

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 85

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to modify Rule § 93.148 regarding administrative change in status from administrative suspension to inactive status.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(12), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

*By the Disciplinary Board of the
Supreme Court of Pennsylvania*

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

ANNUAL REGISTRATION OF ATTORNEYS

§ 93.148. Administrative change in status from administrative suspension to inactive status.

(a) Enforcement Rule 219(k) provides that an inactive attorney who has been administratively suspended for

failure to file the annual form and pay the annual fee required by § 93.146(b)(2) of these rules, may request an administrative change in status form from the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office and said Office shall change the status of an attorney eligible for inactive status under this subsection (a) upon receipt of:

(1) the annual form required by § 93.142 of these rules;

(2) payment of the annual fee required by § 93.141 of these rules;

(3) payment of the annual fee that was due in the year in which the attorney was administratively suspended;

[(3)] (4) payment of all collection fees and late payment penalties assessed under § 93.142(b)(2) and § 93.144 of these rules; and

[(4)] (5) payment of an administrative processing fee of \$100.00.

Where a check in payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under § 93.142(b)(2), shall also have been paid.

(b) Enforcement Rule 219(k) provides that an active attorney who has been administratively suspended for failure to file the annual form required by § 93.142 and pay the annual fee required by § 93.141 must comply with § 93.145 (relating to reinstatement of administratively suspended attorneys) before becoming eligible to register as inactive or retired.

[Pa.B. Doc. No. 18-1257. Filed for public inspection August 17, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 400 AND 1000]

Proposed Amendment of Pa.R.C.P. Nos. 430, 1018.1 and 1064

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 430 governing service by order of court, 1018.1 governing the notice to defend, and 1064 governing service in quiet title actions involving subsurface mineral, oil, and gas rights for the reasons set forth in the accompanying explanatory 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 will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

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

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

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us

All communications in reference to the proposal should be received by October 19, 2018. 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 Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 400. SERVICE OF ORIGINAL PROCESS

SERVICE PURSUANT TO SPECIAL ORDER OF COURT

Rule 430. Service Pursuant to [Special] Order of Court. [Publication.]

[(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

Official Note: A sheriff's return of "not found" or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. *Gonzales v. Polis*, 357 A.2d 580 (Pa. Super. 1976). Notice of intended adoption mailed to last known address requires a "good faith effort" to discover the correct address. *Adoption of Walker*, 360 A.2d 603 (Pa. 1976). An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, (3) examinations of local telephone directories, courthouse records, voter registration records, local tax records, and motor vehicle records, and (4) a reasonable internet search.

See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral, oil, or natural gas rights.]

(a) If service cannot be made under any other rule, a party may file a motion with the court for an order permitting any methods of service which are reasonably calculated to provide actual notice to the defendant.

(1) The methods of service requested may include, but are not limited to, one or more of the following:

(i) service via email or social media account;

Official Note: Any contact through email or social media account must comply with the Rules of Professional Conduct.

(ii) mailing the legal paper to an address known to be the defendant's address;

(iii) mailing the legal paper to an address the defendant is currently receiving mail;

Official Note: Pursuant to the Freedom of Information Act, 39 C.F.R. § 265.2, postal authorities are required to state in writing whether a defendant is currently receiving mail at a particular address.

(iv) service by any other method which is reasonably calculated to provide actual notice to the defendant; and

(v) if service cannot be accomplished by any of the above listed methods, service by publication consistent with due process.

(2) Upon request of a party, the court may allow any competent adult to make service in the manner provided by Rule 402(a).

(3)(i) The motion requesting service pursuant to subdivision (a)(1)(i)—(iv) shall be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, the reasons why service pursuant to any other rule cannot be made, and the reasons why the method of service requested is reasonably calculated to provide actual notice to the defendant.

(ii) The motion requesting service by publication pursuant to subdivision (a)(1)(v) shall be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, and the reasons why service pursuant to subdivision (a)(1)(i)—(iv) cannot be made.

Official Note: See Rule 1064 for additional requirements for service of original process pursuant to this rule for actions to quiet title involving subsurface mineral, oil, or natural gas rights.

[(b)(1)] (b) If service of process by publication has been authorized by rule of civil procedure or order of court, the publication shall be by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county. The publication shall contain the caption of the action and the names of the parties, state the nature of the action, and conclude with a notice substantially in the following form:

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed

without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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 office shall be that designated by the court under Rule 1018.1(c).

[(2) When service is made by publication upon the heirs and assigns of a named former owner or party in interest, the court may permit publication against the heirs or assigns generally if it is set forth in the complaint or an affidavit that they are unknown.]

CHAPTER 1000. ACTIONS
Subchapter A. CIVIL ACTION
PLEADINGS

Rule 1018.1. Notice to Defend. Form.

(a) Every complaint filed by a plaintiff and every complaint filed by a defendant against an additional defendant shall begin with a notice to defend in substantially the form set forth in subdivision (b). No other notice to plead to a complaint shall be required.

(b)

[[CAPTION]] CAPTION
NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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 notice does not change any of the rules relating to the pleading of objections and defenses. This rule applies to all complaints including those where service is [**by publication**] pursuant to **Rule 430**. [**For the mandatory content of the publication in such cases see Rule 430(b).**] When a defendant is served outside the United States, Rule 1026(b) provides a sixty-day period for pleading.

(c) Each court shall by local rule designate the officer, organization, agency or person to be named in the notice from whom information can be obtained.

(d) A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Subchapter D. ACTION TO QUIET TITLE

Rule 1064. Service.

In actions involving subsurface mineral, oil, or natural gas rights, if the plaintiff seeks to serve original process [**by publication**] pursuant to Rule 430 and obtains actual knowledge of a last known address of the defendant outside the county in which the property is located, the plaintiff shall explain in the affidavit required by Rule [**430(a)**] **430** the search for the defendant in that locale.

Official Note: For service of original process, see Rule 410 governing service in actions involving real property. See Rule 430 for additional requirements for service of original process [**by publication**].

EXPLANATORY COMMENT

The amendment of Rule 430 governing service pursuant to order of court, including service by publication, is intended to clarify procedure and modernize such service. The amended rule sets forth the standard by which a court may evaluate whether a method of service may be used and encourages the use of various methods. While the current rule implicitly permits service by any method so ordered by the court, not just publication, the amendment explicitly provides the methods and the procedure to follow.

Subdivision (a) of the amended rule provides that when a motion requesting service by court order, the court may permit any method that is reasonably calculated to provide actual notice to the defendant. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (holding that an alternative method of service should provide “notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”). *Mullane* continues to be controlling law. See *Jones v. Flowers*, 547 U.S. 220 (2006).

A party who seeks service pursuant to this procedure is required to file a motion with the court requesting the method or methods of service that are reasonably calculated to provide actual notice to the defendant. Subdivi-

sion (a)(1)(i)—(v) lists the methods of service that may be used. Recognizing the usefulness of electronic media, the methods available for service include email and social media accounts. Subdivision (a) also permits service by more traditional method: mailing a legal paper to an address known to be the defendant's address or to an address where the defendant is currently receiving mail.

Subdivision (a)(3)(i) requires a motion requesting a method of service pursuant to subdivision (a)(1)(i)—(iv) to be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, the reasons why service pursuant to any other rule cannot be made, and the reasons why the method of service requested is reasonably calculated to provide actual notice to the defendant. When leave is sought to serve by email or social media account, the moving party must set forth with specificity in the affidavit the reasons the moving party believes the email or social media account belongs to the defendant, and the basis for concluding that the defendant regularly accesses the email or social media account. When service by this method is approved, unless the court provides otherwise, service of the summons or complaint must be made on the defendant through email or by sending or posting on the social media account a private message designed to minimize public access or disclosure of the filing of the action against the defendant.

Service by publication remains as a method of service in the rule. If service cannot be accomplished by any of the methods in subdivision (a)(1)(i)—(iv), subdivision (a)(1)(v) permits the court to order service by publication to the extent that such service is consistent with due process. Subdivision (a)(3)(ii) requires a motion requesting service by publication to include an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, and the reasons why service cannot be made pursuant to subdivision (a)(1)(i)—(iv).

Subdivision (a)(2) permits service by a competent adult provided there is court approval to do so.

