

COURTS

Title 210—APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 9, 11, 19, 21, 25 AND 37]

Order Adopting Amendments to Pa.R.A.P. 102, 904, 905, 1112, 1113, 1116, 1123, 1925, 1931, 1972, 2113, 2154, 2172, 2185, 2542, 2545, and to Official Notes to Pa.R.A.P. 2572 and 3723; No. 197; Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam

And Now, this 13th day of January, 2009, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 38 Pa.B. 4723 on August 30, 2008:

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rules of Appellate Procedure 102, 904, 905, 1112, 1113, 1116, 1123, 1925, 1931, 1972, 2113, 2154, 2172, 2185, 2542, 2545, and to Official Notes to Pa.R.A.P. 2572 and 3723 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective as to all appeals filed 60 days or more after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

IN GENERAL

Rule 102. Definitions.

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

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Appropriate security—Security which meets the requirements of Rule 1734 (appropriate security).

Children's fast track appeal—Any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity. See 42 Pa.C.S. §§ 6301 et seq.; 23 Pa.C.S. §§ 2511 et seq.; 23 Pa.C.S. §§ 2101 et seq.; 23 Pa.C.S. §§ 5301 et seq.; 23 Pa.C.S. §§ 5102 et seq.

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ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 904. Content of the Notice of Appeal.

(a) *Form*.—[The] Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

* * * * *

Notice is hereby given that C.D., defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the ___ day of _____ [19] 20 _____. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

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(e) *Content in criminal cases*.—When the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) *Content in children's fast track appeals*.—In a children's fast track appeal the notice of appeal shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

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Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk*.

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children's fast track appeal, the concise statement of errors complained of on appeal as described in Rule 1925(a)(2) shall be filed with the notice of appeal and served in accordance with Rule 1925(b)(1).

(3) Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court*. The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee in the appellate court required under Subdivision (c). **If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal and shall transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors**

complained of on appeal required by Subdivision (a)(2) of this rule. The clerk shall also transmit with such papers:

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CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1112. Appeals by Allowance.

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(c) *Petition for allowance of appeal.* [—]

(1) Allowance of an appeal from a final order of the Superior Court or the Commonwealth Court may be sought by filing a petition for allowance of appeal with the Prothonotary of the Supreme Court within the time allowed by Rule 1113 (time for petitioning for allowance of appeal), with proof of service on all other parties to the matter in the appellate court below.

(2) If the petition for allowance of appeal is transmitted to the Prothonotary of the Supreme Court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a U.S. Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the appellate court below and shall be either enclosed with the petition or separately mailed to the prothonotary.

(3) Upon actual receipt of the petition for allowance of appeal the Prothonotary of the Supreme Court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when allowance of appeal was sought, which date shall be shown on the docket. The Prothonotary of the Supreme Court shall immediately note the Supreme Court docket number upon the petition for allowance of appeal and give written notice of the docket number assignment in person or by first class mail to the prothonotary of the appellate court below who shall note on the docket that a petition for allowance of appeal has been filed to the petitioner and to the other persons named in the proof of service accompanying the petition.

(4) **In a children’s fast track appeal, the Prothonotary of the Supreme Court shall stamp the petition for allowance of appeal with a “Children’s Fast Track” designation in red ink, advising the Supreme Court that the petition for allowance of appeal is a children’s fast track appeal.**

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(f) *Entry of appearance.*—Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his or her counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The Prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter a counsel’s appearance for a party may not be withdrawn without

leave of court unless another lawyer has entered or simultaneously enters an appearance for the party.

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The United States Postal Service form may be in substantially the following form:

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With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 1200.

Rule 1113. Time for Petitioning for Allowance of Appeal.

(a) *General rule.*—Except as otherwise prescribed by this rule, a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.

(1) If a timely application or reargument is filed in the Superior Court or Commonwealth Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the decision on reargument, whether or not that decision amounts to a reaffirmation of the prior decision.

(2) Unless the Superior Court or the Commonwealth Court acts on the application for reargument within 60 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the prothonotary of the appellate court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

(3) **In a children’s fast track appeal, unless the Superior Court acts on the application for reargument within 45 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the Prothonotary of the Superior Court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.**

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Rule 1116. Brief in Opposition to Petition.

(a) **General rule.**—[Within] Except as otherwise prescribed by this rule, within 14 days after service of a petition for allowance of appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court and shall comply with Rule 1115(a)(7) (content of petition for allowance of appeal.). No separate motion to dismiss a petition for allowance of appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for allowance of appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for allowance of appeal.

(b) **Children's fast track appeals.**—In a children's fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file an answer.

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Rule 1123. Denial of Appeal; Reconsideration.

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(b) **Reconsideration.** Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most extraordinary circumstances. An application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within fourteen days after entry of the order denying the petition for allowance of appeal. In a children's fast track appeal, the application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 7 days after entry of the order denying the petition for allowance of appeal. Any application filed under this subdivision must:

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CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

Rule 1925. Opinion [is] in Support of Order.

(a) **Opinion in support of order.**

(1) **General rule.**—[Upon] Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

(2) **Children's fast track appeals.**—In a children's fast track appeal:

(i) **The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905. See Pa.R.A.P. 905(a)(2).**

(ii) **Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by Rule 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.**

* * * * *

(b) **Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.** If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement").

(1) **Filing and service.**—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service [form] **Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified**, in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

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(c) **Remand.**

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(4) In a criminal case, counsel may file of record and serve on the judge a statement of intent to file an *Anders/McClendon* brief in lieu of filing a Statement. If, upon review of the *Anders/McClendon* brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to **Rule 1925(a)**, or both. Upon remand, the trial court may, but is not required to, replace appellant's counsel.

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Official Note: Subdivision (a) The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate **Rule 1925(a)** opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. See, e.g., *Commonwealth v. Yogel*, 307 Pa. Super. 241, 243-44, 453 A.2d 15, 16 (1982). At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. See, e.g., Pa.R.Crim.P. 581(I). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under **Rule 1925(a)**, even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931, and that rule was concur-

rently amended to expand the time period for the preparation of the opinion and transmission of the record.

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Rule 1931. Transmission of the Record.

(a) *Time for transmission.* [—]

(1) *General rule*—[**The**] **Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this subdivision for a class or classes of cases.**

(2) *Children's fast track appeals.*—**In a children's fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be.**

* * * * *

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he **or she** is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

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DISPOSITION WITHOUT REACHING THE MERITS

Rule 1972. Dispositions on Motion.

