de novo* record hearing.

(iii) If a timely objection is made by a party, the recommendation shall become an interim order of court pending further disposition by the court.

(g) *Fees.*

(1) The fees of the parenting coordinator shall be allocated between the parties by the appointing judge. The parenting coordinator may reallocate the fees, subject to *de novo* review by the court, if one party has caused a disproportionate need for the services of the parenting coordinator.

(2) In order to limit the financial burden on the parties, a parenting coordinator should meet with the parties only upon a request of a party to resolve an issue about which the parties disagree.

(3) *Waiver of fees or reduced fees.* Judicial districts implementing a parenting coordination program shall effectuate a policy or program by local rule so that indigent or low income parties may participate in the parenting coordination program at a reduced fee or no fee.

(Editor's Note: Rules 1915.22 and 1915.23 are new and printed in regular type to enhance readability.)

Rule 1915.22. Form of Order Appointing Parenting Coordinator.

The order appointing a parenting coordinator pursuant to Pa.R.C.P. No. 1915.11-1 shall be in substantially the following form:

(Caption)
ORDER OF COURT

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

1. APPOINTMENT AND TERM:

Pursuant to Pa.R.C.P. No. 1915.11-1, _____ is appointed as the parties' parenting coordinator for a term of [] months (not exceeding 12 months), or until further order of court.

Legal counsel for _____, or either party, if unrepresented, shall provide copies of all orders, pleadings and custody evaluations in this case to the parenting coordinator within ten (10) days of the date of this order.

2. ROLE OF THE PARENTING COORDINATOR:

(a) The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties and, if unable to reach an agreement, recommend a resolution to the court.

(b) The parenting coordinator shall not function as the attorney, advocate, counselor, or psychotherapist for the parties, the parties' child(ren), or family. However, the parenting coordinator is permitted and encouraged to facilitate communication and agreement between the

parties when conflicts arise and shall always act in a manner conducive to the best interests of the child(ren).

3. PARENTING COORDINATOR'S SCOPE OF AUTHORITY:

In order to implement the custodial arrangement set forth in the custody order and resolve related parenting issues about which the parties cannot agree, the parenting coordinator is authorized to recommend resolutions to the court about issues that include, but are not limited to:

(a) Places and conditions for transitions between households;

(b) Temporary variation from the schedule for a special event or particular circumstance;

(c) School issues, apart from school selection;

(d) The child(ren)'s participation in recreation, enrichment, and extracurricular activities, including travel;

(e) Child-care arrangements;

(f) Clothing, equipment, toys, and personal possessions of the child(ren);

(g) Information exchanges (e.g. school, health, social, etc.) and communication with or about the child(ren);

(h) Coordination of existing or court-ordered services for the child(ren), e.g. psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management;

(i) Behavioral management of the child(ren);

(j) Other related custody issues that the parties mutually have agreed in writing to submit to the parenting coordinator, which are not issues excluded in Paragraph 4.

4. EXCLUSIONS FROM PARENTING COORDINATOR'S AUTHORITY:

(a) The following specific issues are excluded from the parenting coordinator's scope of authority:

(1) A change in legal custody as set forth in the custody order;

(2) A change in primary physical custody set forth in the custody order;

(3) Other than as set forth in Paragraph 3(b), a change in the court-ordered custody schedule that reduces or expands the child(ren)'s time with a party;

(4) A change in the residence (relocation) of the child(ren);

(5) Determination of financial issues, other than allocation of the parenting coordinator's fees as set forth in Pa.R.C.P. 1915.11-1(f)(1);

(6) Major decisions regarding the health, education, religion, or welfare of the child(ren).

(7) Other: _____

(b) Unless the parties consent, the parenting coordinator shall not contact collateral sources or speak with the child(ren). Any communications with the child(ren) or collateral sources shall be limited to the issue(s) currently before the parenting coordinator. To effectuate this provision, the parties shall execute releases, as necessary, authorizing the parenting coordinator to communicate with the appropriate individuals.

5. COMMUNICATIONS:

(a) The parenting coordinator shall determine the protocol of all communications, interviews, and sessions, including who shall attend the sessions (including the children), and whether the sessions will be conducted in person or by other means. The protocols should include measures addressing the safety of all participants.

(b) Communications between the parties or their attorneys and the parenting coordinator are not confidential.

(c) The parties and their attorneys shall have the right to receive, but not initiate, oral *ex parte* communication with the parenting coordinator. The parenting coordinator shall promptly advise the other party or the other party's attorney of the communication. A party or a party's attorney may communicate in writing with the parenting coordinator, but shall contemporaneously send a copy of the written communication to the other party or the other party's attorney. Documents, recordings, or other material that one party gives to the parenting coordinator must promptly be made available to the other party or the other party's attorney for inspection and copying.

(d) Absent an emergency affecting the child(ren)'s health or welfare, communication from the parenting coordinator to the court shall be in writing and the parenting coordinator shall contemporaneously send copies to the attorneys for both parties, or to any unrepresented party. If the parenting coordinator has communicated orally with the court on an emergency basis, the parenting coordinator shall promptly communicate in writing the substance of the oral communication to the attorneys for the parties, or to an unrepresented party.

(e) A party cannot compel the testimony of a parenting coordinator without an order of court.

6. PARENTING COORDINATION PROCESS:

(a) The parenting coordinator shall provide to the parties notice and an opportunity to be heard on the issues.

(b) The parenting coordinator's recommendation shall be in writing on the Summary and Recommendation of the Parenting Coordinator form set forth in Pa.R.C.P. No. 1915.23 and sent to the court for review within two days after hearing from the parties on the issues. The parenting coordinator shall serve a copy of the Summary and Recommendation to the parties or, if represented, to their counsel.

(c) A party objecting to the recommendation shall file a petition for a *de novo* record hearing before the court within ten days of service of the filed Summary and Recommendation of the Parenting Coordinator form. The petition must specifically state the issues to be reviewed and include a demand for a *de novo* record hearing. A copy of the recommendation shall be attached to the petition. In accordance with Pa.R.C.P. No. 440, the petition shall be served upon the other party, if represented, the party's attorney, and the parenting coordinator.

7. DE NOVO RECORD HEARING:

(a) If the parties do not file an objection within ten days of receipt of the parenting coordinator's recommendation, the court shall:

(1) accept the recommendation by order;

(2) modify the recommendation by order;

(3) send the recommendation back to the parenting coordinator for more specific information; or

(4) vacate the recommendation and conduct a *de novo* record hearing on the issues.

(b) As soon as practical, the court shall conduct a *de novo* record hearing on the issues specifically set forth in the petition. The court shall render a decision within the time set forth in Pa.R.C.P. No. 1915.4(d).

(c) The recommendation shall become a final order of court unless:

(1) a party timely files with the court a petition objecting to the parenting coordinator's recommendation; or

(2) the court vacates the recommendation and conducts a *de novo* record hearing.

(3) If a timely objection is made by a party, the recommendation shall become an interim order of court pending further disposition by the court.

8. ALLOCATION OF FEES:

(a) The parties will share the obligation to pay the fees of the parenting coordinator as follows: ___% Mother, ___% Father, ___% Third party. Fees may be reallocated by the court or the parenting coordinator if a party has disproportionately caused the need for the services of the parenting coordinator.

(b) The hourly rate of the parenting coordinator shall be set forth in a separate agreement entered into between the parties and the parenting coordinator.

