

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

[204 PA. CODE CH. 71]

Proposed Adoption of Pennsylvania Bar Admission Rule 215

Notice is hereby given that the Pennsylvania Board of Law Examiners is considering recommending to the Pennsylvania Supreme Court that it adopt Rule 215 of the Pennsylvania Bar Admission Rules codifying the Board's practice of conducting remote hearings as set forth in Annex A. For ease of review, the proposed rule is in plain text.

The proposed amendment would codify the Board's practice of conducting remote hearings using video, telephone or equivalent means. Currently, there is no Board rule addressing remote hearing before the Board and, given the current public health crisis, the Board is outlining the manner and methods for conducting remote hearings currently and into the future. The rule also provides the applicant may request a hearing be conducted remotely and provides the Board may grant such request.

In addition to a hearing being held remotely, the proposed rule permits the Board to schedule, of its own volition, witness testimony by telephone, video or equivalent means when the witness is unable to testify in person due to a compelling reason. Additionally, the applicant may request that a witness's testimony occur remotely and provides the Board with discretion to grant the request. In order to assure the identity of any witness testifying remotely, the rule requires the witness provide valid government-issued-photo identification in advance of his or her testimony.

In addition, the rule outlines notice and other requirements for holding remote hearings. First, the Board is required to provide the date and time of the hearing in Eastern time. Second, the applicant is required to provide the names of witnesses, additional documents, and additional exhibits at least 3 business days in advance of the hearing. Third, it requires that the applicant request the record be held open in the event a document or exhibit cannot be provided in advance, and permits the Board to hold the record open for the submission of those documents or exhibits for a reasonable time. Last, the rule also provides the manner in which documents are provided to the Board, i.e. all documents and exhibits are to be transmitted securely via the Board's secure electronic website, applicant portal, mail, or facsimile.

The proposed rule also outlines technology matters. It requires the Board to provide notice of technology requirements used for remote hearings on its website and on the hearing information letter or document, and requires the Board to provide necessary instructions for the conduct of remote hearings. The proposed rule also provides that applicants are responsible to ensure that they have the necessary equipment and software, and that equipment it is in good working order prior to the hearing. The rule also places responsibility on the applicant and his or her counsel to be familiar with required technology in advance of the hearing.

Interested persons are invited to submit written comments regarding the proposed amendments to the Counsel to the Board, Pennsylvania Board of Law Examiners, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 3600, P.O. Box 62535, Harrisburg, PA 17106-2535, no later than September 8, 2020.

By the Pennsylvania Board of Law Examiners
Supreme Court of Pennsylvania

GICINE P. BRIGNOLA,
Executive Director

Annex A

TITLE 204. JUDICIAL RULES OF GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter B. ADMISSION TO THE BAR GENERALLY

PROCEEDINGS BEFORE BOARD

(Editor's Note: The following rule is proposed to be added and printed in regular type to enhance readability.)

Rule 215. Remote Hearing.

(a) *Scheduling of Remote Hearing.*

(1) The Board may schedule a hearing to be conducted remotely, including by video, telephone or equivalent means.

(2) An applicant may request that a hearing be conducted remotely and, at its discretion, the Board may grant such request.

(3) The Board may schedule, on its own motion, a witness's testimony to occur by telephone, video or equivalent means when the witness is unable to testify in person due to a reasonable and compelling circumstance.

(4) An applicant may request that a witness's testimony occur by telephone, video or equivalent means and, at its discretion, the Board may grant such request.

(5) Any witness testifying remotely must provide valid, government-issued-photo identification to the Board office in advance of his or her testimony.

(b) *Notice of Remote Hearing and Documents.*

(1) The Board shall provide the date and time of the hearing in prevailing Eastern time.

(2) The applicant or his or her counsel, if any, shall provide the names of witnesses at least 3 business days in advance of the hearing.

(3) With respect to documents and exhibits to be presented at the hearing that are not already part of the Board's record, the applicant or his or her counsel shall provide copies to the Board at least 3 business days in advance of the hearing.

(4) In the event the applicant or his or her counsel cannot provide a copy of a document or exhibit prior to the hearing, he or she shall request that the record be held open for the submission of such document or exhibit.

(5) Upon request, the Board will have discretion regarding whether to hold the record open for a reasonable time for the submission of any document or exhibit the applicant or his or her counsel requests to submit.

(6) Documents and exhibits shall be transmitted electronically via the Board's secure electronic website, applicant portal, mail, or facsimile unless otherwise directed by the Board.

(c) *Technology.*

(1) The Board shall provide notice of the technology requirements or software used for a remote hearing on its website and in its hearing information letter or document.

(2) The Board shall also provide any instructions necessary for the conduct of the remote hearing prior to the hearing (i.e. instructions on how to mute/unmute a microphone, turn camera on/off, etc.).

(3) Applicants shall ensure that all necessary equipment and software are in good working order prior to the hearing. Each applicant is responsible for his or her own equipment (i.e. laptop, desktop, smartphone, webcam, etc.).

(4) Applicants and counsel, if any, will be expected to be familiar with the required technology before the hearing begins.

[Pa.B. Doc. No. 20-1065. Filed for public inspection August 7, 2020, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Proposed Amendments to the Pennsylvania Rules of Professional Conduct Regarding Fees

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") plans to recommend to the Supreme Court of Pennsylvania that it adopt an amendment to Pennsylvania Rule of Professional Conduct ("RPC") 1.5 relating to fees, as set forth in Annex A. This proposed rule amendment adds commentary related to duties of successor counsel in contingent fee matters.

RPC 1.5 governs a lawyer's ethical duties related to fees, with the commentary providing guidance as to the basis or rate of fee, terms of payment, division of fee, and disputes over fees. Although the commentary contemplates the situation where a single billing to a client covers the fee of two or more lawyers who are not in the same firm and who are simultaneously representing a client, most often in contingent fee matters, the commentary does not address the circumstance of a successor counsel from one firm replacing counsel from a different firm in a contingent fee matter, where the services of that predecessor counsel are terminated by the client, without cause.

This particular scenario may be a common experience for practitioners. The American Bar Association addressed this circumstance in its June 18, 2019 Formal Opinion 487 ("Fee Division with Client's Prior Counsel"). The opinion addresses the successor counsel's duties after taking over the contingent fee matter and underscores the successor counsel's critical duty to advise the client in writing of the predecessor counsel's potential claim on a recovery. Other concomitant duties are discussed pertaining to potential conflicts of interest if the successor

counsel negotiates with the predecessor counsel on the client's behalf, and handling disputed funds. The Board's review of the opinion leads us to conclude that guidance on this subject matter would be helpful to Pennsylvania practitioners.

The Board's proposed amendment to Comment [5] of RPC 1.5 describes the successor counsel/predecessor counsel scenario, reminds successor counsel of his or her duties pursuant to subdivisions (b) and (c) of RPC 1.5, as well as duties set forth in RPC 1.7 and 1.15(f), and references Formal Opinion 487.

Just as in any contingent fee matter, the successor counsel must comply with RPC 1.5(b) describing the rate or basis of the fee and with RPC 1.5(c)'s requirement of a written fee agreement stating the method by which the fee is determined. These rules are designed to ensure that the client has a clear understanding of the total legal fee. A contingent fee agreement that fails to mention that some portion of the fee may be due to or claimed by the predecessor counsel in the circumstances described herein is inconsistent with the requirements of RPC 1.5(b) and (c).

If the successor counsel will be involved in negotiating fees with the predecessor counsel on the client's behalf, RPC 1.7 requires the successor counsel to advise the client of the personal conflict of interest inherent in such a situation and to obtain appropriate informed consent to waive the conflict. If a disagreement arises concerning the amount of the predecessor counsel's fees from the proceeds obtained by the successor counsel, the successor counsel must hold such disputed portion of the funds in trust, pending resolution in accordance with RPC 1.15(f).

Interested persons are invited to submit written comment regarding the proposed amendments by mail to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, by facsimile at 717-231-3381, or by email address Dboard.comments@pacourts.us on or before October 7, 2020.

*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 A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.5. Fees.