(a) **Except as otherwise prescribed by this rule, [Subject] subject to Rule 123 (applications for relief), any party may move:**

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Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the appellate court, a motion under this rule shall not relieve any party of the duty of filing his **or her** briefs and reproduced records within the time otherwise prescribed therefore. The court may grant or refuse the motion, in whole or in part; may postpone consideration

thereof until argument of the case on the merits; or may make such other order as justice may require.

(b) In a children's fast track appeal, a dispositive motion filed under Paragraphs (a)(1), (a)(2), (a)(5), (a)(6) or (a)(7) of this rule shall be filed within 10 days of the filing of the statement of errors complained of on appeal required by Rule 905(a)(2), or within 10 days of the lower court's filing of a Rule 1925(a)(2) opinion, whichever period expires last, unless the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided herein, or except upon application and for good cause shown.

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CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2113. Reply Brief.

(a) *General rule.*—In accordance with Rule 2185(a) (Time for Serving and Filing Briefs[; **General Rule**]), the appellant may file a brief in reply to matters raised by appellee's brief and not previously addressed in appellant's brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief.

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CONTENT OF REPRODUCED RECORD

Rule 2154. Designation of Contents of Reproduced Record.

(a) *General rule.*—Except when the appellant has elected to proceed under Subdivision (b) of this rule, **or as otherwise provided in Subdivision (c) of this rule,** the appellant shall not later than 30 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his **or her** brief, serve and file a designation of the parts of the record which he **or she** intends to reproduce and a brief statement of issues which he **or she** intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(b) *Large records.*—If the appellant shall so elect, or if the appellate court has prescribed by rule of court for classes of matters or by order in specific matters, preparation of the reproduced record may be deferred until after the briefs have been served. Where the appellant desires thus to defer preparation of the reproduced record, the appellant shall, not later than the date on which his **or her** designations would otherwise be due under Subdivision (a), serve and file notice that he **or she** intends to proceed under this subdivision. The provisions of Subdivision (a) shall then apply, except that the designations referred to therein shall be made by each party at the time his **or her** brief is served, and a statement of the issues presented shall be unnecessary.

(c) Children's fast track appeals.

(1) In a children's fast track appeal, the appellant shall not later than 23 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 7 days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(2) In a children's fast track appeal, the provisions of Subdivision (b) shall not apply.

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FORM OF BRIEFS AND REPRODUCED RECORD

Rule 2172. Covers.

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(b) Children's fast track appeals.—In a children's fast track appeal, the front cover shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

[(b)] (c) Reproduced record.—If the reproduced record is bound separately, the cover thereof shall be the same as provided in Subdivision (a), except that in place of the information set forth in Paragraph (a)(4) of this rule there shall appear "Reproduced Record" or "Supplemental Reproduced Record," as the case may be.

[(c)] (d) Repetition in body of document.—Unless expressly required by these rules, none of the material set forth in Subdivisions (a) and (b) shall be repeated in the brief or reproduced record.

[(d)] (e) Cover stock.—The covers of all briefs and reproduced records must be so light in color as to permit writing in ink thereon to be easily read and so firm in texture that the ink will not run.

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FILING AND SERVICE

Rule 2185. Time for Serving and Filing Briefs.

(a) Time for serving and filing briefs.

(1) General [Rule] rule.—[The] Except as otherwise provided by this rule, the appellant shall serve and file appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated

appellee's first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(2) Children's fast track appeals.

(i) In a children's fast track appeal, the appellant shall serve and file appellant's brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 21 days after service of appellant's brief and reproduced record. A party may serve and file a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least 3 days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee's first brief. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(ii) In a children's fast track appeal, the provisions of Subdivisions (b) and (c) of this Rule shall not apply.

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(c) Definitive copies.—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his or her brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in the briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

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**CHAPTER 25. POST-SUBMISSION PROCEEDINGS
APPLICATION FOR REARGUMENT**

**Rule 2542. Time for Application for Reargument.
Manner of Filing.**

(a) Time.[—]

(1) General rule.—[An] Except as otherwise prescribed by this rule, an application for reargument shall be filed with the prothonotary within 14 days after entry of the judgment or other order involved.

(2) Children's fast track appeals.—In a children's fast track appeal, an application for reargument shall be filed with the prothonotary within 7 days after entry of the judgment or other order involved.

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Rule 2545. Answer to Application for Reargument.

(a) General rule.—[Within] Except as otherwise prescribed by this rule, within 14 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date

of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

(b) Children's fast track appeals.—In a children's fast track appeal, within 7 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

REMAND OF RECORD

Rule 2572. Time for Remand of Record.

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Official Note: Subdivision (a) is based upon former Commonwealth Court Rule 115A. Former Superior Court Rule 58 permitted the record to be returned to the lower court before the order became final upon expiration of the time to petition for allowance of appeal.

Subdivision (b) extends the ten day period of former Supreme Court Rule 67 to 14 days to conform to the 14 day period for applying for reargument under Rule 2542(a)(1) (time for application for reargument).

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ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 37. BUSINESS OF THE COMMONWEALTH COURT

ARGUMENT BEFORE COURT EN BANC OR A PANEL

Rule 3723. Application for Reargument en Banc.

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Official Note: Based on former Commonwealth Court Rule 43. The time for applying for reargument is increased from ten to 14 days. See Rule 2542(a)(1) (time for application for reargument).

[Pa.B. Doc. No. 09-148. Filed for public inspection January 30, 2009, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Amendment of Civil Procedure 1303—Arbitration Hearing and Notice; No. 04-1727

Administrative Order No. 7-2009

And Now, this 16th day of January, 2009, it is hereby Ordered and Decreed that, effective March 1, 2009, Carbon County Rule of Civil Procedure CARB.R.C.P. 1303 governing the Hearing and Notice in arbitration cases be and is hereby Amended as attached hereto.

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

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order in the Prothonotary's Office.

By the Court

ROGER N. NANOVIC,
President Judge

Rule 1303—Hearing. Notice.

Notice of the appointment of arbitrators and the date, time and place of arbitration in accordance with Pa.R.C.P. 1303 shall be made by the Prothonotary's Office. The Notice shall include the following language: "The matter will be heard by a board of arbitrators at the time, date, and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge."

