

THE COURTS

231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 105

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 11, 2011 directed to:

Patricia A. Miles, Esquire
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Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
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*By the Domestic Relations
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,
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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3. Parties. **Obligor. Obligee.**

(a) An action [shall] may be brought

[(a)] (1) by a person, including a minor parent or a minor spouse, to whom a duty of support is owing, or

[(b)] (2) on behalf of a minor child by a person having custody of the child, without appointment as guardian ad litem, or

[(c)] (3) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

[(d)] (4) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

[(e)] (5) by a parent, guardian or public or private agency on behalf of an unemancipated child over eighteen years of age to whom a duty of support is owing.

(6) by any person who may owe a duty of support to a child or spouse.

(b) The trier of fact shall enter an appropriate support order based upon the evidence presented, without regard to which party initiated the support action or filed a modification petition. The determination of which party will be the obligee and which will be the obligor will be made by the trier of fact based upon the respective incomes of the parties and the custodial arrangements at the time of the initial or subsequent conference, hearing or trial. If supported by the evidence, the party named as the defendant in the initial pleading may be deemed to be the obligee, even if that party did not file a complaint for support.

(1) In general, the party who has primary custody of the children shall be the obligee of a child support order.

(2) When the parties share custody of the children equally, the party with the higher income shall be the obligor as provided in Rule 1910.16-4(c)(2).

Explanatory Comment—1999

New subdivision (c) incorporates 23 Pa.C.S. § 4341(b) to confer standing on any person who is caring for a child to seek support on behalf of that child even though there is no court order granting legal or physical custody to that person. The statutory provision effectively overrules *Larson v. Diveglia*, 549 Pa. 118, 700 A.2d 931 (1997), which held to the contrary.

Subdivision (e) is amended to eliminate the requirement of consent when the child is over 18 years of age. This requirement was originally intended only for applicable child support actions for higher educational support, which actions were abolished by *Curtis v. Kline*, 542 Pa. 249, 666 A.2d 265 (1995). This rule also is intended to apply to children who are unemancipated by reason of physical or mental disability, consistent with 23 Pa.C.S. § 4321(3) as interpreted by case law.

Explanatory Comment—2010

A new category has been added in subdivision (a) to allow a party who may not have primary custody of the parties' child or who may owe a duty of support to a spouse to initiate a support action in which an appropriate order may be entered.

A new subdivision (b) has been added to clarify that in all initial and subsequent support actions, the trier of fact may enter a support order against either party, without regard to which party filed the complaint or petition for modification. This facilitates judicial economy, and relieves the parties from incurring additional filing fees, losing time from work or family, losing retroactivity and having to wait for a new proceeding to be scheduled. It enables the trier of fact to base the order on the facts and circumstances at the time of the proceeding, which may be different than at the time of filing.

Rule 1910.5. Complaint. Order of Court.

* * * * *

(c) An order shall be attached at the front of the complaint directing the defendant to appear before an officer for a conference at the time and place directed by the court. The order shall be substantially in the form provided by Rule 1910.27(b) and must include notice that a support order may be entered against either party without regard to which party initiated the action or filed a modification petition.

* * * * *

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

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. In a child support case, if a change in custody occurs after the date of filing, but before a domestic relations conference is held, the trier of fact shall enter a charging order going forward in favor of the primary custodian that shall be effective from the date of the change in custody. The trier of fact also may enter a retroactive arrears order in favor of the party who was the primary custodian at the time of filing. Such an order may address the period from the date of filing to the date of the change in custody. However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.

Example: Mother has primary custody of the children and files for child support. Two months later, Father becomes the primary custodian. One month after the change in custody, a support conference is held. Father will be the obligee on a charging order that is retroactive to the date he became the primary custodian. However, an order also may be entered with Mother as the obligee for the two-month period from the date of filing to the date of the change in custody.

Official Note: The order must direct payment to be made payable to or payment to be made to the State Collection and Disbursement Unit for transmission to the obligee. See 23 Pa.C.S. § 4325.

Subdivision (a) was amended in 2005 to include the statutory provision at 23 Pa.C.S.[A.] § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 Pa.C.S.[A.] § 4352(e) for additional provisions. Every order of support must contain an immediate or conditional order for the attachment of income. See Rule 1910.21.

* * * * *

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances.

* * * * *

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq. After a party has filed a petition for modification, the petition may not be withdrawn unless both parties consent.

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented without regard to which party filed the petition for modification. If the trier of fact finds that there has been a material and substantial change in circumstances, the order may be increased or decreased depending upon the respective incomes of the parties and each party's custodial time with the child at the time the modification petition is heard.

