

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.13-1 and 1910.13-2;
No. 467 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of November, 2006, Rules 1910.13-1 and 1910.13-2 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective on February 6, 2007.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was [**required**] ordered to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(i) the order of court scheduling the conference and/or hearing was served by ordinary mail with the return address of the domestic relations section appearing thereon, that the mail was not returned to the domestic relations section within fifteen days after mailing, and that, at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed; or

(ii) the party signed a receipt indicating acceptance of a copy of the court order; or

(iii) an employee of the court handed a copy of the order to the party; or

(iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Official Note: See Rule 76 for the definition of "competent adult."

(b) The request for a bench warrant shall be made by the domestic relations office within sixty days following the party's failure to appear. The request shall be in the form provided by Rule 1910.13-2(b), and shall include the hearing officer or conference officer's certification that the party has not appeared for any domestic relations matter involving the same parties since the date the party failed to appear.

(c) Upon appearance in court by a party on the matter underlying the bench warrant, the bench warrant shall be

vacated forthwith and the notice shall be given to all computer networks into which the bench warrant has been entered.

(d) [**The bench warrant shall direct that if the court is unavailable at the time of the party's arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff's office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. Under no circumstances shall the party remain in the county jail longer than seventy-two hours prior to hearing.**] When a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When an individual is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings. As used in this rule, "judicial officer" is limited to the common pleas court judge who issued the bench warrant, or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, and the bench warrant hearing cannot be conducted promptly after the arrest, the individual shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the sheriff's office and the director of the domestic relations section that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail in the arresting county promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance of that bench warrant. The individual shall not be detained without a hearing on the bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (d)(5), the bench warrant shall expire by operation of law.

Explanatory Comment—1994

In 1988, Section 4342 of the Domestic Relations Code, 23 Pa.C.S. § 4342, was amended to require establishment of procedures for expedited contempt in support. Those procedures are set forth in new Rules 1910.13-1, 1910.13-2, and 1910.21-1 through 1910.21-7.

Former Rule 1910.13 provided for the issuance of a bench warrant for failure of a person to obey a court order other than an order for support. It is replaced with new Rule 1910.13-1 which sets forth detailed procedures for the issuance of a bench warrant, and new Rule 1910.13-2 which provides the associated forms. The new rules apply only to a party who fails to appear at a support conference or hearing as directed by an order of court.

An individual arrested pursuant to a bench warrant can be incarcerated for a period not to exceed seventy-two hours prior to hearing as set forth in new Rule 1910.13-1(d). Under the old rules, if the court was unavailable at the time of arrest, the individual could not be held. Therefore, law enforcement officials were unable to execute bench warrants in the evenings or on weekends, when their efforts were most likely to be successful. By limiting the possible period of incarceration to seventy-two hours, new Rule 1910.13-1(d) balances the need to bring parties before the court with the desire to avoid lengthy pre-hearing detention. Bail can be set by the court where appropriate, providing additional protection for the respondent.

[Former Rule 1910.21 is replaced by new Rules 1910.21 through 1910.21-7. New Rule 1910.21-1 replaces the notice to appear before the court with a court order, thus eliminating the need for two essentially identical documents attached to a single petition. It also eliminates the old requirement that a copy of the support order underlying the contempt petition and an "official statement" of support arrearages be attached to the petition. Instead, the petition need only set forth the amount of the arrearages, as well as any other allegations which constitute the alleged failure to comply with the support order. As with a support complaint, an answer is permitted, but not required, unless specially ordered by the court.

Former Rule 1910.21(c) provided for service of a contempt petition only by regular mail. If the respondent failed to appear for the conference or hearing, the matter had to be continued for personal service or issuance of a bench warrant, sometimes creating lengthy delays. New Rule 1910.21-1(d) permits service of the contempt petition by first class mail. If the respondent fails to appear, the domestic relations section can request issuance of a bench warrant after certifying that the order was not returned by the post office within fifteen days, and that the postal authorities verified that the party was receiving mail at the address to which the order was sent on a date after the order was mailed. Thus, under the new rule, service can be accomplished with relative ease and little expense, but also with reasonable certainty that the respondent actually received notice of the proceedings.

New Rule 1910.21-1 addresses situations both where the payor is chronically a few dollars short, or a few days late by requiring that contempt proceedings be initiated when arrearages in any amount have existed for fifteen days.

The procedures for expedited contempt after service of the petition are set forth in new Rules 1910.21-2 through 1910.21-7. Pursuant to new Rule 1910.21-2, the respondent can be required to attend a conference, or can go directly before a judge for hearing, if the court permits. In all cases where the respondent does not go directly before a judge, there is an office conference as set forth in new Rule 1910.21-3. If an agreement is reached, the court may then enter the order without hearing on the basis of the conference officer's recommendation. If no agreement is reached, the matter proceeds as described in new Rule 1910.21-4 or, if an individual county adopts it by local rule, as set forth in new Rule 1910.21-5.

If no agreement is reached, new Rule 1910.21-4 requires the conference officer to prepare a summary of the conference. Upon consideration of the conference summary, the court may enter an order without hearing the parties. Either party has the right to file a written request for a de novo hearing within ten days after the order is mailed. If the court does not enter an order within five days, a de novo hearing is automatically scheduled before the court. The contempt order is stayed if either party demands a de novo hearing. The hearing de novo must be held no later than seventy-five days after the date the petition for contempt was filed. The time limitation is for the benefit of the plaintiff, and is intended to ensure speedy resumption of support payments.

New Rule 1910.21-5 provides the alternative procedure where no agreement is reached at the office conference. At the conclusion of a conference, the hearing officer must file a report containing a proposed order and the hearing officer's recommendations. If either party files exceptions within ten days, the court must either hear argument on the exceptions or hold a hearing de novo within seventy-five days. If no exceptions are filed within ten days, the court may enter an order on the basis of the hearing officer's report.

New Rule 1910.21-4 makes clear that a respondent cannot be incarcerated without a full evidentiary hearing before a judge. The court's order committing the respondent to jail must name the conditions that the respondent must fulfill in order to be released.

Pursuant to new Rule 1910.21-7, motions for post trial relief are not permitted to be filed to any order entered under new Rules 1910.21-1 through 1910.21-6.]

Explanatory Comment—1999

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult." In certain circumstances, the term has been used with the restrictive language "who is not a party to the action."

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "competent adult" means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." In view of this new definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action."

These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amend by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

Explanatory Comment—2006

Beginning in 2006, bench warrants issued for failure to obey a court order to appear in a support matter will be available through the Judicial Network ("JNET") system. JNET expands the capacity of law enforcement officers throughout the commonwealth to be informed of outstanding bench warrants issued by both the criminal and civil courts. The Supreme Court of Pennsylvania has promulgated new Pa.R.Crim.P. 150, effective August 1, 2006, which sets forth the procedure related to criminal bench warrants. The amendments to Rule 1910.13-1 and 1910-13-2 track the new criminal procedural rule so that bench warrant procedures will be uniform throughout the commonwealth. For additional information see the Criminal Procedural Rules Committee's Final Report explaining new Pa.R.Crim.P. 150, published with the promulgation order at 36 Pa. B. 184 (January 14, 2006).

Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]

REQUEST FOR BENCH WARRANT AND SUPPORTING AFFIDAVIT

1. _____ did not appear for a conference and/or hearing in the Court of Common Pleas of _____ County on the ____ day of _____, 20____, which was scheduled by an order of court compelling this person's appearance, a copy of which is attached to this request.

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

(a) The order of court (i) was served upon the party by ordinary mail with the return address of the court thereon; (ii) the mail was not returned to the court within fifteen (15) days after mailing; and (iii) at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed.

(b) The party signed a receipt indicating acceptance of the court order.

(c) An employee of the court handed a copy of the court order to the party. The employee's affidavit of service is attached.

(d) A competent adult handed a copy of the court order to the party. The adult's affidavit of service is attached.

3. This request for Bench Warrant is made within sixty days following the party's failure to appear for the conference and/or hearing; and

I have reviewed the records of the Court and the Domestic Relations Office concerning this case, and attest that the party has not appeared for any domestic rela-

tions matter involving the same parties since the date upon which the party failed to appear in violation of the attached order of court.

4. In my capacity as hearing officer or conference officer, I request that the attached Bench Warrant be issued against the party named on account of the party's failure to appear for a scheduled conference and/or hearing in violation of an order of court.

[5. I recommend that bail in this matter be set as follows:

No bail.

Bail to be set in the amount of _____ .

Bail to be determined by the magisterial district judge.

Note: The following information should be supplied where the magisterial district judge is given discretion in setting bail.]

The records of the Domestic Relations Section show that:

the party owes support arrearages in the amount of \$ _____ .

the party has failed to appear for _____ hearings relating to this case.

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

DATE: _____ NAME/OFFICIAL TITLE _____

(b) The Bench Warrant entered by a court pursuant to Rule 1910.13-1 shall be in substantially the following form, and shall be attached to the Request for Bench Warrant form set forth in subdivision (a) of this rule:

[CAPTION]
BENCH WARRANT

AND NOW, this ____ day of _____, 20____, the Sheriff of _____ County, or any constable, or police officer, or other law enforcement officer is hereby ordered to take _____, residing at _____, into custody for appearance before this Court.

This bench warrant is issued because it appears that the (plaintiff) (defendant) has failed to appear, after notice, before the court for a scheduled conference and/or hearing.

We command you, the arresting officer, forthwith to convey and deliver the party into the custody of the Court of Common Pleas of _____ County, at _____, _____ (address), _____ (city),

Pennsylvania, for a hearing.

DESCRIPTIVE INFORMATION

Social Security # _____ Sex _____ D.O.B. _____ Age _____

Height _____ Weight _____ Race _____ Eyes _____ Hair _____

Distinguishing features (scars, tattoos, facial hair, disability, etc.) _____

Alias _____

Telephone # _____

You are further commanded that if the court is unavailable, the party may be held in the County Jail until the

court is opened for business, at which time the party shall be promptly conveyed and delivered into the custody of the court at

_____, _____,
(address) (city)

Pennsylvania, for hearing.

The authority in charge of the county jail shall notify the sheriff's office and the director of the domestic relations section forthwith that the party is being held pursuant to the bench warrant.

Under no circumstances may the party be held in the county jail of the county that issued this bench warrant for more than seventy-two hours [prior to hearing] or the close of the next business day if the 72 hours expires on a non-business day. See Pa.R.Crim.P 150(A)(5).

Bail in this matter shall be set as follows:

- No bail.
- Bail to be set in the amount of _____.

[**Bail to be determined by the magisterial district judge.**]

Official Note: Standards for setting bail are set forth in Rule of Criminal Procedure 525.