All continuance requests must be filed no later than seven (7) days before the scheduled Arbitration hearing. The attorney/party must notify all other attorneys/pro se parties and members of the panel of the granting of the continuance motion. In the event such notice is not provided and a panel member appears, the defaulting party shall be responsible for paying the panel member the current arbitration fee of \$150.00. Any continuances requested within the seven (7) days of the scheduled Arbitration hearing shall require the personal appearance of the attorney/pro se party before the Judge to explain the extenuating circumstances necessitating the late filing.

Any appointed arbitrator must notify Court Administration of their inability to serve within ten (10) days of the scheduled event so that a suitable replacement can be secured.

If a case is settled less than two (2) days before the Arbitration hearing, one of the attorneys/pro se parties must appear before the Board of Arbitrators and have an Award entered by agreement. If it is settled more than two (2) days before the Arbitration hearing, Plaintiff's attorney/Plaintiff must file a praecipe to strike the case from the arbitration list because the case is settled and must notify all other attorneys/pro se parties and the panel members. In the event counsel fails to appear and advise the Board of the settlement award or to provide such notice and a panel member appears, the defaulting party shall be responsible for paying the panel member the current arbitration fee of \$150.00.

[Pa.B. Doc. No. 09-149. Filed for public inspection January 30, 2009, 9:00 a.m.]

CLINTON COUNTY

Order Amending Rules of Civil Procedure; No 114-09

Order

And Now, this 19th day of January, 2009, *It Is Hereby Ordered* that all existing Clinton County Rules of Civil Procedure be revoked and the following new Rules adopted as set forth hereafter:

RULES OF CONSTRUCTION

Title and Citation of Rules Rule 51.1

1. These rules shall be known as the Clinton County Rules of Civil Procedure and may be cited as "Clinton R.C.P. No. _____."
2. These rules shall govern all proceedings in the civil division of the Court and shall be construed either consistent with or subordinate to all rules or decisions of the Supreme Court of Pennsylvania, the rules of the Judicial Council of Pennsylvania, or any statutes still in effect governing practice and procedure.

PETITION PROCEDURE RULE TO SHOW CAUSE Rule 206.4(c)

1. The procedure specified in Pennsylvania Rule of Civil Procedure 206.5 is adopted to govern petition practice in Clinton County. The issuance of a Rule to Show Cause shall be discretionary with the Court in accordance with that Rule.
2. The provisions of this rule shall not be applicable to Preliminary Objections.
3. After a petition has been time-stamped in the Prothonotary's Office, such petition may be presented to the Court as follows:
 - a. Any petition may be presented to an available judge at 8:30 a.m. on any business day or in open court immediately preceding or following any court proceeding.
 - b. Any petition may be delivered to the Court Administrator who shall refer the petition to the appropriate judge.
4. All petitions shall contain a certification by counsel that concurrence in the petition has been sought and that such concurrence has been given or denied. Counsel shall take reasonable steps to secure such concurrence or non-concurrence. Concurrence need not be sought of *pro*

se parties. Certification shall be on a separate piece of paper, attached to the petition at the end thereof. If concurrence or non-concurrence cannot be secured after reasonable efforts, the petition may be filed without said certification, but the petitioner shall thereafter have a continuing duty to file such a certification within a reasonable time.

5. The Petitioner shall attach to the Petition a proposed order substantially in the form set forth in Pa.R.C.P. No. 206.5(d).

6. At the time the petition is time-stamped, a copy of the petition, together with a copy of the proposed order, shall be served in accordance with Pa. R.C.P. No. 440. It shall be presumed that members of the Clinton County Bar agree that their mailbox in the Prothonotary's Office is designated as an appropriate place for service unless they note otherwise on the first page of their pleading.

7. Any Petition which is insufficient on its face will be returned unsigned to the Prothonotary without further notice to counsel.

MOTIONS

Rule 208.2(d) and (e) Uncontested Motions/Certification of Concurrence

All Motions, including any motion pertaining to discovery, shall contain a certification by counsel that concurrence in the motion has been sought and that such concurrence has been given or denied. Counsel shall take reasonable steps to secure such concurrence or non-concurrence. Concurrence need not be sought of *pro se* parties. Certification shall be on a separate piece of paper, attached to the motion at the end thereof. If concurrence or non-concurrence cannot be secured after reasonable efforts, the motion may be filed without said certification, but the moving party shall thereafter have a continuing duty to file such a certification within a reasonable time.

Rule 208.3(a) Motion Practice

1. After a motion has been time-stamped in the Prothonotary's Office, such motion may be presented to the Court as follows:
 - a. Any motion may be presented to an available judge at 8:30 a.m. on any business day or in open court immediately preceding or following any court proceeding.
 - b. Any motion may be delivered to the Court Administrator who shall refer the motion to the appropriate judge.
2. Counsel shall prepare and submit a proposed order with any motion.
3. At the time the motion is time-stamped, a copy of the motion, together with a copy of the proposed order shall be served in accordance with Pa.R.C.P. No. 440.
4. Any motion which is insufficient on its face will be returned unsigned to the Prothonotary without further notice to counsel.

Service by Publication Rule 430.1

Service by publication authorized by Pa.R.C.P. No. 430(a) shall be made by publishing a notice of the action one (1) time in one (1) newspaper of general circulation within Clinton County; proof of publication shall be filed with the Prothonotary.

