

# 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. 86

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to modify Rule § 93.141 regarding language pertaining to the Philadelphia Traffic Court.

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 Executive Director 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*

JESSE G. HEREDA,  
*Executive Director*

#### 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

##### § 93.141. Annual registration.

\* \* \* \* \*

(b) *Inapplicable to justices and judges.* Enforcement Rule 219(b) provides that the following shall be exempt from the annual fee:

(1) Justices or judges serving in the following Pennsylvania courts of record shall be exempt for such time as they serve in office: Supreme, Superior, Commonwealth, Common Pleas, and Philadelphia Municipal; and justices or judges serving an appointment for life on any federal court;

(2) retired attorneys; and

(3) military attorneys holding a limited certificate of admission issued under Pa.B.A.R. 303 (relating to admission of military attorneys).

**Official Note:** The exemption created by subdivision (b)(1) does not include [ **Philadelphia Traffic Court judges,** ] Pittsburgh Municipal Court judges, magisterial district judges, arraignment court magistrates or administrative law judges.

[Pa.B. Doc. No. 18-1741. Filed for public inspection November 9, 2018, 9:00 a.m.]

## Title 225—RULES OF EVIDENCE

### [ 225 PA. CODE ART. VIII ]

#### Order Approving the Amendment of Pennsylvania Rules of Evidence 803(1) and 803(2); No. 779 Supreme Court Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 25th day of October, 2018, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 47 Pa.B. 7422 (December 9, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Evidence 803(1) and 803(2) 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 December 1, 2018.

#### Annex A

### Title 225. RULES OF EVIDENCE

#### ARTICLE VIII. HEARSAY

##### Rule 803. Exceptions to the Rule Against Hearsay— Regardless of Whether the Declarant Is Available as a Witness.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

##### Rule 803(1). Present Sense Impression.

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it. **When the declarant is unidentified, the proponent shall show by independent corroborating evidence that the declarant actually perceived the event or condition.**

### Comment

This rule [ is identical to ] differs from F.R.E. 803(1) insofar as it requires independent corroborating evidence when the declarant is unidentified. See Commonwealth v. Hood, 872 A.2d 175 (Pa. Super. 2005).

For this exception to apply, declarant need not be excited or otherwise emotionally affected by the event or condition perceived. The trustworthiness of the statement arises from its timing. The requirement of contemporaneity, or near contemporaneity, reduces the chance of premeditated prevarication or loss of memory.

### Rule 803(2). Excited Utterance.

(2) *Excited Utterance.* A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. When the declarant is unidentified, the proponent shall show by independent corroborating evidence that the declarant actually perceived the startling event or condition.

### Comment

This rule [ is identical to ] differs from F.R.E. 803(2) insofar as it requires independent corroborating evidence when the declarant is unidentified. See Commonwealth v. Upshur, 764 A.2d 69 (Pa. Super. 2000).

This exception has a more narrow base than the exception for a present sense impression, because it requires an event or condition that is *startling*. However, it is broader in scope because an excited utterance (1) need not describe or explain the startling event or condition; it need only *relate* to it, and (2) need not be made contemporaneously with, or immediately after, the startling event. It is sufficient if the stress of excitement created by the startling event or condition persists as a substantial factor in provoking the utterance.

There is no set time interval following a startling event or condition after which an utterance relating to it will be ineligible for exception to the hearsay rule as an excited utterance. In *Commonwealth v. Gore*, [ 262 Pa. Super. 540, 547, ] 396 A.2d 1302, 1305 (Pa. Super. 1978), the court explained:

The declaration need not be strictly contemporaneous with the existing cause, nor is there a definite and fixed time limit. . . . Rather, each case must be judged on its own facts, and a lapse of time of several hours has not negated the characterization of a statement as an "excited utterance." . . . The crucial question, regardless of the time lapse, is whether, at the time the statement is made, the nervous excitement continues to dominate while the reflective processes remain in abeyance.

\* \* \* \* \*

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised May 16, 2001, effective July 1, 2001; amended November 2, 2001, effective January 1, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017; **amended October 25, 2018, effective December 1, 2018.**

### Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment for paragraph 25 published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 revision of the Comment for paragraph 25 published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the May 16, 2001 revision of the Comment for paragraph 18 published with the Court's Order at 31 Pa.B. 2789 (June 2, 2001).