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

- (1) whether the fee is fixed or contingent;
 - (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (4) the fee customarily charged in the locality for similar legal services;
 - (5) the amount involved and the results obtained;
 - (6) the time limitations imposed by the client or by the circumstances;
 - (7) the nature and length of the professional relationship with the client; and
 - (8) the experience, reputation, and ability of the lawyer or lawyers performing the services.
- (b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- (e) A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:
- (1) the client is advised of and does not object to the participation of all the lawyers involved; and,
 - (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

Comment

* * * * *

Division of Fee

(4) A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee if the total fee is not illegal or excessive and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.

Successor Counsel in Contingency Fee Matters

(5) Unlike the situation in (4), which addresses division of fee between lawyers from different firms who are simultaneously representing a client, there may arise a situation where a client enters a contingent fee agreement with one lawyer (“predecessor counsel”), terminates that lawyer’s services without cause, and enters a new contingent fee agreement with a different lawyer (“successor counsel”). In such a situation, and pursuant to a lawyer’s duties as set forth in paragraphs (b) and (c), successor counsel must notify the client, in writing, that some portion of the fee may be due to or claimed by predecessor counsel for services performed prior to the termination, and should discuss with the client the effect of that claim on successor counsel’s proposed fee agreement. If successor counsel will be involved in negotiating fees with predecessor counsel on the client’s behalf, successor counsel must advise the client of the personal conflict of interest inherent in such a situation, and must obtain appropriate informed consent to waive the conflict as set forth in Rule 1.7. If a dispute arises regarding distribution of the recovery, successor counsel must hold the disputed portion of the funds in trust pending resolution, in accordance with Rule 1.15(f). See ABA Formal Opinion 487 (June 18, 2019) (relating to successive contingent fee agreements). While part II.A of Formal Opinion 487 would require the client’s written informed consent, Rule 1.7 does not require a writing. However, written consent may benefit both the client and successor counsel for the reasons set forth in Explanatory Comment [20] to Rule 1.7.

Disputes over Fees

[(5)] (6) If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer’s fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[(6)] (7) It is Disciplinary Board policy that allegations of excessive fees charged are initially referred to Fee Dispute Committees for resolution.

[Pa.B. Doc. No. 20-1066. Filed for public inspection August 7, 2020, 9:00 a.m.]

**Title 204—JUDICIAL SYSTEM
GENERAL PROVISIONS**

**PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CHS. 85, 89, 91 AND 93]
Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 98**

By this Order, the Disciplinary Board of the Supreme Court of Pennsylvania amends its Board Rules and Procedures to modify Rules § 85.11 related to recusal;

§ 89.2 related to procedure in formal proceedings; § 89.21 related to notice and service; § 89.55 related to pleadings; § 89.93 related to presentation by the parties; § 91.3 related to determination of validity of subpoena; § 93.22 related to quorum and manner of acting; and § 93.23 related to powers and duties of the Board.

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 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 85. GENERAL PROVISIONS

§ 85.11. Recusal.

* * * * *

(b) *Procedure for recusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or a hearing committee member or a special master shall be made in accordance with these rules, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion. The procedures applicable to a motion for recusal shall be as follows:

(1) The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).

(2) In the case of a motion to disqualify a hearing committee member or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master **and must specify the grounds upon which the motion is based.**

(3) The motion shall be ruled upon by the challenged member or special master.

(4) An interlocutory appeal from the decision on the motion [, **which appeal shall be ruled upon by the Board Chair,] may be filed with the Board within five business days after the decision on the motion. The appealing party shall serve a copy of the appeal on the nonappealing party by mail on the date that the appealing party files the appeal, and the nonappealing party may file a response within five business days after delivery. The appeal shall be ruled upon by the Board Chair, or the Vice-Chair when the Chair is unavailable.**

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS

GENERAL MATTERS

§ 89.2. [Equity procedure to apply] Procedure in formal proceedings to be governed by Board Rules, Enforcement Rules, and decisional law; limitations on motions.

[Except where inconsistent with these rules, formal proceedings before hearing committees, special masters and the Board shall conform generally to the practice in actions in equity under the Pennsylvania Rules of Civil Procedure.]

(a) Enforcement Rules 208(c) and (d) provide that the procedure in formal proceedings before hearing committees, special masters, and the Board shall be governed by these Rules, the Enforcement Rules, and the decisional law of the Court and the Board in attorney discipline and reinstatement matters.

Official Note: The Pennsylvania Rules of Civil Procedure relating to pleadings, answers to pleadings, motions, and responses to motions, are not applicable to formal proceedings before hearing committees, special masters and the Board.

(b) Limitations on prehearing motions. A motion for summary judgment or judgment on the pleadings, a motion to strike the petition for discipline or portions thereof, a motion to dismiss based on insufficient evidence to proceed with formal charges, any motion attacking the validity of the proceedings or pre-petition procedures, or any similarly-styled motion, shall not be accepted for filing, but if accepted for filing, shall not be entertained.

(c) Limitations on hearing motions. A motion for directed verdict or nonsuit, a motion to dismiss based on insufficient evidence, any motion attacking the validity of the proceedings, or any similarly-styled motion, shall not be accepted for filing, but if accepted for filing, shall not be entertained.

SERVICE OF DOCUMENTS

§ 89.21. Notice by the Board to participants; Service of original process by the Board.

[Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be served by the Executive Office by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at the address of record of such person.

When service is not accomplished by mail, personal service may be effected by any one duly authorized by the Executive Office.]

(a) Notice to participants. The Board shall give notice of orders, notices and other documents generated by the Board by mailing a copy to the participants.

(b) Service of original process on the Board's own motion. A copy of original process in the form of a petition filed, or order issued, by the Board on its own motion shall be personally served upon the respondent-attorney by anyone duly authorized by the Executive Office unless another method of service shall be specifically required by these Rules or the Enforcement Rules; provided, however, that if personal service cannot be made after reasonable efforts to locate and serve the respondent-attorney, service may be made by delivering a copy to an employee, agent or other responsible person at the office of the respondent-attorney, and if that method of service is unavailable, then by mailing a copy in the manner provided in Enforcement Rule 212 (relating to substituted service).

Subchapter B. INSTITUTION OF PROCEEDINGS

§ 89.55. No other pleadings.

Pleadings shall be limited to a petition for discipline (or for reinstatement) and an answer thereto.

Official Note: Preliminary objections to the petition for discipline are not permitted. If an answer to a petition for discipline contains new matter, a reply to the new matter is not required.

**Subchapter C. HEARING PROCEDURES
HEARING**

§ 89.93. Presentation by the parties.

(a) *General rule.* The respondent-attorney and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

Official Note: See D.Bd. Rules § 89.2(c) (relating to equity procedure to apply) for limitations on hearing motions.

(b) *Objections.* When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly, if so requested by the hearing committee or special master, and may be stated briefly if no such request is made. Formal exceptions are unnecessary and shall not be taken to procedural rulings.

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CHAPTER 91. MISCELLANEOUS MATTERS

**Subchapter A. SERVICE, SUBPOENAS,
DEPOSITIONS AND RELATED MATTERS
IN GENERAL**

§ 91.3. Determination of validity of subpoena.

(a) *In general.* Enforcement Rule 213(d) provides that any attack on the validity of a subpoena issued under these rules shall be handled as follows:

(1) A challenge to a subpoena authorized by § 91.2(a)(1) (relating to subpoenas and investigations) shall be heard and determined by the hearing committee

or special master before whom the subpoena is returnable in accordance with the procedure established by the Board in subsection (b).

(2) A challenge to a subpoena authorized by § 91.2(a)(2) shall be heard and determined by a member of a hearing committee in the disciplinary district in which the subpoena is returnable in accordance with the procedure established by the Board in subsection (b).

(3) A determination under paragraph (1) or (2) may be appealed to a lawyer-Member of the Board within ten days after service pursuant to §§ [89.21] 89.21(a) and 89.24 of the determination on the party bringing the appeal by filing a petition with the Board setting forth in detail the grounds for challenging the determination. The appealing party shall serve a copy of the petition on the non-appealing party by mail on the date that the appealing party files the appeal, and the non-appealing party shall have five business days after delivery to file a response. No attack on the validity of a subpoena will be considered by the Designated lawyer-Member of the Board unless previously raised before the hearing committee or special master. The Board Member shall decide the appeal within five business days of the filing of the non-appealing party's response, if any. There shall be no right of appeal to the Supreme Court. Any request for review shall not serve to stay any hearing or proceeding before the hearing committee, special master or the Board unless the Court enters an order staying the proceedings.