PLEADINGS**Notice to Defend. Form.
Rule 1018.1**

The designated officer to be named in the Notice to Defend from whom legal help can be obtained as required by Pa.R.C.P. No. 1018.1 shall be:

Court Administrator
Court of Common Pleas of Clinton County
230 E. Water Street
Lock Haven, PA 17745
(570) 893-4016

**Procedures Concerning Disposition of
Preliminary Objections
Rule 1028(c)****1. Procedure Defined**

a. Preliminary Objections shall be accompanied by a memorandum of law which shall be designated for immediate distribution to the Court and not filed of record.

b. Service shall be made in conformity with Pa.R.C.P. No. 440.

c. All Preliminary Objections shall be accompanied by a notice plainly appearing on the face thereof of the date the motion was filed with the Prothonotary and advising that a reply memorandum of law must be submitted within thirty (30) days from that date. The reply memorandum shall not be filed of record. The moving party shall also file an affidavit of service which shall state that the notice required by this rule has been given.

d. The Prothonotary shall immediately send the Preliminary Objections and the accompanying memorandum to the Court Administrator who shall refer the matter to the appropriate judge. All requests for an extension of the thirty (30) day period to answer Preliminary Objections must be approved by the Court by a motion addressed to the Court Administrator; no agreement entered into solely by the parties will be honored by the Court.

e. Any Preliminary Objections filed without the accompanying memorandum may be dismissed. If a reply memorandum has not been filed pursuant to the notice required by section c of this rule, the Court may dispose of the matter without such memorandum.

f. If any matter is settled or withdrawn prior to disposition, the Court Administrator shall be promptly advised, and the moving party shall file an appropriate praecipe with the Prothonotary.

g. The Court in its discretion may grant additional time in which to file a reply memorandum, request additional memoranda, call for oral argument, advance the time for submitting memoranda, or enter an Order prior to the expiration of the thirty (30) day reply period.

2. Matters Requiring Factual Supplement to the Record.

a. In the case of Preliminary Objections challenging jurisdiction or service, a memorandum of law and notice to opposing parties to file a reply memorandum of law within thirty (30) days need not be filed contemporaneously with the Preliminary Objections. Instead, the party filing the Preliminary Objections shall indicate that additional testimony is required.

b. In all such cases, the party filing the Preliminary Objections shall undertake to supplement the record with the necessary facts by affidavit, deposition or testimony, as the case may require, within sixty (60) days from the filing of the Preliminary Objections.

c. If the Court requires, the party filing the Preliminary Objections shall file a memorandum of law within two (2) weeks from the completion of the supplementation of the record. This memorandum shall be processed as stated above.

**PROCEDURES CONCERNING DISPOSITION OF
MOTIONS FOR JUDGMENT ON THE PLEADINGS
Rule 1034(a)****1. Procedure Defined**

a. Motions for Judgment on the Pleadings shall be accompanied by a memorandum of law which shall be designated for immediate distribution to the Court and not filed of record.

b. Service shall be made in conformity with Pa.R.C.P. No. 440.

c. All Motions for Judgment on the Pleadings shall be accompanied by a notice plainly appearing on the face thereof of the date the motion was filed with the Prothonotary and advising that a reply memorandum of law must be submitted within thirty (30) days from that date. The reply memorandum shall not be filed of record. The moving party shall also file with the motion an affidavit of service which shall state that the notice required by this rule has been given.

d. The Prothonotary shall immediately send the motion to the Court Administrator who shall refer the matter to the appropriate judge. All requests for an extension of the thirty (30) day period to answer such motions must be approved by the Court by a motion addressed to the Court Administrator; no agreement entered into solely by the parties will be honored by the Court.

e. Any motion subject to this rule which is filed without an accompanying memorandum may be dismissed. If a reply memorandum has not been filed pursuant to the notice required by section c of this rule, the Court may dispose of the matter without such memorandum.

f. If any matter is settled or withdrawn prior to disposition, the Court Administrator shall be promptly advised, and the moving party shall file an appropriate praecipe with the Prothonotary.

g. The Court in its discretion may grant additional time in which to file a reply memorandum, request additional memoranda, call for oral argument, advance the time for filing, or enter an order prior to the expiration of the thirty (30) day reply period.

2. Matters Requiring Factual Supplement to the Record.

a. In the case of motions based on facts not presently a part of the record, a memorandum of law and notice to opposing parties to file a reply memorandum of law within thirty (30) days need not be filed contemporaneously with the motion. Instead, the moving party shall indicate that additional testimony is required.

b. In all such cases, the moving party shall undertake to supplement the record with the necessary facts by affidavit, deposition or testimony, as the case may require, within sixty (60) days from the filing of the motion.

c. If the Court requires, the moving party shall file a memorandum of law within two (2) weeks from the completion of the supplementation of the record. This memorandum shall be processed as stated above.

**PROCEDURES CONCERNING DISPOSITION OF
MOTIONS FOR SUMMARY JUDGMENT**

Rule 1035.2(a)

1. Procedure Defined

a. Motions for Summary Judgment shall be accompanied by a memorandum of law which shall be designated for immediate distribution to the Court and not filed of record.

b. Service shall be made in conformity with Pa.R.C.P. No. 440.

c. All motions shall be accompanied by a notice plainly appearing on the face thereof of the date the motion was filed with the Prothonotary and advising that a reply memorandum of law must be submitted within thirty (30) days from that date. The reply memorandum shall not be filed of record. The moving party shall also file with the motion an affidavit of service which shall state that the notice required by this rule has been given.

d. The Prothonotary shall immediately send the Motion for Summary Judgment to the Court Administrator who shall refer the matter to the appropriate judge. All requests for an extension of the thirty (30) day period to answer such motions must be approved by the Court by a motion addressed to the Court Administrator; no agreement entered into solely by the parties will be honored by the Court.

e. Any motion subject to this rule which is filed without an accompanying memorandum may be dismissed. If a reply memorandum has not been filed pursuant to the notice required by section c of this rule, the Court may dispose of the matter without such memorandum.

f. If any matter is settled or withdrawn prior to disposition, the Court Administrator shall be promptly advised, and the moving party shall file an appropriate praecipe with the Prothonotary.

g. The Court in its discretion may grant additional time in which to file a reply memorandum, request additional memoranda, call for oral argument, advance the time for filing, or enter an order prior to the expiration of the thirty (30) day reply period.

2. Matters Requiring Factual Supplement to the Record

a. In the case of motions based on facts not presently a part of the record, a memorandum of law and notice to opposing parties to file a reply memorandum of law within thirty (30) days need not be filed contemporaneously with the motion. Instead, the moving party shall indicate that additional testimony is required.

b. In all such cases, the moving party shall undertake to supplement the record with the necessary facts by affidavit, deposition or testimony, as the case may require, within sixty (60) days from the filing of the motion.

c. If the Court requires, the moving party shall file a memorandum of law within two (2) weeks from the completion of the supplementation of the record. This memorandum shall be processed as stated above.