Final Report explaining the November 2, 2001 amendments to paragraph 6 published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 620 (February 2, 2013).

Final Report explaining the November 9, 2016 amendments to paragraph 6, 8, 10, and revision of the Comment for paragraph 7 and 9 published with the Court's Order at 46 Pa.B. 7436 (November 26, 2016).

**Final Report explaining the October 24, 2018 amendments to paragraph 1 and 2 published with the Court's Order at 48 Pa.B. 7112 (November 10, 2018).**

### FINAL REPORT<sup>1</sup>

#### Amendment of Pa.R.E. 803(1) and 803(2)

On October 25, 2018, effective December 1, 2018, upon recommendation of the Committee on Rules of Evidence, the Court ordered the amendment of Pennsylvania Rules of Evidence 803(1) and 803(2) to add a requirement of independent corroborating evidence when the declarant is unidentified.

Previously, the strict application of Pa.R.E. 803(1) and Pa.R.E. 803(2) did not consider whether the declarant was identified. However, evolving case law added a requirement of independent corroborating evidence that the declarant actually perceived the event or condition when the declarant is unidentified. *See, e.g., Commonwealth v. Upshur, 764 A.2d 69 (Pa. Super. 2000); Commonwealth v. Hood, 872 A.2d 175 (Pa. Super. 2005).* The Committee recommended amendment of Pa.R.E. 803(1) and Pa.R.E. 803(2) to contain this requirement as a means of ensuring the reliability of the declarant's statement, especially if the declarant is not identified.

[Pa.B. Doc. No. 18-1742. Filed for public inspection November 9, 2018, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### BUTLER COUNTY

#### Local Family Court Rules—Custody; MsD 18-40281

#### Order of Court

And Now, this 25th day of October, 2018, it is hereby Ordered and Decreed, that Butler County Local Family Court Rules Explanatory Comment, L1915.1, L1915.3, L1915.4, L1915.4-1, L1915.4-2, L1915.4.2a, L1915.5, L1915.7, L1915.10, L1915.11, L1915.12, L1915.13, L1915.18 are rescinded. Effective thirty (30) days after

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

publication in the *Pennsylvania Bulletin* the Butler County Court of Common Pleas adopts the following local rules L1915.1, L1915.3, L1915.3-1, L1915.4, L1915.4-3, L1915.4-4, L1915.5, L1915.11-2, L1915.12, L1915.13, and L1915.18.

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

1. File one (1) copy to the Administrative Office of Pennsylvania Courts via email to [adminrules@pacourts.us](mailto:adminrules@pacourts.us).

2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format only to [bulletin@palrb.us](mailto:bulletin@palrb.us) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish these Rules on the Butler County Court website at [www.co.butler.pa.us](http://www.co.butler.pa.us).

4. Incorporate the local rule into the set of local rules on the Butler County website within thirty (30) days after the publication of the local rule in the *Pennsylvania Bulletin*.

5. File one (1) copy of the local rule in the office of the Butler County Prothonotary for public inspection and copying.

6. Forward one (1) copy to the *Butler County Legal Journal*.

*By the Court*

WILLIAM R. SHAFFER,  
*Administrative Judge*

#### **L1915.1. Scope. Definitions.**

(a) These rules govern all actions for custody and partial custody including, but not limited to original actions, petitions for relocation, petitions to modify orders and petitions for contempt.

(b) These rules supplement the Pennsylvania Rules of Civil Procedure governing custody actions, Pa.R.C.P. No. 1915.1 et seq.

(c) These rules modify Rules L1915.1—L1915.13 of the Butler County Local Rules of Court.

#### **L1915.3. Commencement of Action. Complaint. Order. Service.**

(a) All Custody Complaints and Petitions for Modification shall be filed with the Prothonotary. In addition to the scheduling Order required by Pa.R.C.P. No. 1915.3, there shall be attached by the Conciliator's office, an additional Order with the following text:

"All adult parties to this action, who have not yet attended the seminar for divided families endorsed by the Butler County Family Court, shall within 5 days of receipt of this Order register to attend the next available seminar. Contact 724 XXX-XXXX to register. Attendance at this seminar is mandatory, unless, within 5 days of receipt of the Order, a party seeks permission to attend a comparable program in another county, and within 10 days, permission is granted by the custody conciliator."