BY THE COURT: _____
JUDGE

Explanatory Comment—2005

Act 207-2004 amended numerous titles of the Pennsylvania Consolidated Statutes changing the title of "district justice" to "magisterial district judge." The amendments to Rule 1910.13-2 reflect the change in title.

[Pa.B. Doc. No. 06-2301. Filed for public inspection November 22, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Order Amending Rules 1910.11, 1910.27, 1920.31, 1920.33 and 1920.54; No. 466 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of November, 2006, Rules 1910.11, 1910.27, 1920.31, 1920.33 and 1920.54 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective on February 6, 2007.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their [**income and expense statements**] **Income and Expense Statements** in the [**form**] forms required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the [**income and expense statement need show only income and extraordinary**] **Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses.**

(2) For cases which are decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), the [**entire income and expense statement**] **Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) must be completed.**

* * * * *

Explanatory Comment—1994

The domestic relations office conference provided by Rule 1910.11 constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial hearing. Second, those cases which do go to hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before fellow officers of the same court. These officers are the conference officer who is an attorney (Rule 1910.11), the hearing officer (Rule 1910.12), and the standing or permanent master who is employed by the court (Rule 1920.51). The amendments are not intended to apply to the attorney who is appointed occasionally to act as a master in a divorce action.

Subdivision (e)(3) makes clear that even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might out of desperation agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children. The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

The provision for [**a temporary**] **an interim** order in subdivision [**(g)(2)**] **(f)** serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the [**income and expense statement**] **Income and Expense Statement**. Therefore in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of

fact, that party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), living expenses are properly considered, and therefore must be presented on the [income and expense statement] Income and Expense Statement.

Explanatory Comment—1995

Rule 1910.11(e) is amended to eliminate the need for a party to request a copy of the conference summary.

[In conformity with the amendment of Pa.R.C.P. 236, subdivision (f) is amended to require that the parties be served with a copy of the order, rather than notice that it has been filed. In addition, subdivision (f) is amended to require the court to enter an interim order on the basis of the conference summary, expediting the commencement of support payments. The language of subdivisions (g) and (i) is also changed to conform with the amended language of subdivision (f).]

Because the court is required to enter a guideline order on the basis of the conference officer's recommendation, there is no need for (g)(2), which provided for a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing de novo. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive [in] of delay in seeking a judicial determination. Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

Explanatory Comment—2006

The time for filing a written demand for a hearing before the court has been expanded from ten to twenty days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

The amendments reflect the separated Income Statement and Expense Statements in Rule 1910.27(c).

Rule 1910.27. Form of Complaint. Order. Income **Statements** and Expense [**Statement**] **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

You, _____, defendant, are ordered to appear at _____ before _____, a conference officer of the Domestic Relations Section, on the ____ day of _____, 20 _____, at ____ .M., for a conference, after which the officer may recommend that an order for support be entered against you. You are further ordered to bring to the conference

- (1) a true copy of your most recent Federal Income Tax Return, including W-2s, as filed,
- (2) your pay stubs for the preceding six months,
- (3) the Income **Statement** and the **appropriate** Expense Statement, **if required**, attached to this order, completed as required by Rule 1910.11(c),
- (4) verification of child care expenses, and
- (5) proof of medical coverage which you may have, or may have available to you.

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest and/or enter an interim support order. If paternity is an issue, the court shall enter an order establishing paternity.

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.

Date of Order: _____ J.

YOU HAVE THE RIGHT TO A LAWYER, WHO MAY ATTEND THE CONFERENCE AND REPRESENT YOU. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS [**OFFICE**] **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.

(Name)

(Address)

(Telephone Number)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of _____ 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 hearing or business before the court. You must attend the scheduled conference or hearing.

(c) The [**income and expense statement**] **Income and Expense Statements** to be attached to the order shall be in substantially the following form:

(1) Income Statement. This form must be filled out in all cases.

_____ v. _____ No. _____

THIS FORM MUST BE FILLED OUT

(If you are self-employed or if you are salaried by a business of which you are owner in whole or in part, you must also fill out the Supplemental Income Statement which appears [on the last page of this Income and Expense Statement] below.)

(Name)

(PACSES Number)

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

INCOME [AND EXPENSE] STATEMENT OF

Date: _____ Plaintiff or Defendant

INCOME

Employer: _____
Address: _____
Type of Work: _____
Payroll Number: _____
Pay Period (weekly, biweekly, etc): _____
Gross Pay per Pay Period \$ _____
Itemized Payroll Deductions:
Federal Withholding \$ _____
[Social Security] FICA _____
Local Wage Tax _____
State Income Tax _____
Mandatory Retirement _____
Union Dues _____
[Savings Bonds _____
Credit Union _____
Life Insurance _____]
Health Insurance _____
Other (specify) _____

Net Pay per Pay Period: \$ _____
Other Income:

Table with 4 columns: Description, Week, Month (Fill in Appropriate Column), Year. Rows include Interest, Dividends, Pension Distributions, Annuity, Social Security, Rents, Royalties, Expense Account, Gifts, Unemployment Comp., Workmen's Workers Comp., Employer Fringe Benefits, Other, and Total.

Table with 4 columns: Description, Weekly, Monthly (Fill in Appropriate Column), Yearly. Rows include EXPENSES Home, Mortgage/rent, Maintenance, Utilities (Electric, Gas, Oil, Telephone, Water, Sewer).

Employment				
Public transportation	\$ _____	\$ _____	\$ _____	
Lunch	_____	_____	_____	
Taxes				
Real Estate	\$ _____	\$ _____	\$ _____	
Personal property	_____	_____	_____	
Income	_____	_____	_____	
Insurance				
Homeowners	\$ _____	\$ _____	\$ _____	
Automobile	_____	_____	_____	
Life	_____	_____	_____	
Accident	_____	_____	_____	
Health	_____	_____	_____	
Other	_____	_____	_____	
Automobile				
Payments	\$ _____	\$ _____	\$ _____	
Fuel	_____	_____	_____	
Repairs	_____	_____	_____	
Medical				
Doctor	\$ _____	\$ _____	\$ _____	
Dentist	_____	_____	_____	
Orthodontist	_____	_____	_____	
Hospital	_____	_____	_____	
Medicine	_____	_____	_____	
Special Needs (glasses, braces, orthopedic devices)	_____	_____	_____	
Education				
Private school	\$ _____	\$ _____	\$ _____	
Parochial school	_____	_____	_____	
College	_____	_____	_____	
Religious	_____	_____	_____	
Personal				
Clothing	\$ _____	\$ _____	\$ _____	
Food	_____	_____	_____	
Barber/hairdresser	_____	_____	_____	
Credit payments				
Credit card	_____	_____	_____	
Charge account	_____	_____	_____	
Memberships	_____	_____	_____	
Loans				
Credit Union	\$ _____	\$ _____	\$ _____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
Miscellaneous				
Household help	\$ _____	\$ _____	\$ _____	
Child care	_____	_____	_____	
Papers/books/magazines	_____	_____	_____	
Entertainment	_____	_____	_____	
Pay TV	_____	_____	_____	
Vacation	_____	_____	_____	
Gifts	_____	_____	_____	
Legal fees	_____	_____	_____	
Charitable contributions	_____	_____	_____	
Other child support	_____	_____	_____	
Alimony payments	_____	_____	_____	
Other				
_____	\$ _____	\$ _____	\$ _____	
_____	_____	_____	_____	
Total Expenses	\$ _____	\$ _____	\$ _____]

PROPERTY OWNED

	Description	Value	H	Ownership* W	J
Checking accounts	_____	\$ _____	_____	_____	_____
Savings accounts	_____	_____	_____	_____	_____
Credit Union	_____	_____	_____	_____	_____

	Description	Value	Ownership*		
			H	W	J
Stocks/bonds	_____	_____	_____	_____	_____
Real Estate	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
	Total	\$ _____			

INSURANCE

	Company	Policy No.	Coverage*		
			H	W	C
Hospital					
Blue Cross	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Medical					
Blue Shield	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Health/Accident	_____	_____	_____	_____	_____
Disability Income	_____	_____	_____	_____	_____
Dental	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____

*H=Husband; W=Wife; J=Joint; C=Child

SUPPLEMENTAL INCOME STATEMENT

(a) This form is to be filled out by a person (check one):

- (1) who operates a business or practices a profession, or
- (2) who is a member of a partnership or joint venture, or
- (3) who is a shareholder in and is salaried by a closed corporation or similar entity.

(b) Attach to this statement a copy of the following documents relating to the partnership, joint venture, business, profession, corporation or similar entity:

- (1) the most recent Federal Income Tax Return, and
- (2) the most recent Profit and Loss Statement.

(c) Name of business: _____

Address and Telephone Number: _____

(d) Nature of business

(check one)

- (1) partnership
- (2) joint venture
- (3) profession
- (4) closed corporation
- (5) other

(e) Name of accountant, controller or other person in charge of financial records: _____

(f) Annual income from business: _____

(1) How often is income received? _____

(2) Gross income per pay period: _____

(3) Net income per pay period: _____

(4) Specified deductions, if any: _____

(2) Expense Statements. An Expense Statement is not required in cases which can be determined pursuant to the guidelines unless a party avers unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. (See Rule 1910.11(c)(1)). Child support is calculated under the guidelines based upon the net incomes of the parties, with additional amounts ordered as necessary to provide for child care expenses, health insurance premiums, unreimbursed medical expenses, mortgage payments and other needs, contingent upon the obligor's ability to pay. The Expense Statement in subparagraph (A) below shall be utilized if a party is claiming that he or she has unusual needs and unusual fixed expenses that may warrant deviation or adjustment in a case determined under the guidelines. In cases which must be determined pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), because the parties' combined net monthly income exceeds \$20,000 per month, the parties must complete the Expense Statement in subparagraph (B) below.

(A) Guidelines Expense Statement. If the combined monthly net income of the parties is \$20,000 or less, it is not necessary to complete this form unless a party is claiming unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. At the conference, each party must provide receipts or other verification of expenses claimed on this statement. The Guidelines Expense Statement shall be substantially in the following form.

EXPENSE STATEMENT OF

 (Name) (PACSES Number)
 I verify that the statements made in this Expense Statement are true and correct. I understand that

false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____
 Plaintiff or Defendant

	Weekly	Monthly	Yearly
	(Fill in Appropriate Column)		
Mortgage (including real estate taxes and homeowner's insurance) or Rent	\$ _____	\$ _____	\$ _____
Health Insurance Premiums	_____	_____	_____
Unreimbursed Medical Expenses:			
Doctor	_____	_____	_____
Dentist	_____	_____	_____
Orthodontist	_____	_____	_____
Hospital	_____	_____	_____
Medicine	_____	_____	_____
Special Needs (glasses, braces, orthopedic devices, therapy)	_____	_____	_____
Child Care	_____	_____	_____
Private school	_____	_____	_____
Parochial school	_____	_____	_____
Loans/Debts	_____	_____	_____
Support of Other Dependents:			
Other child support	_____	_____	_____
Alimony payments	_____	_____	_____
Other: (Specify)	_____	_____	_____
_____	_____	_____	_____
Total	\$ _____	\$ _____	\$ _____

(B) *Melzer Expense Statement.* No later than five business days prior to the conference, the parties shall exchange this form, along with receipts or other verification of the expenses set forth on this form. Failure to comply with this provision may result in an appropriate order for sanctions and/or the entry of an interim order based upon the information provided.

