

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[ 201 PA. CODE CH. 6 ]

### Amendment of Rule 601 of the Rules of Judicial Administration; No. 469 Judicial Administration

#### Order

*Per Curiam*

*And Now*, this 4th day of October, 2016, it is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 601 of the Pennsylvania Rules of Judicial Administration is amended in the following form.

To the extent that notice of proposed rulemaking would otherwise be required by Pa.R.J.A. No. 103, the immediate promulgation of the amendments is found to be in the interests of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective in 30 days.

#### Annex A

### TITLE 201. RULES OF JUDICIAL ADMINISTRATION

#### CHAPTER 6. MAGISTERIAL DISTRICT JUDGES

#### Rule 601. Certification requirements of interested persons.

(a) Magisterial district judges and arraignment court magistrates who are not members of the bar of this Commonwealth must complete a course of training and instruction in the duties of their respective offices and pass an examination and be certified by the Administrative Office of Pennsylvania Courts prior to assuming office.

(b)(1) Any interested individual may apply to the Minor Judiciary Education Board to be enrolled in the course of training and instruction and take the examination to be certified.

(2) Any individual who has successfully completed the course of training and instruction and passed the examination, but who has not served as a magisterial district judge or arraignment court magistrate shall be certified for only a [ **two-year** ] **twenty-five-month** period, and must complete the continuing education course every year in order to maintain his or her certification.

(c) Any individual certified under paragraph (b) who has not served as a magisterial district judge or arraignment court magistrate within [ **two years** ] **twenty-five months** will be required to take a review course as defined by the Minor Judiciary Education Board and pass an examination in order to maintain his or her certification by the Administrative Office of Pennsylvania Courts.

**Official Note:** The text of this rule is taken from Rule 19 of the Rules Governing Standards of Conduct of Magisterial District Judges, rescinded March 26, 2015, effective immediately. Rule 19 [ **was amended in 2006 to limit to two years** ] **limits to twenty-five months** the period of certification for individuals who have successfully completed the certification course and examination but have not served as judges or arraignment court

magistrates. The rule permits individuals who are certified to serve as judges or arraignment court magistrates but who have not done so within [ **two years** ] **twenty-five months** of certification to take a review course and pass an examination to maintain their certification for an additional [ **two-year** ] **twenty-five-month** period. Admission to the review course and recertification examination under paragraph (c) may be limited by the availability of space. In addition, the rule requires that all certified individuals must attend the annual continuing education course to maintain certification.

Act 17 of 2013, signed by the Governor and immediately effective on June 19, 2013, effectively abolished the Traffic Court of Philadelphia and transferred most of its duties to a new Traffic Division of the Philadelphia Municipal Court. See 42 Pa.C.S. § 1121. Under Act 17, the Traffic Court of Philadelphia is composed of two judges serving on the court on the effective date of the Act and whose terms expire on December 31, 2017. See 42 Pa.C.S. § 1321. Because this Rule concerns the certification and recertification of persons not yet elected to judicial office, all references to the Traffic Court of Philadelphia have been removed.

[Pa.B. Doc. No. 16-1801. Filed for public inspection October 21, 2016, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 200 ]

### Order Amending Rule 237.3 of the Rules of Civil Procedure; No. 648 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 4th day of October, 2016, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 46 Pa.B. 982 (February 27, 2016):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 237.3 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2017.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 237.3. Relief from Judgment of *Non Pros* or by Default.

(a) A petition for relief from a judgment of *non pros* or of default entered pursuant to Rule 237.1 shall have attached thereto a [ **verified** ] copy of the complaint, **preliminary objections**, or answer which the petitioner seeks leave to file.

[ (b) ] (b)(1) If the petition is filed within ten days after the entry of [ **the judgment** ] a judgment of *non pros* on the docket, the court shall open the judgment if the proposed complaint [ **or answer** ] states a meritorious cause of action [ **or defense** ].

(2) If the petition is filed within ten days after the entry of a default judgment on the docket, the court shall open the judgment if one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense.

**Official Note:** Rule 236 requires the prothonotary to give notice of the entry of any judgment and to note in the docket the giving of the notice.

The petitioner must act with reasonable diligence to see that the petition is promptly presented to the court if required by local practice.

See *Schultz v. Erie Insurance Exchange*, [ 505 Pa. 90, ] 477 A.2d 471 (Pa. 1984) for the requirements for opening a judgment by default and [ Pa.R.C.P. ] Rule 3051 as to a judgment of *non pros*. Rule 237.3 does not change the law of opening judgments. Rather, the rule supplies two of the three requisites for opening such judgments by presupposing that a petition filed as provided by the rule is timely and with reasonable explanation or legitimate excuse for the inactivity or delay resulting in the entry of the judgment. The requirement of this rule for proceeding within ten days is not intended to set a standard for timeliness in circumstances outside this rule.