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**CHAPTER 93. ORGANIZATION AND
ADMINISTRATION**

Subchapter B. THE DISCIPLINARY BOARD

§ 93.22. Quorum and manner of acting.

(a) *General rule.* Enforcement Rule 205(b) provides that seven members of the Board shall constitute a quorum and that, except when acting under § 93.23(a)(5), (7) [and], (8), (9) and (16) (relating to powers and duties), the Board shall act only with the concurrence of not less than the lesser of:

- 1. seven members, or
- 2. a majority of the members in office who are not disqualified from participating in the matter or proceeding.

(b) *Determination of quorum.* Enforcement Rule 205(b) further provides that the presence of members who are disqualified from participating in one or more matters to be considered at a meeting shall nonetheless be counted for purposes of determining the existence of a quorum for the consideration of all matters on the agenda.

§ 93.23. Powers and duties.

(a) *General rule.* Enforcement Rule 205(c) provides that the Board shall have the power and duty:

* * * * *

(15) To recommend the temporary suspension of a respondent-attorney pursuant to Enforcement Rule 208(f)(5) (relating to emergency temporary suspension orders and related relief).

(16) To decide, through the Board Chair, the Vice-Chair, or a designated lawyer-member of the Board, an interlocutory appeal to the Board when such appeal is permitted by the Enforcement Rules, these rules, or other law.

[16] (17) To exercise the powers and perform the duties vested in and imposed upon the Board by law.

(b) *Consultations with local bar associations.* Enforcement Rule 205(d) provides that the Board shall, to the extent it deems feasible, consult with officers of local bar associations in the counties affected concerning any appointment which it is authorized to make under the Enforcement Rules.

[Pa.B. Doc. No. 20-1067. Filed for public inspection August 7, 2020, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 51]

Proposed Amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges addressing political and campaign activities of judicial candidates in public elections for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
minorrules@pacourts.us

All communications in reference to the proposal should be received by September 22, 2020. 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 Minor Court Rules Committee

MARGARET A. HUNSICKER,
Chair

Annex A

TITLE 207. JUDICIAL CONDUCT PART II. CONDUCT STANDARDS CHAPTER 51. STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES PENNSYLVANIA RULES FOR MAGISTERIAL DISTRICT JUDGES

Canon 4. A magisterial district judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rule 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections.

* * * * *

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, [or] publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot, **or publicly endorse or speak on behalf of candidates for the office of magisterial district judge within the same judicial district;**

(4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(5) seek, accept, or use endorsements from any person or organization;

(6) contribute to a political organization or candidate for public office;

(7) identify himself or herself as a member or candidate of a political organization; and

(8) use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office.

* * * * *

Comment:

General Considerations

(1) Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office.

(2) Despite paragraph (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges,

or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (12), and Rule 4.2(C), paragraph (3).

(3) In public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

(4) Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

(5) For purposes of paragraph (B)(3), candidates are considered to be a candidate for the same judicial office if they are competing for a single judgeship or for one of several judgeships on the same court to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign. **Additionally, the phrase "candidates for any other elective judicial office appearing on the same ballot" means candidates who appear together on the paper ballot or, in the case of electronic voting terminals, appear together on the electronic ballot. However, candidates for magisterial district judge may publicly endorse or speak on behalf of other candidates for magisterial district judge within the same judicial district, as defined by 42 Pa.C.S. § 901(a). Cf., Code of Judicial Conduct, Rule 4.2(B)(3).**

Statements and Comments Made During a Campaign for Judicial Office

(6) Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(3) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

(7) Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (C)(3) or (C)(4), or Rule 4.1, paragraph (A)(12), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

(8) Subject to paragraph (C)(4), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

(9) Paragraph (C)(4) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings,

statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PUBLICATION REPORT

Proposed Amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges

The Minor Court Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges ("Conduct Rules"). The amendment of the Rule and Comment relates to political and campaign activities of candidates for magisterial district judge in public elections.

Currently, Conduct Rule 4.2(B)(3) provides, among other things, that a candidate for elective judicial office may, unless prohibited by law and under certain time parameters, "publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot." The Committee received a request to examine the phrase "on the same ballot" in that Rule, and was advised that there were differing interpretations of the phrase. By one interpretation of the phrase, magisterial district judge candidates could endorse magisterial district judge candidates running in the same election cycle, *i.e.*, a candidate for magisterial district judge endorsing a candidate for magisterial district judge running in another magisterial district. Conversely, the competing interpretation is quite literal, meaning that the candidates must actually appear on the ballot together.

The Supreme Court recently adopted amendments to Rule 4.2 of the Code of Judicial Conduct (governing appellate court judges, common pleas court judges, judges of the Philadelphia Municipal Court except for the Traffic Division, and senior judges of those courts) that defines the phrase "candidates for any other elective judicial office appearing on the same ballot" to mean "candidates who appear together on the paper ballot or, in the case of electronic voting terminals, appear together on the electronic ballot."¹ The Committee is considering recommending to the Supreme Court an amendment to Comment (5) of Conduct Rule 4.2 to add that language.

However, adoption of this new clarifying language means that candidates for magisterial district judge could never endorse each other since each magisterial district is served by one magisterial district judge. One would not expect a candidate for magisterial district judge to endorse his or her opponent—the only other person on the ballot for that position. In contrast, a candidate for magisterial district judge could appear on the same ballot as judicial candidates for the courts of common pleas and statewide appellate courts. Under this new interpretation, a candidate for magisterial district judge could endorse candidates for the statewide appellate courts or for the courts of common pleas in his or her county, but could never endorse a candidate for magisterial district judge.

The Committee agrees that there are benefits to maintaining consistency between the two sets of rules governing judicial conduct. However, there are observable differences between the election process for magisterial district judges and judges of the statewide appellate courts and common pleas courts. Magisterial district judges run for election every six years, while statewide and common pleas court judges run for retention every ten years following their initial election. *See* Pa. Const., art. V,

¹ Order of December 20, 2019, No. 529, Judicial Administration Docket.

§§ 13, 15. Judicial candidates for statewide and common pleas courts are able to run as a slate of judicial candidates, while the literal interpretation of the Rule would appear to prohibit candidates for magisterial district judge from a similar approach.

Therefore, in addition to the proposed amendment relative to the “same ballot” language, the Committee is also considering proposing an amendment to Conduct Rule 4.2(B)(3) and Comment (5) to permit a candidate for magisterial district judge to publicly endorse or speak on behalf of candidates for the office of magisterial district judge within the same judicial district subject to the other provisions of the Rule. Judicial districts are defined by 42 Pa.C.S. § 901(a).

Permitting candidates for magisterial district judge to endorse other candidates for magisterial district judge within the same judicial district could have the effect of increasing the volume of political activity in elections for magisterial district judge; some may argue the case for less political activity in judicial elections. However, the Committee believes this proposal provides an adequate balancing of interests, as endorsement privileges are limited to the candidate’s judicial district. The Committee invites all comments, concerns, and suggestions regarding this proposal.

[Pa.B. Doc. No. 20-1068. Filed for public inspection August 7, 2020, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Amending Rules 1915.3, 1915.5 and 1915.15 of the Pennsylvania Rules of Civil Procedure; No. 707 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 27th day of July, 2020, upon the recommendation of the Domestic Relations Procedural Rules Committee, the proposal having been published for public comment in the *Pennsylvania Bulletin*, 49 Pa.B. 3880 (July 27, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1915.3, 1915.5, and 1915.15 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 October 1, 2020.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided [**by**] **in** subdivision (c), [**an action shall be commenced**] **the plaintiff shall com-**

mence a custody action by filing a verified complaint substantially in the form provided by Pa.R.C.P. No. 1915.15(a).

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*.

(b) An order shall be attached to the complaint **or petition for modification** directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by [**Rule 1915.15(b)**] **Pa.R.C.P. No. 1915.15(c)**.