Current subdivision (b)(2) has been deleted. The subdivision, which provided for a court to permit service by publication against the heirs or assigns generally if set forth in the complaint or affidavit they are unknown, has been removed in light of the holding in *Northern Forests, II v. Keta Realty Co.*, 130 A.3d 19 (Pa. Super. 2016), *petition for allowance of appeal denied*, 158 A.3d 1237 (Pa. 2016).

Conforming amendments have also been made to Rule 1018.1 governing the notice to defend and Rule 1064 governing additional requirements for service of actions to quiet title in subsurface mineral, oil, and gas rights. These amendments delete the reference to "service by publication" and instead refer to "service pursuant to Rule 430".

*By the Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 18-1258. Filed for public inspection August 17, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 400 AND 1000]

Proposed Rescission of Pa.R.C.P. No. 401(c)

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P. No. 401(c) governing the copies for service of original process for the reasons set forth in the accompanying explanatory 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 will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

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

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

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us

All communications in reference to the proposal should be received by October 19, 2018. 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 Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 400. SERVICE OF ORIGINAL PROCESS

SERVICE GENERALLY

Rule 401. Time for Service. Reissuance, Reinstatement, and Substitution of Original Process. [**Copies for Service.**]

(a) Original process shall be served within the Commonwealth within [**thirty**] **30** days after the issuance of the writ or the filing of the complaint.

Official Note: See Rule 404 for the time for service outside the Commonwealth.

(b)(1) If service within the Commonwealth is not made within the time prescribed by subdivision (a) of this rule or outside the Commonwealth within the time prescribed

by Rule 404, the prothonotary upon *praecipe* and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint, by writing thereon “reissued” in the case of a writ or “reinstated” in the case of a complaint.

(2) A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint.

(3) A substituted writ may be issued or a substituted complaint filed upon *praecipe* stating that the former writ or complaint has been lost or destroyed.

(4) A reissued, reinstated, or substituted writ or complaint shall be served within the applicable time prescribed by subdivision (a) of this rule or by Rule 404 after reissuance, reinstatement, or substitution.

(5) If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff, instead of reissuing the writ, may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint. Thereafter the writ may be reissued, or the complaint may be reinstated as the equivalent of a reissuance of the writ, and the plaintiff may use either the reissued writ or the reinstated complaint as alternative original process.

Official Note: If the applicable time has passed after the issuance of the writ or the filing of the complaint, the writ must be reissued or the complaint reinstated to be effective as process. Filing or reinstatement or substitution of a complaint which is used as alternative process under this subdivision, has been held effective in tolling the statute of limitations as the reissuance or substitution of a writ.

[(c) The copy of the original process to be served upon the defendant shall be attested by the prothonotary or certified by the plaintiff to be a true copy.]

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

VENUE AND PROCESS

Rule 1008. Copies for Service.

Rescinded.

[**Official Note:** For the requirement of attested or certified copies for service, see Rule 401(c).]

EXPLANATORY COMMENT

The Civil Procedural Rules Committee is proposing the rescission of Rule 401(c), which provides for the prothonotary to attest or for the plaintiff to certify that a copy of the complaint to be served on the defendant is a true copy. Originally adopted in 1946 as part of former Rule 1008, the attestation or certification provided a mechanism to ensure that the original and any copy to be served had been authenticated as a true copy in a time when reproduction of documents was more labor-intensive and prone to error. Today, the requirement is anachronistic given modern methods of document reproduction that

easily permit exact copies. The note to rescinded Rule 1008 cross-referencing Rule 401(c) has also been deleted.

*By the Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 18-1259. Filed for public inspection August 17, 2018, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Order Amending Rules 1910.4, 1910.16, 1910.16-4, 1910.17, 1920.1, 1920.13, 1920.15, 1920.31, 1920.51, 1920.52, 1920.54, 1920.56 and 1920.74 of the Rules of Civil Procedure; No. 683 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 30th day of July, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 47 Pa.B. 2540 (May 6, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.4, 1910.16, 1910.16-4, 1910.17, 1920.1, 1920.13, 1920.15, 1920.31, 1920.51, 1920.52, 1920.54, 1920.56, and 1920.74 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, 2019.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.4. [**Commencement of Action. Fee.**] **Domestic Relations Section. Commencement of Action. No Filing Fees. Authorized Fees.**

[(a) An action shall be commenced by filing a complaint with the domestic relations section of the court of common pleas.

Official Note: For the form of the complaint, see Rule 1910.27(a).

See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania shall apply.

Section 961 of the Judicial Code, 42 Pa.C.S. § 961, provides that each court of common pleas shall have a domestic relations section.

(b) No filing fee shall be required in advance.

Explanatory Comment—1994

The rule continues the practice under repealed Section 6704(a) of the Judicial Code in providing that the action shall be commenced by the filing of a complaint. The complaint will be filed with the domestic relations section of the court of common pleas. Section 961 of the Judicial Code provides for each court of common pleas to have a domestic relations section.

Subdivision (b) continues the prior practice under the repealed Act of July 13, 1953, P.L. 431, § 14, 62 P.S. § 2043.44, which provided: “No fee shall be required to be paid in advance.”]

(a) Each court of common pleas shall have a domestic relations section that shall be the filing office for pleadings and documents for child support, spousal support, and alimony *pendente lite* actions.

(b) A party shall commence actions for child support and spousal support by filing a complaint in the domestic relations section. A party shall commence an action for alimony *pendente lite* by filing a complaint in the domestic relations section if a divorce complaint has been filed with the prothonotary.

Official Note: See Pa.R.C.P. No. 1910.27(a) for the form of the complaint.

See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply.

See the Pennsylvania Department of Human Services Child Support Program for e-services, including filing for support or requesting a modification of an existing support order at <https://www.human.services.state.pa.us/cs/ws/>.

See Pa.R.C.P. No. 1920.31(a)(2) regarding the filing of alimony *pendente lite* actions in the domestic relations section.

(c) The domestic relations section shall not require payment of a filing fee to commence or modify an action.

(d) Unless authorized by statute, a judicial district shall not impose additional fees in actions for child support, spousal support, and alimony *pendente lite*. The domestic relations section shall collect fees through the Pennsylvania Child Support Enforcement System (PACSES).

Official Note: The statutorily authorized fees in actions for child support, spousal support, and alimony *pendente lite* include the genetic testing fee, the federally mandated annual fee, and fees associated with statewide court operations referenced in 204 Pa. Code § 29.351.

Rule 1910.16. Support Order. Allocation.

(a) In an order awarding child support and spousal support **or child support and alimony *pendente lite***, the court may on its own motion or upon the motion of either party:

(1) Make an unallocated award in favor of the spouse and one or more children[,]; or

(2) State the amount of support allocable to the spouse and the amount allocable to each child.

Official Note: See 23 Pa.C.S. § 4348(d) for additional matters [**which**] **that** must be specified in an order of support if arrearages exist when the order is entered.

(b) [An unallocated order in favor of the spouse and one or more children shall be a final order as to all claims covered in the order. No motion for post-trial relief may be filed to the final order.] An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

Official Note: The procedure relating to Motions for Reconsideration is set forth in [**Rule**] **Pa.R.C.P. No. 1930.2.**

Explanatory Comment—2018

Subdivision (b) resolves the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares the orders are final and appealable. Not only is the unallocated support order final and appealable, so are the other claims covered in the order, irrespective of whether those would be final and appealable had the claims not been a part of the order awarding unallocated support.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

* * * * *

(f) *Allocation. Consequences.*

(1) An order awarding [**both spousal and**] child support **and spousal support or child support and alimony *pendente lite*** may be unallocated or **may** state the amount of support allocable to the spouse and the amount allocable to each child. [**Each**] **The** order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child [**and spousal support are delineated on the order**] **support and spousal support or child support and alimony *pendente lite* are delineated in the order.** However, Part IV of the formula provided by these rules assumes that an order will be unallocated. Therefore, if the order is [**to be**] allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If **the** allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is [**to be**] allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. [**No consideration of federal income tax consequences shall be applied if the order is unallocated or the order for the spousal support or alimony *pendente lite* only.**] **The federal**

income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony pendente lite only.

Official Note: The 2005 amendment supersedes *Diamant v. Diamant*, 816 A.2d 256 (Pa. Super. [Ct.] 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. [Rule] Pa.R.C.P. No. 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

(2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the [guidelines which result] method that results in the greatest benefit to the obligee.

