

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1900]

Order Adopting Rule 1901.8 of the Rules of Civil Procedure; No. 584 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 25th day of June, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 3722 (June 30, 2012) and republished for additional public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 6245 (October 6, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1901.8 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days on July 25, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901.8. Modification or Discontinuance.

(a) In cases in which a temporary protection order has not yet been granted or has been denied, a plaintiff in a protection from abuse action who wishes to discontinue the action may file a praecipe to discontinue, pursuant to Pa.R.C.P. 229, prior to the final order hearing. The party may also request the discontinuance by oral motion at a hearing.

(b) In cases in which a temporary protection order has been granted, a plaintiff in a protection from abuse action who wishes to vacate the temporary order and discontinue the action shall either file a petition with the court prior to the final order hearing or make the request by oral motion at the final order hearing.

(c) If either party seeks a modification after a final judgment has been entered in a protection from abuse action, the party shall petition the court to modify the final order. The court shall enter an order granting or denying the petition following an appearance by the petitioner before the court.

Explanatory Comment—2013

Jurisdictions across the commonwealth have adopted varying procedures and processes for the withdrawal, discontinuance and modification of protection from abuse actions. This rule provides a uniform process that comports with the requirements of 23 Pa.C.S. §§ 6107(b)(2)

(related to hearings), 6117 (related to procedure and other remedies) and *Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007). These requirements, when read together, require a different procedure for withdrawal, discontinuance and modification at various stages in a protection from abuse proceeding.

After a final protection order is entered, and no motion to reconsider or appeal is filed, the court no longer retains jurisdiction to vacate that order. *Charnik*, 921 A.2d at 1217. The court does, however, have jurisdiction to modify a protection from abuse order at any time after the filing of a petition for modification, service of the petition and a hearing on the petition. 23 Pa.C.S. § 6117. Thus, a party may request that the court modify the order to expire at an earlier date if the party does not want the order to remain in effect.

[Pa.B. Doc. No. 13-1237. Filed for public inspection July 12, 2013, 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 123 Republication

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, October 25, 2013 directed to:

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Deleted material is bold and [bracketed]. New material is bold.

*By the Domestic Relations
Procedural Rules Committee*

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

* * * * *

(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

* * * * *

(2) [*Social Security Payments for a Child.* If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and the obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of the obligee, obligor and child's benefits shall then be reduced by the amount of the child's benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. This calculation presumes that the primary custodial parent, or the shared custodial parent who is the obligee, is receiving the child's benefits. In cases in which the obligor is receiving the child's benefits, the amount of the child's benefit shall be added to the obligor's income and support shall be calculated as in any other case without deduction of the amount of the benefit from the presumptive amount of support set forth in the basic support schedule. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child.]

Social Security Derivative Benefits for a Child.

(A) This subdivision (A) shall be applied if a child for whom support is sought is receiving Social Security derivative benefits as a result of either parent's retirement or disability.

(i) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement or disability, the amount of the benefit shall be added to the income of the party receiving the benefit on behalf of the child to calculate child support. Next, apportion the amount of basic child support set forth in the schedule in Rule 1910.16-3 between the parties based upon each party's percentage share of their combined net monthly income, including the child's benefit in the income of the party receiving it.

(ii) If the child's benefit is being paid to the obligee, the amount of the child's benefit shall be deducted from the basic support obligation of the party whose retirement or disability created the child's benefit. If the child's benefit is being paid to the obligor, the child's benefit shall not be deducted from the obligor's obligation, even if the obligor's

retirement or disability created the child's benefit. In cases of equally shared custody, first determine which party has the higher income without the benefit, and thus is the obligor, before adding the child's benefit to the income of the party receiving it.

(iii) In all cases, the domestic relations sections shall provide the parties with two calculations theoretically assigning the benefit to each household.

(iv) In allocating additional expenses pursuant to Rule 1910.16-6, the allocation shall be based upon the parties' incomes after the addition of the child's benefit to the income of the party receiving it.

(B) This subdivision (B) shall be applied when determining the support obligation of a surviving parent when the child for whom support is sought is receiving Social Security derivative benefits as a result of the other parent's death. The income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child, including the Social Security derivative benefits if they are being paid to the obligee. If the benefits are being paid to the surviving parent, the amount of the benefit shall be added to that parent's income to calculate child support.

(3) *Foster Care Payments.* If either party to a support action is a foster parent and/or is receiving payments from a public or private agency for the care of a child who is not his or her biological or adoptive child, those payments shall not be included in the income of the foster parent or other caretaker for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

[*Example 1.* If the obligor has net income of \$1,200 per month; the obligee has net monthly income of \$800; and the child receives Social Security derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$543 per month. From that amount, subtract the amount the child is receiving in Social Security derivative benefits (\$543 minus \$300 equals \$243). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$243 between the obligor and the obligee in proportion to their respective incomes. The obligor's \$1,200 net income per month is 60% of the total of the obligor's and the obligee's combined net monthly income. Thus, the obligor's support obligation would be 60% of \$243, or \$146, per month.]

