

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.25-3, 1910.25-4, 1910.25-5 and Promulgating New Rule 1910.25-7; No. 479 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 11th day of June, 2007, Rules 1910.25-3, 1910.25-4 and 1910.25-5 of the Pennsylvania Rules of Civil Procedure are amended and new Pennsylvania Rule of Civil Procedure 1910.25-7 is promulgated as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.25-3. Civil Contempt. Conference Summary. Order. Hearing De Novo.

* * * * *

(b) The court, without hearing the parties, may enter an appropriate order after consideration of the conference summary. [The order shall state] Each party shall be provided with a copy of the order and written notice that any party may, within [ten] twenty days after the date of receipt or the date of the mailing [of a copy] of the order, whichever occurs first, file a written demand with the domestic relations section for a hearing before the court.

* * * * *

Rule 1910.25-4. Civil Contempt. Alternative Procedure. Record Hearing. Report. Exceptions. Order.

* * * * *

(c) Within [ten] twenty days after the conclusion of the hearing, any party may file exceptions to the report or any part thereof, to rulings on objections, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to the entry of the order, leave is granted to file exceptions raising those matters.

(d) If no exceptions are filed within the [ten] twenty-day period, the court shall review the report and, if approved, enter an order.

* * * * *
Rule 1910.25-5. Civil Contempt. Contempt Order. Incarceration.

* * * * *

(b) An order committing a respondent to jail for civil contempt of a support order shall specify the conditions the fulfillment of which will result in the release of the respondent.

* * * * *

Rule 1910.25-7. Indirect Criminal Contempt. Incarceration.

In addition to any other remedy available to the court, the court may order the respondent to obtain employment with income that can be verified and is subject to income attachment. If the respondent willfully fails to comply with an order to obtain such employment, the court may commit the respondent to jail upon adjudication for indirect criminal contempt, provided the respondent is afforded all of the procedural safeguards available to criminal defendants.

Explanatory Comment—2007

Parental support of children is a fundamental requirement of law and public policy. Absent an inability to maintain employment or acquire other income or assets, sanction in the form of incarceration may be imposed by the court to compel compliance and provide an incentive to obey the law. The contempt process, which should be used as a last resort, is necessary to impose coercive sanctions upon those obligors whose circumstances provide no recourse to the court to compel payment or a good faith effort to comply. Appellate opinions have made it clear that an obligor who is in civil contempt cannot be incarcerated without the present ability to fulfill the conditions the court imposes for release. However, the courts also have noted that recalcitrant obligors may be imprisoned for indirect criminal contempt if afforded the proper procedural safeguards. See *Godfrey v. Godfrey*, 894 A.2d 776 (Pa. Super. 2006); *Hyle v. Hyle*, 868 A.2d 601 (Pa. Super. 2005).

[Pa.B. Doc. No. 07-1077. Filed for public inspection June 22, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Availability and Temporary Assignments of Magisterial District Judges; No. 07-0164; CP-13-AD-000002-2007 (Old number-MD023-2007)

Administrative Order 12-2007

And Now, this 7th day of June, 2007, in order to ensure compliance with Pa.R.C.P.M.D.J.112 governing the Rules of Conduct, Office Standards, and Civil Procedure for Magisterial District Judges, Pa.R.Crim.P. 132 governing

the Temporary Assignment of Issuing Authorities, Pa.R.C.P. 1901.2 governing Scheduling of Temporary Protection From Abuse matters, Carbon County's Administrative Order 27-2001 governing when the Court is available to address Temporary Protection From Abuse matters, Carbon County Local Rule CARB.R.C.P. 1901.5 governing Enforcement of Protection From Abuse matters and 35 P.S. § 10225.307 governing Involuntary Intervention by Emergency Court Order under the Older Adult Protective Services Act, it is hereby

Ordered and Decreed that the schedule attached hereto be and is hereby *Approved* and said attachment *Shall Establish* the on-call schedule and temporary assignments for the Magisterial District Judges of Carbon County for the period of January 1, 2007 to July 30, 2007.

It Is Further Ordered and Decreed that the same Magisterial District Judge temporarily assigned on this schedule *Shall Serve* as the temporary issuing authority during regularly scheduled hours for any Magisterial District Judge unavailable due to duties outside the county, mandatory continuing education classes, illness or vacation.

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

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Minor Court Rules Committee and Pennsylvania Criminal Procedural Court Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Forward one (1) copy to the Chief of Police of each Borough and Township in Carbon County to be conspicuous placed in their respective offices.
7. Keep continuously available for public inspection a copy of the Order in the Magisterial District Judges' Offices, Prothonotary's Office and Clerk of Courts Office.