ACTION IN EQUITY

Accounting by Fiduciaries

Rule 1534.1

1. A fiduciary filing an account pursuant to Pa.R.C.P. No. 1534 shall give written notice to all parties or their counsel of record that such account will be presented for confirmation on a date not less than thirty (30) days after

such notice. Said notice shall include any proposed schedule of distribution and a statement that the account may be confirmed and distribution ordered unless exceptions are filed with the Prothonotary before that date.

2. Service of the aforesaid documents on a party shall be by personal service or upon counsel of record pursuant to Pa.R.C.P. No. 440.

MINORS AS PARTIES

**Compromise, Settlement, Discontinuance and
Distribution.**

Rule 2039.1

1. A petition for compromise, settlement, or discontinuance of an action to which a minor is a party of record shall recite the factual nature of the minor's action, the prognosis for the minor's injuries, the reasons for any proposed compromise, settlement, or discontinuance, and a request for a proposed distribution of the fund. A hearing will be scheduled at which the minor shall appear and evidence shall be presented as to the extent of the minor's injuries and such other matters as the Court deems necessary. If the petition is accompanied by (1) a written report of a physician based upon an examination of the minor within thirty (30) days preceding the filing of the petition, (2) an affidavit of each counsel of record giving an opinion as to the probabilities of proof of defendant's negligence, and of the minor's negligence, if any, and (3) in the event that the minor is sixteen (16) years of age or over, his or her written approval of the proposed settlement and distribution, the Court may approve the proposed compromise, settlement or discontinuance, and distribution without the requirement of a hearing, if satisfied of the accuracy of the information presented and that, based upon such information, the proposed disposition of the action and distribution of the proceeds adequately compensates the minor for the injuries sustained and expenses incurred.

2. The petition shall include a detailed statement outlining attorney fees, if any, the nature of the legal services rendered, and correspondence from any insurance carrier detailing the nature of the negotiations.

CONFESSION OF JUDGMENT FOR MONEY

**Judgment on Warrant More Than Twenty Years Old
or on Missing or Unsigned Warrant**

Rule 2952.1

An application for leave of Court to enter judgment under the circumstances set forth in Pa.R.C.P. No. 2952(a)(9) shall be by petition and rule to show cause, returnable twenty (20) days after service. The petition shall set forth that the instrument containing the warrant was duly executed, that the obligation is unpaid, and that the obligor is alive. The rule shall be served personally if the obligor can be found within the Commonwealth; if the obligor cannot be found within the Commonwealth, he or she shall be served by registered mail. If the address of the obligor is unknown, notice of the rule shall be published by the Sheriff once each week for three (3) successive weeks in one newspaper of general circulation within the county. If no answer is filed within twenty (20) days after service or within five (5) days after the last publication of the notice, the rule may, on motion, forthwith be made absolute and leave granted to enter judgment in accordance with the warrant.

ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

Writ of Execution. Money Judgments. Notice. Rule 3252.1(b)

The designated officer to be named in the Notice to find out where legal help can be obtained as required by Pa. R.C.P. No. 3252(a) shall be:

Court Administrator
 Court of Common Pleas of Clinton County
 230 E. Water Street
 Lock Haven, PA 17745
 (570) 893-4016

DISCOVERY

**Interrogatories
 Rule 4005**

Neither written Interrogatories to a party nor the Answers thereto shall be filed with the Prothonotary without leave of Court unless to supplement a Motion.

**Production of Documents
 Rule 4009.1**

Neither Requests for Production of Documents nor the responses thereto shall be filed with the Prothonotary without leave of Court unless to supplement a Motion.

**Notice of Intent to Serve Subpoena
 Rule 1009.21**

Notice to a person, not a party, of intent to serve a subpoena shall not be filed with the Prothonotary unless to supplement a Motion.

This Order shall take effect thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

J. MICHAEL WILLIAMSON,
President Judge

[Pa.B. Doc. No. 09-150. Filed for public inspection January 30, 2009, 9:00 a.m.]

CLINTON COUNTY

Order Amending Rules of Miscellaneous Procedure; No. 115-09

Order

And Now, this 19th day of January, 2009, *It Is Hereby Ordered* that all existing Clinton County Rules of Miscellaneous Procedure be revoked and the following new Rules adopted as set forth hereafter:

SCOPE OF RULES

**Title and Citation of Rules
 Rule 101**

These rules shall be known as the Clinton County Rules of Miscellaneous Procedure and may be cited as "Clinton R.M.P. No. _____."

**Scope of Rules
 Rule 102**

These rules shall govern all proceedings in the Court of Common Pleas of Clinton County, Pennsylvania, and shall be construed either consistent with or subordinate to all rules or decisions of the Supreme Court of Pennsylvania, rules of the Judicial Council of Pennsylvania, any statutes still in effect governing practice and procedure, the

Clinton County Rules of Criminal Procedure, the Clinton County Rules of Civil Procedure, and the Clinton County Orphans' Court Rules.

COURT CALENDAR AND TRIAL SCHEDULE

**Court in Continuous Session. Court Calendar.
 Rule 201**

1. Court shall be in continuous session throughout the year.
2. Prior to December of each year, the Court by order will fix the Court calendar for the upcoming year. A copy of this order shall be posted in the Prothonotary's office and mailed to all attorneys regularly practicing before the Court.

**Civil Trial Scheduling
 Rule 202**

1. The Prothonotary shall keep a "Trial List" book in which shall be placed all civil cases that are to be tried both jury and non-jury trials.
2. Civil cases shall only be placed upon the trial list by praecipe or by order of Court. Any party who praecipes a matter for trial shall certify that:
 - a. The matter has been at issue more than twenty (20) days;
 - b. Discovery has been completed;
 - c. There are no pending pre-trial motions;
 - d. The matter is not subject to compulsory arbitration or has been appealed therefrom; and
 - e. Whether the matter is to be heard jury or non-jury.

The Prothonotary shall not honor any praecipe for trial that does not contain the above recitals. The praecipe shall be served by the moving party upon all other parties or their counsel of record.

3. Cases in which new trials have been granted shall be placed at the head of the trial list. All other cases shall be listed in the order in which praecipies are filed, subject to any preference given another case by statute or rule of Court.

4. At twelve o'clock noon on the last full working day of each month, the Prothonotary shall close the list of cases to be tried and immediately have printed a list showing the cases to be tried divided into two categories: (1) jury trials and (2) non-jury trials.

5. The trial list shall be posted in the Prothonotary's Office, and a copy thereof delivered to the President Judge, to all counsel of record appearing in cases on the list, and to all parties unrepresented by counsel whose case appears on the list.