* * * * *

Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * * * *

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY ENTER AN ORDER AGAINST EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION.] THE TRIER OF FACT SHALL ENTER AN APPROPRIATE SUPPORT ORDER BASED UPON THE EVIDENCE PRESENTED, WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION. THE DETERMINATION OF WHICH PARTY WILL BE THE OBLIGEE AND WHICH WILL BE THE OBLIGOR WILL BE MADE BY THE TRIER OF FACT BASED UPON THE RESPECTIVE INCOMES OF THE PARTIES AND THE CUSTODIAL ARRANGEMENTS AT THE TIME OF THE INITIAL OR SUBSEQUENT CONFERENCE, HEARING OR TRIAL. IF SUPPORTED BY THE EVIDENCE, THE PARTY NAMED AS THE DEFENDANT IN THE INITIAL PLEADING MAY BE DEEMED TO BE THE OBLIGEE, EVEN IF THAT PARTY DID NOT FILE A COMPLAINT FOR SUPPORT.

* * * * *

(g) The order to be attached at the front of the petition for modification set forth in subdivision (f) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY MODIFY OR TERMINATE THE EXISTING ORDER IN ANY MANNER BASED UPON THE EVIDENCE PRESENTED.] THE TRIER OF FACT MAY INCREASE, DECREASE OR TERMINATE THE EXISTING ORDER BASED UPON THE EVIDENCE PRESENTED. AN ORDER MAY BE ENTERED AGAINST EITHER PARTY WITHOUT REGARD TO WHICH PARTY FILED THE MODIFICATION PETITION.

* * * * *

[Pa.B. Doc. No. 10-2347. Filed for public inspection December 19, 2010, 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 106

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania.

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By the Domestic Relations Procedural Rules Committee

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses.

* * * * *

(b) Health Insurance Premiums.

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. Premiums paid by a party to whom no duty of support is owed to cover himself or herself only and that are not necessary to cover the other party or a child as part of a support order shall not be apportioned between the parties. If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of either party's household, the cost shall be allocated between the parties in proportion to their net

incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

* * * * *

Example 1. If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.[A.] § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

* * * * *

Example 3. The parties are divorced and Mother is the obligee of a child support order. Father, the obligor, pays \$200 per month toward the cost of a health insurance policy provided by his employer that covers himself and the parties' child. Mother pays \$400 per month for her employer-sponsored health insurance that covers only herself. The amount of the premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective incomes. The portion of the premium that covers Father will not be allocated because the parties are no longer married and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

(3) Pursuant to 23 Pa.C.S.[A.] § 4326(a), in every support proceeding, the court must ascertain each parent's ability to provide medical support for the parties' children and the support "order shall include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."

* * * * *

(ii) Unless health care coverage for the parties' children is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 Pa.C.S.[A.] § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed. The notice shall direct the employer to enroll the children of the obligor who are the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor. However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object. Concurrent with the issuance of the National

Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact or availability of alternative health care coverage for the children. If there is more than one employer-provided health care coverage option, the obligor shall select the plan, subject to the obligee's right to seek a court order designating a different option.

* * * * *

Official Note: Subdivision (b) of this rule does not apply to Medical Assistance. See 23 Pa.C.S.[A.] § 4326(1). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maher v. Maher*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa.C.S.[A.] § 4321.

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[Pa.B. Doc. No. 10-2348. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 107

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 11, 2011 directed to:

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*By the Domestic Relations
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-3.1. Support Guidelines. High Income Cases.

(a) *Child Support Formula.* When the parties' combined monthly net income is above \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall in no event be less than the amount of support that would have been awarded if the parties' combined net monthly income were \$30,000. That amount shall be a presumptive minimum.

* * * * *

(2) And second, the trier of fact shall [**make**] apply **Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments for substantial or shared custody pursuant to Rule 1910.16-4(c) and allocations of additional expenses pursuant to Rule 1910.16-6;**

* * * * *

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.

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

* * * * *

(c) *Substantial or Shared Physical Custody.*

(1) When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. **This rebuttable presumption also applies in high income cases decided pursuant to Rule 1910.16-3.1.** Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.

* * * * *

(3) [**This subdivision**] **Reductions for substantial or shared custody** shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income. **Income equaliza-**

tion, as provided in subparagraph (2) above, applies even if the obligor's income falls within the shaded area of the schedule of basic child support.

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[Pa.B. Doc. No. 10-2349. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Rule 139

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 139 be adopted and prescribed. These proposed modifications address the use of restraints on a juvenile during a court proceeding.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
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All comments shall be received no later than Tuesday, January 11, 2011.

By the Juvenile Court
Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 139. Use of Restraints on the Juvenile.

A. *Use of Restraints.* Restraints, such as handcuffs, chains, shackles, irons, or straitjackets, shall be removed prior to the commencement of a court proceeding unless the requirements of paragraph (B) are met.

B. *Exception.* Restraints may be used during a court proceeding if the court determines that:

1) they are necessary:

a) to prevent physical harm to the juvenile or another person;

b) to prevent disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or

c) to prevent the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom; and

2) there are no less restrictive alternatives to restraints that will prevent harm, disruptive behavior, or flight.

Comment

The use of any restraints is highly discouraged. The routine use of excessive restraints on juveniles is a practice that is contrary to the philosophy of balanced and restorative justice and undermines the goals of providing, treatment, supervision, and rehabilitation to juveniles. However, there are some circumstances when juveniles need to be restrained to protect themselves and others and to maintain security in the courtroom. See 42 Pa.C.S. § 6301 for purposes of the Juvenile Act.