Official Note: See [§ 5430(d) of the] Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5430(d), relating to costs and expenses for appearance of parties and child, and 23 Pa.C.S. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A [**claim for custody which**] **custody claim that** is joined with [**an action of divorce**] **a divorce action** shall be asserted in the **divorce** complaint or a subsequent petition, which shall be substantially in the form provided by [**Rule**] **Pa.R.C.P. No.** 1915.15(a).

Official Note: [**Rule**] **See Pa.R.C.P. No.** 1920.13(b) [**provides that claims which may be joined with an**] (claims that are joined in a divorce action [**of divorce**] shall be raised [**by the**] **in a** complaint or a subsequent petition).

(d) If the **child’s** mother [**of the child**] is not married and the child has no legal or presumptive father, [**then**] a putative father initiating [**an action for**] a custody [**must**] **action shall** file a **paternity** claim [**of paternity**] pursuant to 23 Pa.C.S. § 5103 and attach a copy to the **custody** complaint [**in the custody action**].

Official Note: If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at [**Rule**] **Pa.R.C.P. No.** 1930.6.

[(e) A grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. § 5323 must plead, in paragraph 9 of the complaint set forth at Rule 1915.15(a), facts establishing standing under § 5324(3). A grandparent or great-grandparent seeking partial physical custody or supervised physical custody must plead, in paragraph 9 of the complaint, facts establishing standing pursuant to 23 Pa.C.S. § 5325.]

(e) **Pleading Facts Establishing Standing.**

(1) **An individual seeking physical or legal custody of a child, who is in loco parentis to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(2) in Paragraph 9(a) of the complaint in Pa.R.C.P. No. 1915.15(a).**

(2) **A grandparent seeking physical or legal custody of a grandchild, who is not in loco parentis to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(3) in Paragraph 9(b) of the complaint in Pa.R.C.P. No. 1915.15(a).**

(3) An individual seeking physical or legal custody of a child, who is not *in loco parentis* to the child, shall plead facts establishing standing under 23 Pa.C.S. § 5324(4) and (5) in Paragraph 9(c) of the complaint in Pa.R.C.P. No. 1915.15(a).

(4) A grandparent or great-grandparent seeking partial physical custody or supervised physical custody of a grandchild or great-grandchild shall plead facts establishing standing under 23 Pa.C.S. § 5325 in Paragraph 9(d) of the complaint in Pa.R.C.P. No. 1915.15(a).

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

Comment—2020

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. The individual seeking custody may or may not be related to the child. Subject to Section 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. A plaintiff proceeding under Section 5324(4) shall satisfy the requirements of that provision by clear and convincing evidence. Additionally, if a juvenile dependency proceeding has been initiated, or is ongoing, or there is an order for permanent legal custody, Section 5324(5) provides that an individual cannot assert standing under Section 5324(4).

Consistent with the Act 21 of 2018 statutory changes, subdivision (e) has been revised to include a third party seeking custody of a child under 23 Pa.C.S. § 5324(4). The subdivision has been reorganized to sequentially follow the statutory provisions in 23 Pa.C.S. §§ 5324(2)—(4) and 5325. Similarly, the Complaint for Custody Paragraph 9 in Pa.R.C.P. No. 1915.15(a) has been reorganized to sequentially follow the statutory provisions and rules sequence, as well. See Pa.R.C.P. No. 1915.15(a).

Rule 1915.5. Question of Jurisdiction, Venue, or Standing. [**No Responsive Pleading by Defendant Required.**] Counterclaim. Discovery. **No Responsive Pleading by Defendant Required.**

[(a) A party must raise any question of jurisdiction of the person or venue, and may raise any question of standing, by preliminary objection filed within twenty days of service of the pleading to which objection is made or at the time of hearing, whichever first occurs. No other pleading shall be required, but if one is filed it shall not delay the hearing.]

(a) Question of Jurisdiction, Venue, or Standing.

(1) A party shall raise jurisdiction of the person or venue by preliminary objection.

(2) A party may raise standing by preliminary objection or at a custody hearing or trial.

(3) The court may raise standing *sua sponte*.

(4) In a third-party plaintiff custody action in which standing has not been resolved by preliminary objection, the court shall address the third-party plaintiff's standing and include its standing decision in a written opinion or order.

Official Note: The court may raise at any time a question of (1) jurisdiction over the subject matter of the action or (2) the exercise of its jurisdiction pursuant to [§] **Section** 5426 of the Uniform Child Custody Jurisdiction and Enforcement Act, relating to simultaneous proceedings in other courts, [§] **Section** 5427, relating to inconvenient forum, and [§] **Section** 5428, relating to jurisdiction declined by reason of conduct. The Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S. § 5407, provides that, upon request of a party, an action in which a question of the existence or exercise of jurisdiction is raised shall be given calendar priority and handled expeditiously.

(b) A party may file a counterclaim asserting the right of physical or legal custody within [**twenty**] **20** days of service of the complaint upon that party or at the time of hearing, whichever first occurs. The claim shall be in the same form as a complaint as required by [**Rule**] **Pa.R.C.P. No. 1915.3.**

(c) There shall be no discovery unless authorized by special order of court.

Official Note: The rule relating to discovery in domestic relations matters generally is [**Rule**] **Pa.R.C.P. No. 1930.5.**

(d) Except as set forth in subdivisions (a) and (b), a responsive pleading shall not be required. If a party files a responsive pleading, it shall not delay a hearing or trial.

Explanatory Comment—1994

Under subdivision (a), the defendant may but is not required to plead to the complaint. All averments may be disputed by the defendant at the custody hearing. An attorney who wished to file another pleading may do so. However, the action is not to be delayed to permit its filing.

Comment—2020

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. Subject to the limitations in 23 Pa.C.S. § 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child's welfare; and (3) the child's parents do not have care and control of the child. A plaintiff proceeding under Section 5324(4) shall satisfy the requirements of that provision by clear and convincing evidence.

Typically, when a third party is seeking custody of a child, the child's parents can raise the issue of the third party's standing to pursue custody. However, Section 5324(4) permits a party to seek custody of a child only when the child's parents do not have care and control of the child. If the parents' lack of care and control also results in their non-participation in the custody litigation, the third party's standing may go unchallenged. Subdivision (a) has been amended by including two new subdi-

visions to address this circumstance. Subdivision (a)(3) permits the court to raise standing sua sponte and, if third-party standing is not resolved by preliminary objection, the court shall address the standing issue in its written opinion or order as required by subdivision (a)(4).

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

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

(Caption)

COMPLAINT FOR CUSTODY

1. The plaintiff is _____, residing at _____ (Street) (City) (Zip Code) (County).

2. The defendant is _____, residing at _____ (Street) (City) (Zip Code) (County).

3. Plaintiff seeks (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the following child(ren):

Table with 4 columns: Name, Present Residence, Age. Includes blank lines for entry.

The child (was) (was not) born out of wedlock.

The child is presently in the custody of _____, (Name) who resides at _____ (Street) (City) (State).

During the past five years, the child has resided with the following persons and at the following addresses:

Table with 3 columns: (List All Persons), (List All Addresses), (Dates). Includes blank lines for entry.

A parent of the child is _____, currently residing at _____. This parent is (married) (divorced) (single).

A parent of the child is _____, currently residing at _____. This parent is (married) (divorced) (single).

4. [The] Plaintiff's relationship [of plaintiff] to the child is that of _____.

[The plaintiff] Plaintiff currently resides with the following persons:

Table with 2 columns: Name, Relationship. Includes blank lines for entry.

5. [The] Defendant's relationship [of defendant] to the child is that of _____.

[The defendant] Defendant currently resides with the following persons:

Table with 2 columns: Name, Relationship. Includes blank lines for entry.

6. Plaintiff (has) (has not) participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another court. The court, term and number, and its relationship to this action is:

Blank lines for providing court information.

Plaintiff (has) (has no) information of a custody proceeding concerning the child pending in a court of this Commonwealth or any other state. The court, term and number, and its relationship to this action is: _____.

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have custodial rights with respect to the child. The name and address of such person is: _____ .