Example 1. The obligor has net monthly income of \$2,000. The obligee's net monthly income is \$1,500 and the obligee, as primary custodial parent of the party's two children, receives \$400 per month in Social Security derivative benefits on behalf of the children as a result of the obligor's disability. Add the children's benefit to the obligee's income, which now is \$1,900 per month. At the parties' combined net monthly income of \$3,900, the amount of basic child support for two children is \$1,224. As the obligor's income is 51% of the parties' combined monthly net income, the obligor's preliminary share of the basic support obligation is \$624. However,

because the obligor's disability created the children's Social Security derivative benefits that the obligee is receiving, the obligor's obligation is reduced by the amount of the benefit, \$400. Thus, the obligor's obligation is \$224 per month. If it were the obligee's disability that created the benefit, the obligor's obligation would remain \$624. If the obligor were receiving the children's benefit as a result of the obligor's retirement or disability, the obligor's income would include the amount of the benefit and total \$2,400, or 62% of the parties' combined net monthly income. The obligor's share of the basic support obligation would then be \$759 and would not be reduced by the amount of the children's benefit because the obligor, not the obligee, is receiving the benefit. Therefore, the obligor's obligation is less if the obligee is receiving the benefit created by the obligor.

Example 2. Two children live with Grandmother who receives \$400 per month in Social Security death benefits for the children as a result of their father's death. Grandmother also receives \$500 per month from a trust established by Father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$1,500 net per month. For purposes of calculating Mother's support obligation, Grandmother's income will be [\$500] \$900, the amount she receives on behalf of the children in Social Security derivative benefits and income from the trust. (If Mother were receiving the benefit on behalf of the children it would be added to her income such that Mother's income would be \$1,900 and Grandmother's would be \$500.) Therefore, the obligee's and [the obligor's] Grandmother's combined net monthly incomes total [\$2,000] \$2,400. [Add to that the \$400 in Social Security benefits Grandmother receives for the children to find the basic child support amount in Rule 1910.16-3.] The basic support amount at the

\$2,400 income level for two children is \$815. Subtracting from that amount the \$400 in Social Security derivative benefits Grandmother receives for the children, results in a basic support amount of \$415. As Mother's income of \$1,500 is [75%] 63% of the parties' combined income of [\$2,000] \$2,400, her support obligation to Grandmother is [\$311] \$261 per month. If Grandmother were not receiving the children's derivative benefits or income from the trust, her income for purposes of calculating Mother's child support obligation would be zero and Mother would pay 100% of the basic support amount because Grandmother has no support obligation to the children.

* * * * *

Explanatory Comment—2013

The rule has been amended to provide that a party's support obligation will be reduced by the amount of a child's Social Security derivative benefit if that party's retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most cases, payment of the benefit to the obligee's household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child's benefits be paid to the obligee.

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

(a) The following formula shall be used to calculate the obligor's share of basic child support, either from the schedule in Rule 1910.16-3 or the formula in Rule 1910.16-3.1(a), as well as spousal support and alimony pendente lite obligations. In high income cases, Part IV shall be used as a preliminary analysis in the calculation of spousal support or alimony pendente lite obligations:

PART I. BASIC CHILD SUPPORT

	OBLIGOR	OBLIGEE
1. Total Gross Income Per Pay Period	_____	_____
2. Less Deductions	(_____)	(_____)
3. Net Income	_____	_____
4. Conversion to Monthly Amount (if pay period is other than monthly) Include in the obligor's income the child's monthly Social Security retirement or disability benefit if the obligor is receiving the child's benefit [(See Rule 1910.16-2(b)(2))]. Include amount of child's monthly Social Security derivative benefit, if any, in the income of the party receiving it pursuant to Rule 1910.16-2(b)(2)(A) or (B).	_____	_____
5. Combined Total Monthly Net Income	_____	_____
[6. Plus Child's Monthly Social Security, Death, Retirement or Disability Derivative Benefit, if any. Do not add child's benefit if included in the obligor's income in line 4. (See Rule 1910.16-2(b)(2))	_____	_____
	+	_____
7. Adjusted Combined Monthly Net Income	_____	_____

8.	PRELIMINARY BASIC CHILD SUPPORT OBLIGATION (determined from schedule at Rule 1910.16-3 based on number of children and line 7 adjusted combined monthly net income)	_____	
9.	Less Child's Monthly Social Security Derivative Benefit (Do not deduct the child's benefit if the obligor is receiving the child's benefit.)	(_____)	
10.] 6.	BASIC CHILD SUPPORT OBLIGATION (determined from schedule at Rule 1910.16-3 based on number of children and line 5 combined monthly net income)	_____	
[11.] 7.	Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
[12.] 8.	Each [Parent's] Party's Preliminary Monthly Share of the Basic Child Support Obligation (multiply line [10] 6 and [11] 7)	_____	_____
9.	Subtract Child's Social Security Derivative Disability or Retirement Benefit from the Monthly Share of Basic Child Support of the Party whose Retirement or Disability Created the Child's Benefits if the Benefits are Paid to the Obligor	_____	_____
10.	Each Party's Adjusted Monthly Share of the Basic Child Support Obligation (Not less than 0)	_____	_____

PART II. SUBSTANTIAL [or] OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (See subdivision (c) of this rule)

[13.] 11.	a. Percentage of Time [Spent] Obligor Spends with Children (divide number of overnights with obligor by 365 and multiply by 100)	_____ %	
	b. Subtract 30%	(_____ %)	
	c. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract result of calculation in line [13b] 11b from line [11] 7)	_____ %	
	d. Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line [13c] 11c and line [10] 6)	_____	
	e. Further adjustment, if necessary under subdivision (c)(2) of this rule	_____	
	f. Obligor's Adjusted Share of the Basic Child Support Amount.	_____	

PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)