Pursuant to paragraph (B), only in extreme cases should restraints be used. If a juvenile has a history of disruptive behavior, may present substantial risk of physical harm to any person, including himself or herself, or may flee, the court may order the use of restraints. When ordering the use of restraints, the court is to order the least restrictive type of restraint to prevent the behavior.

Explanatory Report

The purpose of this Rule is to eliminate shackling during a court proceeding in almost every case. Only in the few extreme cases should such restraints be utilized.

The Committee considered this issue in light of the Report from the Interbranch Commission on Juvenile Justice (ICJJ). In the ICJJ's Report, the Commission asked the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency to perform a study to reduce and if possible eliminate shackling in Pennsylvania's juvenile courtrooms. (p. 54 of Report).

The Committee believes it is appropriate to address the use of restraints in the courtroom and to limit the use of such restraints by Rule of Court, especially in those cases where the juvenile does not pose a risk. The Committee wanted to ensure that the routine use of excessive restraints is discouraged because it is contrary to philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. However, there are some circumstances when juveniles should be restrained to protect themselves and others and to maintain security in the courtroom.

Pursuant to paragraph (B)(1), restraints may be used if it is determined that they are necessary to prevent: 1) harm to the juvenile or another person; 2) disruptive courtroom behavior; or 3) the juvenile from fleeing. In all three circumstances, there should be evidence that the juvenile has had a history of such behavior or there are other factors present that make the juvenile very likely to pose a risk.

In addition, paragraph (B)(2) requires the least restrictive restraint to be used if it is determined that restraints are necessary.

It is also important to note that this rule only affects the use of restraints in court proceedings. Sheriffs, probation officers, and other persons providing transportation of juveniles to and from detention facilities, placement facilities, and other locations may be bound by internal procedures and policies, including insurance policies to use restraints during the transportation of juveniles. The use of restraints in those situations is governed by local policies of operation.

[Pa.B. Doc. No. 10-2350. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 2, 3, 5 AND 6]

Proposed Amendments to Rules 241, 242, 311, 312, 500, 600, 610 and 632

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 241, 242, 311, 312, 500, 600, 610, and 632 be adopted and prescribed. These proposed modifications address the victim's rights to: 1) be notified of a hearing; 2) attend a hearing and offer testimony; and 3) submit a victim-impact statement.

The following Explanatory Report highlights the intent of these Rules. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

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Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
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Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 18, 2011.

By the Juvenile Court
Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 241. Notice of Detention Hearing.

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; [and]
- 6) the victim; and
- 7) any other appropriate persons.

Comment

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005.

Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.*

a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.

b) The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

c) **The victim may be present and offer testimony.**

4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. **Findings.** The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

D. **Filing of petition.** If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The victim, counsel for the victim, and other persons accompanying the victim for his or her assistance are permitted to attend the detention hearing pursuant to Rule 132. See also 42 Pa.C.S. § 6336 and 18 P.S. § 11.201 et seq.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART B. INTAKE AND INFORMAL ADJUSTMENT

Rule 311. Intake Conference.

A. **Generally.** The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. **Juvenile probation officer's duties.** Before proceeding with an intake conference, the juvenile probation officer shall:

1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and

2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and

3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. **Rescheduling.** If a juvenile fails to appear for an intake conference, the juvenile probation officer may attempt to reschedule the conference.

D. **Bench Warrants.**

1) If the juvenile fails to appear for an intake conference, the juvenile probation officer may notify the court that the juvenile has failed to appear for the conference.

2) If a judge finds that sufficient notice of the intake conference was given, the judge may issue a bench warrant. The judge may not find notice solely based on first-class mail service.

3) If a bench warrant is issued, the case shall proceed pursuant to Rules 140 and 240.

E. **Notice, motion, and hearing.**

1) The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference.

2) Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action.

3) The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. See 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Pursuant to paragraphs (C) and (D), if a juvenile fails to appear for an intake conference, juvenile probation officers should use their discretion in determining whether to reschedule the intake conference or ask the court to issue a bench warrant.

Pursuant to paragraph (D)(2), in determining sufficient notice, the judge may not find notice solely based on first-class mail service. See also Rule 140 (A)(2) and its *Comment*.

Under paragraph (E), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend

an intake conference. **If the attorney for the Commonwealth objects pursuant to paragraph (E)(2), the court is to conduct a hearing on the motion. The victim is to receive notice of the hearing and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at the hearing. See also Rule 132 and the Victim's Bill of Rights, 18 P.S. § 11.201 et seq.**

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 311 with the Court's Order at 39 Pa.B. 6033 (October 17, 2009).

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

- 1) an adjudication would not be in the best interest of the public and the juvenile;
- 2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and
- 3) the admitted facts bring the case within the jurisdiction of the court.