[ A defendant who seeks to file a pleading other than an answer is not entitled to the benefit of this rule but must comply with the requirements of *Schultz v. Erie Insurance Exchange*, supra. ]

See Rules 206.1 through 206.7 governing petition practice.

#### Explanatory Comment—1994

[ **Rule 237.3. Relief from Judgment of Non Pros or by Default.** ]

Rule 237.3 governs relief from a judgment by default or of *non pros*. Subdivision (a) requires that a [ **verified** ] copy of the complaint, **preliminary objections**, or answer sought to be filed be attached to the petition for relief from the judgment. This enables the court to determine from the actual complaint, **preliminary objections**, or answer to be filed whether [ **it** ] the **complaint** alleges a meritorious cause of action [ **or** ], **one or more of the preliminary objections has merit**, or **the answer alleges a meritorious defense**.

Subdivision (b) eases the burden of a party against whom judgment has been entered and who moves promptly for relief from that judgment. If the petitioner files a petition for relief from [ **the judgment** ] a judgment of *non pros* within ten days after entry of the judgment on the docket, the rule requires the court to open the judgment if the proposed complaint [ **or answer** ] states a meritorious cause of action [ **or defense** ]. **If the petitioner files a petition for relief from a default judgment within ten days after entry of the judgment on the docket, the rule requires the court to open the judgment if one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense.** The rule provides a date certain from which to measure the

ten-day period and the language establishing the beginning of that period is derived from Rule 1308 governing appeals in compulsory arbitration.

Case law has imposed three requirements for opening a judgment by default: a petition timely filed, a reasonable explanation or legitimate excuse for the inactivity or delay and a showing of a meritorious defense. Rule of Civil Procedure 3051 similarly states these three requisites for opening a judgment of *non pros*, substituting the showing of a meritorious cause of action rather than a meritorious defense. Rule 237.3(b) presumes that a petition filed within the required ten-day period is both timely and with reasonable explanation or legitimate excuse for the inactivity or delay. In this context, subdivision (b) requires that the judgment be opened if the petitioner attaches to the petition a [ **verified complaint or** ] **complaint which states a meritorious cause of action, one or more preliminary objections which has merit, or an answer which states a meritorious cause of action or** defense. A note to the rule cautions that the rule is not intended to change the law relating to the opening of judgments in any way or to impose a new standard of timeliness in cases outside the limited circumstances set forth in the rule.

#### Illustrations

In illustrations 1 through 3, the defendant has failed to plead within the required time to a complaint containing a notice to plead.

1. Prior to receiving a notice of intention to enter a default judgment, defendant seeks an agreement with the plaintiff for an extension of time in which to plead. The parties may certainly agree to an extension of time and proceed in accordance with their agreement. However, such an agreement is really unnecessary since the plaintiff cannot enter judgment without giving the ten-day notice required by the rule and the ten-day notice cannot be waived. Defendant may plead within the time up to the date of mailing or delivery of the notice plus ten days. This period of time may be more than might be provided by any agreement. In addition, there is no danger of a judgment being entered as the required notice has not been given.

2. Defendant has received the ten-day notice but cannot file the pleading within the ten-day period. Now, as provided by Rule 237.2, it is appropriate to seek an agreement to extend the time in which to plead since the plaintiff has given the notice which is prerequisite to the entry of judgment and actual entry of the judgment is imminent.

3. Defendant has received the ten-day notice and obtained an agreement extending the time to plead. However, defendant does not plead within the agreed time. Plaintiff may enter judgment by default without further notice as provided by Rule 237.2 and the form of agreement set forth in Rule 237.6.

In illustrations 4 [ **through 6** ] and 5, the plaintiff has entered a valid judgment by default against the defendant and the prothonotary has entered the judgment in the docket and noted the date thereof. Thereafter, the defendant files a petition to open the judgment.

4. The defendant files the petition to open the judgment within ten days of the date on which the prothonotary entered the judgment on the docket and seeks leave to file the answer attached to the petition. The defendant

is entitled to the benefit of Rule [ 237.3(b) ] 237.3(b)(2) by timely filing the petition and attaching an answer. Rule [ 237.3(b) ] 237.3(b)(2) requires the court to open the judgment upon the defendant demonstrating to the court that the filing of the petition was within the ten-day period and that the answer attached to the petition states a meritorious defense.