[14.] 12.	a. Obligor's Share of Child Care Expenses	_____	
	b. Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)	_____	
	c. Less Obligor's Share of the Health Insurance Premium (if the obligor is paying the premium)	(_____)	
	d. Obligor's Share of Unreimbursed Medical Expenses	_____	
	e. Other Additional Expenses	_____	
	f. Total Additional Expenses	_____	
[15.] 13.	OBLIGOR'S TOTAL MONTHLY SUPPORT OBLIGATION [(add line 12 (or 13(d or e) (if applicable) and line 14f)] (add line 10 or 11f, if applicable, and line 12f)	_____	

*PART IV. SPOUSAL SUPPORT OR APL
With Dependent Children*

[16.] 14.	Obligor's Monthly Net Income (line 4)	_____
[17.] 15.	Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2))	(_____)
[18.] 16.	Less Obligee's Monthly Net Income (line 4)	(_____)
[19.] 17.	Difference	_____
[20.] 18.	Less Obligor's Total Monthly Child Support Obligation Without Part II Substantial or Shared Custody Adjustment (Obligor's line [12] 10 plus line [14f] 12f)	(_____)
[21.] 19.	Difference	_____
[22.] 20.	Multiply by 30%	x .30
[23.] 21.	AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

Without Dependent Children

[24.] 22.	Obligor's Monthly Net Income (line 4)	_____
[25.] 23.	Less Obligor's Support, Alimony Pendente Lite or Alimony Obligations, if any, to Children or Former Spouses who are not part of this action (see Rule 1910.16-2(c)(2))	(_____)
[26.] 24.	Less Obligee's Monthly Net Income ([Line] line 4)	(_____)
[27.] 25.	Difference	_____
[28.] 26.	Multiply by 40%	x .40
[29.] 27.	PRELIMINARY AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____
[30.] 28.	Adjustments for Other Expenses (see Rule 1910.16-6)	_____
[31.] 29.	TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL	_____

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[Pa.B. Doc. No. 13-1238. Filed for public inspection July 12, 2013, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Adopting Rule 1915.3-1 and Amending Rule 1915.4 of the Rules of Civil Procedure; No. 583 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 25th day of June, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 7408 (December 8, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1915.3-1 of the Pennsylvania Rules of Civil Procedure is adopted and Rule 1915.4 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days on July 25, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

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

Rule 1915.3-1. Withdrawal of Pleading. Discontinuance of Action.

(a) *Withdrawal of Pleading.* A custody pleading cannot be withdrawn after the issuance of a scheduling order or notice of conference regarding claims made in the pleading except

- (1) by leave of court after notice to the non-moving party, or
- (2) by written agreement of the parties.

(b) *Discontinuance of a Custody Action.*

(1) A custody action may be discontinued by praecipe only upon a verified statement by the moving party that the complaint has not been served.

(2) A custody action cannot be discontinued after the complaint has been served except

(A) by leave of court after notice to the non-moving party, or

(B) by written agreement of the parties.

Rule 1915.4. Prompt Disposition of Custody Cases.

* * * * *

(b) *Listing Trials Before the Court.* Depending upon the procedure in the judicial district, within 180 days of the filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall, **sua sponte or on motion of a party, dismiss the matter unless [the moving] a party has been granted an extension for good cause shown, [which] or the court finds that dismissal is not in the best interests of the child.** The extension shall not exceed 60 days beyond the 180 day limit. A further reasonable extension may be granted by the court upon agreement of the parties or when the court finds, on the record, compelling circumstances for a further reasonable extension. **If an extension is granted and, thereafter, neither party files a praecipe, motion or request for trial within the time period allowed by the extension, the court shall, sua sponte or on the motion of a party, dismiss the matter unless the court finds that dismissal is not in the best interests of the child. A motion to dismiss, pursuant to this rule, shall be filed and served upon the opposing party. The opposing party shall have 20 days from the date of service to file an objection. If no objection is filed, the court shall dismiss the case. Prior to a sua sponte dismissal, the court shall notify the parties of an intent to dismiss the case unless an objection is filed within 20 days of the date of the notice.**

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[Pa.B. Doc. No. 13-1239. Filed for public inspection July 12, 2013, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Order Adopting Rule 1915.4-4 of the Rules of Civil Procedure; No. 582 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 25th day of June, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 1660 (March 31, 2012) and republished for additional public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 6246 (October 6, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1915.4-4 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days on July 25, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4-4. Pre-Trial Procedures.

A pre-trial conference in an initial custody or modification proceeding shall be scheduled before a judge at the request of a party or sua sponte by the court and the procedure shall be as set forth in this rule. If a party wishes to request a pre-trial conference, the praecipe set forth in subdivision (g) below shall be filed. The scheduling of a pre-trial conference shall not stay any previously scheduled proceeding unless otherwise ordered by the court.

(a) The praecipe may be filed at any time after a custody conciliation or conference with a conference officer unless a pre-trial conference has already been scheduled or held. The pre-trial conference may be scheduled at any time, but must be scheduled at least 30 days prior to trial.

(b) Not later than five days prior to the pre-trial conference, each party shall serve a pre-trial statement upon the court and the other party or counsel of record. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) the name and address of each expert whom the party intends to call at trial as a witness;

(2) the name and address of each witness the party intends to call at trial, the relationship of that witness to the party and a statement by the party or the party's counsel that he or she has communicated with each listed witness; and

(3) a proposed order setting forth the custody schedule requested by the party.

In addition to the above items included in the pre-trial statement, any reports of experts and other proposed exhibits shall be included as part of the pre-trial statement served upon the other party or opposing counsel, but not included with the pre-trial statement served upon the court.

(c) If a party fails to file a pre-trial statement or otherwise comply with the requirements of subdivision (b), the court may make an appropriate order under Rule 4019(c)(2) and (4) governing sanctions.