B. *Completion.*

- 1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.
- 2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

Pursuant to paragraph (A), informal adjustments may not occur after the filing of a petition. *See* Rule 800 (12), which suspends 42 Pa.C.S. § 6323(a) only to the extent that it conflicts with this rule. *See also Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. *See* 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. *See* 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. *See* 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment **and to submit a victim-impact statement if the victim so chooses. [In addition] The juvenile probation officer is to include any payment of restitution determined to be owed to the victim**

as a condition of successful completion of an informal adjustment by a juvenile. If the victim is not present, the victim is to be notified of the final outcome of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 312 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

CHAPTER 5. DISPOSITIONAL HEARING

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule 500. Summons and Notice of the Dispositional Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.

B. *Notice.* [**The court shall give notice**] Notice of the dispositional hearing **shall be given** to:

- 1) the attorney for the Commonwealth;
- 2) **the victim;**
- 3) the juvenile's attorney; and
- [3] 4) the juvenile probation office.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. *See* 42 Pa.C.S. § 6333.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005.

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS AND NOTICE

Rule 600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

B. *Notice.* [**The court shall give notice**] Notice of the hearing **shall be given** to:

- 1) the attorney for the Commonwealth;
- 2) **the victim**;
- 3) the juvenile's attorney; and
- [3] 4) the juvenile probation office; and
- [4] 5) the placement facility staff, if the juvenile is in placement.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional Review Hearing.*

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, **[the court shall give] notice and an opportunity to be heard shall be given to the parties and the victim [notice of the request and an opportunity to be heard]**.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months. See Rule 800.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006).

Rule 632. Early Termination of Court Supervision by Motion.

A. *Motion.* Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.

B. *Notice.* In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer **and the other party**.

C. *Objection.*

1) A party, **victim**, or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.

2) Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.

3) **The court shall make a determination as to whether it will schedule a hearing on the objections or make findings without a hearing.**

D. *Hearing.* If objections have been made pursuant to paragraph (C) **and the court has determined a hearing is necessary**, the court shall hold a hearing and give each party, **the victim**, and the juvenile probation officer an opportunity to be heard before the court enters its final order.

E. *Court's motion.* The court, *sua sponte*, may schedule a hearing for early termination of court supervision **[upon a request by the juvenile probation officer]**. All parties shall receive notice of the hearing.

F. *Termination.* When the requirements of paragraphs (A) through (D) have been met or pursuant to its own motion under paragraph (E) and the court is satisfied that there are compelling reasons to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

Comment

If a party is moving for early termination of court supervision of a juvenile pursuant to paragraph

(A), or the court, *sua sponte*, has scheduled a hearing pursuant to paragraph (E), the victim of the offense is to be notified, by the attorney for the Commonwealth or the juvenile probation officer, of the motion for early termination and/or the scheduled hearing.

The victim is permitted to: 1) request and attend a hearing; 2) submit a victim-impact statement; and 3) object to the early termination.

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1147 (March 8, 2008).

Explanatory Report

Under the Purposes Clause of the Juvenile Act, the court shall make findings and enter an order consistent with the protection of the public interest that provides balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community. See 42 Pa.C.S. § 6301(b)(2).

Part of the juvenile's accountability is confronting the victim and seeking to repair the harm inflicted. Restitution owed to the victim should be included in the dispositional order or as a condition of an informal adjustment or a consent decree. See Rules 312 and 512.

These proposed rule changes further emphasize that the victim shall be part of the court process. The victim must receive notice of hearings and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at hearings. See Rules 132, 241, 242, 311, 312, 360, 370, 371, 390, 500, 512, 513, 600, 610, and 632.

When there is a proposed change in the dispositional order pursuant to Rule 610, the victim shall be given notice and an opportunity to be heard. This is especially important if the change is substantially different from the original court order. See Rule 610.

Additionally, the victim may object to a motion for early termination of the court's supervision of the juvenile. If the court schedules a hearing to terminate court supervision, the victim must be afforded an opportunity to be heard before the court enters its final order. See Rule 632.

[Pa.B. Doc. No. 10-2351. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 2, 3, 4, 5 AND 8]

Proposed Amendments to Rules 242, 394, 406, 512 and 800

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 242, 394, 406, 512, and 800 be adopted and prescribed. These proposed modifications address the role of the attorney for the Commonwealth in presenting cases.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 25, 2011.

*By the Juvenile Court
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

**CHAPTER 2. COMMENCEMENT OF
PROCEEDINGS, ARREST PROCEDURES,
WRITTEN ALLEGATION, AND
PRE-ADJUDICATORY DETENTION**

PART D. PRE-ADJUDICATORY DETENTION

Rule 242. Detention Hearing.

A. Informing juvenile of rights. Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.*

a) The hearing shall be conducted in an informal but orderly manner.

b) The attorney for the Commonwealth shall present evidence to support the written allegation.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) *Juvenile's rights.* The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. *Findings.* The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. *See* 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. *See* Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. *See* Rule 363 for time of service. *See* Rule 331 for service of the petition. *See* Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. Burden of proof. Unless the provisions of 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the attorney for the Commonwealth shall have the burden of establishing by a preponderance of the evidence that:

1) there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

2) the public interest is served by transfer of the case to criminal proceedings; and

3) the juvenile is not amenable to treatment, supervision, or rehabilitation as a juvenile.