7. The **child's** best interest and permanent welfare [**of the child**] will be served by granting the relief requested because (set forth facts showing that the granting of the relief requested will be in the **child's** best interest and permanent welfare [**of the child**]):

_____ .

8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child have been named as parties to this action. All other persons, named below, who are known to have or claim a right to custody of the child will be given notice of the pendency of this action and the right to intervene:

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____

[9. (a) If the plaintiff is a grandparent who is not in loco parentis to the child and is seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5323, you must plead facts establishing standing pursuant to 23 Pa.C.S. § 5324(3).

(b) If the plaintiff is a grandparent or great-grandparent who is seeking partial physical custody or supervised physical custody pursuant to 23 Pa.C.S. § 5325, you must plead facts establishing standing pursuant to § 5325.

(c) If the plaintiff is a person seeking physical and/or legal custody pursuant to 23 Pa.C.S. § 5324(2) as a person who stands in loco parentis to the child, you must plead facts establishing standing.

_____]

9. (a) If the plaintiff is seeking physical or legal custody of a child and is in loco parentis to the child, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5324(2).

(b) If the plaintiff is a grandparent seeking physical or legal custody of a grandchild and is not in loco parentis to the child, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5324(3).

(c) If the plaintiff is seeking physical or legal custody of a child and is not in loco parentis to the child, the plaintiff shall plead facts establishing standing pursuant to 23 Pa.C.S. § 5324(4) and (5).

(d) If the plaintiff is a grandparent or great-grandparent seeking partial physical custody or supervised physical custody of a grandchild or great-grandchild, the plaintiff shall plead facts establishing standing under 23 Pa.C.S. § 5325.

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

Wherefore, [**plaintiff**] **Plaintiff** requests the court to grant (shared legal custody) (sole legal custody) (partial physical custody) (primary physical custody) (shared physical custody) (sole physical custody) (supervised physical custody) of the child.

Plaintiff/Attorney for Plaintiff

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

 Plaintiff

Official Note: The form of complaint is appropriate if there is one plaintiff and one defendant and [**if**] the custody of one child is sought [**, or if**] **or** the custody of several children is sought and the information required by [**paragraphs**] **Paragraphs** 3 to 7 is identical for all of the children. If there are [**multiple**] **more than two** parties, the complaint should be appropriately adapted to accommodate them. If the custody of several children is sought and the information required is not identical for all of the children, the complaint should contain a separate paragraph for each child.

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*.

* * * * *

Explanatory Comment—2008

In an effort to promote uniformity of practice throughout the Commonwealth, several forms are included in the rules. Two aspects of these forms are worthy of mention. First, much of the information which must be set forth in the complaint is required by the Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa.C.S.A. § 5429. Second, the complaint is verified by use of a statement that it is subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

Comment—2020

Act of May 4, 2018, P.L. 112, No. 21, amended 23 Pa.C.S. § 5324 by adding a new class of third-party standing for individuals seeking custody of a child whose parents do not have care and control of the child. The individual seeking custody may or may not be related to the child. Subject to the limitations in 23 Pa.C.S. § 5324(5), the newly added standing provision requires that: (1) the individual has assumed or is willing to assume responsibility for the child; (2) the individual has a sustained, substantial, and sincere interest in the child’s welfare; and (3) the child’s parents do not have care and control of the child. A plaintiff proceeding under Section 5324(4) shall satisfy the requirements of that provision by clear and convincing evidence. Additionally, if a juvenile dependency proceeding has been initiated, or is ongoing, or if there is an order for permanent legal custody, Section 5324(5) provides that an individual cannot assert standing under Section 5324(4).

Consistent with the Act’s statutory change, the Complaint for Custody Paragraph 9 has been re-

vised to include a third party seeking custody of a child under 23 Pa.C.S. § 5324(4) and has been reorganized to sequentially follow the statutory provisions in 23 Pa.C.S. §§ 5324(2)—(4) and 5325. Similarly, Pa.R.C.P. No. 1915.3(e) has been reorganized to sequentially follow the statutory provision sequence. See Pa.R.C.P. No. 1915.3(e).

[Pa.B. Doc. No. 20-1069. Filed for public inspection August 7, 2020, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 1990]

Proposed Amendment of Pa.R.C.P. No. 240 and Proposed Adoption of Pa.R.J.A. No. 1990

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 240 and the adoption of Pa.R.J.A. No. 1990 to govern the procedure for requesting and determining a request to proceed *in forma pauperis* 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 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 9, 2020. 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*

JOHN J. HARE,
Chair

PUBLICATION REPORT

The Civil Procedural Rules Committee is considering proposing the amendment of Rule 240 and the adoption of new Rule of Judicial Administration 1990 to govern the request to proceed *in forma pauperis* (IFP). The Committee undertook review of this issue based, in part, on a suggestion that the current procedure in Rule 240 “to mitigate the formidable costs of litigation to the indigent ensuring that . . . courthouse doors are always open, even to those who are poor[,] . . . may prove illusory. . .” *Shore v. Pa. Dep’t of Corrections*, 179 A.3d 441 (Pa. 2018) (Justice Wecht, concurring statement).

Current Rule 240 sets forth the procedure to request to proceed IFP based upon an inability to pay court costs. The rule requires a self-represented litigant to file a petition requesting such status along with an affidavit in support of the petition either simultaneously with the commencement of an action or afterward. The affidavit requests financial information regarding the litigant’s household, including income, assets, and liabilities. Rule 240 also permits a litigant represented by an attorney to proceed IFP. In contrast to the self-represented litigant, however, the litigant represented by an attorney may proceed IFP upon the attorney’s filing of a *praecipe* containing a certification that the attorney is providing free legal advice to the party and the party is believed to be unable to pay the costs of litigation. Rule 240 does not contain any objective criteria for the judge to make a determination as to whether a petitioner qualifies to proceed *in forma pauperis*.

Although Rule 240 governs requests to proceed *in forma pauperis* in the court of common pleas in civil matters, such requests are considered by other courts in the Unified Judicial System. *See, e.g.*, Pa.R.A.P. 551–561; Pa.R.C.P.M.D.J. No. 206. As a result, a joint subcommittee was formed to examine the current rule, identify the deficiencies of current practice, and develop a framework to address the concerns raised by the concurring statement in *Shore* with the goal of establishing a procedure to be used among the several courts. In addition to delegates from the Civil Procedural Rules Committee, the joint subcommittee consisted of delegates from the Appellate Court Procedural Rules Committee, Domestic Relations Procedural Rules Committee, and the Minor Court Rules Committee.

The joint subcommittee identified the current rules of procedure governing IFP: Pa.R.C.P. No. 240, Pa.R.C.P.M.D.J. No. 206, and Pa.R.A.P. 551, 552, 553, 561, 2151. Pa.R.C.P. No. 240 and Pa.R.C.P.M.D.J. No. 206 are nearly identical. They prescribe the procedure for applying for IFP status. Upon reviewing the rules, the joint subcommittee identified three types of IFP petitioners:

(1) *pro bono*—the rules grant a party IFP status if they are represented by an attorney upon the filing of a *praecipe* by the attorney certifying that the party is indigent;

(2) *pro se*—a self-represented party is required to file a petition to proceed IFP as well as an affidavit disclosing income, assets, and liabilities for a determination for IFP status; and

(3) *pro se prisoner*—self-represented prisoners are required to follow the same procedure as any *pro se* party, but they are also subject to the Pennsylvania Litigation Reform Act, 42 Pa.C.S. §§ 6601 *et seq.*

The joint subcommittee also reviewed rules and forms used by the federal courts and other states. The criteria used by some states for granting IFP status is “adjunctive eligibility,” *i.e.*, if a litigant has qualified for and is receiving benefits from a government poverty program, *e.g.*, Supplemental Nutrition Assistance Program, the litigant has a presumption of eligibility for IFP status. Other states use a percentage of the federal poverty income guidelines as the criteria for determining IFP status.

The joint subcommittee also recognized that the current procedure varies from county to county. Some counties review petitions for IFP status in motions court, other counties adjudicate them after administrative review without hearing. The joint subcommittee concluded that a uniform procedure for determining IFP status would be beneficial for both litigants and courts.

The joint subcommittee recommended that the procedure be placed within the Rules of Judicial Administration. With regard to civil practice, Rule 240 would be amended to cross-reference a Rule of Judicial Administration, but retain any procedure that is specific to civil actions. *See, e.g.*, Pa.R.A.P. 240(j)(2) (governing actions commenced by a writ of summons). The placement of the IFP procedure within a Rule of Judicial Administration is intended to ensure uniformity in its application regardless of the court in which IFP status is requested.