By the Court

ROGER N. NANOVIC,
President Judge

THE FOLLOWING SCHEDULE IS FOR NON-BUSINESS HOURS AND EMERGENCIES FOR CARBON COUNTY MAGISTERIAL DISTRICT JUDGES COVERING COURTS 3-1, 3-2, 3-3 AND 3-4 BEGINNING 4:30 P.M. EACH MONDAY AND ENDING THE FOLLOWING MONDAY AT 4:30 P.M. IN ADDITION, THIS ON-CALL SCHEDULE APPLIES TO CIVIL MATTERS PURSUANT TO PA.R.C.P.M.D.J. 112 DURING NORMAL BUSINESS HOURS.

January 1, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
January 8, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
January 15, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2

January 22, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
January 29, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
February 5, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
February 12, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
February 19, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
February 26, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
March 5, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
March 12, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
March 19, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
March 26, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
April 2, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
April 9, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
April 16, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
April 23, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
April 30, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
May 7, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
May 14, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
May 21, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
May 28, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
June 4, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
June 11, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
June 18, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
June 25, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4
July 2, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
July 9, 2007	Magisterial District Judge Edward M. Lewis	Court 3-1
July 16, 2007	Magisterial District Judge Bruce F. Appleton	Court 3-2
July 23, 2007	Magisterial District Judge Casimir T. Kosciolk	Court 3-3
July 30, 2007	Magisterial District Judge Joseph D. Homanko	Court 3-4

[Pa.B. Doc. No. 07-1078. Filed for public inspection June 22, 2007, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Rule of Civil Procedure 39-1910.11; Misc. Doc. Vol. 2007, Page 2002

Order of Court

May 31, 2007, it is hereby ordered that Local Rule of Civil Procedure 39-1910.11 is amended as follows, said rule will be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALKER,
President Judge

Rule 39-1910.11. Office Conference. Subsequent Proceedings. Order.

39-1910.11(a). *Office Conference conducted by Conference Officer.* The office conference shall be conducted by a conference officer designated from time to time by the conference officer supervisor and/or the director of Domestic Relations.

39-1910.11(b). Rescinded.

39-1910.11(e). Rescinded.

39-1910.11(f)(1). *Instructions Mailed with Conference Order.* The Domestic Relations Section shall mail a copy of "How to Appeal Your Recently Obtained Support Order," to each party with the order entered following the conference at Domestic Relations.

39-1910.11(i)(1). *Demand for Appeal Hearing; filing fee.* Any party may seek review by the court of the order entered following the conference at Domestic Relations. Review by the court will act as an appeal of the decision made by the conference officer at the Domestic Relations Section. The hearing before the court will be a de novo hearing. An appealing party shall file a written demand for hearing using the form "Demand for Appeal Hearing," attached as Exhibit "A." Except as set forth in subsection (C) below, the party shall pay a \$25.00 filing fee to Franklin County Domestic Relations Section at the time of filing the written demand for hearing.

(A) The demand for hearing shall not be accepted and/or scheduled by Domestic Relations if not accompanied by the filing fee.

(B) The filing fee for the written demand for hearing is non-refundable.

(C) If a party is indigent and unable to pay the filing fee, the party must seek leave of court to have the fee waived.

39-1910.11(i)(2). *Content of "Demand for Appeal Hearing."* The party filing a written demand for hearing shall indicate on the form the reasons or issues the party wishes the court to address at the hearing. The party must select the type of hearing being requested: routine hearing or specially assigned hearing.

(A) Routine Hearing is a hearing that does not need more than 30 minutes to complete and does not address complex questions of law or fact.

(B) Specially Assigned Hearing requires greater than 30 minutes to complete and does address complex questions of law or fact. Pa.R.C.P. 1910.11(j)(2) applies.

(C) Failure of the party to select either a routine hearing or a specially assigned hearing on the "Demand for Appeal Hearing" will result in the Domestic Relations Section scheduling the matter for a routine hearing lasting no more than 30 minutes.

39-1910.11(i)(3). *Scheduling and Notice.* When any party files a written demand for hearing and pays the filing fee, the Domestic Relations Section shall schedule a hearing before the court and give notice to the parties.

39-1910.11(i)(4). *Mailing to both parties.* When the de novo hearing has been scheduled, the Domestic Relations Section shall mail to the parties a copy of the order scheduling the hearing before the court, a copy of the written demand for hearing, and the form "Pre-Trial Memorandum for Appeal Hearing," attached as Exhibit "B."

39-1910.11(i)(5). *Pre-Trial Memorandum for Appeal Hearing.* The "Pre-Trial Memorandum for Appeal Hearing" shall be filed at Domestic Relations at least seven (7) days before the hearing. The following shall apply:

(A) Failure of the appealing party to file a pre-trial hearing memorandum may be considered an abandonment of claims and a withdrawal of the appeal. The court may impose other sanctions as appropriate.

(B) Failure of the opposing/responding party to file a pre-trial hearing memorandum may be treated as not contesting the appellant's claims and will be deemed a waiver of all other issues on appeal. The court may impose other sanctions as appropriate.