C. *Findings.* At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) [there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors] the Commonwealth has met its burden of proof pursuant to paragraph (B); and

[5] 4) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill,

[Then] then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "*prima facie* phase." The court should determine if there is a *prima facie* showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a *prima facie* showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the

adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a *prima facie* case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. See 42 Pa.C.S. § 6355.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 394 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing.

A. *Manner of hearing.*

1) The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

2) **The attorney for the Commonwealth shall present evidence in support of the petition and have the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s).**

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 406 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence [**which**] **from both parties and the juvenile probation officer that** is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

C. *Duties of the court.* The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;
- 2) the right to file an appeal;
- 3) the time limits for a post-dispositional motion and appeal;
- 4) the right to counsel to prepare the motion and appeal;
- 5) the time limits within which the post-dispositional motion shall be decided; and
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

Comment

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended May 17, 2007, effective August 20, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, and 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 *et seq.*, as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which require separate counsel if there is a conflict of interest.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if

elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(b), which provides that the district attorney, upon request of the court, shall present the evidence in support of the petition, is suspended only insofar as the Act is inconsistent with Rule 242(B)(1)(b) which provides the district attorney shall present the evidence in support of the petition.

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[13] 14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[14] 15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[15] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[16] 17) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional

review hearings to be held at least every six months when a juvenile is removed from the home.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended December 30, 2005, effective immediately[; amended]. Amended March 23, 2007, effective August 1, 2007[; amended]. Amended February 26, 2008, effective June 1, 2008[; amended]. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Explanatory Report

Background

The Committee believes that the Rules need to clarify that the *prosecutor* must prosecute. Therefore, the following changes address the prosecutor's function, burden of proof, and presence at juvenile hearings.

Rule 242. Detention Hearing

The proposed addition to this Rule provides that the attorney for the Commonwealth must present the evidence. The Juvenile Act provides that the attorney for the Commonwealth, at the request of the court, shall present the evidence in support of the petition. *See* 42 Pa.C.S. § 6336(b). Rule 800 suspends the Juvenile Act only by removing the "at the request of the court" language, making the prosecutor's presence mandatory.

It is the role of the prosecutor to put forth the evidence on behalf of the Commonwealth. This duty cannot be performed by a juvenile probation officer, master, judge, or any other person.

Rule 394. Transfer Hearing

The proposed addition to this Rule clarifies who carries the burden of proof.

Unless the exceptions of 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the attorney for the Commonwealth has the burden of establishing by a preponderance of evidence that: 1) there is a *prima facie* showing that the juvenile committed a felony delinquent act; 2) public interest is served by the transfer; and 3) the juvenile is not amenable to treatment, supervision, and rehabilitation as a juvenile.

If 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the juvenile has the burden of establishing by a preponderance of evidence that: 1) public interest is served by adjudicating the

juvenile in juvenile court; and 2) the juvenile is amenable to treatment, supervision, and rehabilitation in the juvenile system.

Rule 406. Adjudicatory Hearing

The proposed additions to this Rule provide that the attorney for the Commonwealth must present the evidence in support of the petition and has the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s). *See* Rule 800 for suspension of the Juvenile Act by eliminating "at the request of the court" from 42 Pa.C.S. § 6336(b). The presence of the prosecutor at this hearing is mandatory.

Rule 512. Dispositional Hearing

The proposed additions to this Rule provide that the juvenile, the attorney for the Commonwealth, and the juvenile probation officer may submit evidence for the Court's consideration in determining the disposition of the juvenile. The victim's testimony may be presented through the attorney for the Commonwealth. The attorney for the Commonwealth may decide not to present evidence as to the disposition of the juvenile; however, the prosecutor must be present at this hearing.

Rule 800. Suspensions of Acts of Assembly

The Juvenile Act requires that the attorney for the Commonwealth shall present evidence in support of the petition at the request of the court. The attorney for the Commonwealth should be present for every proceeding and present the evidence. The "at the request of the court" language is removed by this suspension.

As stated *infra*, it is not the role of any other person to perform this function, which has been the practice in some counties. Juvenile probation officers, masters, judges, and other persons should not usurp the role of the prosecutor. It is the attorney for the Commonwealth exclusively who represents the interests of this Commonwealth.

[Pa.B. Doc. No. 10-2352. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Amendments to Rule 151

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 151 be adopted and prescribed. These proposed modifications address the presumption of indigence for juveniles.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
 Supreme Court of Pennsylvania
 Juvenile Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Ave, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, February 1, 2011.

*By the Juvenile Court
 Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B. COUNSEL

Rule 151. Assignment of Counsel.