The proposed Rule of Judicial Administration provides as follows:

Subdivision (a) sets forth the scope of the rule and specifies the costs and fees that may be waived pursuant to the rule.

Subdivision (b) defines a litigant eligible for IFP status as a person who is without financial resources according to the criteria set forth in subdivision (b)(1) or who will suffer a substantial financial hardship to pay fees and costs according to the criteria set forth in subdivision (b)(2).

Subdivision (b)(1) addresses litigants without financial resources and provides three categories for those persons who are without financial resources. They will automatically qualify for IFP status upon providing appropriate documentation. They include any person who:

(1) receives needs-based public assistance;

(2) is represented by an attorney who is practicing in a legal aid organization or who certifies that he or she is providing the party with free legal services and believes the party is unable to pay the fees and costs. While no further documentation is required of a legal aid attorney, the attorney certifying his or her *pro bono* representation and the party’s inability to pay fees and costs must complete and sign a *Praecipe* to Waive Fees and Costs. The suggested form is set forth in subdivision (i); or

(3) meets an income and asset requirement of a gross income that is 200% or less of the federal poverty income guidelines for the party’s household size, and assets of less than \$10,000 (excluding the party’s home and one vehicle).

Subdivision (b)(2) provides that a litigant who does not qualify under subdivision (b)(1) may nonetheless apply for IFP status if the litigant believes that he or she cannot pay without a substantial financial hardship and provides additional information for the court to make a determination. For these litigants, the court is required to conduct a hearing to determine eligibility.

Subdivision (c) requires a party to file an application to waive fees and costs, provide necessary information and supporting documentation as specified on the form set forth in subdivision (h). It also prohibits the filing of an application for IFP status before commencing an action and sets forth the procedure when an application is filed with the commencement of an action or after the commencement of an action.

Subdivision (d) requires action by the court on the application to waive fees and costs. It contemplates that the court or its designee will review the application to determine IFP status pursuant to subdivision (b)(1), *i.e.*, those litigants without financial resources. The court may deny an application only after conducting a record hearing and finding that the application is incomplete and the party either cannot provide the missing information, cannot provide documentation supporting the party's application, included inaccurate information on the application or the supporting documents, or the court concludes the party will not suffer a substantial financial hardship. It is important to note that this is a departure from the current rule and current practice. The requirement for a record hearing is intended to address the concern that there be a record establishing the reasons for the denial in order to aid the appellate court review.

Subdivision (e) carries over the language of Rule 240(g) providing when a party with IFP status subsequently obtains a monetary recovery by judgment or settlement, the party paying the monetary recovery shall pay the filing office the waived fees and costs from the monetary recovery as taxed costs.

Subdivision (f) carries over the language of Rule 240(j)(1) providing that when an action is commenced at the same time as the filing of an application for IFP status, the court may, prior to acting on the application, dismiss the action if the allegation of poverty is unsubstantiated or the action is frivolous.

Subdivision (g) sets forth the suggested form for the Application to Waive Fees and Costs required by subdivision (c).

Subdivision (h) sets forth the suggested form for the *Præcipe* to Waive Fees and Costs required by subdivision (b)(1)(i)(B).

The proposed amendment to Rule 240 would include a replacement of the current procedure with a cross-reference to the proposed Rule of Judicial Administration. As noted above, amended Rule 240 would retain the procedure set forth in current subdivision (j)(2), specifying certain requirements when a petition to proceed *in forma pauperis* is filed when commencing an action by a writ of summons, as that procedure applies to civil cases only.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 240. *In Forma Pauperis*. Application to Waive Fees and Costs.

[(a) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act and Protection of Victims of Sexual Violence or Intimidation Act.

Official Note: The term “all civil actions and proceedings” includes all domestic relations actions except those brought pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6106, and Protection of Victims of Sexual Violence or Intimidation Act, 42 Pa.C.S. §§ 62A01—62A60.

(b) A party who is without financial resources to pay the costs of litigation is entitled to proceed *in forma pauperis*.

(c) Except as provided by subdivision (d), the party shall file a petition and an affidavit in the form prescribed by subdivision (h). The petition may not be filed prior to the commencement of an action or proceeding or the taking of an appeal.

(1)(i) If the petition is filed simultaneously with the commencement of the action or proceeding or with the taking of the appeal, the prothonotary shall docket the matter and petition without the payment of any filing fee.

(ii) If the court shall thereafter deny the petition, the petitioner shall pay the filing fee for commencing the action or proceeding or taking the appeal. A party required to pay such fee may not without leave of court take any further steps in the action, proceeding or appeal so long as such fee remains unpaid. Not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter a judgment of *non pros* in the action or proceeding or strike the appeal if the fee remains unpaid. The action, proceeding or appeal shall be reinstated only by the court for good cause shown.

(2) If the action or proceeding is commenced or the appeal is taken without the simultaneous filing of a petition, the appropriate filing fee must be paid and shall not be refunded if a petition is thereafter filed and granted.

(3) Except as provided by subdivision (j)(2), the court shall act promptly upon the petition and shall enter its order within twenty days from the date of the filing of the petition. If the petition is denied, in whole or in part, the court shall briefly state its reasons.

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed *in forma pauperis* upon the filing of a *præcipe* which contains a certification by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs.

(2) The *praecipe* shall be substantially in the form prescribed by subdivision (i).

(e) A party permitted to proceed *in forma pauperis* has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

(f) A party permitted to proceed *in forma pauperis* shall not be required to

(1) pay any cost or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee, or

(2) post bond or other security for costs as a condition for commencing an action or proceeding or taking an appeal.

(g) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed *in forma pauperis*, the exonerated fees and costs shall be taxed as costs and paid to the prothonotary by the party paying the monetary recovery. In no event shall the exonerated fees and costs be paid to the indigent party.

(h) The affidavit in support of a petition for leave to proceed *in forma pauperis* shall be substantially in the following form:

(Caption)

1. I am the (plaintiff) (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: _____
 Address: _____

(b) *Employment*

If you are presently employed, state

Employer: _____

Address: _____

Salary or wages per month: _____

Type of work: _____

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) *Other income within the past twelve months*

Business or profession: _____

Other self-employment: _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social security benefits: _____

Support payments: _____

Disability payments: _____

Unemployment compensation and supplemental benefits: _____

Workers' compensation: _____

Public assistance: _____

Other: _____

(d) *Other contributions to household support*

(Wife) (Husband) Name: _____

If your (wife) (husband) is employed, state

Employer: _____

Salary or wages per month: _____

Type of work: _____
 Contributions from children: _____
 Contributions from parents: _____
 Other contributions: _____

(e) *Property owned*

Cash: _____
 Checking account: _____
 Savings account: _____
 Certificates of deposit: _____
 Real estate (including home): _____
 Motor vehicle: Make _____, Year _____,
 Cost _____, Amount Owed \$ _____
 Stocks and bonds: _____
 Other: _____

(f) *Debts and Obligations*

Mortgage: _____
 Rent: _____
 Loans: _____
 Other: _____

(g) *Persons dependent upon you for support*

(Wife) (Husband) Name: _____
 Children, if any:
 Name: _____ Age: _____

 Other Persons:
 Name: _____
 Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

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

Date: _____

 Petitioner

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant) to proceed *in forma pauperis*.

I, _____, attorney for the party proceeding *in forma pauperis*, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party.

 Attorney for

(j)(1) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed *in forma pauperis*, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Official Note: A frivolous action or proceeding has been defined as one that “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

(2) If the petitioner commences the action by writ of summons, the court shall not act on the petition for leave to proceed *in forma pauperis* until the complaint is filed. If the complaint has not been filed within ninety days of the filing of the petition, the court may dismiss the action pursuant to subdivision (j)(1).

Official Note: The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 205.6.]

(a) Except as provided in subdivision (b), the procedure for requesting to proceed *in forma pauperis* in all civil actions is set forth in Pennsylvania Rule of Judicial Administration 1990.

(b) If a party commences a civil action by a writ of summons and the party seeks to proceed *in forma pauperis*:

(1) The court shall not act on an application to waive fees and costs until the party files a complaint.