(d) Unless otherwise ordered by the court, the parties may amend their pre-trial statements at any time, but not later than seven days before trial.

(e) At the pre-trial conference, the following shall be considered:

- (1) issues for resolution by the court;
- (2) unresolved discovery matters;
- (3) any agreements of the parties;

- (4) issues relating to expert witnesses;
- (5) settlement and/or mediation of the case;
- (6) such other matters as may aid in the disposition of the case; and
- (7) if a trial date has not been scheduled, it shall be scheduled at the pre-trial conference.

(f) The court shall enter an order following the conference detailing the agreements made by the parties as to any of the matters considered, limiting the issues for trial to those not disposed of by agreement and setting forth the schedule for further action in the case. Such order shall control the subsequent course of the action unless modified at trial to prevent manifest injustice.

(g) The praecipe for pre-trial conference shall be substantially in the following form:

(Caption)
PRAECIPE FOR PRE-TRIAL CONFERENCE

To the Prothonotary:

Please schedule a pre-trial conference in the above-captioned custody matter pursuant to Pa.R.C.P. 1915.4-4. The parties' initial in-person contact with the court (conference with a conference officer or judge, conciliation or mediation) occurred on

Plaintiff/Defendant/Attorney for Plaintiff/Defendant

Explanatory Comment—2013

The Domestic Relations Procedural Rules Committee has become aware that there is a wide disparity in pre-trial procedures in custody cases among the various jurisdictions. As the committee strives to recommend best practices, this new rule establishes uniform pre-trial procedures in custody cases when requested by either party. The goal is to reduce custody litigation by encouraging early preparation and court intervention for purposes of expedited resolutions. The rule is based upon the pre-trial procedures in divorce cases as set forth in Rule 1920.33. Nothing in this rule shall affect the First Judicial District's practice of conducting a pre-trial conference upon the filing of a motion for a protracted or semi-protracted trial.

[Pa.B. Doc. No. 13-1240. Filed for public inspection July 12, 2013, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 2 AND 6]

Order Amending Rules 120, 220, 221, 231, 240, 610 and 612 of the Rules of Juvenile Court Procedure; No. 605 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 28th day of June, 2013, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3); and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 120, 220, 221, 231, 240, 610 and 612 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care. **Detention facility shall not include any county jail or state prison.**

* * * * *

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have, upon or after the juvenile's tenth birthday, committed a delinquent act before reaching eighteen years of age **or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.**

* * * * *

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation, or program description, to receive delinquent juveniles or which otherwise provides treatment to juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure. **Placement facility shall not include any county jail or state prison.**

* * * * *

Comment

* * * * *

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187. See Rule 210 for the power of magisterial district judges to issue arrest warrants.

"Detention facility" is not to include any county jail, state prison, penal institution, or other facility used primarily to detain adults who have not been released on bail and who are alleged to have committed a criminal offense. However, nothing in this rule precludes the use of a county jail or state prison for minors when criminal proceedings have been commenced. For example, a minor may be detained in a county jail for a direct-file case when it is alleged a criminal offense has been committed.

The term "disposition" includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on proba-

tion. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case "with prejudice" prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

* * * * *

A "juvenile" must be at least ten years old and must not have reached the age of eighteen at the time of the commission of a delinquent act for a delinquency petition to be filed. If a child is under the age of ten at the time of the commission of a delinquent act, a dependency petition may be filed pursuant to Pa.R.J.C.P. [100] 1100 *et seq.*, and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* "Juvenile" not only includes any person who is at least ten years of age and under twenty-one years of age if the commission of the alleged delinquent act occurred prior to the juvenile's eighteenth birthday, but also includes any person who is under the juvenile court's jurisdiction until termination of court supervision pursuant to Rules 631 and 632, which is to end no later than the juvenile's twenty-first birthday.

* * * * *

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

"Placement facility" is not to include any county jail, state prison, penal institution, or other facility used primarily for the execution of sentences of adults convicted of a crime. See 42 Pa.C.S. § 6352(b) for disposition of a delinquent juvenile. However, nothing in this rule precludes an adult from being sentenced to a county jail in a contempt proceeding. For example, if a juvenile failed to appear for a juvenile court hearing when summoned and is now eighteen years of age or older, the court may proceed with a contempt hearing and order detention in a county jail.

A "pre-dispositional report" or "social study" includes, but is not limited to, the compilation of the juvenile's family history and demographics; school record and educational issues; job history; talents and extra-curricular activities; prior delinquency or dependency involvement with the court; health care issues; psychological or psychiatric history, examinations, and reports; drug and alcohol examinations, treatments, and reports; needs regarding disability; and any other relevant information concerning the juvenile to help the court understand any issues relating to the juvenile.

* * * * *

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended September 7, 2011, effective immediately. Amended September 20, 2011, effective November 1, 2011. Amended May 21, 2012, effective August 1, 2012. **Amended June 28, 2013, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

**CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION
PART B. ARREST PROCEDURES IN DELINQUENCY CASES**

(b) Arrests Without Warrant

Rule 220. Procedure in Cases Commenced by Arrest Without Warrant.

* * * * *

Comment

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See 42 Pa.C.S. § 6308 for the taking of fingerprints and photographs by law enforcement officers. The arresting officer is to ensure that the fingerprints and photographs are forwarded to the central repository as required by the Pennsylvania State Police. 42 Pa.C.S. § 6309(c).

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definition of "detention facility."

Official Note: Rule 220 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. **Amended June 28, 2013, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 220 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

Rule 221. Temporary Detention in Police Lock-Up.