**Counsel's Pre-Trial Conference (Civil Jury Trials)
 Rule 203**

1. Within twenty (20) days of the posting of the civil jury trial list, plaintiff's counsel shall contact all other counsel to arrange for a pre-trial conference between counsel which shall be completed within forty-five (45) days of the posting of the aforesaid trial list. Counsel's conference shall be conducted at the Clinton County Courthouse unless all counsel agree to another location. Arrangements for the availability of a room at the Courthouse shall be made through the Court Administrator. The failure of plaintiff's counsel to comply with the schedule provided herein shall upon motion be grounds for a non pros.

2. At counsel's conference the following matters shall be accomplished:

a. Counsel shall exchange lists of potential witnesses, their addresses, and a general statement of the proposed testimony of each witness. The lists shall indicate which witnesses will be called and which may be called. Only witnesses so listed will be permitted to testify at trial.

b. Counsel shall examine, number, and list all exhibits which they intend to introduce and use at trial, whether during the case in chief or in rebuttal. Exhibits shall be marked by using the labels then in use by the Court. Any party may use at trial any exhibit listed by any other party. Only exhibits so listed and numbered will be admitted into evidence at trial. Counsel shall make a good faith attempt to agree as to the authenticity and admissibility of exhibits which have been listed and marked. If such an agreement cannot be reached, the objecting party shall state in detail the reasons for an objection together with any authorities in support of that position.

c. Counsel shall agree upon a brief factual statement of the case to be read to the jury as a part of voir dire and submit proposed questions to be used by the Court or counsel in conducting voir dire.

d. Each party shall submit to the other parties, in writing, the principles upon which they intend to rely at trial. If the parties disagree as to the applicability of a particular legal principle, a statement shall be prepared indicating the nature of said disagreement and each party's respective position.

e. Each party claiming damages shall submit to the party against whom the claim is asserted, an itemized list of special damages together with a list of the categories of general damages being sought and the estimated value of said general damages.

f. Counsel shall explore in depth the prospects for settlement and if a settlement cannot be achieved be prepared to explain to the Court the areas of difference in arriving at a settlement.

Report of Counsel's Pre-Trial Conference Rule 204

1. Within ten (10) days of the completion of counsel's conference, plaintiff's counsel shall prepare a report thereof and submit the same to the assigned Judge and counsel. To the extent the report requires information and rules of law pertaining to defendant's case, it shall be the responsibility of defendant's counsel to provide plaintiff's counsel with such data. The report shall contain the following:

a. A statement of the date and place where counsel's conference was held.

b. A list of all prospective witnesses and accompanying data as required by Clinton R.M.P. No. 203(2)(a).

c. A list of all exhibits which have been examined, numbered and listed in accordance with Clinton R.M.P. No. 203(2)(b). Each numbered exhibit shall be briefly but adequately identified on this list together with an indication as to whether the exhibit's admissibility is being contested. If an exhibit's admissibility is in dispute the objecting party's statement of reasons for the objection shall be included.

d. The agreed upon brief statement of facts to be read to the jury for voir dire purposes together with each party's proposed questions for voir dire.

e. Plaintiff's statement of the legal principles being relied upon to support the case together with an indication as to whether those principles are in dispute as well as a statement of the legal principles being relied upon by all other parties.

f. A statement of damages as required by Clinton R.M.P. No. 203(2)(e).

g. Any stipulation of fact which the parties have agreed upon for use at trial including any waivers of specific claims or defenses.

h. Concise trial briefs regarding the anticipated legal issues to be presented at trial. When any portion of a trial brief relies upon an unreported opinion, photocopies of that opinion shall be attached to the briefs.

i. A concise statement, in narrative form, from each party as to the basic facts intended to be proven at trial.

j. Proposed special verdict questions which any party anticipates submitting at the time of trial.

2. If any party disagrees with any representation made in plaintiff's report of counsel's conference, a written objection to said report shall be submitted to the assigned Judge within ten (10) days of the filing of plaintiff's report.

Pre-Trial Conference Rule 205

1. If no objections are filed to the Report of Counsel's Pre-Trial Conference within the time limits prescribed by Clinton R.M.P. No. 204(2), the Court Administrator shall forthwith schedule the matter for a pre-trial conference between the assigned Judge and counsel. This conference shall be attended by counsel who are expected to try the case and who shall either be authorized to enter into a settlement agreement or who shall have in attendance, in person or readily available by telephone, such persons who are empowered to enter into a settlement agreement. The Judge and counsel shall discuss the report of counsel's conference, any possible simplification of the issues, the possible bifurcation of the trial, limitations on the number of expert witnesses, the prospects of settlement, and such other matters as may aid in the trial or disposition of the action.

2. If a party fails to cooperate in the conduct of the pre-trial proceedings mandated by Clinton R.M.P. Nos. 203, 204, and 205, including but not limited to, failure to attend any scheduled conference and/or the inadequate preparation of required documents, such failure shall be deemed to be grounds for the entry of a judgment of non pros or other appropriate default relief.

ARBITRATION AND AWARD Compulsory Submission Rule 401

All cases which are at issue where the amount in controversy is Fifty Thousand (\$50,000.00) Dollars or less, except those involving title to real estate, shall first be submitted to and heard by a Board of three members of the Bar of this Court, as provided by 42 Pa.C.S.A. 7361. Unless a party has demanded a jury trial, the President Judge may dispense with compulsory arbitration and order the matter tried as a non-jury trial. At such non-jury trial, the parties may proceed pursuant to Pa.R.C.P. 1305 with respect to evidentiary matters.

Arbitrators Rule 402

1. All members of the Clinton County Bar shall constitute the Board of Arbitrators and all members shall act

as arbitrators. No two members from the same firm or office, or related by blood or marriage, shall serve on the same board, unless this requirement is waived in writing by all parties in interest or their counsel.