**[ 5. The defendant files the petition to open the judgment within ten days of the date on which the prothonotary enters the judgment on the docket and seeks leave to file the preliminary objections attached to the petition. The defendant is not entitled to the benefit of Rule 237.3(b) because, although the petition is timely filed, the rule does not provide for preliminary objections to be attached to the petition. A defendant who wishes to file preliminary objections upon the opening of a judgment must proceed pursuant to case law and meet the standards set forth in *Schultz v. Erie Insurance Exchange*, 505 Pa. 90, 477 A.2d 471 (1984), cited in the note to the rule.**

**6.] 5.** The defendant files a petition to open the judgment more than ten days after the date of entry of the judgment on the docket. The petition to open is not within the scope of Rule 237.3(b) which requires that the petition be “filed within ten days after the entry of the judgment on the docket”. The defendant must proceed pursuant to case law and meet the standards of *Schultz v. Erie Insurance Exchange*, [ 505 Pa. 90, ] 477 A.2d 471 (Pa. 1984).

Although these illustrations use the example of the entry of a judgment by default and a petition to open the judgment, they are adaptable and thus equally applicable to the entry of a judgment of non pros for failure to file a complaint and a petition to open such a judgment.

#### [ Explanatory Comment—2001

The amendment to the Note clarifies the procedure when a defendant, upon the opening of a default judgment, intends to file preliminary objections, a pleading not encompassed by this rule. Contrary to the holding of the Commonwealth Court in *Peters Township Sanitary Auth. v. American Home and Land Dev. Co.*, 696 A.2d 899 (Cmwlth Ct. 1997), preliminary objections are not an appropriate attachment to a petition to open a default judgment under Rule 237.3.

Clarifying amendments have been made to the 1994 Explanatory Comment. ]

#### Explanatory Comment—2010

The 1994 Explanatory Comment to Rule 237.3 provides several illustrations of the application of the rule. A discrepancy exists between Illustration 1 and Rule 237.1(a)(2)(ii) governing notice of praecipe to enter judgment of non pros or by default. The 1994 Explanatory Comment provides that the defendant may plead within the time of receiving the notice of praecipe plus ten days. Rule 237.1(a)(2)(ii) states that the ten-day period shall be calculated forward from the date of the mailing or delivery of the notice. The 1994 Explanatory Comment has been amended to conform with the text of Rule 237.1(a)(2)(ii).

#### Explanatory Comment

Rule 237.3 governing relief from judgment of non pros or by default has been amended in two respects. Current Rule 237.3(a) requires a verified copy of a complaint or answer, which the petitioner seeks leave to file, be attached to the petition for relief. The amendment removes the requirement that the copy be verified. It was reported to the Committee that both *pro se* litigants and attorneys often fail to attach a verified copy. The purpose of Rule 237.3 is to give a litigant who promptly responds to the entry of a judgment under this rule the ability to prosecute or defend a case. The rule does not achieve its purpose if a litigant is barred from doing so by a technical requirement.

The current rule was amended in 2001 to allow a party to attach a complaint or answer only to the petition for relief; the use of preliminary objections was prohibited notwithstanding the decision in *Peters Township Sanitary Auth. v. American Home and Land Dev. Co.*, 696 A.2d 899 (Pa. Cmwlth. 1997) (holding preliminary objections are an appropriate attachment to a petition to open a default judgment under Rule 237.3). Rule 237.3 has been amended to permit the use of preliminary objections as a pleading that may be attached to a petition for relief from default judgment. By allowing the use of preliminary objections, the amendment is intended to give a defendant the same opportunity to file a responsive pleading after the entry of a default judgment that is afforded to him or her prior to the entry of a default judgment.

Clarifying amendments have been made to the 1994 Explanatory Comment and the 2001 Explanatory Comment has been deleted.

By the Civil Procedural  
Rules Committee

WILLIAM SHAW STICKMAN, IV,  
Chair

[Pa.B. Doc. No. 16-1802. Filed for public inspection October 21, 2016, 9:00 a.m.]

#### PART I. GENERAL

#### [ 231 PA. CODE CH. 1930 ]

#### Order Amending Rules 1930.2, 1930.4 and 1930.5 of the Rules of Civil Procedure; No. 649 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 6th day of October, 2016, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 45 Pa.B. 6977 (December 12, 2015):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1930.2, 1930.4, and 1930.5 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 1, 2017.

## Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

## PART I. GENERAL

## CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

**Rule 1930.2. No Post-trial Practice. Motions for Reconsideration.**

(a) There shall be no motions for post-trial relief in any domestic relations matter, **including Protection of Victims of Sexual Violence or Intimidation matters.**

**Official Note:** See Pa.R.C.P. No. 1957.

(b) A party aggrieved by the decision of the court may file a motion for reconsideration in accordance with [ **Rule of Appellate Procedure** ] Pa.R.A.P. 1701(b)(3). If the court does not grant the motion for reconsideration within the time permitted, the time for filing a notice of appeal will run as if the motion for reconsideration had never been [ **filed** ] **presented to the court.**

**Official Note:** Pennsylvania Rule of Appellate Procedure 903 states that[ , **except as otherwise set forth by that rule,** ] the Notice of Appeal shall be filed within [ **thirty** ] 30 days after the entry of the order from which the appeal is taken, **except as otherwise set forth in that rule.**

(c) [ **The reconsidered decision, except as set forth in subdivision (e), shall be rendered within 120 days of the date the motion for reconsideration is granted.** ] **The court shall render its reconsidered decision within 120 days of the date the motion for reconsideration is granted, except as set forth in subdivision (e).** If [ **it** ] the court's decision is not rendered within 120 days, the motion shall be deemed denied.

(d) [ **The** ] **If the court does not enter a reconsidered decision within 120 days, the time for filing a notice of appeal will begin to run anew from the date of entry of the reconsidered decision[ , or, if the court does not enter a reconsidered decision within 120 days, from the 121st day ] or from the 121st day after the motion for reconsideration was granted.**

(e) If the court grants the motion for reconsideration[ , and files same, ] and files its order within the [ **30 day** ] 30-day appeal period, [ **it may, at any time within the applicable 120 day period thereafter,** ] the court may issue an order **during the applicable 120-day period** directing that additional testimony be taken. If [ **it does** ] the court issues an order for **additional testimony**, the reconsidered decision need not be rendered within 120 days, and the time for filing a notice of appeal will run from the date the reconsidered decision is rendered.

**Rule 1930.4. Service of Original Process in Domestic Relations Matters.**

(a) *Persons Who May Serve.* Original process in all domestic relations matters, **including Protection of Victims of Sexual Violence or Intimidation matters,** may be served by the sheriff or a competent adult:

- (1) by handing a copy to the defendant; [ **or** ]
- (2) by handing a copy:

(i) at the residence of the defendant to an adult member of the family with whom the defendant resides; but if no adult member of the family is found, then to an adult person in charge of such residence; [ **or** ]

(ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which the defendant resides; [ **or** ]

(iii) at any office or usual place of business of the defendant to the defendant's agent or to the person for the time being in charge [ **thereof.** ]; **or**

- (3) [ **or** ] pursuant to special order of court.

**Official Note:** See [ **Rule** ] Pa.R.C.P. No. 76 for the definition of "competent adult." [ **Service upon** ] **Original process served on** an incarcerated person in a domestic relations action must also include notice of any hearing in such action[ , ] and specific notice of the incarcerated individual's right to apply to the court for a writ of *habeas corpus ad testificandum* to enable him or her to participate in the hearing. The writ is available [ **where** ] if an incarcerated individual wishes to testify as provided by statute or rule, [ **as well as where the** ] **or if the incarcerated** individual's testimony is sought by another. *Vanaman v. Cowgill*, 526 A.2d 1226 (Pa. Super. 1987). See 23 Pa.C.S. § 4342(j) and [ **Rule** ] Pa.R.C.P. No. 1930.3. In determining whether a writ of *habeas corpus ad testificandum* should be issued, a court must weigh the factors set forth in *Salemo v. Salemo*, 554 A.2d 563 (Pa. Super. 1989).

(b) *Service in Protection From Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.* [ **In Protection from Abuse matters only, original process may also be served by an adult using any means set forth in subdivision (a) above.** ] If personal service cannot be completed within [ **forty-eight (48)** ] 48 hours after a Protection From Abuse or a Protection of Victims of Sexual Violence or Intimidation petition is filed, the court may[ , by special order as set forth in subdivision (a)(3) above, authorize service by another means ] authorize alternative service by special order as set forth in subdivision (a)(3), including, but not limited to, service by mail pursuant to subdivision (c) of this rule.

[ (c) *Service by Mail.* Except in Protection from Abuse matters unless authorized by special order of court pursuant to subdivision (b) above, original process may also be served by mailing the complaint and order to appear, if required, to the defendant's last known address by both regular and certified mail. Delivery of the certified mail must be restricted to addressee only, and a return receipt must be requested.