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Comment

This rule reflects certain provisions of § 6326 of the Juvenile Act. 42 Pa.C.S. § 6326.

The terms "police lock-up" and "adult lock-up" as used in this rule do not include a county jail or state prison. If detained, a juvenile is not to be held in a county jail or state prison. The use of a temporary holding cell at the local or state police station or courthouse is permissible if the requirements of this rule have been met.

Official Note: Rule 221 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 221 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

PART C. WRITTEN ALLEGATION PROCEDURES

Rule 231. Written Allegation.

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Comment

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Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending allegations.

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definition of "detention facility."

Official Note: Rule 231 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 231 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

PART D. PRE-ADJUDICATORY DETENTION

Rule 240. Detention of Juvenile.

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Comment

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For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code § 200.101 *et seq.* (2003).

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definition of "detention facility."

Official Note: Rule 240 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 240 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS AND REVIEWS

Rule 610. Dispositional and Commitment Review.

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Comment

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Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing 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.

If a juvenile is detained or placed, the juvenile is to be placed in a detention facility or placement facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definitions of "detention facility" and "placement facility."

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 610 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

Rule 612. Modification or Revocation of Probation.

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Comment

A juvenile should be afforded due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). A juvenile's probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

If a juvenile is over the age of eighteen, under the age of twenty-one, and is alleged to have violated the terms of probation, the juvenile, if detained, is to be placed in a detention facility. See Rule 120 and its Comment for definitions of "detention facility," which does not include a county jail or state prison, and "juvenile," which includes a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

For the use of advanced communication technology, see Rule 129.

Official Note: Rule 612 adopted April 1, 2005, effective October 1, 2005. Amended March 5, 2013, effective immediately. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 612 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

**Explanatory Report
June 2013**

The Supreme Court of Pennsylvania has adopted modifications to Rules 120, 220, 221, 231, 240, 610, and 612. The changes are effective immediately.

Background

Concerns were brought to the Committee’s attention on the use of county jails as temporary detention facilities for juveniles or as a sanction for violation of juvenile probation after the juvenile’s eighteenth birthday.

The Committee is clarifying with these rule modifications that a juvenile may never be detained in a county jail or other penal institution when jurisdiction is vested in the Juvenile Court through the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, regardless of whether the juvenile has turned eighteen years of age.

The Rules of Juvenile Court Procedure and the Juvenile Act do not permit juveniles, under the juvenile court’s jurisdiction, to be held in a county jail, even if segregated from adults, as a temporary holding facility, detention facility, or placement facility.

Rule discussion

Modifications to Rule 120 stress that “detention facility” and “placement facility” do not include county jails or state prisons. It also clarifies the definition of “juvenile” by including, not only juveniles who have committed a delinquent act, but also those juveniles who continue on juvenile probation, even after their eighteenth birthday until juvenile court supervision is terminated. The Juvenile Act grants the juvenile court jurisdiction until the juvenile turns twenty-one years of age. *See* 42 Pa.C.S. § 6301 *et seq.*

The Comments to Rules 220, 231, 240, 610, and 612 have been modified to clarify that when detained, a juvenile may only be held in a detention facility or placement facility. The Comment to Rule 221 has been modified to clarify that “police lock-up” and “adult lock-up” do not include the county jail or state prison.

The Comment to Rule 612 was also modified to explain that the juvenile court has jurisdiction over the juvenile until the juvenile turns twenty-one years of age. The juvenile may not be detained in a county jail or state prison for a juvenile probation violation even if the juvenile is eighteen years of age. If detained, the juvenile must be placed in a detention or placement facility.

[Pa.B. Doc. No. 13-1241. Filed for public inspection July 12, 2013, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 1 AND 11]

Order Amending Rules 120 and 1120 of the Rules of Juvenile Court Procedure; No. 603 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 24th day of June, 2013, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3); and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 120 and 1120 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2014.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person’s official title. **A party to the proceedings shall not function as the clerk of courts.**

* * * * *

Comment

A party to the proceedings is not to function as the clerk of courts. Because the clerk of courts maintains the official court record, this person is to remain neutral and unbiased by having no personal connection to the proceedings.

“Clerk of courts” is the person given the power under state law or local practice to maintain the official court record. *See* Rule 166 for additional responsibilities of the clerk of courts.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended September 7, 2011, effective immediately. Amended September 20, 2011, effective November 1, 2011. Amended May 21, 2012, effective August 1, 2012. **Amended June 24, 2013, effective January 1, 2014.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 published with the Court’s Order at 43 Pa.B. 3941 (July 13, 2013).

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

* * * * *

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person’s official title. **A party to the proceedings shall not function as the clerk of courts.**

* * * * *

PARTY is a person [**who is legally entitled**] or the **county agency who has standing** to participate in the proceedings but nothing in these Rules confers standing upon a person.

* * * * *

Comment

A party to the proceedings is not to function as the clerk of courts. Because the clerk of courts maintains the official court record, this person is to remain neutral and unbiased by having no personal connection to the proceedings. The county agency is a party to the proceeding and [**should not**] is not to function as the “Clerk of Courts.”

* * * * *

Official Note: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. **Amended June 24, 2013, effective January 1, 2014.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court’s Order at 43 Pa.B. 3941 (July 13, 2013).

Explanatory Report June 2013

The Supreme Court of Pennsylvania has adopted the amendments to Rules 120 and 1120. The amendments are effective January 1, 2014.

The Committee recommended that a party, including the county agency, be prohibited from acting as clerk of courts.