(c) The parties will pay a joint retainer to the parenting coordinator in the percentages set forth above in an amount to be set forth in a separate agreement between the parties and the parenting coordinator. After each session, or at least once monthly, the parenting coordinator shall provide the parties with an invoice of charges incurred. The retainer may be replenished as services are rendered. Funds remaining at the conclusion of the parenting coordinator's appointment shall be returned to the parties.

9. TERMINATION/WITHDRAWAL OF PARENTING COORDINATOR:

(a) The parties may not terminate the parenting coordinator's services without court approval.

(b) A party seeking the termination of the parenting coordinator's services shall serve the other party and parenting coordinator with a copy of the petition for termination.

(c) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall petition the court.

10. APPEAL:

If there is an appeal of the underlying custody order or this order, then this order shall be stayed during the pendency of the appeal.

BY THE COURT:

J.

Rule 1915.23. Form of the Summary and Recommendation of the Parenting Coordinator.

The recommendation of the parenting coordinator shall be in writing and shall be in substantially the following form:

(Caption)
**SUMMARY AND RECOMMENDATION
OF THE PARENTING COORDINATOR**

The undersigned, the duly appointed parenting coordinator in the above-captioned matter, pursuant to the Order of Court dated _____, 20____, after submission of an issue described below and after providing parties the parties an opportunity to heard on the issue, the parenting coordinator sets forth the following:

SUMMARY OF THE ISSUE(S)

1. Description of the issue(s):

2. The respective parties' position on the issue(s):

RECOMMENDATION

Date

Parenting Coordinator

ORDER OF COURT

**JUDICIAL REVIEW OF PARENTING
COORDINATOR'S RECOMMENDATION**

Accepted.

Modified as follows: _____

Returned to the parenting coordinator for additional information on the following issue(s): _____

Vacated. A *de novo* record hearing of the issue(s) is scheduled for _____, 20____ at _____ a.m./p.m. before the undersigned.

By the Court:

Date

J.

**PUBLICATION REPORT
Recommendation 155**

The Domestic Relations Procedural Rules Committee (Committee) is proposing a revision to Pa.R.C.P. No. Rule 1915.11-1. Parenting Coordination and the addition of two new rules/forms: Pa.R.C.P. No. 1915.22. Form of Order Appointing Parenting Coordinator and Pa.R.C.P. No. 1915.23. Form of the Summary and Recommendation of the Parenting Coordinator. In 2013, the current rule, Pa.R.C.P. No. 1915.11-1, was adopted by the Supreme Court eliminating parenting coordination.

As the language of the current rule makes it clear that judges make decisions regarding child custody matters, the proposed rule adopts a similar process to the custody hearing officer procedure in Pa.R.C.P. No. 1915.4-2(b) and the juvenile court master procedures in Pa.R.J.C.P. 1191, and acknowledges the role the judiciary has in the custody process, including parenting coordination, by mandating that the appointing judge maintain a supervisory role over the recommendations of the parenting coordinator and review each recommendation. However, in lieu of filing exceptions to the recommendation of the hearing officer as in Pa.R.C.P. No. 1915.4-2, the proposed rule would provide for a *de novo* hearing before the judge in the event a party disagrees with the recommendation of the parenting coordinator.

The proposed new rules provide for a standard form order for appointing a parenting coordinator and a standard form for the recommendation from the parenting coordinator. As with the other family law forms, the two proposed forms would provide for a uniform practice across the Commonwealth and would ensure all the necessary information is provided to the parties and their counsel.

[Pa.B. Doc. No. 16-1669. Filed for public inspection September 30, 2016, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1920]

Proposed Amendments of Pa.R.C.P. Nos. 1920.42, 1920.51, 1920.72 and 1920.73

The Domestic Relations Procedural Rules Committee (Committee) is planning to propose to the Supreme Court an amendment to Pa.R.C.P. Nos. 1920.42, 1920.51, 1920.72 and 1920.73, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. No 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

All communications in reference to the proposal should be received by February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Domestic Relations
Procedural Rules Committee*

DAVID J. SLESNICK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.42. [**Affidavit and Decree under § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in § 3301(c) and § 3301(d)(1)(i) Divorces. Counter-affidavit.**] **Decrees under § 3301(c) or § 3301(d) of the Divorce Code. Affidavits and Counter-Affidavits. Praecepte to Transmit Record. Requirements of § 3301(c) Affidavit. Notice of Intention to Request Entry of Divorce Decree.**

[(a) If a complaint has been filed requesting a divorce on the ground of irretrievable breakdown and

(1) both parties have filed an affidavit under § 3301(c) of the Divorce Code substantially in the form prescribed by Rule 1920.72(b), or

(2) either party has filed a § 3301(d) affidavit under § 3301(d) of the Divorce Code substantially in the form prescribed by Rule 1920.72(d) and has served it upon the other party along with a form counter-affidavit and the other party has admitted or failed to deny the averments of the § 3301(d) affidavit, the prothonotary on praecipe in the form prescribed by Rule 1920.73(b) shall transmit the record to the court, which shall review the record and enter the appropriate decree. No master shall be appointed.

(b) The affidavit required by § 3301(c) of the Divorce Code must have been executed

(1) ninety days or more after both filing and service of the complaint and

(2) within thirty days of the date the affidavit was filed.

(c) An affidavit of consent may be withdrawn only with leave of court.

(d)(1) Except as provided in (e), no decree shall be entered by the court under § 3301(c) or § 3301(d)(1)(i) of the Divorce Code unless a notice of intention to request entry of divorce decree, substantially in the form prescribed by Rule 1920.73(a), was mailed or delivered to the attorney of record of the party against whom the decree is to be entered or, if there is no attorney of record, to the party, along with a form counter-affidavit if none has been filed, at least twenty days prior to the date of the filing of the praecipe to transmit the record. A copy of the praecipe, which shall state the date and manner of service of the notice, shall be attached.

(2) The affidavit required under § 3301(d) of the Divorce Code shall be filed with the prothonotary and served upon the other party, along with a form counter-affidavit. The moving party must wait a minimum of 20 days after service of the § 3301(d) affidavit before serving the Notice of Intention to File Praecepte to Transmit the Record and another form counter-affidavit or filing the waiver of notice pursuant to Rule 1920.72(c).

(e) Notice of intention to request entry of divorce decree shall not be required prior to entry of a divorce decree

(1) where the parties have executed and filed with the prothonotary a waiver of notice substantially in the form set forth in Rule 1920.72(c); or

(2) under § 3301(d) where the court finds that no appearance has been entered on defendant's behalf and that defendant cannot be located after diligent search.

Official Note: This counter-affidavit will be filed only if the party against whom the decree is to be entered has not previously denied the allegations of the other party's affidavit or has not previously claimed economic relief by counterclaim or petition.]

(a) *Obtaining a divorce decree under §§ 3301(c) and (d).* The court shall enter an appropriate decree if:

(1) in a divorce action under § 3301(c) divorce:

(i) § 3301(c)(1)—both parties have signed and filed an Affidavit of Consent; or

(ii) § 3301(c)(2)—a party has signed and filed an Affidavit of Consent and an Affidavit to Establish Presumption of Consent alleging his or her status as a victim of a personal injury crime and that his or her spouse has been convicted of that crime;

(A) the filed affidavits have been served on the other party, along with a blank Counter-Affidavit under § 3301(c)(2);

(B) the other party has admitted or failed to deny the averments in the affidavit; and

(iii) the Affidavit of Consent and, if necessary, the Affidavit to Establish Presumption of Consent have been signed consistent with subdivision (b)(1); and

(iv) the requirements of subdivision (c) or (d) have been satisfied.