(1) If the certified mail is refused by defendant, but the regular mail is not returned within fifteen days, service may be deemed complete.

(2) If the mail is returned with notation by the postal authorities that it was unclaimed, service shall be made by another means pursuant to these rules. ]

- (c) *Service by Mail.*

(1) Except in Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation

matters, original process in all domestic relations matters may be served by mailing the original process, a notice or order to appear, if required, and other orders or documents, as necessary, to the defendant's last known address by both regular and certified mail.

(a) Delivery of the certified mail shall be restricted to the addressee only and a return receipt shall be requested.

(b) If the certified mail is refused by the defendant, but the regular mail is not returned within 15 days, service may be deemed complete.

(c) If the mail is returned with notation by the postal authorities that it was unclaimed, service shall be made by another means pursuant to these rules.

(2) In Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation matters, original process may be served by mail pursuant to this rule, if authorized by the court under subdivision (a)(3).

**Official Note:** Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

(d) *Acceptance of Service.* In lieu of service pursuant to this rule, the defendant or the defendant's authorized agent may accept service of original process [ **by filing with the prothonotary a separate document which shall be substantially in the following form:** ] as set forth in Pa.R.C.P. No. 402(b).

[ (Caption)

ACCEPTANCE OF SERVICE

I accept service of the \_\_\_\_\_  
NAME OF DOCUMENT

I certify that I am authorized to accept service on behalf of the defendant.

\_\_\_\_\_  
DATE DEFENDANT OR AUTHORIZED AGENT

\_\_\_\_\_  
MAILING ADDRESS

**Official Note:** If defendant accepts service personally, the second sentence should be deleted.]

(e) [ **Time for** ] *Service Within the Commonwealth.* Original process shall be served **on a defendant located** within the Commonwealth within [ **thirty** ] 30 days of the filing of the [ **petition or complaint** ] original process.

(f) *Service Outside of the Commonwealth.* Original process shall be served **on a defendant located** outside the Commonwealth within [ **ninety** ] 90 days of the filing of the [ **compliant** ] original process:

- (1) by any means authorized by this rule; [ **or** ]
- (2) in the manner provided by the law of the jurisdiction in which defendant will be served; [ **or** ]
- (3) in the manner provided by treaty; or
- (4) as directed by the foreign authority in response to a letter rogatory or request.

In Protection from Abuse matters, [ **the defendant** ] a **defendant outside of the Commonwealth** must be personally served with original process [ **outside of the Commonwealth** ]. [ **Such service** ] Service may be made either in accordance with subdivisions (a) and (b) [ **of this Rule** ] governing personal service or as provided for by the law in the jurisdiction where the defendant resides **or is located**. If personal service cannot be completed within 48 hours after [ **entry of the protection order** ] the **filing of the original process**, service outside of the Commonwealth may be made by [ **any** ] other means authorized by this rule.

**Official Note:** Sections 5323 and 5329(2) of the Judicial Code, 42 Pa.C.S. §§ 5323 and 5329(2), provide additional alternative procedures for service outside the Commonwealth. For Protection from Abuse matters, personal service outside of the Commonwealth must [ **first** ] be attempted **first** before service can be made by certified and regular mail or by [ **any of the** ] other means prescribed in subsection (f) [ **of this Rule** ] for out-of-state service.

(g) *Reinstatement of [ Complaint ] Original Process.* If service is not made as required by subdivision (e) or (f) [ **of this rule** ], the prothonotary **shall reinstate the original process** upon praecipe accompanied by the original process, or praecipe indicating that the original [ **complaint** ] process has been lost or destroyed accompanied by a substituted [ **complaint, shall reinstate the complaint** ] original process.

(1) [ **A complaint** ] Original process may be reinstated at any time and any number of times. A new party defendant may be named in a reinstated [ **complaint** ] original process.

(2) [ **A reinstated complaint** ] Reinstated original process shall be served as required by subdivision (e) or (f) [ **of this rule** ].

(h) *Proof of Service.* Proof of service shall be made as follows:

(1) The person [ **making service of** ] serving the original process shall [ **make** ] complete a return of service [ **forthwith** ] without delay. If service has not been [ **made** ] completed within the time allowed in subdivision (e) or (f), a return of no service shall be [ **made upon the expiration of the period allowed for service** ] completed.

(2) Proof of service shall set forth the date, time, place [ **and** ], manner of service, the identity of the person served, and any other facts necessary for the court to determine whether proper service has been made.