It has always been understood that a party to the proceeding should not serve as clerk of courts. The clerk of courts is to be an unbiased and neutral person. The revisions to the Rules clarify the intent of the Rules.

Additionally, the county agency is being added to the definition of “party” because they are not technically a “person.”

[Pa.B. Doc. No. 13-1242. Filed for public inspection July 12, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CRAWFORD COUNTY

Adoption of Local Criminal Rules of Procedure; AD 1-2013

Order

And Now, this 13th day of June, 2013, it is *Ordered and Decreed* that Rule 117 of the Court of Common Pleas of Crawford County, Pennsylvania, Criminal Division, is rescinded and the following Rule 117 is adopted this date, to be effective thirty (30) days after the publication in the *Pennsylvania Bulletin*. Further, Form 590 of Rule 590 is amended such that paragraph 18(c) of Form 590 is

modified to remove the third word which is “cannot” and replace that word with “can,” again, with this change effective thirty (30) days after the publication in the *Pennsylvania Bulletin*.

The District Court Administrator is *Ordered and Directed* to:

1. Distribute two (2) certified paper copies and one (1) copy on a computer diskette or on a CD-ROM, that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.

3. Publish a copy of the local rule changes on the Unified Judicial System’s website at <http://ujsportal.pacourts.us/localrules/ruleselection.aspx>.

4. Provide one (1) certified copy of the local rule changes to be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Crawford County and upon request and payment of reasonable fees of reproduction and mailing, the Clerk of Courts shall furnish any person a copy of such local rules.

5. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee.

6. Provide one (1) certified copy of the local rule changes to the Crawford County Law Library.

7. Keep such local rules changes, as well as all local criminal rules available for the public on the Crawford County website www.crawfordcountypa.net.

By the Court

ANTHONY J. VARDARO,
President Judge

Rule 117. Coverage-Issuing Warrants; Preliminary Arraignments and Summary; Summary Trials; Setting and Accepting Bail and Other Duties.

REGULAR BUSINESS HOURS

All magisterial district judge offices shall be open for regular business Monday through Friday, excluding holidays celebrated by the Court of Common Pleas of Crawford County, from 8:30 a.m. to 4:30 p.m. prevailing local time.

CONTINUOUS COVERAGE

There shall be continuous coverage by the judges of magisterial district courts for all of the following purposes with coverage to be provided during non-business hours consistent with the on-call system established for Crawford County in this local rule:

1. Issuance of search warrants pursuant to Pa.R.Crim.P. 203.

2. Issuance of arrest warrants pursuant to Pa.R.Crim.P. 513.

3. Requests to accept bail pursuant to Pa.R.Crim.P. 520(B).

4. Other duties as set forth in Pa.R.Crim.P. 117(A)(2)(a), (b), (c) and (d).

5. Issuance of emergency orders under the Protection from Abuse Act when the Court of Common Pleas of Crawford County is not available.

6. Issuance of emergency orders under the Older Americans Protective Services Act when the Court of Common Pleas of Crawford County is not available.

**ON-CALL COVERAGE DURING
NON-BUSINESS HOURS**

The magisterial district judges shall rotate in performing the duties of on-call magisterial district judge on a weekly basis consistent with a schedule established annually by the Crawford County Court Administrator with the approval of the President Judge. Modifications of this schedule may occur amongst respective magisterial district judges by mutual agreement. Any such modification shall be conveyed to the Crawford County Emergency Management Office by the magisterial district judge who will be serving as the on-call magisterial district judge by mutual agreement. Any additional compensation for subsequent modification of an existing schedule shall be waived.

The weekly on-call duties shall begin on Friday at 4:30 p.m. and continue until the following Friday at 8:30 a.m. unless the magisterial district courts are closed on a Friday in which case the duties shall continue until 4:30 p.m. on Friday.

The on-call magisterial district judge shall provide the following services for all of the magisterial district courts of this county while on-call in the following manner:

1. Continuous coverage for Items 1, 2, 3, 5, 6 in the "Continuous Coverage" section above.

If there is need for the on-call magisterial district judge to perform any of the "Continuous Coverage" duties the Crawford County Emergency Management Office shall be contacted so that the magisterial district judge can be promptly notified. The on-call magisterial district judge will then return the call to the police officer or other person requesting the attention of the on-call magisterial district judge. The Crawford County Emergency Management Office will only contact the on-call magisterial district judge if the request is for one of the items for which "Continuous Coverage" is required as set for above.

2. The on-call magisterial district judge will also be responsible for the following duties required by Pa.R.Crim.P 117(A)(2)(a), (b), (c) and (d) but not on a continuous basis:

(a) conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1)

In order to perform those duties required by Pa.R.Crim.P. 117(A)(2)(a), (b), (c) and (d) the on-call magisterial district judge shall do the following:

Monday through Friday when the magisterial district courts have been open for business during regular business hours the on-call magisterial district judge shall contact the booking officer at the Crawford County Cor-

rectional Facility at 9:30 p.m. to determine whether there is a need for the on-call magisterial district judge to perform any of the above duties.

If there is such a need the on-call magisterial district judge shall within one hour appear at the Crawford County Correctional Facility to perform those duties or the on-call magisterial district judge may do so within one hour by two-way audio-visual communication to the extent allowable by Pa.R.Crim.P. 119.

The on-call magisterial district judge shall also call the booking officer at the Crawford County Correctional Facility each weekday morning at 8 a.m. to determine whether there is a need for any of the above services to be performed and that magisterial district judge shall make arrangements for any such matter to be heard no later than 9 a.m. in that magisterial district judge's court or other appropriate court.