EXPENSE STATEMENT OF

 (Name) (PACSES Number)
 I verify that the statements made in this Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____
 Plaintiff or Defendant

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
HOME			
Mortgage or Rent	_____	_____	_____
Maintenance	_____	_____	_____
Lawn Care	_____	_____	_____
2nd Mortgage	_____	_____	_____

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
UTILITIES			
Electric	_____	_____	_____
Gas	_____	_____	_____
Oil	_____	_____	_____
Telephone	_____	_____	_____
Cell Phone	_____	_____	_____
Water	_____	_____	_____
Sewer	_____	_____	_____
Cable TV	_____	_____	_____
Internet	_____	_____	_____
Trash/ Recycling	_____	_____	_____
TAXES			
Real Estate	_____	_____	_____
Personal Property	_____	_____	_____
INSURANCE			
Homeowners/ Renters	_____	_____	_____
Automobile	_____	_____	_____
Life	_____	_____	_____
Accident/ Disability	_____	_____	_____
Excess Coverage	_____	_____	_____

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
Long-Term Care	_____	_____	_____
AUTOMOBILE			
Lease or Loan Payments	_____	_____	_____
Fuel	_____	_____	_____
Repairs	_____	_____	_____
Memberships	_____	_____	_____
MEDICAL			
Medical Insurance	_____	_____	_____
Doctor	_____	_____	_____
Dentist	_____	_____	_____
Hospital	_____	_____	_____
Medication	_____	_____	_____
Counseling/Therapy	_____	_____	_____
Orthodontist	_____	_____	_____
Special Needs (glasses, etc.)	_____	_____	_____
EDUCATION			
Tuition	_____	_____	_____
Tutoring	_____	_____	_____
Lessons	_____	_____	_____
Other	_____	_____	_____
PERSONAL			
Debt			
Service	_____	_____	_____
Clothing	_____	_____	_____
Groceries	_____	_____	_____
Haircare	_____	_____	_____
Memberships	_____	_____	_____
MISCELLANEOUS			
Child Care	_____	_____	_____
Household Help	_____	_____	_____
Summer Camp	_____	_____	_____
Papers/Books/Magazines	_____	_____	_____
Entertainment	_____	_____	_____
Pet Expenses	_____	_____	_____
Vacations	_____	_____	_____
Gifts	_____	_____	_____
Legal Fees/Prof. Fees	_____	_____	_____
Charitable Contributions	_____	_____	_____
Children's Parties	_____	_____	_____
Children's Allowances	_____	_____	_____
Other Child Support	_____	_____	_____
Alimony Payments	_____	_____	_____
TOTAL MONTHLY EXPENSES	_____	_____	_____
	* * *	* * *	

Explanatory Comment—1994

The support complaint and [**expense statement**] **Income and Expense Statements** contain a verification which states that the documents are subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

Explanatory Comment—2006

Rule 1910.27(c) is amended to separate income and expense information and to elicit the expense information relevant in cases that fall within the guidelines, as well as those that do not. In cases which can be determined under the guidelines, no expense information need be provided unless a party is claiming unusual needs and expenses that may warrant a deviation pursuant to **Rule 1910.16-5** or an apportionment of expenses pursuant to **Rule 1910.16-6**. If a party is claiming such expenses, the form at subsection (c)(2)(A) should be submitted. A separate expense form for cases in which the parties' combined monthly net income exceeds \$20,000 is set forth at subsection (c)(2)(B).

Rule 1910.11(c) was amended, effective in March 1995, to provide that only income and extraordinary expenses need be shown on the **Income and Expense Statement** in cases which can be determined pursuant to the guidelines. The **Explanatory Comment—1994** explained the rationale for the amendment.

Nevertheless, because space for both income and expense information was provided on the same form **Income and Expense Statement**, parties often needlessly expended time and effort to provide expense information that was not relevant at the conference. The amendments are intended to clarify and simplify the submission of expense information.

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) Within thirty days after the service of the pleading or petition containing a claim for child or spousal support, alimony, alimony pendente lite or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months [**and**], a completed [**income and expense statement**] **Income Statement** in the form required at **Rule 1910.27(c)(1)** and a completed **Expense Statement** in the [**manner and**] form required by [**Rules 1910.11 and**] **Rule 1910.27(c)(2)(B)**.

(2) If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under **Rule 4019** governing sanctions.

(3) [**When**] In those counties in which the prothonotary's office does not automatically forward a divorce complaint containing claims for support or alimony pendente lite to the domestic relations section or other appropriate office, if a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date [**of the written demand for hearing unless the order states otherwise**] the

moving party delivers a copy of the complaint to the domestic relations section or other appropriate office with a demand for hearing. [If a demand for hearing appears conspicuously on the front of the divorce pleading, support or alimony pendente lite shall be awarded retroactive to the date of filing of that pleading and the matter shall be set promptly for hearing.

Official Note: At the time a hearing is demanded on the issue of support, a copy of the divorce pleading which contains that count must be delivered to the domestic relations section.]

* * * * *

[Explanatory Note—1983

Subdivision (a) as originally promulgated required each party to file a completed income and expense statement within thirty days after service of the pleading or petition containing a related claim for relief. That requirement remains unchanged. However, the rule is conformed to Support Rule 1910.11(c) by also requiring each party to file within the same thirty day period a copy of his or her most recent income tax return and the pay stubs for the preceding six months.

New subdivision (a)(2) incorporates by reference Discovery Rule 4019 governing sanctions. When there is a failure to file the documents required by subdivision (a)(1), the broad spectrum of sanctions which is available under Rule 4019(c) will permit the court to impose the sanction appropriate to the facts of the case.

Explanatory Comment—1991

The Divorce Code of 1980 has been modified by two recent Acts of Assembly. First, the Divorce Code was codified as part of the Pennsylvania Consolidated Statutes by Act 1990-206. Second, the Divorce Code was substantially amended by Act 1988-13. Many of the rules of civil procedure covered by Recommendation 5 have been amended as a result of this legislation.

I. Codification. Old Rules 1920.1 through 1920.92 were promulgated in 1980 to implement the then recently enacted Divorce Code. The old rules contain many references to the Divorce Code which was enacted as part of the Unconsolidated Statutes, 23 P. S. § 101 et seq.

Act 206 of 1990, effective March 19, 1991, repealed the Divorce Code as enacted in 1980 and re-enacted it as Part IV of the Domestic Relations Code, 23 Pa.C.S. § 3101 et seq. Part IV of the Domestic Relations Code continues to be known as the Divorce Code. All statutory references in the new rules refer to the Divorce Code as it is now codified.

For more than ten years, the term "Section 201(c) or (d)" divorce has meant a "no-fault" divorce. Under the new codification, the grounds for a no-fault divorce will be found in Section 3301(c) and (d) of the Divorce Code, 23 Pa.C.S. § 3301(c) and (d). This is one example of the revisions to the divorce rules necessitated by the codification. These revisions merely correct obsolete references and effect no change in practice or procedure. The Committee is developing a proposal to review all of the domestic relations rules to include the new statutory references.

II. Spousal Support. Section 3104 (formerly Section 301) of the Divorce Code, which enumerates the various claims that may be joined in an action of divorce, was amended by Act 1988-13 to include "spousal support." Old Rule 1920.31, governing the joinder of related claims, has been amended to include the reference to spousal support in conformity with the Divorce Code as amended.

III. Living Separate and Apart. Section 3301(d) (formerly Section 301(d)) of the Divorce Code, providing for a no-fault divorce where the marriage is irretrievably broken and the parties have lived separate and apart, was amended by Act 1988-13 to reduce the waiting period from three years to two years. Old Rule 1920.72(c), governing the form of the plaintiff's affidavit, makes reference to this three year period. New Rule 1920.72(c) refers to the two year period of separation.

Old Rule 1920.42(a), governing the procedure in a divorce under Section 3301(d) of the Divorce Code, referred to "the plaintiff" filing an affidavit. Old Rule 1920.72(c) provides the form of the "Plaintiff's" affidavit. However, the Divorce Code uses the phrase "an affidavit has been filed." Consequently, there is no reason why a defendant may not file the affidavit to initiate the procedure for entering the decree. Old Rules 1920.42(a)(2) and (c)(2) and 1920.72(c) and (d) have been revised to allow filing of the affidavit by either party.

IV. Establishing Grounds for Divorce. New Section 3301(e) (formerly Section 201(e)) of the Divorce Code was added by Act 1988-13, and provides that, if grounds are established under the no-fault provisions of Sections 3301(c) or (d), "the court shall grant a divorce without requiring a hearing on any other grounds." A note has been added to old Rule 1920.51 referring to this provision.

V. Inventory; Pre-trial Statement. Section 3505(b) (formerly Section 403(b)) of the Divorce Code was enacted in 1980 provides for "an inventory and appraisal of all property owned or possessed at the time the action was commenced." Old Rule 1920.33 was adopted to implement this provision. The rule did not work very well. The inventory and appraisal were seldom filed within sixty days after a claim for determination and distribution of property is filed, as required by the rule. The old rule further required that the parties use the date the action was commenced as the valuation date. In most instances, the date the action was commenced was irrelevant for valuation purposes.

Section 3505(b)(1) of the Divorce Code, as amended by Act 1988-13, requires that the inventory and appraisal contain a list of property owned or possessed by either or both parties as of both the date of separation and a date thirty days prior to the date of the hearing on equitable distribution. There are three problems with this Divorce Code provision. First, the date of separation is frequently unclear and is itself a disputed issue in the action. Second, an inventory which contains values and liabilities as of a date thirty days prior to trial must be filed very late in the proceedings. Third, even if the date of separation is undisputed, a valuation as of that date is frequently irrelevant.

New Rules 1920.33 and 1920.75 rescind old Rules 1920.33 and 1920.75, and suspend Section 3505(b) as

amended by Acts 1988-13 and 1990-206. New Rule 1920.33 substitutes the devices of an inventory and a pre-trial statement. New Rule 1920.75 provides a form for the inventory.

New Rule 1920.33(a) requires that each party file an inventory within ninety days after the filing of a claim for the distribution of property. The inventory must include "all property owned or possessed at the time the action was commenced," including all marital property, as well as all non-marital property. At this point in the action, a valuation of the property need not be provided.