(3) Proof of service by a person other than the sheriff shall be by affidavit. If a person other than the sheriff [ **makes** ] completes a return of no service, the affidavit shall set forth with particularity the efforts made to effect service.

(4) Proof of service by mail shall include a return receipt signed by the defendant or, if the defendant has refused to accept mail service, the returned letter with the notation that the defendant refused to accept delivery[, ] and an affidavit that the regular mail was not returned within [ **fifteen** ] 15 days after mailing.

(5) Proof of service or of no service shall be filed with the prothonotary.

(6) An executed Acceptance of Service shall be filed in lieu of a Proof of Service [ **where defendant** ] if the **defendant or defendant's agent** accepts service of the original process.

(i) *Appearance at Hearing or Conference.* [ **Regardless of the method of service, a party who appears** ] **A party appearing** for the hearing or conference will be deemed to have been served.

**Rule 1930.5. Discovery in Domestic Relations Matters.**

(a) There shall be no discovery in a simple support, custody [ **or** ], Protection from Abuse [ **proceeding** ], or **Protection of Victims of Sexual Violence or Intimidation proceedings** unless authorized by order of court.

(b) Discovery shall be available without leave of court in accordance with [ **R.C.P. 4001 et seq.** ] **Pa.R.C.P. Nos. 4001—4025** in alimony, equitable distribution, counsel fee and expense, and complex support proceedings.

[Pa.B. Doc. No. 16-1803. Filed for public inspection October 21, 2016, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### CLARION COUNTY

#### Order Creating Local Rules of Criminal Procedure 524, 527 and 530; No. 1148 CD 2016

##### Order

*And Now, October 5, 2016, It Is Hereby Ordered:*

1. Local Rules of Criminal Procedure 524 Types of Release on Bail—Supervised Bail, 527 Nonmonetary Conditions of Release on Bail, and 530 Bail Agency, of the Court of Common Pleas of Clarion County, are established to be effective as of December 1, 2016.

2. The Clarion County Court Administrator is directed to:

A. File one certified copy of these newly created Local Rules with the Administrative Office of Pennsylvania Courts.

B. Publish a copy of the newly created local rule on Clarion County Court website at <http://www.co.clarion.pa.us/government/courts.html>.

C. Electronically submit a Word file of the newly created Local Rules and this Order to the Legislative Reference Bureau by email to [bulletin@palrb.us](mailto:bulletin@palrb.us) and submit by regular mail two (2) certified copies of the newly created Local Rules and this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

D. Provide the Clarion County Clerk of Courts with the newly created Local Rules, which shall be available for public inspection and copying. The Clarion County Clerk of Courts shall maintain a complete up to date set of the Clarion County Local Criminal Rules of Court effective May 1, 2010 and all amendments to those Rules.

E. Update the Local Criminal Rules of Court published on the County of Clarion website within thirty days of publication of the new rules in the *Pennsylvania Bulletin*.

F. Provide information to each member of the local bar regarding where the updated Local Rules can be found.

*By the Court*

JAMES G. ARNER,  
*President Judge*

#### L.R.Crim.P. 524. Types of Release on Bail—Supervised Bail.

(C)(6) Pursuant to local rules and Pa.R.Crim.P. 524, 527 and 530, a magisterial district judge may, in addition to setting regular bail, authorize supervised bail and impose conditions in accordance with L.R.Crim.P. 527 and 530. Supervised bail shall be an alternative to regular bail and shall continue until revoked, rescinded or modified.

The following terms and conditions shall apply to supervised bail:

(a.) The magisterial district judge shall set regular bail.

(b.) Supervised bail shall have the effect of suspending the need for posting regular bail so long as the defendant complies with the conditions of supervised bail and so long as supervised bail remains in effect.

(c.) Unless regular bail has also been revoked, the defendant shall have the right to post it when supervised bail has been revoked or rescinded.

(d.) In order to be eligible for supervised bail, the defendant must complete and sign an Application for Bail Supervision, which includes an acknowledgment that he or she understands and consents to the conditions of supervised bail, including conditions relating to rescission, revocation and modification of such bail.

(e.) A representative of the Adult Probation Office has authority to approve or deny the Application and to recommend certain conditions of supervised bail. If it is approved, the District Attorney will have authority to approve or disapprove the Application and to recommend certain additional conditions. The Defendant is required to accept all the conditions in order to be considered for the program.

(f.) The District Attorney will present the completed Application to a magisterial district judge at the time scheduled for a preliminary hearing, and the judge will issue an Order either approving or disapproving the Application. If the Adult Probation Office or the District Attorney has denied the defendant's application, a magisterial district judge shall not grant supervised bail.