[When] If the obligee's net income is equal to or greater than the obligor's net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's net income is equal to or greater than the obligor's net income, the guideline amount indicated shall be attributed to child support only.

(3) Unallocated charging orders for child support and spousal support[,] or child support and alimony pendente lite[,] shall terminate upon the death of the [payee spouse or payee ex-spouse] obligee.

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 [Pa.C.S.A. §] Pa.C.S. §§ 7101 et seq. The court shall provide notice of allocation to the parties.

Official Note: This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.

[Explanatory Comment—2005

Rule 1910.16-4(a) sets forth the income shares formula used to establish the support obligation. Subdivision (b) provides the method for calculating support for seven or more children as the basic support schedule in Rule 1910.16-3 sets forth the presumptive amount of support for only up to six children.

Subdivision (c) sets forth the method for calculating the presumptive amount of support in cases where the children spend 40% or more of their time during the year with the obligor. When there is equal time sharing, subsection (2) reduces the support obligation further so that the obligor does not pay more than is necessary to equalize the parties'

combined income between the two households. Subsection (3) expressly excludes SSR cases from application of this rule. Since the SSR already reduces support to a minimal level, no further reduction should be given for the amount of time spent with the children.

Subdivision (d) relates to the calculation of support in divided or split custody cases. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children resides with each party.

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Rule 1910.16-3.

In subdivision (f), the guidelines continue to presume that the order will be unallocated for tax purposes. However, new language has been added to subsection (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subsection (3) is intended to insure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Rule 1910.19(d) provides that all spousal support and alimony pendente lite orders terminate upon the death of the payee. Termination of a charging order does not affect arrears existing at that time. Subsection (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

Explanatory Comment—2010

The basic support schedule incorporates an assumption that the children spend 30% of the time with the obligor and that the obligor makes direct expenditures on their behalf during that time. Variable expenditures, such as food and entertainment, that fluctuate based upon parenting time, were adjusted in the schedule to build in the assumption of 30% parenting time. Upward deviation should be considered in cases in which the obligor has little or no contact with the children. However, upward deviation may not be appropriate where an obligor has infrequent overnight contact with the child, but provides meals and entertainment during daytime contact. Fluctuating expenditures should be considered rather than the extent of overnight time. Downward deviation may be appropriate when the obligor incurs substantial fluctuating expenditures during parenting time, but has infrequent overnights with the children.

The calculation in Rule 1910.16-4(c) reduces an obligor's support obligation further if the obligor spends significantly more time with the children. The obligor will receive an additional 10% reduction in the amount of support owed at 40% parent-

ing time, increasing incrementally to a 20% reduction at 50% parenting time. This method still may result in a support obligation even if custody of the children is equally shared. In those cases, the rule provides for a maximum obligation which may reduce the obligation so that the obligee does not receive a larger portion of the parties' combined income than the obligor.]

Explanatory Comment—2005

Pa.R.C.P. No. 1910.16-4(a) sets forth the income shares formula used to establish the support obligation. Subdivision (b) provides the method for calculating support for seven or more children as the basic support schedule in Pa.R.C.P. No. 1910.16-3 sets forth the presumptive amount of support for up to six children.

Subdivision (c) sets forth the method for calculating the presumptive amount of support in cases where the children spend 40% or more of their time during the year with the obligor. When there is equal time sharing, subdivision (2) reduces the support obligation further so that the obligor does not pay more than is necessary to equalize the parties' combined monthly net income between the two households. Subdivision (3) expressly excludes SSR cases from the application of this rule. Since the SSR already reduces support to a minimal level, a further reduction should not be given for the amount of time spent with the children.

Subdivision (d) relates to the calculation of support in divided or split custody cases. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children resides with each party.

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Pa.R.C.P. No. 1910.16-3.

Subdivision (f) states that the guidelines continue to presume that the order will be unallocated for tax purposes. However, language has been added to subdivision (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subdivision (3) is intended to ensure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Pa.R.C.P. No. 1910.19(d) provides that all spousal support and alimony *pendente lite* orders terminate upon the death of the obligee. Termination of a charging order does not affect arrears existing at that time. Subdivision (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in another state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.

Explanatory Comment—2010

The basic support schedule incorporates an assumption that the children spend 30% of the time with the obligor and that the obligor makes direct expenditures on their behalf during that time. Variable expenditures, such as food and entertainment, that fluctuate based upon parenting time were adjusted in the schedule to build in the assumption of 30% parenting time. Upward deviation should be considered in cases in which the obligor has little or no contact with the children. However, an upward deviation may not be appropriate if an obligor has infrequent overnight contact with the child, but provides meals and entertainment during daytime contact. Fluctuating expenditures should be considered rather than the extent of overnight time. A downward deviation may be appropriate when the obligor incurs substantial fluctuating expenditures during parenting time but has infrequent overnights with the children.

The calculation in Pa.R.C.P. No. 1910.16-4(c) reduces an obligor's support obligation further if the obligor spends significantly more time with the children. The obligor will receive an additional 10% reduction in the amount of support owed at 40% parenting time, increasing incrementally to a 20% reduction at 50% parenting time. This method still may result in a support obligation even if custody of the children is equally shared. In those cases, the rule provides for a maximum obligation so that the obligee does not receive a larger portion of the parties' combined monthly net income than the obligor.

Explanatory Comment—2018

The allocation of a support order is of great significance to the parties. The issue of allocation may arise in a support action if child support and spousal support or child support and alimony *pendente lite* are sought. The decision to allocate a support order will determine the party that pays the federal income tax, which affects the actual money available to the beneficiary of the order.

Allocation of a support order may not be appropriate in all cases. Rather, the decision to allocate must be based upon the facts of the particular case. Subdivision (f) makes clear that the court has the authority to allocate the order and that the decision rests in the discretion of the court. The court or the parties may raise the question of allocation.

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order. Priority of Distribution of Payments.

* * * * *

Explanatory Comment—2010

Subdivision (d) has been moved from [Rule] Pa.R.C.P. No. 1910.16-7 and expanded for clarification. It addresses the priority of the distribution of payments and collections in all cases, not just those involving multiple families. However, collections realized through the interception of federal tax returns by the Internal Revenue Service are subject to federal distribution priorities. See 45 CFR § 303.72(h). An unallocated order for child support and spousal support or child support and alimony *pendente lite* has the same priority as a child support order.

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.1. Definitions. Conformity to Civil Action.

(a) As used in this chapter,

[“action” means an action of divorce or an action for annulment of marriage which may include any other claim which may under the Divorce Code be joined with the action of divorce or for annulment;]

“action,” an action of divorce or an action for annulment of marriage, which may include the ancillary claims that may be joined with the action of divorce or for annulment under the Divorce Code, except as otherwise provided in these rules;

“custody,” includes partial custody[and visitation];

“divorce[]” means [] divorce from the bonds of matrimony or dissolution of a civil union;

“marital property rights” means those rights created solely by Section 3501 of the Divorce Code; and

“nonmarital property rights” means all property rights other than marital property rights.

(b) Except as otherwise provided in this chapter, the procedure in the action shall be in accordance with the rules relating to a civil action.

Official Note: [For other claims which may be joined, see Section 3104 of the Divorce Code, 23 Pa.C.S. § 3104.] See Section 3104 of the Divorce Code for the ancillary claims that may be joined in a divorce action, except as otherwise provided in these rules.

See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite.

The definition of divorce has been expanded to include civil unions. See *Neyman v. Buckley*, 153 A.3d 1010 (Pa. Super. 2016).

Rule 1920.13. Pleading More Than One Cause of Action. Alternative Pleading.

(a) The plaintiff may state in the complaint one or more grounds for divorce and may join in the alternative a cause of action for annulment.

[(b) The plaintiff may

(1) join in the complaint in separate counts any other claims which may under the Divorce Code be joined with an action of divorce or for annulment or, if they have not been so joined, the plaintiff may as of course amend the complaint to include such other claims or may file to the same term and number a separate supplemental complaint or complaints limited to such other claims; or

(2) file to the same term and number a subsequent petition raising such other claims.]

(b) Except as otherwise provided in these rules, the plaintiff may:

(1) join as separate counts in the complaint the ancillary claims that may be joined with an action of divorce or for annulment under the Divorce Code;

(2) amend the complaint to include the ancillary claims;

(3) file to the same term and number a separate supplemental complaint or complaints limited to the ancillary claims; or

(4) file to the same term and number a subsequent petition raising the ancillary claims.