New Rule 1920.75 provides for a form of inventory which is consistent with the requirements of new Rule 1920.33(a). For the most part, the only information that is required is a description of the property involved in the claim and the identification of the owners. The form of inventory retains the checklist of property found in the old rule.

New Rule 1920.33(b) requires each party to file and serve a pre-trial statement within the time specified by court order or the written direction of the master, or, if none, at least sixty days before the hearing on the claim for distribution of property. Eleven subparagraphs specify the content of the pre-trial statement. Preparation of the pre-trial statement requires the parties to prepare their cases well before trial, thus facilitating the presentation of evidence at the trial, and enhancing the prospect of early settlement.

Section 3505(b)(2) of the Divorce Code provides for the inventory and appraisal to contain a valuation of the property as of three dates: the date of acquisition, the date of separation and the date thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(1) does not specify a date for valuation. It provides that the pre-trial statement shall include a list of assets specifying "(i) the marital assets, their value, the date of valuation . . . and (ii) the non-marital assets, their value, the date of valuation . . .". It is incumbent upon each party to show why property should or should not be valued as of a certain date. Consequently, each party needs to provide the value as of the date he or she intends to prove at the hearing. Three valuations are generally unnecessary.

Section 3505(b)(3) of the Divorce Code provides for the inventory and appraisal to contain a list of liabilities of either or both parties as of thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(6) requires the pre-trial statement to include the current expense statement required in an action for support if the party filing the statement intends to offer testimony concerning his or her expenses. Subparagraph (10) of the new rule requires that the pre-trial statement includes "a list of marital debts including the amount of each debt as of the date of separation" and specified additional information concerning that debt. New Rule 1920.33 is therefore more comprehensive than the Divorce Code because it requires a current expense statement and a history of marital debt.

New Rule 1920.33(c) provides for sanctions as authorized by Discovery Rule 4019(c) for failure to file either the inventory or the pre-trial statement.

New Rule 1920.33(d) provides two evidentiary sanctions relating only to the pre-trial statement. Under subparagraph (1), a party may be barred from offering any testimony or introducing any evidence with regard to a matter not included in the statement. Subparagraph (2) provides that a party may not offer testimony or introduce evidence which "is inconsistent with or which goes beyond the fair scope of the information in the pre-trial statement."

The evidentiary sanctions set forth in new Rule 1920.33(d) do not apply to the inventory. Because the inventory is filed within ninety days after a claim has been made for equitable distribution, there may be insufficient time for the parties to learn of all of the property which may be subject to that claim. Consequently, the rule contemplates that any omissions will be corrected in the pre-trial statement.

Act 1988-13 added new Section 3502(e) (formerly Section 401(k)) to the Divorce Code relating to enforcement of an order or an agreement of equitable distribution. New Rule 1920.33(e) states that orders for equitable distribution entered pursuant to the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and under the Divorce Code. Remedies available for enforcement for equitable distribution orders are set forth in Divorce Code Sections 3323(b) (formerly Section 410(b)) and 3505(a) (formerly 403(a)), as well as Section 3502(e).

It should be noted that 23 Pa.C.S. § 3105(a) (formerly Section 401.1(a)) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement of an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although new Rule 1920.33(e) refers only to enforcement of orders, it also applies to enforcement of agreements.

Explanatory Comment—1994

In its opinion in *McKeown v. McKeown*, 612 A.2d 1060 (Pa. Super. 1992), the court indicates that spousal support cannot be converted automatically to alimony pendente lite. However, in many cases there is a need for alimony pendente lite after the decree is entered, just as there is spousal support before. Because of the recent change in Rule 1910.16-1, which states that the amount of alimony pendente lite is determined according to the guidelines, there is little difference between the two. Although the entitlement defense continues to be available, if the dependent spouse is already receiving spousal support, the amended rule permits automatic conversion to alimony pendente lite upon entry of the decree.

Explanatory Comment—1995

New subdivision (a)(3) is added because, unlike a separate action for support, a count in a divorce which requires support is often filed in the interest of preserving every possible claim rather than because either party wishes to have that claim heard. Where a support claim is not pursued for months, or even years, allowing retroactivity to the date of filing in accordance with Rule 1910.17 can create massive and unjust arrearages.

This amendment permits retroactivity only for the period of time during which the support claim has been actively pursued. Thus, if a demand for support hearing appears on the front of a divorce pleading, support is available retroactive to the date of filing. However, where the demand does not appear on the front of the divorce pleading, retroactivity will be allowed only from the date upon which the hearing is eventually demanded.]

Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.

* * * * *

(b) Within the time required by order of court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying:

(i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon[,]; and

(ii) the non-marital assets, their value, the date of the valuation, and any liens or encumbrances thereon;

(2) the name and address of each expert whom the party intends to call at trial as a witness. A report of each expert witness listed shall be attached to the pre-trial statement. The report shall describe the witness's qualifications and experience and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

(3) the name, address and a short summary of the testimony of each person, other than the party, whom the party intends to call at trial as a witness;

(4) a list of all of the exhibits which the party expects to offer in evidence, each containing an identifying mark. Any exhibits that do not exceed three pages shall be attached to the pre-trial statement, and any exhibits which exceed three pages shall be described;

(5) the party's gross income from all sources, each payroll deduction, and the party's net income, including the party's most recent state and federal income tax returns and pay stubs;

(6) if the party intends to offer any testimony as to his or her expenses, [**a current expense statement**] **an Expense Statement** in the form required by [**the practice and procedure governing an action in support**] **Rule 1910.27(c)(2)(B)**;

* * * * *

(e) An order distributing property under Section 3502 of the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

[**Official Note: See, inter alia, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) relating to injunction against disposition of property pending suit, and Section 3502(e) providing**

remedies for failure to comply with an order of equitable distribution or the terms of an agreement between the parties.]

Explanatory Comment—1994

23 Pa.C.S. § 3105(a) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement on an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although Rule 1920.33 refers only to enforcement of orders, it also applies to enforcement of agreements.

Rule 1920.54. Hearing by Master. Report. Related Claims.

(a) If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating:

(1) the amount of support or alimony pendente lite[,];

(2) by and for whom it shall be paid[,]; and

(3) the effective date of the order.

The [**income and expense statements**] **Income and Expense Statements** shall be attached to the report.

* * * * *

[Pa.B. Doc. No. 06-2302. Filed for public inspection November 22, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 83

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, January 19, 2007 directed to:

Patricia A. Miles, Esquire
 Counsel, Domestic Relations Procedural Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, Pennsylvania 17055
 FAX (717) 795-2175
 E-mail: patricia.miles@pacourts.us

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

*By the Domestic Relations
 Procedural Rules Committee*

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

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

Rule 1915.8. Physical and Mental Examination of Persons.

(a) The court may order the [child or a party] **child(ren) and/or either and/or both parties** to submit to **and fully cooperate in** an evaluation by an appropriate expert or experts. The order, **which shall be substantially in the form set forth in Rule 1915.18**, may be made upon the court's own motion or [on] **upon** the motion of a party with reasonable notice to the person to be examined, [and] **or by agreement of the parties**. The order shall specify the place, manner, conditions and scope of the examination and the person or persons by whom it [is to] **shall be made and to whom distributed**. In entering an order directing an evaluation pursuant to this rule, the court shall consider all appropriate factors including the following, if applicable:

(1) **the allocation of the costs, including insurance coverage, if any, attendant to the undertaking of the evaluation and preparation of the resultant report and court testimony of any appointed expert;**

(2) **the execution of appropriate authorizations to facilitate the examination;**

(3) **any deadlines imposed regarding the completion of the examination and payment of costs;**

(4) **the production of any report and of underlying data to counsel and/or any unrepresented party upon the completion of the examination;**

(5) **whether the expert shall be deemed an independent court-appointed expert and, if so, whether such expert shall be subject to cross-examination by all counsel and any unrepresented party.**

(b) [Where the expert is appointed upon the court's motion] **Unless otherwise directed by the court, the expert shall deliver to the court [and], to the attorneys of record[, or to the parties if there are no attorneys of record] and to any unrepresented party, copies of [a detailed written report] any reports arising from the evaluation setting out the findings, results of all tests made, diagnosis and conclusions [within the time provided in subdivision (d) of this rule].** No reports shall be filed of record. Any

report which is prepared at the request of a party, with or without a court order, and upon which a party intends to rely at trial, must be delivered to the court and the other party at least thirty days before trial.

(c) [Where the expert evaluation is obtained upon motion of a party, the expert shall deliver to that party a detailed written report setting out the findings, results of all tests made, diagnosis and conclusions within the time provided in subdivision (d) of this rule.

(d) **Each expert's report shall be filed and/or served**

(1) **within sixty days of the entry of the order where the county pays the expert, or**

(2) **within sixty days after full payment of the expert fee(s) where one or both parties are directed to pay.**

(e) **The court may assess the cost of the examination and report on any or all of the parties or as otherwise permitted by law.**

(f) **The order shall require that payment be made within twenty days of the date of the order.**

(g) [If a party refuses to obey an order of court made under subdivision (a) of this rule, the court may make an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition, or such other order as is just. **The willful failure or refusal of a party to comply with an order entered pursuant to this rule may also give rise to a finding of contempt and the imposition of such sanctions as may be deemed appropriate by the court, including, but not limited to, an adverse inference against the non-complying party.**

[(h)] (d) **A petition for contempt alleging failure to comply with an order entered pursuant to subdivision (a) of this rule shall be treated in an expedited manner.**

[(i) **Any report which is prepared at the request of a party, with or without a court order, and upon which a party intends to rely at trial, must be served upon the court and the opposing party thirty days before trial.**

Explanatory Comment—1981

A child custody determination may often involve consideration of the mental and physical condition of both the parties to the proceeding and the child. Rule 1915.8 provides a procedure for the mental and physical examination of persons, similar to that provided by Discovery Rule 4010. One major difference between this rule and the Discovery Rule is the express statement that "the order may be made upon the court's own motion or on motion of a party . . ."

The power of the court to order a physical or mental examination on its own motion is a concrete example of the direction which custody law has taken. As expressed by Judge Lawrence W. Kaplan, "The Child Advocate in Custody Litigation," in PBI publication No. 1980-140, p. 86, *supra*:

The Superior Court, in exercising its actual adjudicative responsibility and perceived administrative stewardship over the custody law

of Pennsylvania, has taken the unprecedented step of requiring the trial judge to develop the record where it is deficient for the parties' failure to fully explore the relevant issues. *Lewis v. Lewis*, 267 Pa. Super. 235, 406 A.2d 781 (1979). By imposing this requirement, Pennsylvania's custody law challenges bench and bar in a fashion unmatched in other areas of the law.

This challenge was noted by the editors of the *Pennsylvania Family Lawyer*, Vol. 1, No. 1, p. 3 (January 1980):

An increased substantial burden is being placed upon judges and attorneys to develop a custody case to its fullest potential to insure that a proper award will be made. There is an affirmative duty to develop a record and to conduct a thorough investigation with the aid of outside agencies.