(g.) Any Clarion County Probation officer who has reasonable cause to believe that a defendant has violated or is violating any condition of supervised bail shall have authority to declare supervised bail rescinded and to arrest the defendant with or without a warrant.

(h.) Upon rescission and arrest, the defendant shall be committed to jail, subject to the right to post regular bail.

(i.) The Application for Bail Supervision form and any other required forms required will be approved and adopted by order of the Court of Common Pleas of Clarion County in accordance with L.R.Crim.P. 527 and 530.

#### L.R.Crim.P. 527. Nonmonetary Conditions of Release on Bail.

(C) A supervised bail program is established. The supervised bail program shall be administered on the following terms and conditions, with the criteria for participation as follows:

(1.) The Defendant must submit an Application For Bail Supervision

(2.) If the Adult Probation Office has rejected a defendant's Application for supervised bail, a magisterial district judge shall not grant supervised bail.

(3.) In entertaining an Application for supervised bail, a magisterial district judge shall consider the recommendation of the District Attorney.

(4.) The defendant must complete an acceptable drug and alcohol Assessment.

(D.) A defendant is ineligible for supervised bail if:

(1.) The committal offense is one of the felony offenses or Vehicle Code offenses listed specifically in an order of this court or is an attempt, solicitation or conspiracy to commit such offense,

(2.) He or she has a prior conviction of any of the felony offenses of the Vehicle Code offenses listed specifically in the order of this court, or a prior conviction of an attempt, solicitation or conspiracy to commit such offense, or of an out of state equivalent offense.

(3.) The defendant has a pending detainer, bench warrant, or notice of violation of probation or parole for which a detainer has been issued.

(4.) The defendant is not a resident of Clarion County.

(5.) Consideration may be given to other factors, including:

a. Any aggravating or mitigating circumstances regarding the committal offense which may bear upon the likelihood of conviction and possible penalty.

b. Prior criminal history involving crimes of violence, escape or flight, or false identification.

c. The defendant's ties to the community, his or her family, employment status and history, and current residence and history of residence.

d. The defendant's reputation and character, mental health and drug or alcohol abuse issues.

e. Any other factors relevant to whether the defendant will appear as required and comply with the conditions of bail.

f. The defendant's history regarding appearance when required in connection with previous bail opportunities.

(E.) *Process of Application and Approval or Denial.*

(1.) Defendant shall complete and sign an Application for Supervised Bail.

(2.) Adult Probation Officer shall interview a defendant at the jail and assist the defendant in completing the Application. If an attorney who has entered an appearance on behalf of a defendant does not want the Adult Probation Office to interview his or her client for the supervised bail program, the attorney shall notify the Adult Probation Office immediately.

(3.) Prior to a preliminary hearing, a defendant or an attorney who has entered his or her appearance on behalf of the defendant may submit an Application for Bail Supervision to the Adult Probation Office for processing.

(4.) The representative of the Adult Probation Office who obtains information from a defendant shall advise the defendant, both orally and in writing, that anything said to the representative may be used against the defendant. Information obtained from or concerning the defendant by the Adult Probation Office shall be disclosed only to the defendant, counsel for the defendant, the issuing authority or judge setting bail, the attorney for

the Commonwealth, and the department preparing a presentence report regarding the defendant. This information shall not be disclosed or used except for purposes relating to the defendant's bail, a presentence report, in a prosecution based on the falsity of the information, or for impeachment purposes as permitted by law.

(5.) The Adult Probation Office may summarily reject an Application:

a. if it is incomplete,

b. if the defendant fails to cooperate fully in the application process, or

c. if the defendant provides false information during the application process.

(6.) To ensure that no disqualifying factors are present, the Adult Probation Office shall review:

a. the Application,

b. the current charges, and

c. the defendant's prior criminal record.

(7.) If a disqualifying factor is present, the Adult Probation Office shall discontinue processing and deny the Application.

(8.) If no disqualifying factors are present, the Adult Probation Office shall either:

a. Reject the Application and if the Application is rejected by the Adult Probation Office, a magisterial district judge shall not enter the defendant into the supervised bail program.

OR

b. Approve the Application and:

i. complete the Adult Probation part of the form and list all appropriate conditions of supervised bail program which the defendant will be required to meet,

ii. forward the completed Application to the District Attorney for consideration,

iii. refer the defendant to the Armstrong, Indiana, Clarion Drug and Alcohol Commission or its designee for evaluation,

iv. conduct a urine drug screen at the Clarion County Jail and report the results to the defendant's attorney, or to the defendant if self-represented, to the District Attorney, and to the magisterial district judge who will be presiding at Central Court when the defendant's preliminary hearing is scheduled.