2. The Prothonotary shall maintain, in alphabetical order, a list of all members of the Bar. Upon the filing of a praecipe for arbitration, the Prothonotary shall submit a list of five names to the plaintiff or the attorney for the plaintiff. In the event there are additional parties to the proceeding, the Prothonotary shall add an additional name for each additional party. This list shall be in the order in which the names appear on the Prothonotary's list, passing those who are disqualified to the next qualified. The plaintiff may strike one member from the list and forward the list to the defendant who may likewise strike one member. In the event of an additional party or parties, the defendant shall forward the list to that party who may likewise strike one member. When all parties have exercised the right to strike, the list shall be returned to the Prothonotary. In the event a party or parties do not exercise the right to strike, the first three remaining members shall constitute the Board and the first shall be the chairperson. Any stricken member, as well as any disqualified member, shall, in alphabetical order, be at the head of the list for the next and/or subsequent cases.

Consolidation of Actions Rule 403

When the same transaction or occurrence, or series of transactions or occurrences, gives rise to more than one cause of action and separate actions have been commenced, all such actions shall be consolidated for arbitration, referred to the same board of arbitration, and heard together, unless the amount in controversy in one or more of the actions exceeds Twenty-Five Thousand (\$25,000.00) Dollars, in which case, none of them shall be submitted to arbitration except by the agreement of all parties in writing. It shall be the duty of every board of arbitration, before proceeding with the hearing, to ascertain whether or not any such separate action has been commenced.

Place of Hearing Rule 404

All hearings shall be held in the Clinton County Courthouse.

Fees of Arbitrators Rule 405

The fee of the chairperson shall be Two Hundred (\$200.00) Dollars. The fee of each other arbitrator shall be One Hundred Seventy-Five (\$175.00) Dollars. These fees shall be applicable in all cases, including those which have been consolidated as provided under Clinton R.M.P. 403. In cases requiring lengthy hearings or involving unusual questions of law or fact, the Court may, on petition of the arbitrators, increase the fees to an amount which will reasonably compensate them for the services performed.

COSTS

Bill of Costs Rule 701

1. Every bill of costs shall set forth the names and addresses of the witnesses, the dates of their attendance, the number of miles actually traveled by each, and the places from which mileage is claimed. To the bill of costs shall be attached any subpoena, endorsed with a return of service on oath or affirmation of the person who served it, setting forth the place where service on each witness was

made, the date of service, and the number of miles actually traveled in making service.

2. Every bill of costs shall be verified on oath or affirmation of the party filing it or their agent or attorney that the witnesses named were actually present in Court on the dates stated and that they were material witnesses.

3. All bills of costs shall be filed, a copy thereof served on the adverse party, and proof of service filed within ten (10) days after the trial or continuance.

4. Any party upon whom a bill of costs has been served may, within five (5) days after such service, file exceptions and request a hearing. Failure to file timely exceptions shall be deemed a waiver of all objections to the bill as filed. The collection of costs will be stayed until the trial judge has decided the matter.

Termination of Inactive Cases Rule 801

As required by Pa.R.J.A. No. 1901, the following procedure shall be followed regarding matters that have been inactive for an unreasonable period of time:

1. An "inactive matter" means any civil or criminal proceeding filed in the Court or with any Magisterial District Judge in which no action has been taken for a continuous period of twenty-four (24) months.

2. In the month of January of each year, the Prothonotary or Clerk of Courts shall provide the Court Administrator with a written list of all pending inactive matters which were initiated in their respective offices earlier than the third calendar year preceding the year in which the list is being prepared. Said written list shall contain the following information:

- Number and term of the matter.
- Names and record addresses of the parties.
- Names and addresses of counsel of record.
- Type of action if a civil matter.
- Charges against the defendant if a criminal matter.

3. Upon receipt of the aforesaid list of inactive matters, the Court Administrator shall review the same with the President Judge, who shall, on his own motion, issue an Order directing the parties to show cause why the matter should not be terminated and stating that for failure to do so the case will be dismissed without prejudice. Such Order shall fix the date for hearing and shall provide for at least thirty (30) days' notice in the manner provided in Pa.R.J.A. No. 1901(c).

4. Unless otherwise ordered, record costs in any dismissed criminal case shall be taxed to the county, and in any other case to the plaintiff, petitioner, or party initiating the proceeding.

5. On or before March 1st of each year, each Magisterial District Judge, after at least thirty (30) days' written notice to parties and counsel, shall dismiss inactive matters without prejudice, and shall on or before May 1st of each year transmit to the Court Administrator a written report of any inactive matters which have not been dismissed.

This Order shall take effect thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

J. MICHAEL WILLIAMSON,
President Judge

[Pa.B. Doc. No. 09-151. Filed for public inspection January 30, 2009, 9:00 a.m.]

LUZERNE COUNTY

Order Establishing a Conflict Counsel Pool and Fee Schedule for the Payment of Conflict Counsel Certified to Represent Defendants When They are Deemed Ineligible for Representation by the Luzerne County Public Defenders Office Due to a Conflict of Interest

Order

And Now, this 13th day of January, 2009, the Court hereby adopts Guidelines for the establishment of a Conflict Counsel Pool and the Rate of Compensation to be paid to counsel deemed eligible to be appointed Conflict Counsel upon application of Luzerne County, through application of its Public Defender's Office, with counsel fees to be paid through the Luzerne County's General Fund, effective sixty (60) days from the date of this Order.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Order and the following Guidelines, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order and the following Guidelines along with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

It is further ordered that this Order and Guidelines shall be kept continuously available for public inspection and copying in the Luzerne County Clerk of Court's Office.

By the Court

MARK A. CIAVARELLA, Jr.,
President Judge

CONFLICT COUNSEL GUIDELINES

I. STATEMENT OF GUIDELINES

A. Objectives

1. The objective of these Guidelines is to attain the ideal of equality before the law for all persons. Therefore, the Guidelines shall be administered so that those accused of crimes, or otherwise eligible for legal representation will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an effective defense.

2. The further objective of these Guidelines is to enumerate the criteria in a way that meet the Conflict Counsel needs of the 11th Judicial District of Pennsylvania, Court of Common Pleas of Luzerne County.

B. Compliance

1. The court, its clerk, the Luzerne County Public Defender's Office, and appointed private counsel shall comply with the Guidelines as set forth herein.