Weekends and Holidays. The magisterial district judge on-call shall contact the booking officer at the Crawford County Correctional Facility each such day at 8 a.m., 2:30 p.m. and 9:30 p.m. to determine whether there is need for the on-call magisterial district judge to perform any of the above duties.

If there is such a need the on-call magisterial district judge shall within one hour appear at the Crawford County Correctional Facility to perform those duties or the on-call magisterial district judge may do so within one hour by two-way audio-visual communication to the extent allowable by Pa.R.Crim.P. 119.

**MAGISTERIAL DISTRICT JUDGE
TEMPORARY ASSIGNMENTS**

When during regular business hours for magisterial district judges, a judge who has venue over a particular matter is unavailable, any other magisterial district judge in Crawford County is hereby temporarily assigned to serve the magisterial district of the judge who is unavailable. Such an arrangement may be made between respective magisterial district judges by mutual agreement. Any additional compensation for said arrangement will be waived.

OFFICIALS DESIGNATED TO ACCEPT BAIL

Magisterial District Judges and the Clerk of Courts shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure.

Rule 590. (Form 590).

Paragraph 18(c) of Form 590 is modified to remove the third word which is "cannot" and replace that word with "can."

[Pa.B. Doc. No. 13-1243. Filed for public inspection July 12, 2013, 9:00 a.m.]

LEHIGH COUNTY

**Rule 205.4 Authorizing a Pilot E-Filing Program for
Civil Cases; No. 2013-J-28**

Administrative Order

And Now, this 21st day of May 2013, *It Is Hereby Ordered That* Leh.Co.R.C.P. 205.4, Electronic Filing and Service of Legal Papers, authorizing the electronic filing of Tax Assessment Appeal Cases be and is hereby rescinded effective upon publication on the Pennsylvania

Judiciary Web Application Portal and that the following Lehigh County Rule authorizing a Pilot E-Filing Program for Civil Cases be and the same is hereby *Adopted*, effective upon publication of this rule on the Pennsylvania Judiciary Web Application Portal (<http://ujportal.pacourts.us>).

It Is Further Ordered That the Court Administrator of Lehigh County shall file: one (1) certified copy of this Order and the Lehigh County Rule authorizing the Pilot E-Filing Program for Civil Cases with the Administrative Office of Pennsylvania Courts; two (2) certified copies and a computer diskette or CD-ROM copy that complies with the requirement of 1 Pa. Code Section 13.11(b) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; one (1) certified copy with the Civil Procedural Rules Committee, and publish a copy on the Pennsylvania Judiciary's Web Application Portal (<http://ujportal.pacourts.us>)

By the Court

CAROL K. MCGINLEY,
President Judge

Rule 205.4. Pilot Program—Electronic Filing of Legal Documents Filed in the Clerk of Judicial Records—Civil Division.

(a)(1) *Authorization for Electronic Filing of Civil Legal Papers—Pilot Program*

(i) In accordance with Pa.R.C.P. No. 239.9, the Lehigh County Court of Common Pleas shall implement on July 1, 2013, a pilot program for the e-filing of legal papers as specifically defined within this rule. The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing. Electronic filing and service shall be governed by this rule.

(ii) In the context of this rule, "legal papers" which may be filed electronically shall be limited to the following cases, identified in Section B of the Supreme Court of Pennsylvania Court of Common Pleas Civil Cover Sheet, provided for in Pa.R.C.P. 205.5(e): Civil Appeals—Board of Assessment, Civil Appeals—Zoning Board, Tort Motor Vehicle, Debt Collection: Credit Card, Mortgage Foreclosure: Residential, and Mortgage Foreclosure: Commercial. Although not specifically identified on the Cover Sheet, Municipal Liens are also included.

(iii) In order to identify participants for the pilot program, the Court Administrator will publish an announcement seeking law firms and solo practitioners willing to participate, for two consecutive weeks in the *Lehigh Law Journal*. The President Judge will review the applications and will notify those sole practitioners and firms that have been selected for the pilot program.

Comment

The primary intent of this rule is to facilitate the filing of all legal papers that are expressly permitted under this subsection. Until such time as necessary protocols are adopted to permit the electronic filing of civil legal papers that were not included within this rule, they shall be filed in paper format.

(b)(1) *Authorized Electronic Format of Legal Papers Electronically Filed.* All legal papers that may be filed electronically as defined by this rule shall be filed in Portable Document Format (PDF). In the event any legal paper or exhibit is submitted to the Clerk of Judicial Records—Civil Division in hard copy format for a case already initiated electronically, the Clerk of Judicial

Records—Civil Division shall convert and maintain such legal paper or exhibit to a Portable Document Format (PDF) and the Clerk of Judicial Records—Civil Division shall return the hard copy legal paper or exhibit to the filing party for retention as required by **Pa.R.C.P. No. 205.4(b)(5)**.

(c)(1) *Reserved*

(c)(2) *Website—Access to the Website*

(i) Website. All legal papers may be filed electronically through the Clerk of Judicial Records—Civil Division's Electronic Filing System "**Odyssey File and Serve**" (OFS) which shall be accessible through the Lehigh County Website, www.lehighcounty.org.

(ii) Access to the Website. To obtain access to the Electronic Filing System, counsel and any unrepresented party must apply for and receive a User Name and Password.

(d)(1) *Payment of Filing Fees*

(i) The Clerk of Judicial Records—Civil Division will accept payment of all filing fees in cash, checks, and the following credit and debit cards: Discover, MasterCard, American Express and Visa.