Official Note: See Pa.R.C.P. No. 1920.72(b) for the Affidavit of Consent for a § 3301(c) divorce. The requirements for a § 3301(c) affidavit are set forth in subdivision (b).

Official Note: See Pa.R.C.P. No. 1920.72(d) for the Affidavit to Establish Presumption of Consent.

Official Note: See Pa.R.C.P. No. 1920.72(f)(2) for the Counter-Affidavit for a § 3301(c)(2) divorce.

(2) in a § 3301(d) divorce,

(i) a party has signed and filed an Affidavit under § 3301(d) alleging the marriage is irretrievably broken and a 2-year separation;

(ii) the filed affidavit has been served on the other party, along with a blank Counter-Affidavit under § 3301(d);

(iii) the other party has admitted or failed to deny the averments in the affidavit; and

(iv) the requirements of subdivision (c) or (d) have been satisfied.

Official Note: See Pa.R.C.P. No. 1920.72(e) for the affidavit for a § 3301(d) divorce.

Official Note: See Pa.R.C.P. No. 1920.72(f)(3) for the Counter-Affidavit for a § 3301(d) divorce. A Counter-Affidavit is required only if the non-moving party has not previously denied the allegations in the moving party's affidavit or has not previously claimed economic relief in a counterclaim or petition.

(3) Related claims pursuant to Pa.R.C.P. Nos. 1920.31 and 1920.33:

(i) have been resolved by agreement of the parties;

(ii) have been resolved by order of court;

(iii) the court has granted a bifurcation in accordance with 23 Pa.C.S. § 3323(c.1); or

(iv) additional claims have not been raised in the pleadings.

(4) a Praecepto to Transmit the Record has been filed with the prothonotary, who shall transmit the record to the court for review.

Official Note: See Pa.R.C.P. No. 1920.73(b) for the Praecepto to Transmit the Record.

(b) The Affidavit of Consent under § 3301(c) and the Affidavit to Establish Presumption of Consent under § 3301(c)(2):

(1) must have been signed:

(i) 90 days or more after the filing and service of the complaint; and

(ii) within 30 days of the date the affidavit was filed with the prothonotary's office;

(2) may be withdrawn only by order of court.

(c) Except as provided in subdivision (d), the court shall enter a decree under § 3301(c) or § 3301(d) of the Divorce Code only if the party requesting the divorce has served on the attorney of record for the other party or, if unrepresented, the other party:

(1) a Notice of Intention to Request Entry of Divorce Decree;

(2) a blank counter-affidavit form for the appropriate section of the Divorce Code;

(3) a copy of the proposed Praecepto to Transmit Record, which shall indicate the date and manner of service of the Notice of Intention to Request Entry of Divorce Decree; and

Official Note: See Pa.R.C.P. No. 1920.73(a) for the Notice of Intention to Request Entry of Divorce Decree.

(d) A Notice of Intention to Request Entry of Divorce Decree shall not be required prior to requesting a divorce decree if:

(1) the parties have signed and filed with the prothonotary a waiver of notice; or

(2) in a § 3301(d) divorce, the court finds that an appearance has not been entered on defendant's behalf and the defendant cannot be located after a diligent search.

Official Note: See Pa.R.C.P. No. 1920.72(c) for the Waiver of Notice of Intention to Request Divorce Decree.

(e) Service of the Notice of Intention to Request Entry of Divorce Decree shall be:

(1) at least 20 days after service of the § 3301(c) or (d) affidavit; and

(2) at least 20 days prior to the date the party intends file the Praecepto to Transmit Record and request the decree.

Rule 1920.51. Hearing by the Court. Appointment of Master. Notice of Hearing.

(a)(1) The court may hear the testimony or, upon its own motion or the motion of either party, may appoint a master with respect to [all or any of] the matters specified in subdivision (a)(2)(i) [to consider same]

and to issue a report and recommendation. The order of appointment shall specify the matters which are referred to the master.

(2)(i) The court may appoint a master in an action of divorce under [Section] § 3301(a), (b), (c)(2), and (d)(1)(ii) of the Divorce Code, an action for annulment, and the claims for alimony, alimony pendente lite, equitable [distribution] division of marital property, child support, partial custody [or visitation, or], counsel fees, and costs and expenses[, or any aspect thereof].

Official Note: The appointment of a master in a § 3301(c)(2) may be necessary to establish the presumption of consent if a party denies the averments in the Affidavit to Establish Presumption of Consent on the Counter-Affidavit under § 3301(c)(2).

(ii) [If there are no claims other than divorce, no master may be appointed] The Court may not appoint a master to determine grounds for divorce if either party has asserted grounds for divorce pursuant to § [3301(c)] 3301(c)(1) or § 3301(d)(1)(i) of the Divorce Code, unless ancillary economic claims have been raised in the pleadings. [A master may be appointed to hear ancillary economic claims in a divorce action pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The master may be appointed to hear ancillary economic claims] An appointment of a master for purposes of resolution of the ancillary economic claims in a § 3301(c) or § 3301(d) divorce may be prior to the entry of a divorce decree if grounds for divorce have been established.

(iii) [No] A master may not be appointed in a claim for legal, physical or shared custody or paternity.

* * * * *

Rule 1920.72. Form of Complaint. [Affidavit] Affidavits under § 3301(c) or § 3301(d) of the Divorce Code. [Counter-affidavit.] Counter-Affidavits. Waiver of Notice of Intention to Request Decree under § 3301(c) and § 3301(d).

(a) The complaint in an action [of] for a divorce under § 3301(c) or § 3301(d) shall begin with the Notice to Defend and Claim Rights required by [Rule] Pa.R.C.P. No. 1920.71 and shall be substantially in the following form:

* * * * *

(b) The affidavit of consent required by § 3301(c) of the Divorce Code and [Rule 1920.42(a)(1)] Pa.R.C.P. No. 1920.42(a)(1)(i) shall be substantially in the following form:

* * * * *

(c) The waiver permitted by [Rule 1920.42(e) shall be in substantially] Pa.R.C.P. No. 1920.42(d)(1) shall be substantially in the following form:

(Caption)

Waiver of Notice of Intention to Request Entry of a Divorce Decree under § 3301(c) and § 3301(d) of the Divorce Code

1. I consent to the entry of a final decree of divorce without notice.

2. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

3. I understand that I will not be divorced until a divorce decree is entered by the Court and that a copy of the decree will be sent to me immediately after it is filed with the prothonotary.

I verify that the statements made in this 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: _____ (PLAINTIFF) (DEFENDANT)

(d) The affidavit to establish presumption of consent under § 3301(c)(2) of the Divorce Code and Pa.R.C.P. No. 1920.42(a)(1)(ii) shall be substantially in the following form:

(Caption)

AFFIDAVIT TO ESTABLISH PRESUMPTION OF CONSENT UNDER § 3301(c)(2) OF THE DIVORCE CODE

1. I am the victim of a "personal injury crime," as that term is defined in 23 Pa.C.S. § 3103.

2. My spouse was convicted of the crime averred in Paragraph 1 on insert date in in the Court of Common Pleas of insert county name County.

The docket number is insert docket number .