(b) In addition to the filing fees assessed by the Prothonotary, an administrative fee for conciliation services shall be assessed by administrative order of court, and shall be submitted to the Prothonotary at the time of the filing of the custody complaint unless otherwise directed by the court.

(c) Within 5 days of service of any claim for custody, partial custody, or visitation, any party to an action who has not previously attended the education seminar for

divided families shall register to attend said seminar. Information concerning the seminar shall be provided by the Prothonotary of the Court of Common Pleas of Butler County, Pennsylvania, to the filing party. Said party shall be responsible for service of such information on the opposing party.

(1) Failure of either party to register for the seminar, prior to the conference, may subject the noncompliant party to such sanctions as may be appropriate, including an award of counsel fees.

(2) Unless otherwise requested by both parties, the parties will be scheduled for separate education seminar sessions.

(d) Fees and policies pertaining to custody conciliation shall be adopted from time to time by administrative orders of court. A copy of said policies and fee schedule will be available at the Domestic Relations office/custody conciliator's office.

(e) The Complaint for Custody and scheduling Order or the Petition for Modification and scheduling Order, in addition to the Order to attend the divided families seminar, shall be served by the moving party in accordance with the Pennsylvania Rules of Civil Procedure.

#### **L1915.3-1. Continuances of Conciliation Conferences or Custody Hearings, Refunds.**

(a) Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. General continuances will not be granted. A date certain for the rescheduled conference will be included in every order continuing a conciliation conference. For a request for a continuance to be considered, the motion shall be filed with the court in accordance with local Family Court motions practice/procedure.

(b) Except in the case of a documented medical emergency, or upon consent of both parties, motions to continue, cancel or withdraw a custody conciliation conference must be presented at least 10 days prior to the scheduled conciliation.

(c) If the case is withdrawn from the conciliator's consideration prior to any conciliation conference occurring, and the party paying the initial conciliators fee seeks a refund thereof, he/she shall present a motion requesting a refund not later than 10 days after the last scheduled conciliation conference.\*

(d) If the party seeking the imposition of an initial custody order, or the modification of a custody order already in existence, i.e. the moving party, fails to appear at a scheduled custody conference, the court will dismiss the case, and the conciliator's fee will not be refunded.

\***Comment:** Requests for refund presented more than 10 days after the conciliation conference will not be granted. The intent of this rule is to process refunds in a timely manner consistent with budgeting and accounting needs of the judicial system and the county.

#### **L1915.4. Initial Contact With the Court.**

(a) After filing, all complaints or motions for conferences shall be immediately forwarded to the custody conciliator's office which shall set the time, date, and place for a custody conference. Said conference shall be held no less than 20, nor more than 45 days from the filing of the complaint/order or petition/order, unless the normal time interval is shortened or lengthened by the court, upon good cause shown.

**L1915.4-3. Custody Conciliation Conference Consents and Recommendations, Unexcused Failure to Attend Conference.**

(a) All parties named in an action for custody shall be present at the custody conciliation conference unless excused by the custody conciliator or by agreement of counsel. Failure of a party to appear at the conference may result in the entry of a custody or partial custody order by the court on the recommendation of the conciliator in the absence of that party. Unless ordered by the court for good cause shown, children shall not be brought to the conciliation and shall not be heard on the issues by the conciliator.

(b) To facilitate the conciliation process and to encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties or their attorneys at the conference shall not be admissible as evidence at a later custody hearing. The custody conciliator shall not be a witness for or against any party.

(c) The court-appointed custody conciliator shall encourage consent agreements on the custody issues pending between/among the parties. If agreements are reached, they shall be reduced to writing and submitted to the court for adoption as an order. The parties will also be encouraged to equitably divide the custody administrative fee.