The reason for the challenge imposed by the Superior Court is clearly stated by the *Pennsylvania Family Lawyer*, p. 7:

Custody cases are not akin to most other cases in the adversary process. The focus is not on parental rights but unrepresented children's rights.

The Superior Court has placed litigants to a custody dispute on notice that the court is bound to explore all facets of the action to determine the best interest of the child. Physical and mental condition of the parties and of the child is but one facet to be explored.

There are two additional points to be noted. First, subdivision (b) provides that the examining physician or psychologist is to deliver a copy of his report to both the court and the parties. Second, subdivision (b) provides sanctions which may be imposed upon a party who refuses to obey an order to submit to an examination.

Explanatory Comment—1994

In order to make a proper determination in a child custody case, the court often requires information which can only be supplied by an expert evaluation of the parties and the subject child. Rule 1915.8 provides a procedure for expert evaluation of persons. Unlike the civil discovery rule (R.C.P. 4010), Rule 1915.8 provides that expert evaluations may be ordered upon the court's own motion as well as the motion of a party.

The proposed revisions to Rule 1915.8 add definite time limits during which the cost of evaluations must be paid, the evaluation themselves completed, and the reports provided to the court and counsel. The time limits are imposed in response to complaints of unreasonable delays in the completion of evaluations. The rule also provides a range of sanctions which the court may impose for failure to comply with an order directing evaluations, and provides that a petition for contempt for failure to comply with an order entered under this rule is to be treated in an expedited fashion.]

Explanatory Comment—2007

This rule addresses the process for any number of expert evaluations a court may order in a custody case, including, but not limited to, physical, mental health, custody or drug and alcohol evaluations,

and/or home studies. Since the initial promulgation of this rule in 1981, the frequency of utilizing professionals as expert witnesses in child custody litigation has increased considerably. Evaluations have served as a means to provide the court with a full and complete record and to facilitate settlement of the litigation.

The proposed revisions to Rule 1915.8 are intended to afford the trial court and the parties a more flexible and case-sensitive means of determining the scope and parameters of a physical and/or mental examination, including deadlines, costs, underlying data, etc. In many instances, the previous sixty-day deadline was impractical and ignored. While some cases demanded that the evaluation be completed in less than 60 days, others demanded far more time than that. The revisions to this rule also specifically permit the trial court to draw an adverse inference from one party's failure to comply with an order pursuant to this rule.

Rule 1915.18. Form of Order Directing Expert Examination and Report.

The order of court directing expert evaluation in a custody matter pursuant to Rule 1915.8 shall be in substantially the following form:

(Caption)
ORDER OF COURT

AND NOW, this ____ day of _____, [19] 20 __, it is hereby ORDERED, that:

[1] Home evaluations will be conducted by _____. The cost of the home evaluations shall be \$ ____.

2) Psychological evaluations will be conducted by _____. The cost of the psychological evaluation shall be \$ _____, but may increase if the issues are especially complex or numerous individuals must be interviewed.

Note: Alternatives are provided for paragraph 3) to accommodate local practice.

3) The cost of the evaluations shall be borne by _____, subject to the Court's right to allocate later. Payment to the evaluator(s) shall be made within twenty (20) days of the date of this order. Upon receipt of payment, the evaluator(s) shall contact the parties for appointments. The evaluations shall be completed and delivered to the (Court) (counsel of record or the parties, if they are unrepresented) within sixty days of receipt of full payment.

OR

3) The cost of the evaluations shall be borne by the county, subject to reimbursement by _____. Upon receipt of a copy of this order, the evaluator(s) shall contact the parties for appointments. The evaluations shall be completed and delivered to the (Court) (counsel of record or the parties, if they are unrepresented) within sixty days of the date of this order.

4) Upon completion of the evaluation reports, either party may schedule a (CONCILIATION/PRETRIAL CONFERENCE) before the undersigned.]

1. The evaluator will be _____ or will be selected by the parties.

2. The evaluator shall conduct a

- Physical Evaluation
- Psychological Evaluation
- Custody Evaluation
- Drug and/or Alcohol Evaluation
- Home Study
- Other (Specify) _____

3. The evaluator shall shall not make specific recommendations for legal and physical custody. If the evaluator makes specific recommendations, the evaluator shall state the specific reasons for the recommendations.

4. The parties shall cooperate fully with the evaluator on a timely basis, including retaining the evaluator upon appropriate terms, scheduling appointments, paying promptly, participating in all sessions and appropriate testing recommended by the evaluator and executing any reasonable consents relating to themselves and their children.

5. Both parties shall promptly cooperate to maximize the use of available insurance coverage and notify the other party of the result. The plaintiff defendant shall submit the costs to his or her insurance first. The cost of the unreimbursed portion of the evaluation shall preliminarily be allocated between the parties with the plaintiff paying _____ % and the defendant paying _____ % without prejudice to the ultimate apportionment of such costs by subsequent agreement of the parties or order of court.

6. The cost for the evaluator's time for depositions and/or testimony for hearing shall be allocated _____ % to the plaintiff and _____ % to the defendant or paid by the party seeking the testimony.

7. The evaluator may consult with and/or interview any person the evaluator believes can provide relevant information, including other experts and/or fact witnesses.

8. The evaluator may utilize the services of another qualified professional (e.g. to perform additional services) without court approval.

9. Subject to the applicable rules of evidence, the evaluator's file (including notes, exhibits, correspondence, test interpretations and, to the extent it is not a violation of copyright law, raw test data) shall promptly be made available to counsel for the parties.

10. Provided that the parties cooperate on a timely basis, the evaluator shall deliver his or her report to counsel for the parties, any unrepresented party, the guardian ad litem, if any, and to the court no later than _____ days prior to the first day of trial. The report shall not be filed of record.

11. Prior to and/or subsequent to the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to substantive issues, without the consent or direct participation of counsel for the other party.

12. The evaluator shall be deemed to be a court-appointed expert and therefore shall be subject to cross-examination by all counsel and any unrepresented party.

13. The evaluator shall be provided with a copy of this order.

14. The evaluator's report shall be considered confidential and shall not be inappropriately disseminated.

15. Other provisions:

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

BY THE COURT:

J.

[Pa.B. Doc. No. 06-2303. Filed for public inspection November 22, 2006, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BRADFORD COUNTY

Local Civil Rules 205.2(B), 206.4(C), 229 and 1301

Order

And Now, this 2nd day of November, 2006, the Court hereby adopts Bradford County Rules of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall send seven (7) certified copies of these rules to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that these local rules shall be kept continuously available in the Prothonotary's Office for public inspection and copying.

By the Court

JEFFREY A. SMITH,
President Judge

Local Rule 205.2(b)

1. Upon the filing of an action pursuant to the Pennsylvania Rules of Civil Procedure, including divorce and custody, a cover sheet in substantially the form specified in Subsection (b)3 of this rule shall be filed immediately in the office of court administration.

2. In the event any such action is filed pro se, the prothonotary shall provide a copy of the cover sheet form to the filing party and shall notify court administration to assure compliance with this rule.

3. The cover sheet shall be as follows:

IN THE COURT OF COMMON PLEAS OF BRADFORD COUNTY, PENNSYLVANIA

_____ : Date Filed: _____
 _____ : Docket No. _____
 _____ : Related Cases _____
 _____ Plaintiffs : _____
 vs. : Jury Trial Demanded Yes No
 _____ : Arbitration Case Yes No
 _____ : _____
 _____ Defendants : _____

Note: A civil action is to be listed for Arbitration unless (1) the amount in controversy exceeds \$30,000 exclusive of interest and costs or (2) the case involves title to real property

CIVIL/FAMILY COVER SHEET

CIVIL ACTION CASE TYPES

- Civil Action (assumpsit, trespass, equity)
- Professional Liability
- Medical Professional Liability
- Ejectment
- Quiet Title
- Replevin
- Mandamus
- Mortgage Foreclosure
- Other _____

APPEALS

- District Justice
- Zoning Board
- Drivers License Suspension
- Registration License
- Board of Assessment
- Other _____

FAMILY COURT CASE TYPES

- Child Custody/Visitation
- Annulment
- Divorce

Divorce Counts

- Child Custody/Visitation
- Equitable Distribution
- Other _____

Plaintiff's DOB _____
 Defendant's DOB _____

Filed by: _____
 Supreme Court ID No. _____

IMPORTANT: This form is not to be filed in the Prothonotary's Office, but should be taken directly to Court Administration for statistical and case management purposes immediately upon the filing of a new case or new petition/complaint (custody or divorce) in a family court case (It is not needed when filing petitions for special relief).

Local Rule 206.4(c)

D. If an answer is filed, the court, upon review, will determine whether a hearing or argument should be scheduled and will enter an order accordingly. **Concurrently with filing, counsel or any unrepresented party shall serve a time-stamped copy of the answer or objection upon the assigned judge.**

Local Rule 212.1

(a)(1) In any such civil action in which the damages sought exceed the jurisdictional limit for compulsory arbitration, any party may file a certification with the Prothonotary that the case is ready for trial. The Certification of Readiness shall be in substantially the following form:

IN THE COURT OF COMMON PLEAS OF BRADFORD COUNTY, PENNSYLVANIA

_____ * CIVIL ACTION
 Plaintiff
 vs. * NO.
 _____ * JURY _____
 Defendant * NON-JURY _____

CERTIFICATION OF READINESS

I hereby certify pursuant to Bradford County Rule of Civil Procedure 212.1(a)(1) that the above-captioned case is ready for trial. All pleadings are closed; all witnesses are presently available to appear at trial; and discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

I further certify that immediately after filing, I will serve a time-stamped copy of this certification upon opposing counsel, any unrepresented party and the Court Administrator.

_____	_____
Print Name	Signature
_____	_____
	Representing
_____	_____
Address	
_____	_____
Telephone No.	Date

(a)(2) The term “ready for trial” means that

(a) the pleadings are closed

(b) witnesses are presently available to appear at trial; and

(c) discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

(b) Immediately after the Certification of Readiness is filed, a time-stamped copy of the Certification shall be served upon the court administrator, opposing counsel and any unrepresented party.

(c) Upon receipt of the Certification of Readiness, the court administrator shall schedule a pre-trial conference before the assigned judge, taking into consideration the deadlines for filing of the pre-trial statements which are set forth in Pa.R.C.P. 212(b)

Local Rule 229.

(a) Any party filing a discontinuance shall immediately serve the court administrator with a time-stamped copy.

Local Rule 1301. Cases For Submission

A. Compulsory arbitration as authorized by Section 7361 of the Judicial Code, 42 Pa.C.S.A. Section 101, et seq. shall apply to all civil cases, except actions in equity, where the amount in controversy, exclusive of interest and costs, shall be **thirty [twenty-five]** thousand dollars **(\$30,000.00) [\$25,000.00]** or less, including appeals from a civil judgment of a district justice. Such actions shall be submitted to and heard by a board of arbitration consisting of three attorneys.