(c) The court may order [alimony pendente lite,] reasonable counsel fees[,] and costs and expenses pending final disposition of any claim.

Official Note: See Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite.

See Pa.R.C.P. No. 1910.26(b) for interim or special relief for support and alimony pendente lite actions proceeding through the domestic relations section.

Rule 1920.15. Counterclaim. Subsequent Petition.

[(a) The defendant may set forth in an answer under the heading “Counterclaim” a cause of action of divorce or for annulment and, whether the defendant does so or not, may set forth any other matter which under the Divorce Code may be joined with an action of divorce.

(b) The defendant may file to the same term and number a subsequent petition raising any claims which under the Divorce Code may be joined with an action of divorce or for annulment. The averments shall be deemed denied unless admitted by an answer.]

(a) The defendant may state a cause of action of divorce or for annulment in an answer under the heading “Counterclaim”.

(b) Except as otherwise provided in these rules, the defendant may:

(1) join as separate counts in the counterclaim the ancillary claims that may be joined with an action of divorce or for annulment under the Divorce Code; or

(2) file to the same term and number a subsequent petition raising the ancillary claims that may be joined with an action of divorce or for annulment under the Divorce Code.

(c) The averments in the counterclaim shall be deemed denied unless admitted by an answer.

Official Note: See Pa.R.C.P. No. 1920.31, which requires the joinder of certain related claims under penalty of waiver. A claim for alimony must be raised before the entry of a final decree of divorce or annulment.

See Pa.R.C.P. No. 1920.31(a)(2) as to raising claims for child support, spousal support, and alimony pendente lite.

See Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

Rule 1920.31. Joinder of Related Claims. [**Child and Spousal Support.**] Alimony. [**Alimony Pendente Lite.**] Counsel Fees. Costs and Expenses.

(a)(1) If a party has raised a claim for alimony, counsel fees, or costs and expenses, the parties shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required by Pa.R.C.P. No. 1910.27(c)(1), and a completed Expense Statement in the form required by Pa.R.C.P. No. 1910.27(c)(2)(B). A party may not file a motion for the appointment of a master or a request for court action regarding alimony, [**alimony pendente lite,**] counsel fees, or costs and expenses until at least 30 days following the filing of that party's tax returns, Income Statement, and Expense Statement. The other party shall file the tax returns, Income Statement, and Expense Statement within 20 days of service of the moving party's documents. [**If a claim for child support, spousal support or alimony pendente lite is raised in a divorce complaint, no expense form is needed in a support action that can be decided pursuant to the support guidelines unless a party claims unusual needs or unusual fixed expenses or seeks deviation pursuant to Rule 1910.16-5 or apportionment of expenses pursuant to Rule 1910.16-6.**]

Official Note: See Pa.R.C.P. No. 1930.1(b). This rule may require attorneys or unrepresented parties to file confidential documents and documents containing confidential information that are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

(2) A divorce complaint shall not include claims for child support, spousal support, and alimony pendente lite. Instead, claims for child support, spousal support, and alimony pendente lite shall be raised in the domestic relations section by filing a complaint pursuant to Pa.R.C.P. No. 1910.4.

[(2)] (3) If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under [Rule] Pa.R.C.P. No. 4019 governing sanctions.

[(3) In those counties in which the prothonotary's office does not automatically forward a divorce complaint containing claims for support or alimony pendente lite to the domestic relations section or other appropriate office, if a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date the moving party delivers a copy of the complaint to the domestic relations section or other appropriate office with a demand for hearing.]

(b)(1) Orders [of child support, spousal support, alimony or alimony pendente lite] for alimony may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

Official Note: See, *inter alia*, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) of the Divorce Code relating to an injunction against disposition of property pending suit, and Section 3703 of the Divorce Code relating to the collection of arrearages.

(2) When so ordered by the court, [all payments of child or spousal support, alimony or alimony

pendente lite] payments for alimony shall be made to the domestic relations section of the court [which] that issued the order.

(c) The failure to claim spousal support, alimony, alimony pendente lite [or], counsel fees, and costs and expenses prior to the entry of a final decree of divorce or annulment shall be deemed a waiver [thereof] of those claims, unless the court expressly provides otherwise in its decree. The failure to claim child support before the entry of a final decree of divorce or annulment shall not bar a separate and subsequent action [therefor].

(d) Upon entry of a decree in divorce, [any] an existing order for spousal support shall be deemed an order for alimony pendente lite if any economic claims remain pending.

Explanatory Comment—2018

As amended, Pa.R.C.P. No. 1920.31 precludes parties from raising claims for child support, spousal support, and alimony pendente lite as counts in a divorce action. Instead, parties shall file those claims in the domestic relations section as a separate action from the divorce. The amendment of this rule is not intended to affect the legal distinction between spousal support and alimony pendente lite.

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 issue a report and recommendation. The order of appointment shall specify the matters which are referred to the master.] The court may hear the testimony or, upon motion of a party or of the court, the court may appoint a master to hear the actions and ancillary claims specified in subdivision (a)(2)(i) and issue a report and recommendation. The order of appointment shall specify the actions and ancillary claims that are referred to the master.

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

* * * * *

Rule 1920.52. Hearing by the Court. Decision. No Post-trial Relief. Decree.

(a) In claims involving:

(1) marital property[,];

(2) enforcement of marital agreements[,];

(3) alimony[,]; or

(4) a contested action of divorce[,] or for annulment,

[the order of the trial judge shall state the reasons therefor. No motion for post-trial relief may be filed to any order enumerated in this subdivision.] the order of the court shall state the reasons for its decision. A motion for post-trial relief may not be filed to orders with the actions or claims enumerated in this subdivision.

(b) In claims involving:

- [(1) child or spousal support,
- (2) paternity when tried by a judge,
- (3) custody, partial custody, or visitation,
- (4) alimony pendente lite,
- (5) counsel fees, costs and expenses, or]

- (1) paternity;
- (2) custody;
- (3) counsel fees;
- (4) costs and expenses;

[(6)] (5) an uncontested action of divorce or annulment[,] or

[(7)] (6) protection from abuse,

the order of the [trial judge] court may set forth only general findings. [No] A motion for post-trial relief may not be filed to [any order] orders with the actions or claims enumerated in this subdivision.

* * * * *

Rule 1920.54. Hearing by Master. Report. Related Claims.

(a) [If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate.] If claims for counsel fees and costs and expenses have been referred to a master pursuant to Pa.R.C.P. No. 1920.51(a), the master's report shall contain a separate section captioned "Counsel Fees and Costs and Expenses". The report may be in a narrative form stating the reasons for the recommendation and shall include a proposed order stating:

(1) the amount [of support or alimony pendente lite];

* * * * *

Rule 1920.56. [Support. Alimony Pendente Lite. Allocation of Order.] (Rescinded).

[(a) In an order awarding child support combined with spousal support, alimony pendente lite or both, the court may on its own motion or upon the motion of either party

(1) make an unallocated award in favor of the spouse and one or more children, or

(2) state the amount of support allocable to the spouse and the amount allocable to each child.

(b) An unallocated order in favor of the spouse and one or more children shall be a final order as to all claims covered in the order.

Explanatory Comment—1989

The allocation of a support order is of great significance to the parties and the court. It has impact upon two substantive areas, federal income taxation and subsequent modification of an order.

With respect to taxation, the decision to allocate a support order will determine which party pays the federal income tax and thus the actual amount of money available to the beneficiary of the order. With regard to subsequent modification of an order, allocation will enable the court to determine whether modification is warranted since the amount of support each beneficiary is receiving is known.

The issue of allocation arises in a support action where both child and spousal support are sought. It also surfaces in actions for divorce in which child support is sought together with spousal support, alimony pendente lite or both. Two rules are proposed to govern these situations, one for support actions (amended Rule 1910.16) and one for divorce actions (new Rule 1920.56).

Allocation of a support order may not be appropriate in all cases. Rather, the decision whether to allocate must be based upon the facts of the particular case. Subdivision (a) of each rule makes clear that the court has the power to determine whether or not to allocate and that the decision rests in the discretion of the court. The question of allocation may be raised by the court on its own motion or by the parties.