(d) If no consent agreement is reached, the conciliator shall file a report with the court within five days of the conference which may contain the following:

(1) recommendations that custody evaluations be undertaken in cases where shared physical or primary physical custody is at issue and either the conciliator identifies circumstances warranting said evaluation or the parties agree to said evaluation; physical or mental evaluations, home studies, drug and alcohol evaluations, counseling, education seminars, appointment of a guardian ad litem, as well as equitable divisions of costs for any of the fees above. The order directing studies and evaluations, expert reports and seminar attendance shall provide that the conciliator allocate relevant fees subject to reallocation at a later stage, as provided by Rule L1915.4(c). A non-paying or non-participating party shall be subject to the contempt powers of the court;

(2) conciliator's review of jurisdiction, venue, standing and relocation issues;

(3) progress, if any, on issues before the conciliator, as well as any recommendations for temporary custody/partial custody orders, including the need for an expedited hearing in emergency cases;

(4) recommendations concerning an equitable division of the custody administrative fee among the parties;

(5) recommendations that a case be diverted to counseling;

(6) scheduling of pre-trial conferences or requesting trial dates.

(e) In those cases where evaluations are ordered, a pre-trial conference will be scheduled within 120 days from the order scheduling the evaluations. In cases when custody evaluations are not ordered, a pre-trial conference will ordinarily be scheduled after thirty days but within ninety days from the date of the conciliation. The initial conciliation order shall also provide that the costs of any evaluations, home studies or tests, including the cost of in-court testimony needed to authenticate and explain expert reports of the results thereof, shall be shared by the parties, initially as allocated by the court in the post-conciliation order, but subject to reallocation as part of the pre-trial conference order and the final order in the case as the equities in the case may dictate. A copy of the order scheduling the pre-trial conference shall be mailed to the custody evaluator by the Prothonotary, to insure that the evaluator's report is available to counsel for the parties at least 15 days prior to the pre-trial conference.

(f) Upon receipt of evaluation reports, the conciliator's office will make the same available to counsel of record, or pro se litigants where applicable.

**L1915.4-4. Pretrial Procedures.**

(a) A party may file a Request for Custody Pretrial Conference anytime within 30 days after service of a Custody Order issued as a result of a Conciliation Conference, in cases where a comprehensive agreement is not reached. The Request shall be filed at the Prothonotary's Office. The Prothonotary shall forward the Request to Court Administration for scheduling. Said Request shall be served on the opposing party, or counsel, if represented.

(b) All parties and trial counsel shall be present at the Pretrial Conference unless otherwise provided by Order of Court. Failure of a party to appear at the Pretrial Conference may result in the entry of a custody/visitation order by the Court.

(c) Any agreement reached at the Pretrial Conference shall be reduced to writing and entered as an order of Court.

(d) The Court will enter an order scheduling a trial if the case is not resolved at the Pre-trial Conference. The Prothonotary shall mail a copy of the trial scheduling order to the evaluator, if one has been appointed in the case.

(e) The Request for Custody Pretrial Conference shall be substantially as follows:

(Caption)

**REQUEST FOR CUSTODY PRETRIAL CONFERENCE**

I, \_\_\_\_\_, hereby request a pretrial conference before the Court of Common Pleas. This Request is being filed within 30 days of the date of Service of the Custody Order.

The issues to be considered are:

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## Verification

I verify that the statements made in this request are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities.

\_\_\_\_\_  
Signature of Petitioner or Counsel

\_\_\_\_\_  
Date

(f) The Scheduling Order shall be substantially as follows:

(Caption)

## ORDER OF COURT

The above named parties and trial counsel are hereby ordered to appear in person approximately \_\_\_\_\_ days from the date of this Order on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_m. before the Honorable \_\_\_\_\_, in Courtroom number \_\_\_\_\_ in the Butler County Courthouse, for a Pretrial Conference. Counsel or the parties, if unrepresented, shall file a Pretrial Narrative with the Prothonotary's Office at least seven days prior to the Pretrial Conference. Courtesy copies shall not be delivered to the Court prior to the Pretrial Conference. Copies of the Pretrial Narrative shall be served on all parties. The parties are required to attend the Pretrial Conference pursuant to Butler County L1915.4-4(b). One-half hour is allotted.