[**A. General.** If] All juveniles are presumed indigent. If a juvenile appears, at any proceeding, without counsel [**does not enter an appearance for the juvenile**], the court shall [**inform the juvenile of the right to**] appoint counsel for the juvenile prior to [**any**] the proceeding. [**In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.**

B. Time.

1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.]

Comment

This Rule contemplates presumption of indigency which may be rebutted. There is an inherent risk that the legal protections afforded juveniles could be eroded by making legal representation dependent upon the limited financial resources of their guardians, particularly where guardians have an income just above the guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the juvenile's opportunity to have counsel. There is also a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than rely upon the juvenile as the law requires. Therefore, the guardians' income is not to be utilized for determining indigency.

Generally pursuant to this Rule, the court is to assign counsel in every case in which the juvenile has appeared without counsel. However, the court may give the juvenile a reasonable opportunity to

obtain a private attorney of the juvenile's choosing if there has been an indication of this desire.

Even if a waiver of counsel colloquy is completed and the court is satisfied that the juvenile may waive counsel pursuant to Rule 152, the juvenile is to have counsel to complete the waiver colloquy and thereafter, as stand-by counsel.

Counsel may be present at an intake hearing or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. *See* Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Explanatory Report

Background

The intent of this Rule, as originally drafted, was that all juveniles receive appointed counsel. The Committee decided to use the language of the Juvenile Act which states that the court is to appoint counsel if "the juvenile is without financial resources or otherwise unable to employ counsel." The Committee interpreted the "otherwise unable to employ counsel" to cover all situations when a juvenile did not have counsel.

The following is an excerpt from the original Explanatory Report when the court adopted the Rules of Juvenile Court Procedure—Delinquency Matter on April 1, 2005:

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign "private" counsel for the juvenile. This rule does not say that the juvenile is entitled to a Public Defender. As a practical matter, the county may choose to have all juveniles represented by the Public Defender's Office because it is more cost effective than private counsel.

In some counties, the juvenile is not receiving counsel as anticipated. The practice in these counties is not to offer representation to a juvenile unless: 1) there was an application for services; and 2) the Poverty Guidelines were met based on the parent's income.

To eliminate this misconception and clarify the Rule's intent, modifications are being proposed.

Rule Discussion

The primary change to this Rule is that the juvenile is presumed indigent. It is also noted that every presumption may be rebutted. As stated in the Committee's previous Explanatory Report discussed *infra*, the Rule does not say that every juvenile is entitled to a Public Defender but, rather to counsel.

The Public Defender is to look at the juvenile's income, not the guardian's income. The juvenile is the client and needs representation in these cases. Because it is believed

that 99% of juveniles will qualify, the Rule provides for the presumption that juveniles are indigent.

As stated in the Interbranch Commission on Juvenile Justice (ICJJ) Report, there is an inherent risk that the legal protections afforded juveniles could be eroded by making that legal representation dependent on the limited financial resources of their parents, particularly when parents have an income just above the poverty guidelines. Additionally, the unwillingness of parents to expend their resources should not determine the juvenile's opportunity to have counsel. (Report pg. 50).

The Committee believes that a conflict of interest results from using the parents' income to determine whether the juvenile will be eligible for an attorney.

There are also situations in which the juvenile may wish to obtain private counsel on their own. The court may give the juvenile a reasonable opportunity to obtain such counsel.

[Pa.B. Doc. No. 10-2353. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Civil Rules of the Court of Common Pleas; No. 3 of 2010; Rules Doc.

Order of Court

And Now, to-wit, this 23rd day of November, 2010, *It Is Hereby Ordered, Adjudged and Decreed* that the following Amended Rule of the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division, adopted by the unanimous proxy vote of the Board of Judges on November 4, 2010, shall be effective (30) days after publication in the *Pennsylvania Bulletin*:

Amended Civil Rule 1303, Administrative Docket

Form 1303: Notice of Hearing Date, Notice to Defend and Notice of Duty to Appear at Arbitration Hearing.

By the Court

DONNA JO MCDANIEL,
President Judge

Order of Court

And Now, this 24th day of September, 2010, it is hereby *Ordered* that the *Hearing Notice* portion of the *Notice To Defend* of Allegheny County Local Rule 1303, Form 1303 is amended to read the following:

HEARING NOTICE

YOU HAVE BEEN SUED IN COURT. The above Notice to Defendant explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defendant, a hearing before a board of arbitrators will take place in the Compulsory Arbitration Center. Report to the Arbitration Assembly Room, Courtroom Two, Seventh Floor City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219, on _____, _____ at 9:00 A.M. **IF YOU FAIL TO FILE THE RESPONSE DESCRIBED IN THE NOTICE TO DEFEND, A JUDGMENT FOR THE**

AMOUNT CLAIMED IN THE COMPLAINT MAY BE ENTERED AGAINST YOU BEFORE THE HEARING.

BY THE COURT:

_____, A.J.

Form 1303. Notice of Hearing Date, Notice to Defend and Notice of Duty to Appear at Arbitration Hearing

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA CIVIL DIVISION

_____ ARBITRATION DOCKET
_____ NO. _____

Plaintiff,
vs. HEARING DATE _____

Defendant.