3. The personal injury crime(s) for which my spouse was convicted:

Check all that apply:

- 18 Pa.C.S. Ch. 25 (relating to criminal homicide)
- 18 Pa.C.S. Ch. 27 (relating to assault)
- 18 Pa.C.S. Ch. 29 (relating to kidnapping)
- 18 Pa.C.S. Ch. 30 (relating to human trafficking)
- 18 Pa.C.S. Ch. 31 (relating to sexual offenses)
- 18 Pa.C.S. § 3301 (relating to arson and related offenses)
- 18 Pa.C.S. Ch. 37 (relating to robbery)
- 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation)
- 75 Pa.C.S. § 3732 (relating to homicide by vehicle)
- 75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury)

I verify that the statements made in this 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 _____ Plaintiff/Defendant

[(d)] (e) The affidavit required by § 3301(d) of the Divorce Code and [Rule 1920(a)(2)] Pa.R.C.P. No. 1920(a)(2)(i) shall be substantially in the following form:

* * * * *

[(e)(1)] (f)(1) The counter-affidavit for a § 3301(c)(1) divorce, as prescribed by [Rule 1920.42(d)(2)]

Pa.R.C.P. No. 1920.42(c)(2), shall be substantially in the following form [in a § 3301(c) divorce]:

(Caption)

COUNTER-AFFIDAVIT UNDER § [3301(c)] 3301(c)(1) OF THE DIVORCE CODE

I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that I must file my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims.

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: _____ (PLAINTIFF) (DEFENDANT)

NOTICE: IF YOU DO NOT WISH TO CLAIM ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

(2) The counter-affidavit for a § 3301(c)(2), as prescribed by Pa.R.C.P. No. 1920.42(a)(1)(ii)(A) and (c)(2), shall be substantially in the following form:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(c)(2) OF THE DIVORCE CODE

1. Check either (a) or (b):

(a) I do not oppose the entry of a divorce decree.

(b) I oppose the entry of a divorce decree because

(Check (i), (ii), or both):

(i) I have not been convicted of a "personal injury crime," as that term is defined in 23 Pa.C.S. § 3103.

(ii) My spouse was not the victim of a personal injury crime for which I have been convicted.

2. Check either (a), (b), or (c):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I UNDERSTAND THAT IN ADDITION TO CHECKING 2(b) ABOVE, I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS WITH THE PROTHONOTARY IN WRITING AND SERVE THEM ON THE OTHER PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO REQUEST DIVORCE DECREE, THE DIVORCE DECREE MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I SHALL BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.

(c) Economic claims have been raised and are not resolved.

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 _____ Plaintiff/Defendant

NOTICE: IF YOU DO NOT WISH TO OPPOSE THE ENTRY OF A DIVORCE DECREE AND YOU DO NOT WISH TO MAKE ANY CLAIM FOR ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

[(2)] (3) The counter-affidavit for a § 3301(d) divorce, as prescribed by [Rule 1920.42(d)(2)] Pa.R.C.P. No. 1920.42(a)(2)(ii) and (c)(2), shall be substantially in the following form [in a § 3301(d) divorce]:

* * * * *

Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecepto to Transmit Record Forms.

(a)(1) The notice of the intention to request entry of divorce decree prescribed by [Rule 1920.42(d)] Pa.R.C.P. No. 1920.42(c)(1) shall be substantially in the following form if there is an attorney of record:

* * * * *

(2)(i) The notice of the intention to request entry of a § 3301(c) divorce decree prescribed by [Rule 1920.42(d)] Pa.R.C.P. No. 1920.42(c)(1) shall be substantially in the following form if there is no attorney of record:

(Caption)

NOTICE OF INTENTION TO REQUEST ENTRY OF § 3301(c) DIVORCE DECREE

TO: _____ (PLAINTIFF/DEFENDANT)

You have signed a § 3301(c) affidavit consenting to the entry of a divorce decree. Therefore, on or after _____, 20____, the other party can request the court to enter a final decree in divorce.

Unless you have already filed with the court a written claim for economic relief, you must do so by the date in the paragraph above, or the court may grant the divorce and you will lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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.

(Name)

(Address)

(Telephone Number)

(ii) The notice of the intention to request entry of § 3301(c)(2) divorce decree prescribed by Pa.R.C.P. No. 1920.42(c)(1) shall be substantially in the following form if there is no attorney of record:

(Caption)

NOTICE OF INTENTION TO REQUEST ENTRY OF § 3301(c)(2) DIVORCE DECREE

TO: _____ (PLAINTIFF/DEFENDANT)

You have been sued in an action for divorce. You have failed to file a counter-affidavit to the Affidavit to Establish Presumption of Consent under § 3301(c)(2) of the Divorce Code. Therefore, on or after _____, 20__, the other party can request the court to enter a final decree in divorce.

If you do not file with the prothonotary of the court a counter-affidavit by the above date, the court can enter a final decree in divorce. A counter-affidavit which you may file with the prothonotary of the court is attached to this notice.

Unless you have already filed with the court a written claim for economic relief, you must do so by the above date or the court may grant the divorce and you will lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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.

_____ (Name)

_____ (Address)

_____ (Telephone Number)

Official Note: The above lines are to be completed with the name, address and telephone number of the officer, organization, agency or person designated by the court in accordance with Pa.R.C.P. No. 1018.1(c).

The date to be inserted in the first paragraph of the notice must be at least twenty days after the date on which the notice was mailed or delivered.

[(ii)] (iii) The notice of the intention to request entry of § 3301(d) divorce decree prescribed by [Rule 1920.42(d)] Pa.R.C.P. No. 1920.42(c)(1) shall be substantially in the following form if there is no attorney of record:

* * * * *

(b) The praecipe to transmit the record prescribed by [Rule 1920.42 shall be in substantially] Pa.R.C.P. No. 1920.42(a)(4) shall be substantially in the following form:

(Caption)

[PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Ground for divorce: irretrievable breakdown under § (3301(c)) and (3301(d)(1)) of the Divorce Code. (Strike out inapplicable section).

2. Date and manner of service of the complaint: _____ .

3. Complete either paragraph (a) or (b).

(a) Date of execution of the affidavit of consent required by § 3301(c) of the Divorce Code: by plaintiff: _____ ; by defendant: _____ .

(b)(1) Date of execution of the affidavit required by § 3301(d) of the Divorce Code: _____ ;

(2) Date of filing and service of the § 3301(d) affidavit upon the opposing party: _____ .

4. Related claims pending: _____ .

5. Complete either (a) or (b).

(a) Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached: _____ .

(b) Date plaintiff's Waiver of Notice was filed with the prothonotary: _____ .

Date defendant's Waiver of Notice was filed with the prothonotary: _____ .

(Attorney for) (PLAINTIFF) (DEFENDANT)]

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Grounds for divorce: irretrievable breakdown
Check the applicable section of the Divorce Code:

§ 3301(c)(1)

§ 3301(c)(2)

§ 3301(d)

2. Service of the Complaint:

(a) Date served: _____ .

(b) Manner of service: _____ .

3. Complete either paragraph (a) or (b).

(a) § 3301(c)(1) or (2) of the Divorce Code—The date the Affidavit of Consent was signed by each party, or if the ground for divorce is under § 3301(c)(2) of the Divorce Code, the date the spouse was convicted of the personal injury crime identified in 23 Pa.C.S. § 3103 next to the appropriate party and then complete (1) and (2).

Plaintiff: _____ ;

Defendant: _____ .

(1) The date the Affidavit to Establish Presumption of Consent under § 3301(c)(2) of the Divorce Code was signed: _____;

(2) The date of filing and service of the Affidavit to Establish Presumption of Consent under § 3301(c)(2) of the Divorce Code upon the other party: _____.