[Pa.B. Doc. No. 06-2304. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY
Consolidated Rules of Court; No. 42 Miscellaneous
2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Criminal Procedure 150 (Som.R.Crim.P. 150) Bench Warrants, a copy as follows is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Criminal Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Bench Warrants.

Som.R.Crim.P. 150: Bench Warrants.

In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a detention hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer if the judicial officer who issued the warrant is unavailable.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in Somerset County, if the bench warrant hearing cannot be conducted

promptly after the arrest or the warrant was issued by a Judge of the Court of Common Pleas, the defendant or witness shall be lodged in the Somerset County Jail pending the hearing. The Warden promptly shall notify the Court Administrator and the District Attorney that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside Somerset County and has been lodged in the Somerset County Jail, the Warden promptly shall notify the Court Administrator and the District Attorney that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the Somerset County Jail. The individual shall not be detained without a bench warrant hearing on that bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) As used in this rule, "judicial officer" is limited to the magisterial district judge or common pleas court judge who issued the bench warrant, or the magisterial district judge or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(7) This Rule does not apply to warrants issued in parole and probation detention or revocation proceedings.

[Pa.B. Doc. No. 06-2305. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 53 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby *Ordered*:

1. The following designated Somerset County Rule of Judicial Administration 5000.4 (Som.R.J.A. 5000.4) Court Reporters is amended to read in its entirety, as reflected in revised Som.R.J.A. 5000.4, and is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Court Reporters

Som. R.J. A. 5000.4

A. An official Court reporter (hereinafter called reporter) shall be present at every session of Court, whether regularly scheduled or specially summoned, whenever or wherever held, as may be assigned by the Court.

B. The assigned reporter shall cause a record to be made of all proceedings in the matter before the Court, including voir dire and arguments of counsel in all cases, stenographically, or by other means if directed by the Court.

Note: See *Commonwealth v. Stewart*, 218 Pa. Superior 38.

C. In order to assure that proper coverage is provided when one of the Official Court Reporters cannot be present or a fourth judge is assigned, the following assignment rule will be applied. In the event that more judges are assigned than Official Reporters are available or one of the Official Court Reporters is unavailable because of vacation or illness, a per diem reporter shall be engaged by the Court Administrator. In the event that one of the Official Court Reporters becomes available no less than 24 hours before the beginning of the workday for which the per diem reporter has been engaged, the Official Court Reporter shall be assigned to perform the work and the per diem reporter shall be cancelled. When a per diem reporter is engaged, the Court Administrator shall arrange the assignments of all of the reporters to assure that assignments which will require preparation of numerous orders and transcripts will be given to the Official Court Reporters to avoid delay in processing of orders and transcripts.

D. In order to assure that transcripts and orders entered on the record are processed promptly and properly, these procedures are to be followed by the Official Court Reporters and any per diem reporter employed by the court:

1. All orders dictated in court are to be prepared as separate orders and not only as part of the transcript.

2. All orders and transcripts must be prepared and delivered to chambers within five (5) business days of the hearing or argument.

3. Per diem reporters are expected to familiarize themselves with the form and content of transcripts, orders and sentences prepared by our Official Court Reporters and to adhere to those standards.

4. Per diem reporters are expected to familiarize themselves with procedures for copying and distributing transcripts and orders and to assure that those procedures are implemented to assure the prompt delivery of documents to the proper recipient. In particular, per diem reporters are to assure that copies of orders which direct rescheduling of a proceeding are distributed to all appropriate recipients, including the Court Administrator.

5. Per diem reporters are required to leave with the Court Administrator's office or an Official Court Reporter a rough ASCII disk of the entire proceedings reported by the per diem reporter, and

all original exhibits from the proceedings reported. Copies of exhibits will be supplied to the per diem reporter to aid in preparation of a transcript if requested.

6. If anything occurs which would affect the ability of any reporter to adhere to these procedures, the Court Administrator must be notified promptly.

7. These procedures may not be waived or modified without the permission of the President Judge.

[Pa.B. Doc. No. 06-2306. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 54 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Civil Procedure 1301 (Som.R.C.P. 1301) Arbitration. Jurisdiction Limits, a copy of which follows, is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

RULES OF COURT

Arbitration

Som.R.C.P. 1301 Arbitration. Jurisdiction Limits.

All civil actions for the recovery of money or personal property shall first be submitted to arbitration before a board of three members of the Bar of this Court, except: (i) actions which involve title to real property, and (ii) actions in which the amount in controversy, exclusive of interest and costs, exceeds [\$25,000.00] \$50,000.00.

Note: See Judicial Code § 7361, 42 Pa.C.S.A. § 7361. The authorized arbitration limit was \$5,000.00 until increased to \$10,000.00 by Act No. 1980-38. The authorized limit was increased to \$25,000.00 by Act No. 1992-25. **The authorized arbitration limit was increased to \$50,000.00 by Act No. 2006-41.**

Regarding referral of replevin to arbitration, see explanatory note 1981 to Pa.R.C.P. 1301.

On arbitration limits, see *Goncher v. Brant*, 29 *Somerset Legal Journal*, 332, 340 (1974) and *Reffner v. Tipton*, No. 2, 30 *Somerset Legal Journal* 269 (1974).

[Pa.B. Doc. No. 06-2307. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 55 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Civil Procedure 208.3(a) (Som.R.C.P. 208.3(a)) Motions. Practice and Procedure, and is amended to read in its entirety, as reflected in revised Som.R.C.P. 208.3(a) is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Motions.

Som.R.C.P. 208.3(a) Motions. Practice and Procedure

A. Motions will be scheduled, argued, and decided:

1. At Motions Court, in accordance with the procedure specified in subparagraph B. of this Rule, if the motion is of the type permitted to be presented at Motions Court, or

2. By the filing of a scheduling praecipe according to the procedure, and in the form specified in subparagraph F. of this Rule, copies of which are available from the Prothonotary or Court Administrator, or

3. In the case of a motion for preliminary injunction or similar motions which require immediate date certain scheduling, by presentation to a judge in accordance with Motions [**Judge**] practice specified in subparagraph C. of this Rule, or

4. In the case of motions which are permitted to be presented ex parte, without prior notice of presentation and opportunity to be heard, pursuant to the provisions of subparagraph D. of this Rule, by presentation to [**a judge**] **the Administrative Judge of the Civil Divi-**

sion or the Administrative Judge of the Family Division in accordance with Motions [Judge] practice specified in subparagraph C. of this Rule, or

5. In the case of motions or petitions which, because of extraordinary and compelling circumstances, cannot be scheduled otherwise, and which must be heard upon short notice, by presentation to [a judge] the Administrative Judge in accordance with Motions Judge practice specified in subparagraph C. of this Rule.

B. Motions Court.

1. Civil Motions Court will be held before the designated [Motions] Administrative Judge of the Civil Division at 9:00 [a.m.] A.M. on [the first and third] each Wednesday[s] of every month, holidays excepted. Family Motions Court will be held before the designated Administrative Judge of the Civil Division at 9:00 A. M. on the first and third Tuesday of every month, holidays excepted.

2. A motion may be presented at Civil Motions Court when the issue raised, or relief requested, is:

a. To compel, limit or prohibit discovery, or to obtain a protective or confidentiality order with respect to discovery.

b. To permit the amendment of a pleading or joinder of an additional defendant.

c. To make a rule absolute or for similar default order, when, although required, timely answer to a motion or petition has not been filed.

[d. To compel counseling in divorce cases.]

[e.] d. To permit withdrawal as counsel.

[f.] e. Approval of settlement of a minor's claim or approval of settlement of wrongful death and survival actions.

[g.] f. Consolidation.

[h.] g. Objections to a scheduling praecipe.

3. A motion may be presented at Family Motions Court when the issue raised, or relief requested, is:

a. For the appointment of a Special Master;

b. A motion for the appointment of a Custody Investigator;

c. A motion to be excused from the payment of costs or to proceed in forma pauperis;

d. To compel counseling in divorce cases;

e. A motion for special relief;

f. Objections to a scheduling praecipe.

[3.] 4. At least [ten] five days before presentation, a copy of the motion shall be served upon all other counsel and unrepresented parties, and upon the [Court Administrator] Administrative Judge, together with a notice specifying the time and date of the Motions Court at which the motion will be presented.

[4.] 5. The [Court Administration] Administrative Judge shall maintain a list of motions with date and time of receipt. Only those motions which have been submitted in a timely manner to the [Court Administrator] Administrative Judge in accordance with these Rules will be heard. Motions will be heard by the

Court in the order of their submission to the [Court Administrator] Administrative Judge.

[5.] 6. The moving party shall file and serve an affidavit of service of the motion and notice prior to, or at the time of presentation. The motion will not be heard unless the notice requirements of this rule have been satisfied and an affidavit of service filed.

[6.] 7. Counsel and unrepresented parties are to confer prior to the presentation of any motion and are to attempt, in good faith, to reach amicable resolution of the issues involved. Good faith efforts toward amicable resolution shall be considered as a factor when determining whether or not the requested relief is appropriate, the propriety of sanctions, or in determining the exigency of circumstances, if relevant.

[7.] 8. At the time of presentation, the [presiding] Administrative Judge may enter an Order resolving the issues raised by the motion; schedule argument, hearing or other proceeding; issue a briefing schedule; or enter other appropriate Order.

[8.] 9. Presentation of motions at Motions Court is optional, and if the party chooses, the motion may be scheduled by scheduling praecipe for hearing or argument.

C. All unscheduled matters, including applications and requests, formal and informal, which may be presented to the [Motions] appropriate Administrative Judge under the provisions of subparagraph A. of this Rule, shall be filed and docketed, and then transmitted to Chambers or presented in open court to the [Motions] Administrative Judge [on duty at the time,] except in the following circumstances:

1. Emergency cases may be presented to any judge.

[2. Matters affecting cases formerly assigned to a judge other than the Motions Judge shall be presented to that other judge, but may in emergencies be presented to the Motions Judge when the assigned judge is absent.]

[3. Matters with which a judge other than the Motions Judge has special familiarity by reason of prior judicial acquaintance, significantly relevant to the matter at hand, may be presented to another judge.]

[4] 2. Matters in which [any judge] the Administrative Judge has been disqualified or declines to act shall be presented to [another judge] the President Judge.

[5] 3. Administrative and policy matters required by law or custom to be acted upon by the President Judge, or appropriate for the attention of the President Judge, shall be presented to the President Judge.