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE, The Allegheny County Bar Association
11th Floor Koppers Building, 436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
Telephone: (412) 261-5555

HEARING NOTICE

YOU HAVE BEEN SUED IN COURT. The above Notice to Defend explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defend, a hearing before a board of arbitrators will take place in the Compulsory Arbitration Center. Report to the Arbitration Assembly Room, Courtroom Two, Seventh Floor City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219, on _____, _____ at 9:00 A.M. **IF YOU FAIL TO FILE THE RESPONSE DESCRIBED IN THE NOTICE TO DEFEND, A JUDGMENT FOR THE**

AMOUNT CLAIMED IN THE COMPLAINT MAY BE ENTERED AGAINST YOU BEFORE THE HEARING.

DUTY TO APPEAR AT ARBITRATION HEARING

If one or more of the parties is not present at the hearing, THE MATTER MAY BE HEARD AT THE SAME TIME AND DATE BEFORE A JUDGE OF THE COURT WITHOUT THE ABSENT PARTY OR PARTIES. THERE IS NO RIGHT TO A TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.

NOTICE: You must respond to this complaint within twenty (20) days or a judgment for the amount claimed may be entered against you before the hearing.

If one or more of the parties is not present at the hearing, the matter may be heard immediately before a judge without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.

Editor's Note: Adopted October 4, 2006, effective December 4, 2006.

[Pa.B. Doc. No. 10-2354. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 25—LOCAL COURT RULES

SCHUYLKILL COUNTY

Amended/Adopted Civil Rules of Procedure

Order of Court

And Now, this 23rd day of November, 2010 at 11:00 a.m., Schuylkill County Civil Rules of Procedure No. 1915.1(b), 1915.3, 1915.15 are amended and Civil Rule of Procedure No. 1915.3a is adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts;
- 2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.
- 3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Proposed Revisions to Schuylkill County Rules of Civil Procedure

Rule 1915.1(b). Definitions.

"Kids First." A four hour orientation and education program established to help parents and other parties in child custody actions to understand the effects of separation, divorce, and family conflicts in their lives and in the lives of their children.

Rule 1915.3. Commencement of Action. Complaint. Order.

(c) In addition to the information required by Pa.R.C.P. 1915.15, every complaint for custody, partial custody or visitation, and every petition for modification of an existing custody order, shall contain the following language:

(1) "Plaintiff has been advised of the requirements to attend the Kids First program."

(2) "Defendant has been advised of the requirements to attend the Kids First program."

(d) A completed order shall be attached to the complaint or petition which includes a provision that all parties attend the Kids First program and the Custody Conciliation Conference which shall be in substantially the form set forth in Sch.R.C.P. 1915.15. All parties named in the pleadings must register for and attend the Kids First program as ordered.

Rule 1915.3a. Kids First Program.

(a) The Court Administrator shall determine the dates, times, and location of the Kids First program.

(b) The name, address, and contact information for the presenter of the Kids First program are: Anthony J. Libassi, 200 Adams Avenue, Scranton, PA 18503, (570) 558-1002, (toll free) 888-215-7445, and www.libassimmediation.com.

(c) Brochures and registration forms for the Kids First program will be available at the Custody Office, Schuylkill County Law Library, and the Prothonotary's Office.

(d) Parties residing outside of Schuylkill County may contact the presenter for possible alternative programs or alternative scheduling if they are unable to attend Kids First as scheduled.

(e) The presenter of Kids First is authorized to approve individual requests for changes to the Kids First registration requirements and scheduling, only upon a showing of good cause.

(f) Upon successful completion of the Kids First program, the presenter shall issue a certificate of completion to the party and provide the Court Administrator of Schuylkill County with a certification of completion which shall be docketed and made part of the record.

(g) The affidavit of service or the certificates of service of a complaint for custody, partial custody, or visitation, and a petition for the modification of custody, shall contain a statement that the opposing party or counsel of record for the opposing party has been served with the Kids First brochure and registration form.

(h) A party to a custody proceeding who has successfully completed the Kids First program will be excused from attending another Kids First program if the party files of record an affidavit stating that the party has attended and successfully completed the Kids First program with a copy of the certificate of completion attached as an exhibit.

Rule 1915.15. Form of Complaint.

(a) In addition to the information required by Pa.R.C.P. 1915.15(a) and (b), each complaint for custody, partial custody, or visitation, or a petition to modify an existing custody order, shall have attached to its front an order in substantially the following form:

**IN THE COURT OF COMMON PLEAS FOR
SCHUYLKILL COUNTY
CIVIL ACTION - LAW**

_____, :
 :
Plaintiff, :
 :
VS. : No.: S-
 :
_____, :
 :
Defendant. :

ORDER OF COURT

AND NOW, this ___ day of _____, 200_. at ___m., you are hereby ORDERED as follows:

You have been sued in Court to obtain Custody, Partial Custody or Visitation of the child(ren) named in the Complaint.