(b) § 3301(d) of the Divorce Code:

(1) The date the Affidavit under § 3301(d) of the Divorce Code was signed: _____;

(2) Date of filing and service of the affidavit upon the other party: _____.

4. Related claims pending: _____.

5. Complete either (a) or (b).

(a) Notice of Intention to Request Entry of Divorce Decree:

(1) Date served: _____.

(2) Manner of service: _____.

(b) The date the Waiver of Notice of Intention to Request Entry of Divorce Decree was filed with the Prothonotary:

(1) Plaintiff's Waiver: _____.

(2) Defendant's Waiver: _____.

(Attorney for)(Plaintiff)(Defendant)

PUBLICATION REPORT Recommendation 158

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. Nos. 1920.42, 1920.51, 1920.72 and 1920.73. The impetus for the amendments was the enactment Act 24 of 2016, which amended the Divorce Code by adding 23 Pa.C.S. § 3301(c)(2), which provides for a presumption of consent to the divorce when there is an allegation that a party is the victim of a personal injury crime, as set forth in 23 Pa.C.S. § 3103, that was committed by that party's spouse. The Act amended other correlative statutes in the Divorce Code, as well.

The familiar procedures of obtaining a § 3301(d) divorce are incorporated into the process of establishing the presumption in § 3301(c)(2) by means of an affidavit, which requires the spouse to aver his or her status of victim of a personal injury crime and that their spouse had been convicted of that personal injury crime. The convicted spouse may oppose the establishment of the presumption by completing and filing a counter-affidavit. In the event the convicted spouse opposes the establishment of the presumption, the court may either schedule a hearing on the establishment of the presumption or appoint a master to do so. The current rule does not permit the appointment of a master to determine grounds under § 3301(c); however, as part of the complete revision of Pa.R.C.P. No. 1920.42, a master may be appointed for a determination of the presumption under § 3301(c)(2).

As noted, as part of this recommendation, the Committee completely rewrote Pa.R.C.P. No. 1920.42. The current rule is difficult to follow and including additional procedures for § 3301(c)(2) into the current rule would have furthered the problem.

To accommodate § 3301(c)(2) divorces, the Committee added forms, including Affidavit to Establish Presumption of Consent, Counter-Affidavit under § 3301(c)(2), Notice of Intention to Request Entry of § 3301(c)(2) Divorce Decree, and amended and reformatted the Praecepto to Transmit Record.

[Pa.B. Doc. No. 16-1670. Filed for public inspection September 30, 2016, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

De Minimis Overpayment of Court Ordered Financial Obligations; Administrative Doc. No. 03 of 2016

Order

And Now, this 12th day of September, 2016, it appearing that the General Assembly has recognized that overpayments of fees and costs in the sum of Fifteen (\$15.00) Dollars or less need not be refunded, and it also appears that overpayments in de minimis amounts delay the closure of criminal cases because the depositing parties cannot be located, do not request a refund, or do not negotiate refund checks issued to them when mailed to their last known address. Therefore, consistent with 42 Pa.C.S. § 1725(c)(2)(xx), it is hereby *Ordered* and *Decreed* that the Office of Judicial Records is authorized to distribute from time to time overpaid amounts in civil and criminal cases, in the sum of Fifteen (\$15.00) Dollars or less, to the City of Philadelphia.

This Administrative Order is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1. This Administrative Order shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. Two certified copies of this Administrative Order, as well as one copy of the Administrative Order shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. Pursuant to Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://courts.phila.gov>, and, if required, shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE JACQUELINE F. ALLEN,
Administrative Judge, Trial Division
Court of Common Pleas, Philadelphia County

[Pa.B. Doc. No. 16-1671. Filed for public inspection September 30, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Amendment of 56th Judicial District—Constable Manual; No. CP-13-AD-0000005-2016

Administrative Order No. 13-2016

And Now, this 12th day of September, 2016, it is hereby

Ordered and Decreed, that effective November 1, 2016, the Carbon County Court of Common Pleas *Amends* the following Constable Manual governing the procedures to be followed by all Constables performing judicial duties for the 56th Judicial District.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File one (1) copy electronically to adminrules@pacourts.us of this Administrative Order and Manual with the Administrative Office of Pennsylvania Courts.
2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish the Rule on the Carbon County Court website at <http://www.carboncourts.com>.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Administrative Order and Manual in the Clerk of Courts Office.
7. Incorporate the Manual no later than thirty (30) days after publication in the *Pennsylvania Bulletin* with this Court's complete set of Rules of Court published at <http://www.carboncourts.com>.

By the Court

ROGER N. NANOVIC,
President Judge

CONSTABLE MANUAL 56th JUDICIAL DISTRICT

I. General Provisions

A. Definitions—Subject to additional definitions contained in subsequent sections of this manual, the following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

C.C.C.F.—Carbon County Correctional Facility

Clerk of Courts—The official, and that official's office, in the 56th Judicial District who, pursuant to 42 Pa.C.S.A. §§ 2756 and 2757, has the responsibility and function to maintain the official criminal case file and list of docket entries for each criminal proceeding, and to perform such other duties as required by rule or law.

Constable—All elected, court appointed, and/or deputy constables duly elected or appointed pursuant to statutory authority. As elected or appointed officials, constables are independent contractors and are not employees of the Commonwealth, the judiciary, or the municipality in which they serve.

Constable's Education and Training Board (C.E.T.B.)—The Constable's Education and Training Board established and created pursuant to 44 Pa.C.S.A. § 7143 responsible for developing basic training and firearms education for constables and to certify constables who perform judicial duties.

Controller—The duly elected County Controller for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq.

County—County of Carbon.

Court—The Court of Common Pleas for the 56th Judicial District.

Court Administrator—The District Court Administrator for the 56th Judicial District as designated by the Pennsylvania Supreme Court and the Administrative Offices of the Pennsylvania Courts.

Court Official—The Judges of the Court of Common Pleas for the 56th Judicial District, the Magisterial District Judges for the 56th Judicial District, the Carbon County District Court Administrator, the Chief Adult Probation Officer for the Carbon County Probation Department, and all employees in the respective offices.

Judicial Duties—Services and duties performed by a constable for the payment of fees as authorized by 44 Pa.C.S.A. § 7161, including all services specified therein regardless of whether a fee is actually sought by the constable or paid by the County.

Magisterial District Judge—A public official having the power and authority of a magisterial district judge whose jurisdiction falls within the 56th Judicial District.

P.C.C.D.—Pennsylvania Commission on Crime and Delinquency.

Prothonotary—The duly elected Prothonotary for the 56th Judicial District empowered with the rights, duties, and responsibilities under 42 Pa.C.S.A. §§ 2736 and 2737, who has the responsibility to maintain official court records and to perform such other duties as required by rule or law.

Sheriff—The duly elected Sheriff for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq., including all deputies appointed in compliance with the County Code.

II. Powers and Duties

A. Requirements of Constables Performing Judicial Duties in the 56th Judicial District—Constables performing judicial duties within the 56th Judicial District must:

1. Be certified by C.E.T.B.

2. Post a bond with the Clerk of Courts' Office in the sum of \$2,500 conditioned upon the just and faithful discharge by the constable of the duties of his/her office. The bond shall be held in trust for the use and benefit of persons who may sustain injury by reason of a constable's neglect of duty. Proof of the filing of a bond must be provided to the Court Administrator's Office.

3. Maintain a policy of professional liability insurance providing coverage for the performance of judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year. Proof of insurance coverage must be filed with the Clerk of Courts Office and the Court Administrator's Office annually.