(ii) The Clerk of Judicial Records—Civil Division will accept advance deposits on draw down accounts of future filing fees.

(iii) The credit or debit card will be charged with a convenience fee dictated by the credit card vendor.

(e) *Reserved*

(f) *Local Procedures*

As authorized by Pa.R.C.P. No. 205.4(f), the following local administrative procedures are adopted:

(i) As provided by Pa.R.C.P. No. 1023.1, the required signature on an electronic filing of legal papers is established by submission of a filing and the application of a digitized signature or the name of the filer preceded by /s/ accompanied by the attorney's printed name or a scanned document with an original signature. Verification will be achieved through the use of an email address and a password obtained from the OFS System. The OFS system will verify the user ID against the state ID number. Verification for parties other than attorneys will be verified through the user ID.

(ii) The legal paper must include a signature block, and the name of the filer under whose user name and password the legal filing is submitted.

(iii) The Electronic Filing Application (OFS) shall provide to the filer, using the email address registered by the filer, a Courtesy Email acknowledging that the filing was received. An Official Notification will be displayed in the Electronic Filing System, which includes the time and date, as a pending filing awaiting approval by the Clerk of Judicial Records—Civil Division. Within six (6) business hours of the receipt of the legal paper, the Clerk of Judicial Records—Civil Division shall provide the filer with notification through the Electronic Filing System that the legal paper has been either accepted or rejected.

(iv) If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by the Electronic Filing System; however, if a legal paper is submitted without the requisite filing fee, the legal paper shall be deemed to have been accepted for filing as of the date payment is received pursuant to 42 P.S. Section 21073(b), "The Clerk of Judicial Records—Civil Division shall not be required to enter on the docket any suit or

action or order of court or to enter any judgment thereon and perform any services whatsoever for any person, political subdivision or the Commonwealth until the requisite fee is paid.”

Note: As required by Pa.R.C.P. No. 205.4(c)(1) access to the Electronic Filing System shall be available at all times, except for routine maintenance; however, legal documents can only be reviewed by the staff of the Clerk of Judicial Records—Civil Division during normal office hours. Therefore, filers are cautioned to file required legal papers well in advance of any filing deadlines to enable timely correction and re-submission in the event a legal paper is not acceptable for filing.

(v) Pa.R.C.P. No. 204.1(3) requires that the first sheet of all pleadings, motions and other legal filings shall contain a 3-inch space from the top of the paper. This space shall be reserved solely for the use of the Clerk of Judicial Records—Civil Division for the electronic date and time stamp, and other official use.

(vi) As required by Pa.R.C.P. 205.5, the filer shall include the statewide cover sheet with the initial filing.

(vii) It shall be the responsibility of the filer to notify the Clerk of Judicial Records—Civil Division of any legal paper or exhibit submitted for filing in hard copy format/paper for a case initiated by electronic filing by indicating under the case number “Electronic Case.” The Clerk of Judicial Records—Civil Division shall then convert the legal paper to a portable document format (pdf) and accept and maintain such legal paper or exhibit in the electronic form. The Clerk of Judicial Records—Civil Division shall return the hard copy legal paper or exhibit to the filing party for retention as required by Pa.R.C.P. No. 205.4(b)(4) and Pa.R.C.P. No. 205.4(b)(5).

(viii) If a legal document is refused for filing, the Clerk of Judicial Records—Civil Division shall specify a reason. Subject to the Rule 205.4(e)(3), a legal paper refused for filing shall be deemed as not having been filed.

(ix) When filing motions, petitions and other responsive pleadings electronically in accordance with the local rules, the filer may provide an electronic courtesy copy to the Office of Court Administration through the Clerk of Judicial Records—Civil Division’s Electronic Filing System “**Odyssey File and Serve**” (OFS).

(g) *Service of Legal Papers*

(i) If a legal paper is accepted for electronic filing, it will be electronically served as authorized by Pa.R.C.P.

No. 205.4(g)(1)(ii) and service shall be effectuated as provided in Pa.R.C.P. No. 205.4(g)(2), Electronic Filing and Service of Legal Papers.

(ii) Once an electronic filing has been accepted by the Clerk of Judicial Records—Civil Division, it shall be the responsibility of the filing party to provide to the Sheriff of Lehigh County, the proper service fee and the documents for Original Service and Writs.

[Pa.B. Doc. No. 13-1244. Filed for public inspection July 12, 2013, 9:00 a.m.]

SUPREME COURT

Order Suspending Administrative Order 16-2010 Transferring Clerk of Court Functions to the Carbon County Children and Youth Office; No. 604 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 24th day of June, 2013, upon the recommendation of the Juvenile Court Procedural Rules Committee:

It Is Ordered pursuant to Pa.R.J.C.P. 1121(E), that Carbon County Administrative Order 16-2010 is hereby *Suspended* as being inconsistent with Pa.R.J.C.P. 1120, to the extent that the Administrative Order relieves the Clerk of Courts of Carbon County from the responsibility of maintaining dockets and original files relating to Juvenile Court dependency matters in Carbon County; designates the Carbon County Children and Youth Office as the Clerk of Courts for dependency matters; and permits personnel of the Children and Youth Administrator II of the Carbon County Children and Youth Office to be deputized by the Clerk of Courts for the performance of duties relating to dockets and original files in dependency matters. *See* Pa.R.J.C.P. 1121(E).

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2014.

[Pa.B. Doc. No. 13-1245. Filed for public inspection July 12, 2013, 9:00 a.m.]