Subdivision (b) of each rule settles the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares such orders to be final and therefore appealable. Not only is the unallocated support order final and appealable, so also are any other claims covered in the same order irrespective of whether they would be final and appealable had they not been a part of the order awarding unallocated support.]

Rule 1920.74. Form of Motion for Appointment of Master. Order.

(a) The motion for appointment of a master shall be substantially in the following form:

(Caption)

MOTION FOR APPOINTMENT OF MASTER

_____ (Plaintiff) (Defendant), moves the court to appoint a master with respect to the following claims:

() Divorce

() Annulment

() Alimony

[() Alimony Pendente Lite]

() [Distribution of] Division of Marital Property

[() Support]

() Counsel Fees

() Costs and Expenses

and in support of the motion states:

(1) Discovery is (is not) complete as to the claim(s) for which the appointment of a master is requested.

(2) The non-moving party (has) (has not) appeared in the action (personally) (by his or her attorney, _____, Esquire).

* * * * *

[Pa.B. Doc. No. 18-1260. Filed for public inspection August 17, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CRAWFORD COUNTY

Creation of the Juvenile Court Restitution Fund; JV Administrative No. AD 1-18

Order

And Now, this 31st day of July, 2018, the Court *Orders and Directs* that the Administrative Order related to the establishment of a Crawford County Juvenile Court Restitution Fund shall be published in the *Pennsylvania Bulletin* and shall be effective 30 days after publication.

It is further ordered that in accordance with Pennsylvania Rules of Judicial Administration 103(d)(6), Crawford County District Court Administrator shall:

(a) Distribute two paper copies of the Administrative Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and distribute to the Legislative Reference Bureau a copy of the Administrative Order on a computer diskette, CD-ROM or other agreed upon alternate format that complies with the requirements of 1 Pa. Code § 13.11(b);

(b) File one copy of the Administrative Order with the Administrative Office of Pennsylvania Courts;

(c) Publish a copy of the Administrative Order on the website for Crawford County when it becomes effective;

(d) Incorporate the Administrative Order in the Local Rules of Judicial Administration no later than 30 days after publication in the *Pennsylvania Bulletin*;

By the Court

ANTHONY J. VARDARO,
President Judge

Administrative Order

And Now, this 31st day of July, 2018, it is *Ordered* that the Crawford County Juvenile Court Restitution Fund is created consistent with the provisions of 42 Pa.C.S.A. § 6352(a)(5).

The purpose of the Crawford County Juvenile Court Restitution Fund shall be to provide a common fund for the deposit of money received from children under Crawford County Juvenile Court supervision and from other revenue sources to be disbursed to reimburse crime victims for financial losses resulting from delinquent acts.

To further the purpose of the Crawford County Juvenile Court Restitution Fund the Court adopts the following guidelines:

Crawford County Juvenile Court Restitution Fund Guidelines

Name

The name of the fund will be the Crawford County Juvenile Court Restitution Fund. When used on any

document for brevity, the Crawford County Juvenile Court Restitution Fund may be referred to as the "CCJCR Fund."

Administrative Responsibility

The Crawford County Juvenile Probation Department shall be responsible for establishing, monitoring, and maintaining the CCJCR Fund in accordance with the following guidelines and any further guidelines that may be promulgated by the President Judge from time to time.

Eligibility

For the purposes of the CCJCR Fund the following definitions will apply:

Eligible Juvenile—Any child who is under the jurisdiction of the Court of Common Pleas of Crawford County through the Crawford County Juvenile Probation Department on or after the effective date of the establishment of the CCJCR Fund and who is required by disposition of the Court or the Juvenile Probation Department to pay restitution to a victim or victims of a delinquent act committed by the child.

Eligible Victim—Any person, business, organization, insurance company, as well as the Commonwealth Crime Victim Compensation Fund (exclusive of any parent or sibling victim) who has a legitimate claim for restitution filed through the Crawford County Juvenile Probation Department on or after the effective date of the fund which claim has resulted from the delinquent act of an eligible juvenile.

Fund Revenue and Management

Funding will be provided for the CCJCR Fund as follows:

A. The Juvenile Probation Department will assess a fee of \$25.00 upon juveniles for each adjudication of delinquency, entry of a consent decree or informal adjustment to be deposited in the CCJCR Fund.

Additionally, pursuant to 42 Pa.C.S.A. § 6304.1 any money collected by the Juvenile Probation Department following a certification from a magisterial district judge court that a child has failed to comply with a lawful sentence imposed for a summary offense by a judge of such a court shall be deposited into the CCJCR Fund.

B. The Chief of Crawford County Juvenile Probation may waive the requirement of any juvenile to pay the fee to the CCJCR Fund due to indigency and/or for other appropriate reasons.

C. The CCJCR Fund shall be managed by the Crawford County Juvenile Probation Department under the direction of the Chief and the Chief shall arrange for the creation of a checking account at a local bank promptly after the effective date of the CCJCR Fund which account shall name the following as signators for the issuance of checks: the current Chief of Crawford County Juvenile Probation Department; each of the two supervisors of the Juvenile Probation Department; and the Crawford County Court Administrator. The signature of two of those four individuals shall be required for the issuance of any check. The President Judge may from time to time designate one or more other person to be one of the signators on the CCJCR Fund account.

All funds currently in a bank account established by the Juvenile Probation Department for the deposit of funds received from outside agencies for the performance of community service work shall be deposited into the new account at or immediately after its creation.

Upon the creation of the CCJCR Fund the revenue received from juveniles as aforesaid as well as any

revenue paid from outside entities for the performance of community service work shall be deposited promptly in the new checking account.

Disbursements from the newly created checking account shall be only for restitution payments approved in a manner hereinafter set forth and for basic maintenance and supplies (i.e. gasoline for mowers) needed for community service work as well as any payments due to the Crawford County Commissioners as set forth in a Memorandum of Understanding with the Crawford County Commissioners.

D. The President Judge may, from time to time upon the recommendation of the current Chief of the Crawford County Juvenile Probation Department make other sources of revenue payable to the CCJCR Fund as those sources of revenue become available.

E. All revenues received for the CCJCR Fund shall be receipted, recorded, deposited or otherwise handled in the same manner as other funds received by the Crawford County Juvenile Probation Department for the purpose of reimbursing victims of delinquent crimes.

F. The Chief of the Crawford County Juvenile Probation Department shall provide quarterly to the President Judge a record of receipts and disbursements from the CCJCR Fund.

G. The funds shall be subject to an annual audit by the elected Crawford County Auditors or any other appropriate auditors.

CCJCR Fund Review Committee

Subject to changes the President Judge may make from time to time, the CCJCR Fund review committee shall be comprised of:

Chief of the Crawford County Juvenile Probation Department and/or a supervisor the Chief may designate
Victim/Witness Coordinator for Juvenile Probation
The Juvenile's supervising Probation Officer
Community Service Program Officer

Fund Expenditures for Restitution

Eligible juveniles may request assistance from the CCJCR Fund in the following manner:

The Crawford County Juvenile Probation Department will prepare an application form for eligible juveniles to utilize in order to request assistance from the fund. In addition to any other information the Crawford County Juvenile Probation Department may deem appropriate, the application will include the following:

1. Description information about the juvenile including name, date of birth, type of supervision and length of supervision.
2. Information with regard to the juvenile's ability to pay restitution.
3. A statement from the Juvenile Probation Officer supervising the juvenile regarding the juvenile's overall adjustment while under supervision, behavior at home, in the community and at school.
4. Information regarding the juvenile's community service completion.
5. A statement as to the balance of restitution owed by the juvenile.
6. A statement that the juvenile has performed community service at a minimum wage rate equal to at least one half of the amount of payment that is being requested

from the CCJCR Fund, is prepared to perform community service at a minimum wage rate equal to the remainder of the disbursement that is requested from the fund and that it appears the juvenile will be supervised long enough to complete that additional community service.

The Juvenile Probation Officer for the applicant will forward the completed application to the Chief Juvenile Probation Officer for consideration by the Review Committee.

The Review Committee after reviewing the application will recommend whether any funds will be disbursed on behalf of the applicant and the amount of those funds.

Said funds will only be disbursed to the eligible victims upon authorization from the President Judge after reviewing the recommendation of the review committee. If there are multiple victims the funds authorized will be disbursed proportionately.