4. Maintain a valid and current Pennsylvania driver's license and required financial responsibility (automobile insurance) on any vehicle used for the performance of judicial duties. Proof of licensing and insurance must be provided to the Court Administrator's Office as required by that office. Absence of a driver's license does not preclude a constable who is otherwise approved by the Court to perform judicial duties from working with a constable pursuant to 44 Pa.C.S.A. § 7161(c), provided the unlicensed or uninsured constable does not operate a motor vehicle. However, unless accompanied by another constable who maintains a valid and current Pennsylvania driver's license and required financial responsibility, a constable who does not possess a valid driver's license or required financial responsibility shall not perform judicial duties.

5. Maintain current contact information with the Court Administrator's Office. Current contact information shall include constable's current address, telephone number, and cell phone number. Contact information shall also include information as to any other communication equipment utilized by the constable to perform judicial duties (e.g. pager, fax machine).

6. If carrying a firearm in the performance of judicial duties, a constable shall provide the Court Administrator's Office with proof of certification or qualification to carry or use firearms as provided by 44 Pa.C.S.A. § 7148.

7. Complete and provide the Controller with all vendor authorization documents, including the production of a tax identification number as required by local, state, or federal law or policies and procedures of the Controller.

8. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and understands the provisions and terms set forth therein. The acknowledgment shall be in the form attached hereto as "Exhibit A."

9. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Constable Manual for the 56th Judicial District and understands the provisions and terms set forth in the manual governing the performance of judicial duties. The acknowledgment shall be in the form attached hereto as "Exhibit A."

B. Authorization to Perform Judicial Duties—No Magisterial District Judge, nor any other Court Official, shall request or otherwise authorize a constable to perform judicial duties, nor shall the Controller authorize payment of fees for a constable performing judicial duties, unless the constable has been designated by the Court Administrator's Office as a constable authorized to perform judicial duties.

1. The Court Administrator's Office shall maintain a list of all constables who are authorized to perform judicial duties within the 56th Judicial District. The Court Administrator's Office shall publish the list with all Magisterial District Judges in the 56th Judicial District; any other Court office utilizing constable services in the performance of judicial duties; the Controller; and the Clerk of Courts Office on a regular basis. This list shall be updated and published at least annually. In the event the privilege of a constable to perform judicial duties is revoked by the Court, the Court Administrator's Office shall promptly notify the identified offices of the same.

2. The Court Administrator's Office shall develop policy and procedure to effectuate and ensure a constable's compliance with the requirements set forth in Section A above.

C. Removal of Authorization to Perform Judicial Duties—Although a constable may only be removed or disciplined for acts of malfeasance or misfeasance upon petition of the District Attorney or an individual citizen (see 13 P.S. § 31), a constable's authorization to perform judicial duties pursuant to Section B above may be revoked at any time pursuant to the authority of the President Judge for the 56th Judicial District.

1. A constable's authority to perform judicial duties may be revoked in the following circumstances:

a. a constable permits his/her compliance with the requirements of Section A above to lapse;

b. the constable commits a breach of the duties or requirements of this manual including, but not limited to, the Constable Code of Conduct as set forth in Section V herein;

c. the constable commits any violation of the law while in the performance of judicial duties or is otherwise convicted of criminal conduct which places the integrity or honesty of the constable at issue;

d. the constable commits any act which jeopardizes public trust in or brings disrespect to the Court.

2. Court Officials who know, or have reason to believe, that a constable has committed a violation of the Code of Conduct or the provisions of the Constable Manual shall promptly inform the Court Administrator's Office of the same.

3. All complaints of constable misconduct, including complaints related to failure to comply with the Constable Manual, shall be promptly investigated by the Court Administrator. The results of the investigation shall be provided to the President Judge for further action, if any.

D. Minimum Requirements—Compliance with the provisions of this manual does not guarantee a constable the right to perform judicial duties for a Magisterial District Judge. Rather, the provisions of this section set forth the minimum requirements which must be complied with before a constable may be utilized by a Magisterial District Judge to perform judicial duties. Magisterial District Judges retain the right to assign constable work within their reasonable discretion provided the utilized constable is otherwise in compliance with this section.

III. Warrant Procedures

A. Definitions—The following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

Legal Holiday—For purposes of this manual, the following shall be defined as legal holidays: New Year's Day, Martin Luther King, Jr.'s Day, Presidents' Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the Day after Thanksgiving Day, and Christmas Day. For those holidays identified herein which annually fall on a rotating calendar day, the actual date shall be defined as the day designated as the federal holiday.

Arrest Warrant—An arrest warrant for a misdemeanor/felony offense issued pursuant to Pa.R.Crim.P. 513 et. al by a Magisterial District Judge for private criminal complaints, including those filed by the Pennsylvania Department of Inspector General, and which have been approved by the District Attorney's Office.

Summary Warrant—A warrant issued by a Magisterial District Judge pursuant to Pa.R.Crim.P. 430. This definition includes both arrest warrants and bench warrants issued pursuant to Rule 430.

B. Summary Warrants and Misdemeanor/Felony Warrants for Private Criminal Complaints—The following procedures shall apply to the issuance and service of these warrants.

1. Magisterial District Judges possess the exclusive right, subject to the authority of the President Judge, to distribute warrants issued by them to a constable of their choice who satisfies the requirements of the C.E.T.B., this manual, and the Court Administrator's Office to perform judicial duties. Magisterial District Judges shall issue warrants where appropriate pursuant to the Pennsylvania Rules of Criminal Procedure and prevailing law.

2. Upon issuance of a warrant, the Magisterial District Judge may assign the warrant to a constable authorized to perform judicial duties by the Court Administrator's Office. Unless the warrant is unassigned, no constable other than the assigned constable shall serve a warrant within 60 days of the initial issuance of the warrant by the Magisterial District Court, subject to the following:

a. If the subject of the warrant is in the custody of the Sheriff's Department as a result of contact between the subject and the Sheriff's Department unrelated to the warrant or in the custody of prison officials in which case a duplicate warrant may be issued to the Sheriff's Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

b. If the subject of the warrant is present in the Carbon County Courthouse and, as a result of routine examination by the Sheriff's Department of any person appearing before the Court of Common Pleas or other information acquired by the Sheriff's Department, the Sheriff's Department learns that an individual present in or at the Courthouse is the subject of a warrant, a duplicate warrant may be issued to the Sheriff's Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

c. If the subject of the warrant is in the custody of a constable who has exercised custody pursuant to another warrant issued and served in compliance with this manual in which case the original warrant shall be recalled and reissued to the constable who has custody of the subject; or

d. If the subject of the warrant is in the custody of a constable as the result of execution of another warrant issued by a Court official or Magisterial District Judge of another Judicial District of this Commonwealth in which case the original warrant shall be recalled and reissued to the Constable.

3. Upon service of the warrant, the constable to whom the warrant has been assigned shall immediately notify the issuing authority of service and promptly return a certified copy of the warrant to the District Court evidencing service of the warrant.

4. If the subject of the warrant is in the custody of a municipal or state police officer who, for any reason, has taken the subject before the issuing authority, the Magisterial District Judge shall promptly notify any constable to whom the warrant has been assigned that the warrant has been served.

5. During the normal operating hours of the Magisterial District Court, if a Constable reasonably believes he/she will be able to serve a summary warrant which has been assigned to another Constable, or is unassigned, within the next 12 hours, he/she shall contact the issuing District Court in which case a warrant may be issued to the Constable.