I. PARENT EDUCATION PROGRAM

1. ALL PARTIES NAMED ABOVE SHALL ATTEND AND COMPLETE THE "KIDS FIRST" PROGRAM. THE PROGRAM IS REQUIRED FOR ALL PARTIES PARTICIPATING IN A CUSTODY ACTION. PARTICIPATION IS REQUIRED WHETHER OR NOT AN AGREEMENT IS SUBMITTED.

2. EACH OF YOU SHALL CONTACT "KIDS FIRST" WITHIN TEN (10) DAYS OF RECEIVING THIS ORDER TO SCHEDULE AND REGISTER FOR THE NEXT AVAILABLE PROGRAM IF YOU FAIL TO COMPLY WITH THIS PROVISION OF THIS ORDER, CONTEMPT CHARGES AGAINST YOU SHALL BE FILED WITH THE COURT.

TO SCHEDULE AND REGISTER FOR THE "KIDS FIRST" PROGRAM CONTACT ANTHONY LIBASSI BY ONE OF THE FOLLOWING:

- (a) internet: WWW.LIBASSIMEDIATION.COM
- (b) telephone: 570-558-1002
888-215-7445 (toll free)
- (c) mail: ANTHONY LIBASSI
200 Adams Avenue, First Floor
Scranton, PA 18503

YOU ARE EACH REQUIRED TO PAY A FEE OF FORTY DOLLARS (\$40.00) DIRECTLY TO THE "KIDS FIRST" PROGRAM AT THE TIME OF REGISTRATION.

3. LOCATION OF "KID FIRST" PROGRAMS:

SCHUYLKILL COUNTY COURTHOUSE
401 N. 2nd STREET
POTTSVILLE, PA
PHONE: 570-341-2007

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

II. CUSTODY CONCILIATION CONFERENCE

You are ordered to appear in person at the *Custody Conciliation Office*, of the Schuylkill County Courthouse on _____, for a Custody Conciliation Conference.

You are further ordered to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by the Order, and Order of Custody, Partial Custody or Visitation may be entered against you or the Court may issue a Warrant for your arrest.

III. GENERAL PROVISIONS

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA BAR ASSOCIATION,
Lawyer Referral Services
100 South Street, P. O. Box 186,
Harrisburg, PA 17108
(800) 692-7375

Counsel and litigants without counsel are ORDERED to *immediately* consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. ALL requests for a continuance of a Custody Conciliation conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The application must be filed in the Custody Conciliation Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order, "Kids First" registration and information, and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans with Disabilities Act of 1990: The Court of Common Pleas of Schuylkill County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any program, hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT,

_____ J.

[Pa.B. Doc. No. 10-2355. Filed for public inspection December 10, 2010, 9:00 a.m.]

**SCHUYLKILL COUNTY
Amended Civil Rule of Procedure 212.1**

Order of Court

And Now, this 23rd day of November, 2010 at 11:00 a.m., Schuylkill County Civil Rule of Procedure No. 212.1 is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts;

2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.

3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rule of Civil Procedure

Rule 212.1. Amended.

(b) A copy of Prothonotary Form 212 shall be served on all counsel contemporaneously with the filing thereof. Within 20 days after filing of the form, opposing counsel may file with the Prothonotary written objections thereto stating the reasons, and shall serve a copy thereof upon the Court Administrator and other counsel. Upon receipt of the objections to a certificate of readiness, the moving party should file a written response with the Prothonotary and Court Administrator within 10 days of the date of filing of the objections and contemporaneously serve the response upon opposing counsel. The Prothonotary shall transmit the response to the objections to the Civil Deputy Court Administrator so the response can be considered along with the objections. The Court Administrator shall promptly deliver the certificate, objections, and any response thereto to the President Judge who shall promptly dispose of said objections. Failure to file such objections constitutes a waiver of any objections to the certificate of readiness, including, but not limited to, any claim that discovery has not been completed. If a summary judgment motion is contemplated by the non-moving party, that party must file objections to the certificate of readiness or the right to do so will be deemed waived.

[Pa.B. Doc. No. 10-2356. Filed for public inspection December 10, 2010, 9:00 a.m.]

SUPREME COURT

Duty Assignment Schedule for Emergency Petitions in the Year 2011; No. 359 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 22nd day of November, 2010, the emergency duty assignment for the year 2011, is herewith adopted.

January	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
February	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
March	Justice Max Baer Justice Joan Orié Melvin	(Eastern District) (Western District)
April	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
May	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
June	Justice Max Baer Justice Joan Orié Melvin	(Eastern District) (Western District)
July	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
August	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
September	Justice Max Baer Justice Joan Orié Melvin	(Eastern District) (Western District)
October	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
November	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
December	Justice Max Baer Justice Joan Orié Melvin	(Eastern District) (Western District)

PATRICIA NICOLA,
Chief Clerk

Supreme Court of Pennsylvania

[Pa.B. Doc. No. 10-2357. Filed for public inspection December 10, 2010, 9:00 a.m.]