The Pretrial Narrative shall include:

- (1) Names and addresses of all witnesses, including experts;
- (2) A brief summary of each witness's anticipated testimony;
- (3) Lists of all exhibits<sup>1</sup>;
- (4) Proposed parenting plan, pursuant to 23 Pa CSA § 5331;
- (5) Requested stipulation of facts;
- (6) Offer of proof for each of the 16 custody factors.

If no Pretrial Narrative is filed, the offending party may be fined or otherwise sanctioned by the Court.

BY THE COURT:

Date: \_\_\_\_\_  
\_\_\_\_\_  
Judge

**L1915.5. Jurisdiction, Venue, Standing, and Relocation Issues.**

(a) The court may direct that issues pertaining to jurisdiction, venue, standing, and relocation be referred to custody conciliation.

(b) Alternatively, the court may schedule a hearing before the court for disposition of the jurisdictional, venue, standing or relocation issue, or the court may take such other action as may be prescribed by statute, compact or treaty.

**Comment:** The court will always dispose of interstate or international jurisdictional issues, outside the conciliation process. In such cases the court may defer to a foreign court the right to conduct a fact-finding hearing related to the jurisdictional issue.

<sup>1</sup> Copies of all exhibits shall be provided to opposing counsel or to the opposing party. Copies of exhibits shall not be included in the original pre-trial narrative filed with the Prothonotary's Office.

**L1915.11-2. Fees for Guardian ad litem.**

(a) If the Court imposes the cost of a guardian ad litem against one or both of the parties, the court shall specify an amount the responsible part(ies) shall pay to the Prothonotary as a deposit to cover the anticipated cost of the guardian's initial investigation of the case. The Court shall also specify the time within which such deposit is due. A guardian ad litem may from time to time request additional deposits by motion, presented in motions court.

**L1915.12. Enforcement. Contempt.**

(a) The custody conciliator may attempt to informally explain existing custody orders upon receiving written correspondence from a party or attorney of record that said order is being misinterpreted or willfully disobeyed.

(b) Upon the filing of any motion or petition alleging violation of a custody or partial custody order, and seeking enforcement of the order, whether or not sanctions are requested, the court shall direct the parties to appear before the court for a 15 minute conference to conciliate the disagreement.

(c) If the enforcement request is not disposed of at the initial judicial conciliation, the court shall direct appropriate additional proceedings, which may include a full conciliation with the conciliator, a direction to participate in counseling, temporary orders relative to interpretation of the existing order pending further conciliation or trial, scheduling of a trial date, or such additional matters as justice may require.

(d) Actions referred to the conciliator shall be subject to the administrative fees and conciliation procedures set forth in these Rules.

(e) If no agreement is reached at the scheduled enforcement conciliation conference, a conciliator's report shall be filed and the matter shall be scheduled before the court for hearing.

**L1915.13. Special Relief.**

(a) All petitions and motions for special relief may be referred to the custody conciliator, pursuant to these Rules, at the discretion of the court.

(b) Alternatively, the court may schedule a hearing to determine the appropriateness of such request for special relief. If a hearing is granted, the court may continue a scheduled custody conference until the court has rendered a decision on the request for special relief.

(c) If, in an emergency, the court grants ex parte special relief, the court shall conduct a hearing within ten days, to address the merits of the petition for special relief. The court may continue the hearing, if requested by the non-moving party, for a reasonable time to allow that party to seek counsel and/or prepare a defense to the petition.

**L1915.18. Custody Evaluator's Fee Schedules and Communication Restrictions.**

Every court appointed custody evaluator shall maintain with the Butler County conciliator's office a fee schedule for in-court testimony, indicating at least 1/2 day and full

day fees. The evaluator's advance deposit requirements and cancellation/refund policies shall also be clearly stated. Such fee schedule and policies may be amended from time to time at the discretion of the evaluator. Both before and after the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to any substantive issues, without the consent or direct participation of counsel for the other party. This prohibition shall not prevent the evaluator from communicating with counsel for the purpose of preparing to present the evaluator's in-court testimony in support of the evaluator's report.

[Pa.B. Doc. No. 18-1743. Filed for public inspection November 9, 2018, 9:00 a.m.]

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