6. All assigned, unserved summary warrants shall be available for service by any constable authorized to perform judicial duties in the 56th Judicial District after the 60th day following issuance of the warrant. In all such cases, it shall be the responsibility of the constable seeking to serve the warrant to review the warrant and determine if the warrant is available to be served by that constable. A constable shall not request a warrant to be reissued unless imminent service of the warrant is anticipated. For purposes of this paragraph, imminent service requires a good faith belief as to the whereabouts of the subject of the warrant and the likelihood that the warrant will be served within the immediately subsequent 12-hour period.

7. When a summary warrant is issued pursuant to Pa.R.Crim.P. 430, upon service of the warrant, the constable shall either:

a. Accept a signed guilty plea together with payment in full of the amount of the fines and costs as stated on the warrant;

b. Accept from the defendant a signed not guilty plea together with payment in full of the amount of the collateral stated on the warrant; or

c. If the defendant is unable to pay the full amount of the fines and costs or collateral, cause the defendant to be taken without unnecessary delay before the issuing authority during normal court hours, or before the on-call Magisterial District Judge.

8. When a constable accepts fines and costs or collateral, the constable shall issue a receipt to the defendant setting forth the amount of the fines and costs or collateral received and promptly return a copy of the receipt, signed by the defendant and constable, to the proper issuing authority. Constables must return the warrant and any pleas, fines, costs, and/or restitution collected to the issuing authority no later than the close of business during the same business day; or if served after normal court hours, on the next business day. Constables should make every effort to resolve service of the warrant as per Pa.R.Crim.P. 430 before physically transporting the defendant to the proper issuing authority, or on-call Magisterial District Judge.

9. A constable shall not serve a summary warrant issued pursuant to Pa.R.Crim.P. 430 at a residence between the hours of 10:00 p.m. and 6:00 a.m., or after 10:00 p.m. on the day preceding a legal holiday until after 6:00 a.m. of the day following the legal holiday.

10. A constable shall not attempt to serve a summary warrant or take the subject of such a warrant into custody unless in possession of a valid warrant.

C. Return of Unserved Warrants

1. A constable who has been issued a warrant pursuant to this manual shall return the warrant to the Magisterial District Court at the expiration of sixty (60) days of its issuance or 12 hours for those warrants issued pursuant to Chapter III, B(5), (6) if the constable is unable to execute or effectuate service within those time periods. Failure to return the warrant within the time period set forth herein may, at the discretion of the

President Judge, result in a revocation/restriction of one's right to perform judicial duties.

2. A constable shall not, under any circumstance, make a duplicate or copy of any warrant for purposes of service.

D. Warrant Service on Incarcerated Parties

1. Unless expressly approved in advance by the Issuing Authority, President Judge or Court Administrator, warrant service on parties already incarcerated or otherwise in the custody of prison officials [is not authorized and] will not be compensated.

2. The Court may authorize payment in Summary Warrant matters in the event, through the efforts of a constable seeking a defendant, the constable learns that a defendant is incarcerated in a County jail outside of Carbon County but within the Commonwealth, and relays that information to the issuing authority.

a. The Magisterial District Judge must indicate that he/she was unaware that the defendant was incarcerated in a County jail outside of Carbon County but within the Commonwealth when the warrant was issued.

IV. Compensation

A. Preliminary Provisions—Constables shall be paid fees in compliance with the fee schedule set forth in 44 Pa.C.S.A. § 7161 or subsequent legislative act or rule of court. Constables shall not be paid a fee for any judicial act committed in violation of the provisions of this manual. Fees shall not be paid unless the request for fees is made in compliance with the procedures set forth in this chapter. When three or more warrants are served on the same subject of the warrant, compensation shall be paid for a maximum of three warrants served.

B. Reimbursement Procedure—Constables shall comply with the procedures of this section in seeking reimbursement for services. A request for reimbursement of services not in compliance with the procedures of this section may be denied on that basis.

1. Magisterial District Judge Warrants—Payment for the performance of judicial duties related to the issuance of a warrant by a Magisterial District Judge shall be submitted to the Magisterial District Judge who authorized the service on the form prescribed by the Court Administrator's Office or the Administrative Office of the Pennsylvania Courts. See Exhibit "B" attached to this manual. The Magisterial District Judge shall acknowledge receipt of the request by executing the same and promptly forwarding the request to the County Controller's Office for payment. Execution of a constable's fee request by a Magisterial District Judge evidences that the Magisterial District Judge authorized the service for which fee reimbursement is being requested.

2. All reimbursement forms shall be completed in their entirety. A form which is incomplete will be returned to the constable by the Magisterial District Court promptly and shall be considered as not having been filed for purposes of the time period set forth in Section IV(C) of this manual.

C. Time of Invoice—Request for payment of all fees shall be made to the Magisterial District Judge in the manner directed by this manual within 30 days of the date of the performed service. Although the County's liability for the payment of fees submitted after 30 days of the date of service shall be controlled by prevailing law, failure to submit requests for payment of fees within the time period set forth herein may result in the revocation of a constable's privilege to perform judicial duties.

D. Mileage—The following rules shall apply to reimbursement for actual mileage:

1. Actual mileage for travel by motor vehicle shall be reimbursed at a rate equal to the highest rate allowed by the Internal Revenue Service.

2. No constable shall undertake travel in the performance of judicial duties by any mode other than motor vehicle, unless prior written consent for the same is authorized by the Court Administrator.

3. In effectuating service of a warrant, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location of commitment, if necessary, plus the number of miles from the commitment location to the issuing authority's office. Where commitment does not occur, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location where acceptance of payment or collateral is made, plus the number of miles from this location to the issuing authority's office.

E. Hours Worked—All work that calculates reimbursement by the hour shall be rounded to the nearest quarter-hour.

F. Second Constable—Except for those circumstances described in 44 Pa.C.S.A. § 7161(c), upon prior approval by the issuing authority, when a second constable is utilized in the service of a warrant, the second constable shall also examine the warrant to ensure that service of the warrant is in compliance with the provisions of this Manual. The second constable shall follow all requirements as described in the Manual and will be held to the same standards as the constable who obtained the warrant for service.

V. Constable Code of Conduct

A. Introduction—A fair and independent court system is essential to the administration of justice. Although constables are not employees of the Commonwealth, the judiciary or any municipal agency, as an independent contractor, they provide services and aid to the judicial process. Proper conduct by those involved in assisting the judicial process inspires public confidence and trust in the Courts and conveys the values of impartiality and fairness that promote the integrity of our system of justice. A constable's conduct reflects upon the Court's commitment to serving the public. A constable performing judicial duties shall observe high standards of conduct so that the integrity and independence of the judicial system are preserved. The provisions of this code shall be applied to further those objectives. All constables performing judicial duties shall observe the standards of conduct set forth in this section. These standards however shall not limit or preclude, nor be interpreted to limit or preclude, other more stringent standards as established by law or by Court order or rule.