The maximum disbursement that will be authorized on behalf of any juvenile will be \$1,000.

Suspension of Fund Activity

In the event the CCJCR Fund balance is below \$100 fund activity shall be suspended until the fund again exceeds \$100.

Additionally, the President Judge or the Chief of Juvenile Probation may suspend any and all activities associated with the CCJCR Fund at any time except if that suspension is done by the Chief of Juvenile Probation, the Chief shall notify the President Judge in writing within 48 hours of doing so stating the reasons for the suspension of all activities associated with that fund. Upon review of that notification the President Judge may choose to end the suspension or otherwise allow the fund to make disbursements with certain limitations set by the President Judge.

By the Court

ANTHONY J. VARDARO,
President Judge

[Pa.B. Doc. No. 18-1261. Filed for public inspection August 17, 2018, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEHIGH COUNTY

Adoption of Criminal Rules 103, 103.1, 528, 530, 531, 531.2, 535 and 536.1 Relating to Bail; AD-8-2018

Order

And Now, this 23rd day of July, 2018, *It Is Ordered* that the following Rules of Criminal Procedure, in and for the 31st Judicial District of Pennsylvania composed of Lehigh County, be, and the same are, promulgated herewith, to become effective thirty (30) days after their publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator for the 31st Judicial District shall: distribute two (2) paper copies of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; distribute a copy of the local rules on a computer diskette, CD-ROM, or other agreed upon alternate format that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau; file one

(1) copy of the local rules with the Administrative Offices of Pennsylvania Courts; and publish a copy of the local rules on the court's website.

By the Court

KELLY L. BANACH,
Administrative Judge

Leh.R.Cr.P. 103. Definitions.

Unless the context clearly indicates otherwise, the words and phrases used in any criminal rule adopted by the Court of Common Pleas of Lehigh County shall be given the same meaning as is given those words and phrases in the Pennsylvania Rules of Criminal Procedure with the following exceptions and additions: (1) "Court", means the Court of Common Pleas of Lehigh County; (2) "Rule", means any rule of criminal court adopted by the Court of Common Pleas of Lehigh County; (3) "Clerk of Courts—Criminal" means the Clerk of Courts—Criminal of the Court of Common Pleas of Lehigh County; and (4) "except as otherwise provided", means except as provided by statute, by the Pennsylvania Rules of Criminal Procedure, or by specific local criminal court rule.

Note: The language of this Rule was derived from Leh.R.C.P. 76.

Leh.R.Cr.P. 103.1. Definitions.

(a) Definitions contained in Pa.R.Crim.P. 103 shall apply to all local rules heretofore and hereafter adopted which govern practice and procedure in criminal matters.

(b) The following words and phrases, when used in any Lehigh County Rule of Criminal Procedure, shall have the following meanings:

Bail Bondsman is as defined at 42 Pa.C.S.A. § 5741.

Bail Enforcement Agent is an individual who performs services or takes action for the purpose of enforcing the terms and conditions of a defendant's release from custody on bail, including locating, apprehending and surrendering a defendant released from custody on bail who has failed to appear at a specified time and place pursuant to Order of Court. The term does not include police officers, sheriffs, court officers or law enforcement personnel who execute warrants of arrest for bail forfeitures pursuant to their official duties.

Clerk is the Lehigh County Clerk of Judicial Records, Criminal Division.

Department is as defined at 42 Pa.C.S.A. § 5741.

Insurer is as defined at 42 Pa.C.S.A. § 5741.

Surety is as defined at 42 Pa.C.S.A. § 5741.

Department of Law is the Lehigh County Department of Law.

Pretrial Services is Lehigh Valley Pretrial Services, Inc.

President Judge is the President Judge of the Court of Common Pleas of Lehigh County.

Leh.R.Cr.P. 528. Percentage Cash Bail System.

(1) Where percentage cash bail has been authorized by the bail authority, the Defendant for whom bail has been set (and any private third party surety/depositor acting on behalf of the Defendant) shall execute the bail bond and deposit with the issuing authority or the Clerk a sum of money equal to ten percent (10%) of the amount of bail set, but in no event less than Twenty-five (\$25.00) Dollars. A Bail Bondsman is expressly prohibited from posting the deposit for the percentage cash bail system as provided in this Rule. However, where 10% cash bail is

authorized, a Bail Bondsman may, nevertheless, post bond, provided they do so for the full amount of the bail.

(2) Prior to setting 10% cash bail, the bail authority shall generally seek and review the recommendations of the court designated bail agency.

(3) Where a third-party becomes the depositor of the 10% cash on behalf of a defendant, that third-party shall become a surety for the balance of the full amount of the bail, and shall execute the bond as a surety.

Note: This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984).

Leh.R.Cr.P. 530. Designation of Local Court Bail Agency.

(1) Lehigh Valley Pretrial Services, Inc., is designated as the bail agency to monitor and assist defendants released on bail in criminal cases instituted in Lehigh County. This agency shall perform the duties and have the powers set forth in Pa.R.Crim.P. 530(A).

(2) When a Defendant is released on any of the types of bail set forth in Pa.R.Crim.P. 524(C)(1) through (4), or on 10% cash bail pursuant to Pa.Rs.C.P. 524(C)(5) and 528(D)(1), and the bail agency has been designated by the bail authority to act as surety or supervising agency for the defendant, the defendant shall then become subject to the rules and regulations of the bail agency. The bail agency shall not be required to sign the bail bond.

(3) Whenever a defendant who is supervised by the bail agency fails to comply with the conditions of his or her release, or the rules and regulations of the bail agency, a bail piece may issue pursuant to Pa.R.Crim.P. 536(B) to the bail agency, and the defendant may be brought before the court to determine if additional bail shall be set or bail revoked.

Note: This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984). The Rule was later amended to reflect the reorganization and renaming of the bail agency.

Leh.R.Cr.P. 531. Qualifications of Bail Bondsmen and Insurers in Lehigh County.

A. INSURERS

1. Every Insurer duly authorized to do business in Pennsylvania and who appoints a bail bondsman to serve as a surety on any bail bond may be qualified by the Lehigh County Court of Common Pleas provided that it files with the Clerk shall file a current Certificate of Authority issued to it by the Department, and a current annual financial statement, in a form and manner prescribed by these rules. All Insurers approved by the Court of Common Pleas have a continuing obligation to remain qualified in Lehigh County and no bond shall be issued by any Bail Bondsman appointed by an Insurer after May 15 of any year unless the Insurer has filed a current Certificate of Authority issued after March 31 of the same year and a current annual financial statement with the Clerk.

2. An Insurer is precluded from insuring bonds under any circumstance where they have any outstanding and unpaid bail forfeitures, as determined by the Department of Law, in violation of 42 Pa.C.S.A. § 5747.1 or these local rules. In circumstances where the Insurer has any outstanding and unpaid forfeitures, any and all Bail Bonds-

man who are appointed by that Insurer in Lehigh County shall be precluded from serving as surety on any bail bond until such time as appropriate financial settlement has been made. The Department of Law shall immediately notify the Clerk, the District Attorney, the Magisterial District Judges of Lehigh County, the Court of Common Pleas—Criminal Division, any Bail Bondsman who is appointed by the Insurer and the Insurer when the Insurer is precluded from insuring any bonds due to a violation of the terms of 42 Pa.C.S. 5747.1 or these local rules. The Clerk and the Magisterial District Judges shall immediately cease accepting bonds from the Insurer and any of its appointed Bail Bondsmen. When the forfeitures have been paid in full or appropriate financial settlement has been made with the County of Lehigh, the Department of Law shall notify the Clerk and Magisterial District Judges that execution of bonds by the Insurer and its appointed Bail Bondsmen may resume.

B. BAIL BONDSMEN

1. A Bail Bondsman authorized to conduct business in Pennsylvania pursuant to 42 Pa.C.S. §§ 5742—5743.1 may be qualified to serve as surety on any bail bond filed in the criminal courts of Lehigh County provided that he or she file with the Clerk a Qualifying Power of Attorney issued by an Insurer by whom the Bail Bondsman has been appointed setting forth the maximum limit of liability per bond, and a copy of their license issued by the Department, in form and manner prescribed by these rules. No bond shall be executed by any Bail Bondsman after the expiration of such Qualifying Power of Attorney until a new Qualifying Power of Attorney has been filed with the Clerk.