II. DEFINITIONS

A. "Appointed counsel" includes private attorneys.

B. "Judge" means Judge of the Pennsylvania Court of Common Pleas of Luzerne County.

C. "Representation" includes counsel and investigative, expert, and other services necessary for an adequate defense.

III. PROVISIONS OF REPRESENTATION

A. Circumstance

1. Mandatory

Representation shall be provided for any financially eligible person who cannot be represented by the Luzerne County Public Defender's Office because of a conflict of interest with the Public Defender's Office.

a. is charged with a felony or with a misdemeanor;

b. is a juvenile alleged to have committed an act of juvenile delinquency defined in the Juvenile Act;

c. is charged with a violation of probation, or faces a change of a term or condition of probation;

d. is under arrest, when such representation is required by law;

e. is entitled to appointment of counsel in parole proceedings;

f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

g. is subject to a mental condition hearing;

h. is in custody as a material witness;

i. is seeking to set aside or vacate a death sentence;

j. is entitled to appointment of counsel under the Pennsylvania Constitution;

k. faces loss of liberty in a case and state law requires the appointment of counsel;

l. faces termination of parental rights; or

m. drug treatment court defendants.

2. Discretionary

Whenever a Judge determines that the interests of justice so require, representation may be provided for any financially eligible person who cannot be represented by the Luzerne County Public Defender's Office because of a conflict of interest with the Public Defender's Office:

a. is charged with a summary offense for which a sentence to confinement is authorized;

b. is charged with civil or criminal contempt who faces loss of liberty;

c. has been called as a witness before a grand jury, a court, the Pennsylvania Legislature, or a State agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty.

B. When Counsel Shall be Provided

Counsel shall be provided to eligible persons as soon as feasible after a conflict of representation with the Public Defender's Office is established and they are taken into custody, when they appear before a judge, when they are formally charged or notified of charges if formal charges are sealed, or when a judge otherwise considers appointment of counsel appropriate under these Guidelines, whichever occurs earliest.

In appointing counsel, the Court shall select an attorney from the panel of private attorneys approved by the court, except in extraordinary circumstances where appointment of other qualified and experienced counsel becomes necessary.

Appointment of counsel may be retroactive to include representation furnished pursuant to these Guidelines prior to appointment. The Court shall appoint separate counsel for persons having interests that cannot be represented by the same counsel or when other good cause is shown.

C. Number and Qualifications of Counsel

1. Number

a. State Capital Prosecutions. A person charged with a capital offense is entitled to the appointment of two (2) attorneys, at least of whom shall be learned in the law applicable to capital cases and has attained Capital Case Certification.

b. Habeas Corpus Proceedings. A financially eligible person seeking to vacate or set aside a death sentence is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider at least two counsel.

D. Eligibility for Representation

1. Fact Finding

The determination of eligibility for representation under these Guidelines is a judicial function to be performed by a judge after Petition for Appointment of Conflict Counsel is presented to the President Judge or his designee and a conflict has been established by the Luzerne County Public Defender's Office.

2. Disclosure of Change in Eligibility

If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court.

IV. PRIVATE COUNSEL

A. Establishment of Conflict Counsel

The existing, previously established panel of attorneys who have been acting as conflict counsel are eligible and hereby appointed to provide representation under these Guidelines. The court shall review and approve attorneys for membership on the panel who are deemed competent to give adequate representation to parties under the Pennsylvania Constitution and Crimes Code.

V. DUTIES OF APPOINTED COUNSEL

A. Standards

The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

B. Professional Conduct

Attorneys appointed pursuant to these Guidelines shall conform to the highest standards of professional conduct, including, but not limited to the provisions of the Pennsylvania Rules of Professional Conduct.

C. No Receipt of Other Payment

Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation

Once counsel is appointed under these Guidelines, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

VI. MISCELLANEOUS

A. Claims

Claims for compensation of private attorneys providing representation under these Guidelines shall be submitted on an approved form to the Office of the Luzerne County Court Administration or the individual appointed by the court to oversee the processing and submission for payment monies due and owed. That office shall review the claim form for mathematical and technical accuracy and for conformity with these Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

VII. EFFECTIVE DATE

This Plan shall become effective sixty (60) days from the date of this Order.

HOURLY FEE SCHEDULE

(1) Except for Capital Murder cases appointed counsel shall be paid at a rate of \$100.00 per hour, calculated at tenth-of-hour increments with maximum compensation limits as set forth herein.

(2) Capital Murder cases appointed counsel shall be paid at a rate of \$170.00 per hour, calculated at tenth-of-hour increments with without a maximum compensation limit subject, however, to approval by the trial judge.

(3) Non-Capital Murder cases appointed counsel shall be paid at a rate of \$135.00 per hour, calculated at tenth-of-hour increments with maximum compensation limits as set forth herein.

PAYMENT OF COUNSEL/CASE COMPENSATION MAXIMUMS

(1) Specific Proceedings

(i) Felonies (except capital prosecution)
\$7,800 for trial court level
\$5,600 for appeal

(ii) Non-Capital Murder
\$10,000 for trial court level
\$7,500 for appeal

(iii) Misdemeanors
\$4,500 for trial court level
\$5,600 for appeal

(iv) Non-Capital Post-Conviction Proceedings
\$7,800 for trial court level
\$5,600 for appeal

(v) Capital Post-Conviction Proceedings
No Maximum compensation limit, subject, however, to approval by the trial judge.

(vi) Capital Conviction Appeals
No Maximum compensation limit, subject, however, to approval by the trial judge.

(vii) Appointed counsel shall also be reimbursed for expenses, including mileage authorized and established pursuant to the Luzerne County Mileage Reimbursement Rate.

(viii) Fees and expenses paid for investigative, expert, and other reasonably necessary services shall not exceed \$7,500 in any case, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the President Judge or his or her designee.

The fee schedule also includes, but is not limited to the following representations:

- (2) Probation Violation—\$100.00 per hour
- (3) Supervised Release Hearing (for persons charged with a violation of supervised release or facing modification, reduction or enlargement of a condition or extension or revocation of a term of supervised release)—\$100.00 per hour
- (4) Parole Proceedings—\$100.00 per hour
- (5) Material Witness in Custody—\$100.00 per hour

(6) Mental Competency Hearings—\$100.00 per hour

(7) Civil or Criminal Contempt (where the person faces loss of liberty)—\$100.00 per hour

(8) Witness (before a grand jury, a court, the Pennsylvania Legislature, or a State agency or commission which has the power to compel testimony, where there is a reason to believe either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty)—\$100.00 per hour

(2) APPROVAL OF PAYMENT

Prior to payment, all fee and expense reimbursements shall be approved by the presiding judge.

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