D. Ex parte orders in adversary proceedings.

1. Motions presented to the court in an adversary proceeding will not be considered ex parte, without prior notice of presentation and an opportunity to be heard, except in the following cases:

a. Motions for relief which are routinely granted as of course, on a presumption of assent, such as motions for appointment of legal counsel and guardians ad litem, and the like.

b. Motions affecting the issuance or service of initial papers upon another who is not yet subject to the jurisdiction of the court, such as applications for substituted service, extensions of time, and the like.

c. Motions for preliminary orders granting or scheduling a hearing thereon, or directing process or notice to bring the opponent before the court to answer.

d. Motions for stay orders in license suspension appeals.

e. Cases in which the adverse party has waived the opportunity to be heard or has consented to the requested action.

f. Cases in which there are special or compelling circumstances which the court finds justify ex parte action.

2. Prior notice of presentation of a motion to the court shall state the date, time and place of intended presentation and shall be accompanied by a copy of the motion and the proposed order.

3. In cases where an ex parte order is made, a copy of the motion and order shall be served promptly on the opponent and on all other parties, who may file a prompt application for reconsideration of the order.

4. In all cases where prior notice of presentation is required under statute or rule of court, the motion shall state that the requisite prior notice was given; the date, time and manner of giving notice; and the substance thereof. If the right to ex parte relief is based on the existence of special or compelling circumstances, the motion shall state such circumstances.

E. Continuances.

1. Motions for continuance must be made in writing or of record in open court, unless excused by the court for cause.

2. Absent exceptional circumstances, motions for continuance shall be presented no later than [**ten (10)**] **fifteen (15)** days before the date of the proceedings for which the continuance is requested. Thereafter, no motions for continuance will be granted except for substantial reasons which were not previously known or reasonably ascertainable.

3. The motion shall state whether or not the proceedings previously have been continued, and, if so, the number of prior continuances, with identification of the party upon whose motion each continuance was granted.

4. Absent extraordinary circumstances, a request for a continuance based on proceedings scheduled in another Court of Common Pleas will be granted only if the other court's scheduling order was issued before the order scheduling the proceedings for which the continuance is requested. If the motion is based on conflict with a matter scheduled in another Court of Common Pleas [e], a copy of the scheduling order from the other Court of Common Pleas shall be attached to the motion.

5. Motions for continuance of court cases shall be presented as follows:

a. When at a scheduled call of the list, to the presiding Judge.

b. When a case is on a current trial or argument schedule, to the assigned Judge.

c. In all other cases, [**Motions Judge practice**] to the **appropriate Administrative Judge**.

6. Continuances shall operate to effect rescheduling:

a. To a date certain or specific trial session if the [**Court**] **Administrative Judge or Presiding Judge** states a date certain or specific trial session in the continuance order.

b. In all other cases, only upon filing of a scheduling praecipe as provided in subparagraph F. of this Rule.

7. An order continuing a case "sec reg.," until the next available session, or in terms of similar generality, will not result in rescheduling, or placement on a new trial list.

8. Every motion for continuance shall specify the reasons for the request.

9. The moving party shall certify that prior notice of presentation of the motion has been given to opposing counsel and unrepresented parties.

10. Every motion for unopposed continuance, whether written or oral, shall be joined in by all other parties or counsel of record, or shall certify that all other parties or counsel have been notified of the presentation of the motion and join in or do not oppose the motion.

11. When a civil case is scheduled for pretrial conference, the motion for continuance shall clearly state whether it relates to pretrial conference, or to the trial, or both.

12. An approved form of continuance motion is set forth in subparagraph F. 14. of this Rule.

13. This Rule does not apply to continuances of trials before arbitrators which are governed by Som.R.C.P. 1303F.

14. Form of Continuance Motion.

[CIVIL CONTINUANCE REQUEST

_____) IN THE COURT OF COMMON
Plaintiff) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
v.)
)
) NO. ____ CIVIL 200 ____
)
Defendant)

Scheduled before Judge _____ on _____ at _____.
For (Type of proceeding): _____

REASON FOR REQUEST: (Attach extra sheet, if necessary) _____

NUMBER OF PRIOR CONTINUANCES: _____ by the plaintiff _____ by the defendant

NOTICE OF PRESENTATION OF THE MOTION HAS BEEN GIVEN TO OPPOSING COUNSEL AND UNREPRESENTED PARTIES.

REQUESTING ATTORNEY OR PARTY:

(Print) _____ Counsel for: _____

(Sign) _____

OPPOSING COUNSEL OR PARTY:

(Print) _____ Counsel for: _____

[] Joins In [] Does not object [] Opposes

OPPOSING COUNSEL OR PARTY:

(Print) _____ Counsel for: _____

[] Joins In [] Does not object [] Opposes

ORDER

AND NOW, this ____ day of _____, 200 __, the above Civil Continuance request if GRANTED/DENIED and the hearing/argument is continued. Hearing will be rescheduled upon the filing of a new scheduling praecipe by a party. Hearing is rescheduled for _____, __.m., on __, 200__.

BY THE COURT:

_____]

CIVIL HEARING CONTINUANCE REQUEST

_____) IN THE COURT OF COMMON
Plaintiff) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
v.)
)
) NO. ____ CIVIL 200 ____
)
)
Defendant)

Scheduled before Judge _____, on _____
For _____

Reason For Request:

Number of prior continuances: _____ By
Plaintiff _____ By Defendant _____

NOTICE [] HAS [] HAS NOT BEEN GIVEN TO
OPPOSING COUNSEL OR PARTY

(Sign) _____ Counsel For: ____
Requesting Attorney or Party

(Sign) _____ Counsel For: ____
Responding Attorney or Party

[] Joins In [] Does Not Object [] Opposes

ORDER

AND NOW, this ____ day of ____ 200__, the
continuance request is [] GRANTED [] DENIED.

[] Hearing to be rescheduled by scheduling
praecipe.

[] Hearing is rescheduled for _____ the ____
day of _____ 200__, at ____ M. in Court-
room No. ____ before Judge _____.

BY THE COURT:

_____ J.

F. Scheduling by Praecipe.

1. Those cases required to be scheduled by praecipe
shall be scheduled only upon filing of a scheduling
praecipe, substantially in the form set forth below in
subparagraph F.6. of this Rule.

2. The praecipe and all issued copies thereof shall by
signed by counsel of record or an unrepresented party.

3. The scheduling praecipe shall be filed as provided in
the prescribed form of scheduling praecipe, and the
praecipe and copies thereof shall be served promptly on
other counsel and unrepresented parties in the case.

4. Upon receipt of a scheduling praecipe any party may
object thereto as follows:

a. If the objection is to the assertion in the praecipe of
readiness of the case for disposition by the court, the
objection shall be made promptly to the court in accord-
ance with Motions [Judge] practice on notice to other
parties.

b. If the objection relates to any other assertion in the
praecipe, such as time of scheduling, time required on the
schedule, etc., the objecting party shall promptly file a
counter praecipe stating only the matter corrected or
changed.

5. If a party files a scheduling praecipe, knowing that
the matter is not ready for disposition by the court, or
knowing that the matters certified to in the scheduling
praecipe are not true, the court may impose sanctions on
the offending party. Sanctions may include assessment of
reasonable counsel fees incurred by other parties as the
result of such conduct, prohibition of additional discovery,
or other appropriate order.

[6. Form of Scheduling Praecipe.

_____) IN THE COURT OF COMMON
Plaintiff) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
v.)
)
) NO. ____ CIVIL 200 ____
)
)
Defendant)

SCHEDULING PRAECIPE

I. This is a/an—

- [] A. ARGUMENT CASE (Complete Part A below):
[] B. CIVIL TRIAL CASE (Complete Part B below):
[] C. CIVIL ARBITRATION CASE (Complete Part
C below).

PART A (Argument Case):

1. Place the above case on an appropriate Argu-
ment Schedule for

[] Argument on _____ .
Nature of Proceeding

If I am the moving party, I CERTIFY that the
required brief has been filed, and has been or will
be served promptly.

—OR—

[] Hearing on _____ .
Nature of Proceeding

2. Type of scheduling requested:

[] a. Sec reg (At any date and time convenient to
the Court to be fixed on the next available Argu-
ment Schedule to be issued).

—OR—

[] b. Sec reg-date certain (At a presently fixed
date and time on an Argument Schedule to be
issued).

—OR—

[] c. Prompt (At a presently fixed date and time
on a schedule already issued).

d. If date certain or prompt scheduling is requested, state the reason (granted only for cause):

3. Estimated total schedule time required for presentation by all parties: _____ Minutes/Hours/Days.

4. a. If the matter listed in paragraph 1 above seeks scheduling for modification or enforcement of any: (i) criminal sentence or order of probation or parole, (ii) juvenile adjudication or disposition order, or (iii) any other order or decree of Court entered in adversary proceedings, state the name of the Judge who made the sentence, order or decree:

_____ J. If not applicable, so state.

b. If any Judge has previously heard argument or testimony on the specific matter to be scheduled, mentioned in paragraph 1 above, or has had significant prior judicial acquaintance with the controversy presented thereby, name the Judge:

_____ J. If not applicable, so state.

PART B. (Civil Trial Case):

1. Place the above case on the next issued Civil Trial List for

[] JURY TRIAL [] NONJURY TRIAL

PART C. (Civil Arbitration Case):

1. Schedule the above case for Arbitration Trial Hearing sec reg.

2. Estimated total time for presentation by all parties: _____ Minutes/Hours/Days

II. I CERTIFY that:

1. This case is ready for disposition by the Court.

2. The signed original of this praecipe and one signed copy thereof (for transmission to the administrator) have been or will be promptly filed to the case in the office of the court clerk; and a signed copy has been or will be promptly served upon each other counsel and upon each unrepresented party who has been served with initial process or pleading.

3. All prescheduling and pretrial procedures, including pleading and discovery, have been completed.

4. All parties, witnesses and counsel for the undersigned are expected to be available and present when the case is scheduled, barring unforeseeable events hereafter occurring. If any event hereafter occurs requiring continuance, a motion therefor will be promptly presented to the Court.

5. I have read and am acquainted with the local rules governing scheduling and court procedures.

III. REMARKS:

Signature

Type or print name of signer and party represented.

List of All Counsel and Unrepresented Parties (State party represented by each, e.g., for plaintiff Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above mentioned cases is scheduled and thereafter continued, a new scheduling praecipe will be required in order to schedule the case again, unless the continuance order fixes a date certain or otherwise provides.]

6. Form of Scheduling Praecipis

ARGUMENT/HEARING SCHEDULING PRAECIPE AND ORDER

_____) Place this case on an Argument
) schedule for [] Hearing []
Plaintiff) Argument on _____
) (Nature of Proceeding or
v.) Pleading)
)
) No. _____ CIVIL 20 ____
)
)
Defendant)

Type of scheduling requested:

[] Sec. Reg. (On the next available Argument Schedule).

[] Prompt (At a presently fixed date and time on an Argument Schedule already issued).

State reason for Prompt scheduling (Granted only for cause)

Estimated hearing time for all parties: _____

Judge _____ has previously heard a matter in this case.