(2) If the party has not filed a complaint within 90 days of the application's filing date, the court may deny the application and dismiss the action pursuant to Pa.R.J.A. No. 1990(f).

Official Note: The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 205.6.

CHAPTER 1990. APPLICATION TO WAIVE FEES AND COSTS (IN FORMA PAUPERIS)

(Editor's Note: The following rule is proposed to be added and printed in regular text to enhance readability.)

Rule 1990. Application to Waive Fees and Costs (In Forma Pauperis).

(a) *Scope.* This rule shall govern the procedure for waiving fees and costs imposed or authorized by an Act of Assembly or general rule that are payable to a court, filing office, or public officer or employee, or require the posting of a bond or other security for costs as a condition for commencing an action, proceeding, or appeal.

Official Note: The term "action, proceeding, or appeal" excludes those brought pursuant to the Protection From Abuse Act, 23 Pa.C.S. §§ 6101—6122 and Protection of Victims of Sexual Violence or Intimidation Act, 42 Pa.C.S. §§ 62A01—62A20.

(b) *Eligibility.* A party who is without financial resources, as set forth in subdivision (b)(1), or who will suffer a substantial financial hardship by paying the fees and costs associated with litigation, as set forth in subdivision (b)(2), is entitled to a waiver of fees and costs, in whole or in part.

(1) *Without Financial Resources.* If the party is eligible under this subdivision and provides documentation supporting eligibility, the court shall order the party's fees and costs waived without a hearing. A party is without financial resources if the party:

(i) receives needs-based public assistance (including, but not limited to, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), or Temporary Assistance to Needy Families (TANF));

(ii) is represented by an attorney:

(A) practicing in a legal aid organization; or

(B) that certifies he or she is providing the party with free legal services and believes the party is unable to pay the fees and costs. The party shall attach to the application the *Praecepte* to Waive Fees and Costs set forth in subdivision (i), which the attorney has completed and signed; or

(iii) meets the following income and asset requirement:

(A) gross income (*i.e.*, before taxes and other deductions) that is 200% or less than the federal poverty guidelines for the party's household size; and

(B) assets less than \$10,000, excluding the party's home and one vehicle.

(2) *Substantial Financial Hardship.* If a party is ineligible for a waiver of fees and costs under subdivision (b)(1), but the party believes that he or she cannot pay the fees and costs without a substantial financial hardship, the court shall conduct a record hearing to determine the party's eligibility under this subdivision.

Official Note: See subdivision (d)(2).

(i) The following factors shall determine whether a substantial hardship exists:

(A) the party's gross income, assets, and expenses;

(B) the number of minor children or adult children, who are incapable of self-support due to a physical or mental disability, that the party is supporting, including a child support obligation;

(C) employment history;

(D) other available financial resources, including resources from individuals who have a duty of support to the party; and

(E) other factors affecting the party's income, assets, or expenses.

(ii) If the party establishes a substantial financial hardship, the court in its discretion may:

(A) waive some or all of the fees and costs; or

(B) permit the party to file the action with a partial payment in an amount determined by the court with periodic payments in an amount determined by the court until the full amount is paid.

Official Note: In addition to this rule, an inmate applying for a waiver of fees and costs in prison conditions litigation shall comply with the Pennsylvania Prison Litigation Reform Act, 42 Pa.C.S. §§ 6601—6608.

(c) *Application.* A party requesting a waiver of fees and costs shall file an application on the form set forth in subdivision (h) and provide the necessary information and supporting documentation as specified on the application.

(1) A party may not file an application to waive fees and costs before commencing an action, proceeding, or appeal.

2. I am providing the following information about people who live with me:
- a. I support _____ adults (not counting myself) who live with me.
 - b. I support _____ children under 18 who live with me.
3. Do you currently receive one or more of the public benefits listed below:
- Yes No

***** If you answered "yes," you must provide documentation or other evidence that you are receiving public benefits. *****

- Supplemental Nutrition Assistance Program (SNAP) (food stamps)
- Medicaid
- Supplemental Security Income (SSI) (Not Social Security)
- Temporary Assistance to Needy Families (TANF)
- Public Housing or Section 8 Housing
- Needs-based VA Pension
- Low-Income Energy Assistance
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Other need-based federal, state, or local program: What program?

***** If you answered "Yes" to Section 3 skip Sections 4 and 5. Read Section 6 and sign/date the form. *****

4. If you answered "No" in Section 3, please complete this section.
- a. Are you represented by Legal Aid or by an attorney who is representing you for free?

Yes No
 - b. If an attorney, other than a legal aid attorney, represents you for free, please attach to this application the *Praecepte* to Waive Fees and Costs that was signed by the attorney.

***** If you answered "Yes" to Section 4 skip Section 5. Read Section 6 and sign/date the form. *****

5. If you answered "No" in Sections 3 and 4, please complete this section.
- a. I believe I cannot afford to pay the court fees and costs in this case.
 - b. I receive this monthly gross income (income before paying taxes and other deductions). Do not leave any lines blank. If you do not receive income from that source, put a zero on the line.

***** You must provide documentation or other evidence supporting the information you have included in this Section. Read Section 6 and sign/date the form *****

\$ _____	monthly gross wages. I work as a _____ (job title/description) for _____ (name of employer) .						
\$ _____	unemployment compensation. I have been unemployed since _____ (date) . My last employer was _____ (name of employer) .						
\$ _____	money from other people.						
\$ _____	<table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Retirement/Pension</td> <td><input type="checkbox"/> Disability</td> </tr> <tr> <td><input type="checkbox"/> Workers Comp</td> <td><input type="checkbox"/> Social Security</td> </tr> <tr> <td><input type="checkbox"/> Child/Spousal support</td> <td>Other sources: _____</td> </tr> </table>	<input type="checkbox"/> Retirement/Pension	<input type="checkbox"/> Disability	<input type="checkbox"/> Workers Comp	<input type="checkbox"/> Social Security	<input type="checkbox"/> Child/Spousal support	Other sources: _____
<input type="checkbox"/> Retirement/Pension	<input type="checkbox"/> Disability						
<input type="checkbox"/> Workers Comp	<input type="checkbox"/> Social Security						
<input type="checkbox"/> Child/Spousal support	Other sources: _____						
\$ _____	Total monthly gross income _____ (describe sources)						
c. What is the value of the property you own?							
\$ _____	Cash						
\$ _____	Bank accounts or other financial assets						
\$ _____	Cars or other vehicles						
\$ _____	House						
\$ _____	Other property: _____ (describe) _____						
\$ _____	Total value of property _____						

*** If you are requesting a waiver due to a substantial financial hardship, please complete the following Section related to your expenses ***

d. What are your monthly expenses?

\$ _____	Rent/mortgage payment
\$ _____	Food and household supplies
\$ _____	Utilities, including cell phone
\$ _____	Clothing and other personal expenses
\$ _____	Medical and dental expenses/insurance
\$ _____	Child care
\$ _____	Transportation, including car payments and repairs
\$ _____	Child and spousal support or alimony
\$ _____	Other expenses: _____ (describe)

\$ _____	Total monthly expenses

e. Are there other facts that you would like the court to know about your circumstances that may help the court decide whether to grant your application?

6. I understand that I have a continuing obligation to inform the court of an improvement in my financial circumstances that would permit me to pay the fees and costs in this case. If I fail to inform the court of any changes in my circumstances, I understand that the court may rescind the waiver of fees and costs and order me to pay those fees and costs.

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

_____ Date _____ Applicant's Signature

(h) *Praeceptum Form*. The praecipe required by subdivision (b)(1)(ii)(B) shall be substantially in the following form:
(Caption)

PRAECIPE TO WAIVE FEES AND COSTS

Kindly allow _____, (Plaintiff) (Defendant), to proceed without paying fees and costs.

I, _____, attorney for the party requesting a waiver of fees and costs, certify that I believe the party is unable to pay the fees and costs, and I am providing free legal services to the party.