(C) For a routine hearing, the pre-trial hearing memorandum shall contain the following: an explanation of each issue you expect to raise at the hearing; a description of the facts you plan to prove related to the support action; identification of witnesses and the facts to which each witness will testify; a description of exhibits other than those required by the Pennsylvania Rules of Civil Procedure; and the relief being sought.

(D) For a specially assigned hearing, the pre-trial hearing memorandum shall contain in addition to all the items listed in Rule 39-1910.11(i)(5)(C), the following information: identification of legal authority (statutes, court cases, or rules) relating to the party's position on each issue raised; and an indication of the length of hearing needed to present all the evidence and witnesses' testimony for both sides of the support action.

39-1910.11(i)(6). *Distribution of Copies.* Upon receiving the parties' "Pre-Trial Memorandum for Appeal Hearing," the Domestic Relations Section shall mail copies of the same to each party prior to the hearing before the court.

39-1910.11(j). Rescinded.

39-1910.11(j)(2). *Discovery.* When a hearing has been assigned a special time, discovery is available in accordance with Pa.R.C.P. 4001 through 4025. See Pa.R.C.P. 1910.11(j)(2). If discovery has been conducted, parties shall attach a statement of what discovery has been sought and responded to, shall identify issues related to failure to make discovery requested or failure to adequately respond, and shall suggest to the court whether the court should or should not review discovery prior to the de novo hearing.

Adopted by Order of Court dated December 7, 1993 and published in the *Pennsylvania Bulletin* Vol. 23, Number 52, December 25, 1993. Amended _____, effective _____ and published in the *Pennsylvania Bulletin* Vol. _____, Number _____, _____.

[Pa.B. Doc. No. 07-1079. Filed for public inspection June 22, 2007, 9:00 a.m.]

LACKAWANNA COUNTY

Repeal and Adoption of Rules of Criminal Procedure; Doc. No. 2007-MD241

Order

And Now, this 25th day of May, 2007, it is hereby Ordered and Decreed that the following Lackawanna County Rule of Criminal Procedure is amended as follows:

1. Lacka. Co. R.Crim.P. 105(C) is amended as reflected in the following rule;

2. Under Pa.R.Crim.P. 117(c), 520, and 525, the following Local Rule shall be disseminated and published as follows:

(a) Seven certified copies of the Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two certified copies of the Local Rule and a computer diskette that complies with the requirements of 1 Pa. Code 13.11(b) shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One certified copy of the Local Rule shall be filed by the court promulgating the rule with the Criminal Procedural Rules Committee which shall then forward a copy to the Administrative Office of the Pennsylvania Courts (AOPC) for publication on the AOPC web site;

(d) The Local Rule shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Criminal Division and upon request and payment of reasonable costs of reproduction and/or mailing, the Clerk of Judicial Records shall furnish to any person a copy of the requested Local Rule(s);

(e) A computer diskette containing text following Local Rule in either MS-DOS, ACSII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association;

(f) The Local Rule shall be published on the website of the Lackawanna Bar Association (www.lackawan

nabar.com) and the website of the Administrative Office of the Pennsylvania Courts (ujportal.pacourts.us/);

(g) The amendment to Local Rule 520 shall become effective not less than thirty (30) days after the date of its publication in the *Pennsylvania Bulletin* as per Pa.R.Crim.P. 105(D).

By the Court

CHESTER T. HARHUT,
President Judge

Rule 525. Bail Bond

1. Magisterial District Judges, the Clerk of Courts and certain designated officials at the Lackawanna County Prison are authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure. (See Pa.R.Crim.P. 117(c), 520, and 525.)

2. Prior to the filing of the transcript with the Clerk of Judicial Records, Criminal Division, bail may be posted from 9:00 a.m. to 4:00 p.m. at the office of the Magisterial District Court where the case is pending.

3. After the filing of the transcript with the Clerk of Judicial Records, Criminal Division, bail may be posted from 9:00 a.m. to 4:00 p.m. at the Clerk of Judicial Records, Criminal Division.

4. Bail may be posted at any other time at the Lackawanna County Prison. Said bail shall be posted with those corrections officers designated by the Warden of the Lackawanna County Prison and deputized by the Clerk of Judicial Records, Criminal Division. The corrections officer is authorized to accept the bail, and pursuant to Pa.R.Crim.P. 525 to release the defendant upon the execution of the bail bond. The official who releases the defendant shall also sign the bail bond witnessing the defendant's signature.

5. The defendant shall not be released until he or she signs the bail bond. After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

6. Bail accepted at the Prison along with the original bail bond shall be forwarded immediately to the office of the Clerk of Judicial Records, Criminal Division. Upon receipt of the bail, if the transcript has not been filed, the Clerk of Judicial Records, Criminal Division, shall notify the Magisterial District Court where the case is pending that the defendant posted bail.

7. Posting of real estate to satisfy the monetary condition of release may not be done at the Lackawanna County Prison.

[Pa.B. Doc. No. 07-1080. Filed for public inspection June 22, 2007, 9:00 a.m.]