2. A Bail Bondsman is precluded from acting as surety on any bail bond under any circumstance where they have any outstanding and unpaid bail forfeitures as determined by the Department of Law in violation of 42 Pa.C.S. § 5747.1, these local rules or the Insurer who has issued the Power of Attorney is precluded from issuing bonds for any reason. The Department of Law shall immediately notify the Clerk, the District Attorney and the Magisterial District Judges, the Court of Common Pleas—Criminal Division, the Insurer who has appointed the Bail Bondsman and the Bail Bondsman when the Bail Bondsman is precluded from acting as surety on a bail bond due to a violation of the terms of 42 Pa.C.S. 5747.1, these local rules or that the Insurer who has issued their Power of Attorney is precluded from insuring bonds. The Clerk and Magisterial District Judges shall immediately cease accepting bonds by the Bail Bondsman upon such notice. When appropriate financial settlement has been made with the County of Lehigh, the Department of Law shall notify the Clerk, the District Attorney, the Magisterial District Judges, the Court of Common Pleas—Criminal Division, the Insurer, and the Bail Bondsman that execution of bonds by the Bail Bondsman may resume.

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Note: This Rule in substantially the same form was adopted as CR 4011, by Order dated November 7, 1995, and published at 25 Pa.B. 5238 et seq. (November 25, 1995).

Leh.R.Cr.P. 531.2. Approval and Regulation of Bail Bondsmen and Insurers in Lehigh County.

(a) *Seeking Approval as Insurer or Bail Bondsman.* A Bail Bondsman, or an Insurer on behalf of a Bail Bondsman, may seek approval to serve as surety on any bail in the Thirty-first Judicial District by filing a petition with the Clerk. The petition must provide the information

and have attached as exhibits any documents and certifications required in subsection (b) herein. Upon filing, the petition will be assigned to a Judge for determination.

(b) *Requirements to Become Qualified.* To become qualified to post bond in Lehigh County:

(1) Each petition must state that the Bail Bondsman and Insurer is in compliance with all laws, statutes, local and state rules of court as may be established from time to time;

(2) Each petition must include as an attachment a current and valid Certificate of Authority issued by the Department showing that the Insurer is authorized under 40 P.S. § 382(1) shall be attached to the petition seeking approval to operate as a Bail Bondsman;

(3) Each petition must include as an attachment a current and valid Appointment Form showing that the Bail Bondsman has been appointed as a producer for the Insurer with the Department shall attached to the petition. The execution of any bail bond by any Bail Bondsman appointed by the Insurer shall create a valid and binding obligation of the Insurer;

(4) Each petition must include as an attachment a copy of the license of the Bail Bondsmen issued by the Department;

(5) In the event that a Bail Bondsman is acting as an agency, who employs or contracts with more than one individual person who serves as a Bail Bondsman, that agency must attach to the petition a list of all individuals who are licensed and appointed with an Insurer to act as a duly appointed Bail Bondsman who are authorized to act on its behalf of the agency;

(6) Each Insurer and Bail Bondsman must attach to the petition a Statement of Official Address which shall provide an address to which service of correspondence, notices, orders and other legal communications shall be made. The mailing by any Lehigh County governmental entity, including but not limited to the Lehigh County Court of Common Pleas, the Lehigh County Clerk of Courts and the Lehigh County Department of Law, of correspondence, notices, orders and other communications by first class mail to said address shall be deemed presumptive proof of service of same and no objection shall be made by any party that the mailing was sent to an improper or incorrect address, provided that no statute or Pennsylvania Rule of Criminal Procedure requires alternative method of service. In the event that statute or Pennsylvania Rule of Criminal Procedure specifically sets forth a means of service, service shall be made in accordance with the relevant statute or Pennsylvania Rule of Criminal Procedure;

(7) Every Bail Bondsman, who conducts any business in Lehigh County shall keep at its office the usual and customary records pertaining to bail bonds posted in Lehigh County, including, but not limited to, such records of bail bonds executed or countersigned by the Insurer or Bail Bondsman, to enable the court to obtain all relevant information concerning such bail bonds for at least three (3) years after the liability of the Insurer has been terminated. Such records of bail bonds posted shall be subject to immediate examination, inspection or copying by the Court or its representative at the Bail Bondsman's place of business or, upon request, a copy will be made available to the Court at its place of business or as otherwise directed. Any and all information shall be furnished in such manner or form as the Court requires;

(8) Each Bail Bondsman shall file an Affidavit with the Clerk of Judicial Records, Criminal Division, disclosing

any convictions for non-summary criminal offenses, with the exception of misdemeanors under the Pennsylvania Vehicle Code, by Bail Bondsman or, if the Bail Bondsman is an agency, by any owner, officer, director of the Bail Bondsman. The Affidavit must attach a copy of a criminal history records check conducted by the Pennsylvania State Police or, for persons residing in another state, the comparable document for that state, for each such person. A conviction may render the Bail Bondsman or, if the Bail Bondsman is an agency, by any owner, officer, director of the Bail Bondsman ineligible to conduct business in the Thirty-first Judicial District as determined by the Lehigh County Court of Common Pleas in its sole discretion;

(9) Each petition for approval shall be filed in the name of the Bail Bondsman who is seeking approval to serve as a surety on bail in Lehigh County. The name of the Bail Bondsman shall appear on the petition identically to the name of the Bail Bondsman on the license and appointment forms attached to the petition. Any Bail Bondsman who is authorized by law and approved to serve as surety on bail in Lehigh County shall only do so in the Bail Bondsman's name as it appears on the petition. The Bail Bondsman shall only use the approved name on any bail bond form or surety information page submitted to the Clerk on bail bonds issued by that Bail Bondsman. Any petitions, correspondence, court appearances or similar activities may only be filed in the name of the Bail Bondsman as approved by the Court and appointed by the Insurer who is obligated through the Bail Bondsman to insure bail bonds. No third party has standing to participate in any petitions correspondence, court appearances or similar activities on behalf of the Bail Bondsman or Insurer;

(10) A copy of the rates to be charged by the Bail Bondsman as an appointed producer of the Insurer and approved by the Department shall be attached to the petition;

(11) Each Bail Bondsman must attach to the petition a schedule of the fees, in addition to the rates filed by the Insurer, to be charged for issuing the bail bond in the event that the Bail Bondsman charges such fees;

(12) Upon approval of a petition required in subsection (a) of this rule, each Bail Bondsman shall pay to the Clerk an initial registration fee of \$500.00, or such amount as may be established from time to time by the Clerk; and

(c) *Requirements to Remain Qualified.* To remain qualified to post bond in Lehigh County:

(1) Each Insurer and Bail Bondsman must fully comply with all laws, statutes, local rules, rules of court and procedures as may be established from time to time;

(2) Each Insurer and Bail Bondsman must maintain compliance with the requirements specified in subsection (b) of this rule to the extent applicable to each;

(3) Each Bail Bondsman must annually update the documents required in subsection (b) of this rule by filing a Praeceptum with the Clerk and attaching the relevant documents to that Praeceptum;

(4) Each Bail Bondsman must, within 30 days, notify, in writing, the President Judge and the Department of Law if the Bail Bondsman has been charged with any non-summary criminal offense with the exception of misdemeanors under the Pennsylvania Vehicle Code, or if the license submitted with the petition for approval has been revoked, suspended or not renewed in any jurisdiction;

(5) No Bail Bondsman or any employees and/or agents thereof may represent or identify itself, directly or indirectly, as employees or agents of the Commonwealth of Pennsylvania or Thirty-first Judicial District or the County of Lehigh. Bail Bondsman or any employees or agents thereof shall not wear clothing or present badges or any other form of law enforcement credentials that create the impression of employment by the Commonwealth of Pennsylvania, the Thirty-first Judicial District or any of its units, including Pre-trial Services or the Lehigh County Sheriff's Department or the County of Lehigh;

(6) Each Bail Bondsman must renew the required registration with the Thirty-first Judicial District, provide all certifications required by this rule and pay to the Clerk an annual renewal fee of \$100.00, or such amount as may be established from time to time by the Clerk with the approval of the President Judge; and

(7) No Bail Bondsman, or its agents and employees, may engage in Prohibited Conduct as set forth in § 531.2(e) hereunder.