B. Performance of Judicial Duties—Constables performing judicial duties shall conduct themselves in an appropriate and lawful manner at all times and shall adhere to the following standards. Constables performing judicial duties:

1. Shall not engage in any form of discrimination, harassment, or retaliation against any person as prohibited by law or Court policy;

2. Shall not engage in any form of violence, threat of violence, or disruptive conduct;

3. Shall not make intentionally false or misleading statements when performing judicial duties. Specifically, a constable may not make a false statement of material fact or law or fail to correct a false statement of material fact or law to any party for purposes of obtaining compliance or forfeiture by a person of their legal rights;

4. Shall not falsify, or improperly alter or destroy work-related documents or records;

5. Shall not be impaired by alcohol, drugs, medications, or other intoxicating substances while performing judicial duties;

6. Shall not give legal advice while performing judicial duties beyond an explanation of the duty they are performing and one's right to be represented by counsel;

7. Shall not illegally possess weapons or controlled substances while performing judicial duties;

8. Shall avoid impropriety or the appearance of impropriety in the performance of all judicial duties;

9. Shall not commit any violation of the law while performing their judicial duties;

10. Shall not be convicted of any crime which shall place their integrity, honesty, or credibility at issue or otherwise negatively reflect upon the integrity and independence of the Court or Court offices;

11. Shall not make any sexual advance, request for sexual favors, or perform other verbal or physical conduct of a sexual nature while in the performance of judicial duties. Such conduct shall include but is not limited to touching, fondling, patting, pinching, kissing, or other physical contact for sexual gratification;

12. Shall treat all those with whom they interact, including Court staff, with professionalism, dignity, respect, and impartiality;

13. Shall cooperate with all law enforcement agencies and their representatives including the Sheriff's Department, the C.C.C.F., and Carbon County staff;

14. Shall not use any means that has no substantial purpose other than to embarrass, delay, or burden the rights of another person or use methods that violate the legal rights of such person;

15. Shall not in any manner hold himself/herself out to be an agent, employee, or representative of any Court office; and

16. Shall not utilize a motor vehicle in the performance of judicial duties contrary to the provisions of the Pennsylvania Motor Vehicle Code.

C. Confidentiality—Constables shall not disclose or use confidential information obtained through the performance of judicial duties for any purpose not connected with the performance of their judicial duties.

D. Conflicts of Interest—

1. Constables shall not solicit, accept, or agree to accept anything of value from any person or entity doing or seeking to do business with, or having an interest in a matter related to the performance of judicial duties.

2. Constables shall not permit family, social, or other relationships to influence their official conduct or judgment, or to create the appearance of influence in the exercise of their official conduct or judgment, while in the performance of judicial duties. Constables performing judicial duties shall inform the Court Administrator of any situation creating undue influence or the appearance of undue influence.

3. Constables shall not use the resources, employees, property, facilities, time, or any funds under their control while in the performance of their judicial duties to improperly benefit them or any other person.

E. Use of Force—A constable's use of force shall be consistent with Pennsylvania law and in compliance with training and education provided by the C.E.T.B. A constable shall never employ unnecessary force or violence and shall use only such force in the discharge of duty as is reasonable under the circumstances. While the use of force is occasionally unavoidable, every constable in the performance of judicial duties shall refrain from applying any unnecessary infliction of pain or suffering and shall never engage in cruel, degrading, or inhuman treatment of any person. A constable shall not fire, unholster, or otherwise remove a firearm from its holster in the performance of judicial duties unless the same is necessary for the defense of the constable or others in response to the threat or use of deadly force against the constable or another where the action is consistent with firearms training provided by P.C.C.D. In no event shall a firearm be unholstered for purposes of intimidation.

F. Appearance—

1. *Dress*—All constables shall dress in customary law enforcement uniform or casual business dress while performing judicial duties. Denim jeans are considered neither customary law enforcement uniform nor casual business dress and are prohibited.

2. *Sign of Authority*—While in the performance of judicial duties, all constables shall prominently display a badge of authority on their outermost clothing. The badge of authority shall consist of either a Pennsylvania state constable patch or a badge pinned to the outermost garment, displayed around the neck, or attached to a belt. Additionally, while performing judicial duties, a constable shall carry at all times a constable certification card issued by C.E.T.B. indicating certification number and expiration date.

G. Duty to Report—Constables who are arrested, charged with, or convicted of a crime, including summary offenses, which occurred while the constable was acting in the course of performing judicial duties, shall report this fact to the Court Administrator at the earliest opportunity, however, in no event shall this report be made later than three (3) business days from the date of arrest or receipt of charges. Constables who are arrested, charged with, or convicted of a crime, other than summary traffic offenses not committed while in the performance of judicial duties, regardless of the jurisdiction in which the conduct occurred, shall report this fact to the Court Administrator at the earliest reasonable opportunity, however, in no event shall this report be made later than three (3) business days from the date of the arrest or receipt of charges.

Exhibit A
ACKNOWLEDGMENT

I, _____, have received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct. I also acknowledge receipt of a copy of the Fifty-Sixth Judicial District Constable Manual. I understand that in order to perform judicial duties, or to be paid for work performed for the Fifty-Sixth Judicial District, I must abide by the procedures and requirements set forth in the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and the Fifty-Sixth Judicial District Constable Manual, including the Code of Conduct, and hereby agree to abide by those procedures and requirements.

Print Name _____ Date _____

Signature _____

Witness _____

Exhibit B
CARBON COUNTY CONSTABLE PAYMENT SHEET

CONSTABLE NAME _____ CONSTABLE NUMBER _____
DISTRICT COURT NUMBER _____ DISTRICT JUDGE _____
DEFENDANT'S NAME _____ DOCKET NUMBER _____
DEFENDANT'S ADDRESS _____

Table with columns: SERVICE, FEE, DATE(S) SERVICES PERFORMED. Rows include: WARRANT, HOW WAS SERVICE MADE?, ARRANGEMENT, COMMIT TO, RETURN OF SERVICE, CONVEY (FINGERPRINTING), FINGERPRINTING..., RELEASED ON, BOND, OTHER, OTHER, OTHER, TOTAL \$.

* MAY ONLY BE CHARGED ONCE PER DEFENDANT PER DATE HANDLED

NAME OF ASSISTING CONSTABLE OR DEPUTY _____

Table with columns: DATE, FROM/TO, MILES. Multiple rows for recording travel data.

MILEAGE @ _____ CENTS PER MILE TOTAL MILES _____ MILES \$ _____

ATTACH ADDITIONAL SHEETS, IF NECESSARY.

CETA \$ _____

TOTAL AMOUNT DUE \$ _____

I HEREBY CERTIFY THAT THE ABOVE SERVICES HAVE BEEN PERFORMED.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE ABOVE SERVICES HAVE BEEN PERFORMED AND THAT NO OTHER REQUESTS FOR PAYMENT FOR THESE SERVICES HAS BEEN MADE.

_____ DAY OF _____, _____

DISTRICT JUDGE (DISTRICT COURT SEAL)

SIGNATURE OF CONSTABLE

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Thomas F. Bello (# 73540) having been disbarred from the practice of law in the State of New York by Opinion and Order of the supreme Court of the State of New York, Appellate Division, Second Judicial Department dated October 23, 2013, the Supreme Court of Pennsylvania issued an Order on September 15, 2016, disbaring Thomas F. Bello from the Bar of this Commonwealth, effective October 15, 2016. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 16-1673. Filed for public inspection September 30, 2016, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 14, 2016, Kristan Elizabeth Peters a/k/a Kristan Peters a/k/a Kristan Peters-Hamlin (# 50741) has been Suspended from the practice of law in this Commonwealth for a period of five years, to

take effect October 14, 2016. This reciprocal suspension is based on a five year suspension that was imposed in the United States District Court for the Southern District of New York. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 16-1674. Filed for public inspection September 30, 2016, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 21, 2016, Cesar Alvarez-Moreno (# 41128) whose registered address is 5066 G Street, SE, Washington, DC, is Suspended from the Bar of this Commonwealth for a period of two years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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