[] I am the moving party and my brief has been filed and served pursuant to SOM.R.C.P. 210.

[] A copy of this praecipe has been served on opposing counsel and any unrepresented party.

Signature Type Name and Party Represented

ORDER

AND NOW, this ___ day of ___ 20___, [] Argument
[] Hearing is scheduled on _____ the ___ day of ___,
20___, in Court Room ___, at _____. M. before
Judge _____.

BY THE COURT

_____ J.

Distribution:

TRIAL SCHEDULING PRAECIPE

_____) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
Plaintiff) PENNSYLVANIA
)
)
v.)
)
)
)
Defendant)

NO. _____ CIVIL 20

ARBITRATION/TRIAL SCHEDULING PRAECIPE AND ORDER

CIVIL ARBITRATION CASE

1. Schedule this case for Arbitration Hearing sec. reg.
2. Estimated total time for presentation by all parties:

_____ Minutes/Hours/Days

CIVIL TRIAL CASE

Place this case on the next issued Civil Trial List for:

_____ JURY TRIAL _____ NONJURY TRIAL.

Signature

Type Name and Party Represented

ORDER

AND NOW, this ___ day of __, 20___, Arbitration Hearing Non Jury Trial is scheduled for ___ the day of __, 20___, at ___ o'clock __. M. in Courtroom ___ before Judge _____.

This case will be scheduled for trial at the next call of the Civil and Family Trial List to be held on _____ the ___ day of __, 20___ at ___ o'clock __M. in Courtroom No. __, before Judge _____.

BY THE COURT

_____ J.

II. I CERTIFY that:

1. This case is ready for disposition by the Court.
2. The signed original of this praecipe and one signed copy thereof (for transmission to the administrator) have been or will be promptly filed to the case in the office of the court clerk; and a signed copy has been or will be promptly served upon each other counsel and upon each unrepresented party who has been served with initial process or pleading.
3. All prescheduling and pretrial procedures, including pleading and discovery, have been completed.
4. All parties, witnesses and counsel for the undersigned are expected to be available and present when the case is scheduled, barring unforeseeable events hereafter occurring. If any event hereafter occurs requiring continuance, a motion therefor will be promptly presented to the Court.
5. I have read and am acquainted with the local rules governing scheduling and court procedures.

III. REMARKS:

Signature

Type or print name of signer and party represented:

List of All Counsel and Unrepresented Parties (State party represented by each, e.g., for plaintiff Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above mentioned cases is scheduled and thereafter continued, a new scheduling praecipe will be required in order to schedule the case again, unless the continuance order fixes a date certain or otherwise provides.

G. Preparation and Form of Orders and Decrees. Copies for Distribution.

1. Unless otherwise directed by the court, decrees and orders requested by a party shall be drafted by the attorney at whose instance they are to be made, and shall be submitted to the court for approval.

2. All proposed orders presented to the court, whether by an attorney, court staff or department, or other person, shall list thereon the names of all counsel in the case (of record and known, including counsel for applicant), and shall indicate the party represented by each (e.g., for plaintiff, for defendant, for petitioner, for respondent, etc.).

Note: Nothing herein is intended to alter the present practice of the court reporters in preparing court orders.

3. Counsel preparing the order shall be responsible for copying, and shall provide sufficient copies to the Prothonotary for distribution to all other counsel and parties. If the order continues a case or fixes a date for hearing or argument, counsel shall ensure that the order and its accompanying documents are transmitted to the Court Administrator for notation of the matter for scheduling purposes. The order and documents shall then be filed in the proper office.

4. All documents prepared in and issued from chambers shall be transmitted to the Court Administrator for copying and distribution sec reg, and for scheduling if necessary, then filed in the proper office.

Adopted May 12, 2004, effective July 26, 2004; Amended October 31, 2006.

[Pa.B. Doc. No. 06-2308. Filed for public inspection November 22, 2006. 9:00 a.m.]

WESTMORELAND COUNTY

Rules W212.1, W1301, W1301.1, W1308; No. 3 of 2006

And Now this 2nd day of November 2006, it is *Hereby Ordered* that Westmoreland County Rules of Civil Procedure W212.1, W1301, and W1308 are rescinded. New Rules W212.1, W1301, and W1301.1 are adopted. The effective date of these changes is January 1, 2007.

DANIEL J. ACKERMAN,
President Judge

RULE W212.1 CERTIFICATION OF READINESS FOR TRIAL. TIME FOR COMPLETING DISCOVERY AND FILING PRE-TRIAL STATEMENT

(a) Any party may file a certification with the prothonotary that the case is ready for trial. A copy of the certification found in the Forms section of these rules shall be served on the judge assigned to the case, on the Court Administrator and on all other parties or their counsel.

(b) The term "ready for trial" means that:

- (1) the pleadings are closed;

(2) witnesses are presently available to appear at trial; and

(3) discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

(c) Upon receipt of the certification of readiness, the judge assigned to the case shall issue an Order addressing the following matters:

(1) When Pre-Trial Statements shall be due pursuant to Pa.R.C.P. 212.I(c) (2), which dates shall be set prior to the Pre-Trial Conference.

(2) The date of the Pre-Trial Conference pursuant to Pa.R.C.P. 212.3.

(3) Such other matters that may aid in the disposition of the case.

RULE W1301 CASES FOR SUBMISSION TO ARBITRATION

(a) All civil cases, except those involving title to real estate or actions in equity, wherein the amount in controversy (exclusive of interest and costs) is \$30,000 or less, shall be heard and decided by a board of arbitration consisting of three members of the bar. The prothonotary shall, at the time the complaint is filed, assign a trial judge.

Cases Submitted By the Parties

(b) Any civil case with an amount in controversy exceeding \$30,000 may be referred to a board of arbitration by agreement signed by all parties or their counsel.

(c) The plaintiff shall, at the time of filing a case subject to arbitration, provide the court administrator a copy of the Complaint. The party who files an appeal of a magisterial district judge's decision shall, at the time of filing the Notice of Appeal, provide the court administrator a copy of the Notice of Appeal. Any party filing a reinstatement of any case subject to arbitration as provided in subsection (a), shall, at the time of filing the Reinstatement, serve a copy of the Reinstatement on the court administrator.

(d) The court administrator shall schedule the case for arbitration on the first available arbitration date but not sooner than 120 days from the date of filing of the Complaint, Notice of Appeal, or the Reinstatement thereof. The court administrator shall, 30 days prior to the arbitration date, provide notice of the date to the parties.

Cases Submitted By the Court

(e) The court, on its own motion or on motion of either party, may by depositions, settlement conference, hearing or otherwise, determine that the amount actually in controversy does not exceed \$30,000 (exclusive of interest and costs) and enter an order referring the case to arbitration.

RULE W1301.1 DISCOVERY IN ARBITRATION PROCEEDINGS

(a) A party to compulsory arbitration proceedings shall be limited, prior to the arbitration hearing, to the discovery hereinafter set forth, unless additional discovery is deemed necessary by counsel and is permitted by the court upon cause shown.

(b) Depositions may be taken only in the following instances:

(1) Where the party or person to be examined is

(i) aged or infirm, or

(ii) about to leave this county for a place outside the Commonwealth or a place more than one hundred miles from the Westmoreland County Courthouse, or

(2) Upon other good cause shown.

(c) Discovery must be completed no later than 10 days prior to the arbitration hearing. Failure to complete discovery within this period shall be deemed a waiver of discovery prior to the hearing. Responses shall be made within the periods prescribed by the Pennsylvania Rules of Civil Procedure.

(d) Discovery to any party shall be limited to the following, applicable fourteen interrogatories and requests for production of documents.

Discovery Directed To Any Party

TO THE [PLAINTIFF (s) _____]
[DEFENDANT(s) _____]
[ADDITIONAL DEFENDANT (s)] _____ :

(1) State your full name and address.

(2) State the full names, present addresses and telephone numbers of witnesses to the incident described in the complaint and the names, present addresses and telephone numbers of witnesses who will be called to testify at the hearing.

(3) It is requested that you produce any written statements, not subject to the attorney-client privilege, signed, adopted or approved by any witness; a written summary of any other statements (including oral statements), and identify any witness who has given a stenographic, mechanical, electrical or other recording that has not yet been transcribed.

(4) It is requested that you produce all photographs, maps, drawings, diagrams, or other demonstrative evidence that may be introduced at the hearing or that may otherwise pertain to the lawsuit.

(5) If this action arises from an accident involving your operation of a motor vehicle, state whether you were in any way impaired in the operation of the vehicle and produce a copy of your driver's license and the police accident report.

Discovery Directed To A Party-Defendant

(6) State whether there is any insurance covering any defendant for the incident or matter described in the complaint. If so, list the name of each company providing coverage, together with the amount of coverage provided, and produce a copy of each declaration page.

Discovery Directed To A Party-Plaintiff Claiming Personal Injuries

(7) Produce all medical documents, including hospital records, treating physician and chiropractic records, or authorizations concerning your injuries.

(8) Disclose the name and address of each physician who treated you during the period from five (5) years prior to the incident to the present date.

(9) Did you sustain injuries that resulted in work loss during the period from five (5) years prior to the incident to the present date? Answer "Yes" or "No."

(10) If the answer to Interrogatory 9 is "Yes," state the date of the injury, the nature of the injury, and the dates of lost work.

(11) If a claim is being made for lost income, state the name and address of your employer at the time of the

incident, the name and address of your immediate supervisor at the time of the incident, your rate of pay, the dates of work loss due to the injuries from this accident, and the total amount of your work loss claim.

Interrogatories That Apply Only To Personal Injury Claims Arising Out Of A Motor Vehicle Accident

(12) If you are making a claim for medical benefits or lost income, have you received or are you eligible to receive benefits from Workers' Compensation or any program, group contract, or other arrangement for payment of benefits as defined by Title 75 P. S. § 1719(b)? Answer "Yes" or "No."

(13) If the answer to Interrogatory 12 is "Yes," set forth the type and amount of these benefits.

(14) Are you subject to the "Limited Tort Option" or the "Full Tort Option" of automobile insurance coverage, as defined in Title 75 P 5 § 1705(a) and (b)?

_____ Limited Tort Option (no claim can be made for non-monetary damages)

_____ Limited Tort Option (claim can be made for non-monetary damages because the injuries fall within the definition of serious injury or because one of the exceptions set forth in 75 P. S. § 1705(d)(1)—(3) applies)

_____ Full Tort Option

Note: This rule does not affect the provisions or requirements of Pa.R.Civ.P. 1305.

Note: This rule does not preclude additional discovery under the Pennsylvania Rules of Civil Procedure in cases appealed pursuant to Pa.R.C.P. § 1308.

[Pa.B. Doc. No. 06-2309. Filed for public inspection November 22, 2006, 9:00 a.m.]