(d) *Opportunity to be Heard.* A Bail Bondsman whose petition seeking approval to post bail in the Thirty-first Judicial District is denied will be provided an opportunity to be heard and to contest the denial. Any Bail Bondsman seeking to contest the denial of its petition for approval to post bail in the Thirty-first Judicial District must file a petition with the Clerk of Judicial Records, Criminal Division and serve the Department of Law within thirty (30) days of the date of denial of its initial petition, and set forth the relief requested and the factual basis therefor. Similarly, a Bail Bondsman which has received approval to post bail in the Thirty-first Judicial District as provided in this rule but which has been subsequently prohibited from posting additional bail, whose right to post bail has been revoked or is otherwise ineligible to post bail in the Thirty-first Judicial District, will be provided an opportunity to be heard, unless the revocation is due to unpaid forfeitures at which the opportunity to be heard shall be governed by 42 Pa.C.S.A. § 5741.1. Any Bail Bondsman seeking to contest prohibition from posting additional bail, that its right to post bail has been revoked, or that it is otherwise ineligible to post bail in the Thirty-first Judicial District must file a petition with the Clerk of Judicial Records, Criminal Division and serve the Department of Law within thirty (30) days of the date of the prohibition, revocation or determination of ineligibility, and set forth the relief requested and the factual basis therefor.

(e) *Prohibited Conduct.* Each Bail Bondsman, or any, employee and/or agents thereof, may not engage in prohibited conduct as set forth below. The following constitutes prohibited conduct:

(1) violating any laws, statutes, local rules or rules of court related to the bail business;

(2) violating any of the rules herein;

(3) having a license as Bail Bondsman revoked in the Commonwealth;

(4) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a fiduciary;

(5) being convicted of any non-summary criminal offense with the exception of misdemeanors under the Pennsylvania Vehicle Code;

(6) failing to advise the Clerk within fourteen (14) days (or such other time period as may be specifically set forth) of any change in circumstances which would materially affect any of the statements, information or certifications required by 531.2(b) or (c) herein;

(7) using an unregistered or unlicensed agent on behalf of an Insurer or Bail Bondsman;

(8) using an individual or entity not appointed by the Insurer who has issued a Power of Attorney for the Bail Bondsman to serve as surety on bail;

(9) signing, executing or issuing bail bonds by a person or entity who or which is not the Bail Bondsman on the bond;

(10) executing a bond without the appropriate counter signature by a licensed and/or authorized Bail Bondsman at time of issue;

(11) failing to account for or pay any premiums held as a Bail Bondsman on behalf of an Insurer;

(12) misstating or misrepresenting any material fact in the initial petition or any subsequent filings, including but not limited to certifications, required by these rules, or in any of the statements, information or certifications required by these rules;

(13) failing to preserve, and to retain separately, any movable tangible collateral, including cash and cash equivalent, obtained as security on any bond;

(14) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within forty-five (45) business days following the conclusion of the case as defined by the Pennsylvania Rules of Criminal Procedure;

(15) offering or providing any consideration or gratuity to any person employed by, or incarcerated in, a jail facility, any person who has the power to arrest or to hold any person in custody, or to any court officers and attorneys to obtain or secure business;

(16) failing to deliver to the defendant, and any person providing collateral on the defendant's behalf, prior to the time the defendant is released from jail, a one-page disclosure form which, at a minimum, must include:

(A) the amount of the bail;

(B) the defendant's bail obligations;

(C) the conditions upon which the bond may be revoked; and

(D) the conditions under which the bond may be exonerated.

(17) failing to provide to the Clerk the fully completed one-page disclosure form required at the time bond is posted;

(18) charging excessive fees not authorized by law or rule of court;

(19) failing to provide an itemized statement of any and all expenses deducted from collateral to the owner thereof, if any;

(20) requiring that, as a condition for posting a bail, a defendant engage the services of a particular law firm or attorney;

(21) preparing or issuing a fraudulent or forged bail bond, power of attorney or other document;

(22) knowingly violating, advising, encouraging, aiding, abetting or assisting the violation of any applicable law, statute, local rule or rule of court;

(23) soliciting, procuring or demanding sexual favors as a condition of or compensation for obtaining, maintaining or exonerating a bail bond, regardless of the identity of the person who performs such favors;

(24) providing legal advice or a legal opinion in any form;

(25) failing to notify and inform law enforcement and the Court that the defendant has committed an act subject to or referenced in 42 Pa.C.S.A. § 5750;

(26) holding oneself out by manner of dress as being a public official including wearing clothing or presenting badges or any other form of law enforcement credentials that might create the impression of employment of the Commonwealth of Pennsylvania, the County of Lehigh, the Thirty-first Judicial District or any of its units, including Pre-trial Services or the Lehigh County Sheriff's Department of the Thirty-first Judicial District or the County of Lehigh; and

(27) engaging in verbal or other abusive behavior and/or unprofessional conduct, including but not limited to the use of profanity, directed toward a County employee.

(f) Any violation of or failure to comply with the rules set forth herein may, upon petition by the Department of Law and after hearing thereon, result in the revocation by the Court of Common Pleas of Lehigh County of the bail posting privileges of the Bail Bondsman.

Leh.R.Cr.P. 535. Return of Cash Deposits. Charges.

Upon full and final disposition of the case, the issuing authority or the Clerk of Courts—Criminal shall retain thirty percent (30%) of the amount deposited, but in no event less than Ten (\$10.00) Dollars, as administrative costs, which includes the Clerk's poundage fee for the percentage cash bail program and shall return the balance to the depositor, unless the depositor at the time the balance is to be returned otherwise agrees in writing. The thirty percent (30%) to be retained shall be considered as earned at the time the bail undertaking is executed and the cash is deposited by the defendant or the third party surety.

Comment: Nothing in this Rule is intended to preclude the application of the seventy percent (70%) cash balance being applied to fines, costs, restitution, or, if funds remain after payment of fines, costs and restitution, to fees due the Defendant's attorney of record, if agreed to in writing by the depositor at the time the money would otherwise be returned to the depositor. See Pa.R.Crim.P. 535, the Comment to that Rule, and the Report of the Criminal Procedural Rules Committee, 33 Pa.B. 6409 (December 27, 2003).

Note: This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984).

Rule 536.1. Forfeitures and Bail Pieces.

(a) Forfeitures.

(1) A bail that is revoked shall be deemed forfeited pursuant to Pa.C.S. § 5747.1, and shall be paid to the Clerk by any surety by close of business on the 91st day following the entry of the order revoking the bail pursuant to the terms of Pa.C.S. § 5747.1, or unless otherwise extended or set aside by Order of Court.

(2) In order for a surety to seek to have the forfeiture order set aside or remitted in whole or in part, the party seeking remission, set aside or exoneration shall present

a petition to the Court, and serve a copy thereof upon the Department of Law. The petition shall set forth in detail the reasons for seeking the set aside, remission or exoneration. In order to facilitate the assessment and investigation of petitions requesting remittance, the surety is required to delineate within the petition the following insofar as applicable:

(A) a recitation of the history of the case including the charges, the date the bond was set, the amount of the bond, and the name and district of the issuing authority;

(B) the date of forfeiture and nature of the proceeding at which forfeiture occurred;

(C) a statement establishing the fact that the defendant was apprehended including the date of apprehension and the agency responsible for the apprehension;

(D) a detailed summary of all efforts by the petitioner to apprehend the defendant including the name, phone number and address of all agents hired or assigned to effectuate the apprehension, and all times, dates, and locations searched;

(E) a declaration that the apprehension or return of the defendant was affected by the efforts of the surety or

that those efforts at least had a substantial impact on the defendant's apprehension; and

(F) clear and specific factual recitation in support of the above declaration.

(3) Any Bail Bondsman or Insurer who files with the Court of Common Pleas of Lehigh County a petition for bail relief, including but not limited to a petition to vacate bail forfeiture or a petition to exonerate surety, shall be responsible for the payment of court costs and/or filing fees as determined by the Clerk of Judicial Records, Criminal Division and may be amended from time to time.

(b) *Bail Pieces*. After a bail piece is issued pursuant to Pa.R.Crim.P. 536 and the defendant is apprehended by or on behalf of the surety, the defendant must be brought before the Judge or a designee in accordance with Pa.R.Crim.P. 150. Bail pieces shall not be utilized to exonerate the surety.

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