Attorney for _____

Official Note: The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

[Pa.B. Doc. No. 20-1070. Filed for public inspection August 7, 2020, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CRAWFORD COUNTY

In the Matter of the Modification of Local Civil Rules of Procedure; No. AD 2008-1807

Order

And Now, July 23, 2020, the Court Orders as follows:

1. Crawford County Local Rules of Civil Procedure 1301 and 1302, governing compulsory arbitration, are hereby Amended as follows this Order, effective thirty days after publication in the *Pennsylvania Bulletin*;

2. The Crawford County District Court Administrator is Ordered and Directed to do the following:

a. File one copy of the amended local rules with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us;

b. File two paper copies and one electronic copy in Microsoft Word format of the amended local rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. Publish the amended local rules on the Crawford County Court website at www.crawfordcountypa.net;

d. Incorporate the amended local rules in the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*;

e. Forward one copy of the amended local rule for publication in the *Crawford County Law Journal*;

f. Forward one copy of the amended local rules to the Crawford County Law Library; and

g. Keep this Order and copies of the amended local rules continuously available for public inspection and copying in the Office of the Prothonotary.

By the Court

JOHN F. SPATARO,
President Judge

Deleted text is bold and bracketed. New text is bold and underlined.

Rule 1301. Arbitration.

(1) *Cases Subject to Arbitration.*

All cases which are at issue where the amount in controversy [**shall be twenty-five (\$25,000) thousand dollars or less**], exclusive of interest and costs, **does not exceed the maximum limitation prescribed by 42 Pa.C.S. § 7361(b)(2)** shall be submitted and heard by a Board of Arbitrators consisting of three (3) members [**or one (1) member**] of the Bar in active practice in this County.

In all cases where a party has obtained a judgment by default, said party may elect to have unliquidated damages assessed at a trial by arbitration with the issues limited to the amount of damages which shall not exceed [**twenty-five (\$25,000) thousand dollars**] **the maximum limitation prescribed by 42 Pa.C.S. § 7361(b)(2)**. The election to assess damages by arbitration shall constitute a waiver by the party making such election of any damages in excess of [**\$25,000**] **the maximum limitation prescribed by 42 Pa.C.S. § 7361(b)(2)**.

(2) *Arbitration by Stipulation.*

By agreement signed by the parties or their counsel, the parties may agree to submit a case to arbitration. Such agreement shall define the issues and contain such stipulation as to facts, admissions, or waivers of defenses or proofs as are agreed upon.

(3) *Exceptions.*

These rules shall not apply to the following actions:

- (a) Ejectment
- (b) Quiet Title
- (c) Replevin—except by Order of Court
- (d) Mandamus
- (e) Quo Warranto
- (f) Mortgage Foreclosure
- (g) Actions requiring Equitable or Declaratory Relief

(4) *Compensation of Board.*

(a) Each member of a Board of Arbitration shall receive as compensation a fee in an amount as set by the Court from time to time by special order. Where hearings exceed 1/2 day, the arbitrators may petition the Court for additional compensation, which may be granted for cause shown.

(b) In the event that a case shall be settled or withdrawn or otherwise terminated by or between the parties before the board members have attended any hearing, the attorney for plaintiff(s) in such case shall file a praecipe with the Prothonotary, requesting that the board so

appointed be vacated. A copy of the praecipe shall be given to the Court Administrator.

(5) *Procedure for Payment.*

Where the arbitrators are entitled to a fee, the Prothonotary shall certify to the County Commissioner and to the County Treasurer the names of the members of the Board and an Order for payment. The County Commissioners and Treasurer shall pay the applicable fee to each member of the Board. Such fees shall not be taxed as costs.

Rule 1302. List of Arbitrators. Appointment to Board. Oath.

(1) *Eligibility to Serve as Arbitrators.*

Only persons actively engaged in the practice of law in Crawford County shall be eligible to serve as arbitrators. For purposes of this rule, persons “actively engaged in the practice of law” are persons who regularly maintain a law office in Crawford County for the practice of law. That shall include part-time assistant public defenders and part-time assistant district attorneys. Excluded are the chief public defender, the district attorney, and full time assistant public defenders and full-time assistant district attorneys. Only persons admitted to the practice of law for at least five (5) years are eligible to serve as chair of the Board [**, or as sole arbitrator**].

(2) *List of Arbitrators.*

The Court Administrator shall, on or before January 1 of each year, compile a list of persons eligible to serve as arbitrators and a list of persons eligible to serve as chair of Boards of Arbitrator [**, or as sole arbitrator**].

(3) *Selection of Board.*

A party wishing to have an arbitration hearing shall file a Praecipe for Arbitration with the Prothonotary and simultaneously serve a copy on the Court Administrator. A Praecipe for Arbitration shall contain a certificate of service indicating service upon all other parties and the date of service.

[**(a) Selection Method.**]

The Court Administrator shall select the first three (3) available attorneys in alphabetical order from the list maintained by the Court Administrator. The first member named who is eligible to be chair shall be chair of the board [**; or**

(b) Sole Arbitrator.

A sole arbitrator may be selected to adjudicate the case by agreement of all parties. The award shall have the same effect as that of a three (3) person panel. The Court Administrator shall select the sole arbitrator.]

(4) *Notification of Appointment and Objections.*

The Prothonotary shall file the appointment of the Board of Arbitrators and shall deliver a copy thereof to the chair and to each party or their counsel of record. Attorneys must sign their qualifications within five (5) business days after their appointment. The Prothonotary shall approach the President Judge if attorneys have not signed their qualification within said period of time. Any party may object to the composition of the Board of Arbitration at this point only for good cause shown. The filing of such objections shall operate as a stay of proceedings. The party filing such objections shall serve a copy thereof upon all other parties or their counsel and shall give notice of intention to present the objections to

Motions Court. Failure to file such objections within five (5) days of delivery of notice of the appointment shall operate as a waiver thereof.

(5) *Companion Cases.*

The Court Administrator shall appoint the same Board to serve as arbitrator in any companion case.

(6) *Vacancies on Board—Prior to Hearing.*

An attorney appointed to the Board of Arbitrators who desires to be excused must file a motion with the Prothonotary, with a copy to the Court Administrator, at least ten (10) days prior to the date of the arbitration hearing and must set forth adequate reasons in support of said motion. Upon approval of the motion by the Court, the Court Administrator shall make an appointment to fill that vacancy. Should a member of the Board fail to attend the hearing, a member of the Board shall notify the Court Administrator who shall immediately vacate that appointment and make an appointment to fill that vacancy.

(7) *Post-Hearing Vacancies.*

Should a vacancy on the Board of Arbitration occur after hearing but before an award is signed by all arbitrators, or should a member of the board fail or refuse to perform his/her duties, the award shall be signed and filed by the remaining members of the Board. If they are unable to agree, they shall notify the Court Administrator who shall appoint a third member. Thereafter, the arbitrators may in their discretion schedule a rehearing for the new Board, which shall thereafter file an award.

[Pa.B. Doc. No. 20-1071. Filed for public inspection August 7, 2020, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated July 27, 2020, Stephen Daniel Brinton (# 94817) is Suspended on Consent from the Bar of this Commonwealth for a period of three years, with six months to be served. The remaining period is stayed, and he is placed on probation for a period of two-years and six months. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides

outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,
Board Prothonotary

[Pa.B. Doc. No. 20-1072. Filed for public inspection August 7, 2020, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that William S. Winters having been suspended from the practice of law in the State of New Jersey; the Supreme Court of Pennsylvania issued an Order dated July 27, 2020 suspending William S. Winters from the practice of law in this Commonwealth for a period of five years, effective August 26, 2020. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,
Board Prothonotary

[Pa.B. Doc. No. 20-1073. Filed for public inspection August 7, 2020, 9:00 a.m.]

SUPREME COURT

Relocation of Magisterial District 33-3-02 within the Thirty-Third Judicial District of the Common- wealth of Pennsylvania; No. 444 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 24th day of July, 2020, upon consideration of the Petition for Relocation of Magisterial District Court 33-3-02 within the Thirty-third Judicial District (Armstrong County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the relocation of Magisterial District 33-3-02 to 128 South Grant Avenue, Kittanning, Pennsylvania, outside of the boundaries of the magisterial district from which the judge is elected, to be effective August 1, 2020, is granted.

[Pa.B. Doc. No. 20-1074. Filed for public inspection August 7, 2020, 9:00 a.m.]