(9.) A defendant may not petition the Court of Common Pleas for bail modification regarding rejection of an Application, but a defendant may petition the Court for modification of regular bail after the preliminary hearing.

(10.) *District Attorney.*

a. Upon receipt of an Application for Supervised Bail, the District Attorney shall complete the District Attorney's Recommendation part of the form.

b. At the time of the preliminary hearing, the District Attorney shall deliver the Application to a representative of the Adult Probation Office to obtain the signed consent of the defendant to all of the conditions recommended by the Probation Office and District Attorney.

c. The completed and signed Application and a proposed Order shall be presented at Central Court to the presiding magisterial district judge.

(11.) *Central Court.*

a. A magisterial district judge who presides at Central Court at the time of the defendant's preliminary hearing

may issue an Order, granting admission to the supervised bail program at the time the defendant appears for a preliminary hearing. A magisterial district judge shall not grant entry to the program prior to that time.

b. A magisterial district judge shall not specially schedule a defendant's preliminary hearing to accelerate a defendant's entry into the supervised bail program.

c. Upon receipt of an Application for Supervised Bail, that has been approved by the Adult Probation Office and a completed drug and alcohol assessment, the magisterial district judge shall conduct a hearing at Central Court to consider the Application.

d. The waiver or non-waiver of a preliminary hearing by the defendant shall not be considered by the magisterial district judge in deciding the Application.

e. The magisterial district judge shall not grant entry to the supervised bail program unless the defendant has produced a clean drug screen, except for marijuana<sup>1</sup>, prior to the preliminary hearing.

f. At the hearing, the magisterial district judge shall:

- i. review the completed Application for Supervised Bail,
- ii. consider the recommendation of the District Attorney, and
- iii. permit the defendant, his or her attorney, the District Attorney, and the Adult Probation representative to be heard.

g. At the conclusion of the hearing, the magisterial district judge shall either grant or deny the Application. If the magisterial district judge grants the Application, he or she shall issue an Order which provides that,

i. The defendant shall comply with all the conditions requested by the Adult Probation Office and the District Attorney,

ii. regular bail set by the issuing authority shall be suspended while the defendant participates in the supervised bail program, but shall be reinstated should the defendant be expelled from the program,

iii. the defendant shall cooperate with Armstrong, Indiana, Clarion Drug and Alcohol Commission or their designee and comply with all treatment recommendations and case management requirements, and

iv. when inpatient treatment is recommended, the jail shall release the defendant directly to the recommended treatment facility when a bed is available.

h. If a defendant is an otherwise acceptable candidate for supervised bail, the magisterial district judge may grant continuances of the preliminary hearing to allow the defendant time to produce an acceptable drug screen.

<sup>1</sup> Marijuana will not be a disqualifying factor as marijuana will test positive in a urine screen for up to thirty days, and would disqualify a large number of applicants. APO will be obligated to conduct continuing drug screens and Defendants who continue to test positive to marijuana more than 30 days after entry may be expelled from the Supervised Bail Program.

### L.R.Crim.P. 530. Bail Agency.

(D) For purposes of administering the supervised bail program, the Clarion County Adult Probation Office is designated as the bail agency for this court.

[Pa.B. Doc. No. 16-1804. Filed for public inspection October 21, 2016, 9:00 a.m.]

## WESTMORELAND COUNTY

### Rules of Civil Procedure; No. 3 of 2016

#### Administrative Order

*And Now*, this 30th day of September 2016, *It Is Hereby Ordered* that the current Westmoreland County Rules of Civil Procedure are amended as follows:

- Rule W1915.4-4: Renumbered as New Rule 1940.1
- Rule W1915.17: Renumbered as New Rule 1915.4-4
- Rule W1915.19: Renumbered as New Rule 1915.17
- Rule W1940.1: Current Rule is rescinded.

*By the Court*

RICHARD E. McCORMICK, Jr.,  
*President Judge*

[Pa.B. Doc. No. 16-1805. Filed for public inspection October 21, 2016, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated October 6, 2016, Michael D. Bartko (# 40760) whose registered address is 37807 Quail Hollow, Avon, OH, is placed on Administrative Suspension from the Bar of this Commonwealth pursuant to Pa.R.D.E. 219(1). 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*

[Pa.B. Doc. No. 16-1806. Filed for public inspection October 21, 2016, 9:00 a.m.]