

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 200 ]

#### Amendment of Comment to Rule 237.3 of the Rules of Civil Procedure; No. 537 Civil Procedural Rules Doc.

##### Order

*Per Curiam*

*And Now*, this 2nd day of December, 2010, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the explanatory comment to Rule 237.3 is amended in the following form.

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

##### Annex A

#### TITLE 231. RULES OF CIVIL PROCEDURE

##### PART I. GENERAL

##### CHAPTER 200. BUSINESS OF COURTS

*(Editor's Note: Explanatory Comment—1994 was not codified when adopted at 24 Pa.B. 6259. The full text was published and amended at 31 Pa.B. 627 (February 3, 2001).)*

#### Rule 237.3. Relief from Judgment of Non Pros or by Default.

\* \* \* \* \*

##### Explanatory Comment—1994

*Rule 237.3. Relief from Judgment of Non Pros or by Default.*

Rule 237.3 governs relief from a judgment by default or non pros. Subdivision (a) requires that a verified copy of the complaint or answer sought to be filed be attached to the petition for relief from the judgment. This enables the court to determine from the actual complaint or answer to be filed whether it alleges a meritorious cause of action or defense.

Subdivision (b) eases the burden of a party against whom judgment has been entered and who moves promptly for relief from that judgment. If the petitioner files a petition for relief from the judgment within ten days after entry of the judgment on the docket, the rule requires the court to open the judgment if the proposed complaint or answer states a meritorious cause of action or defense. The rule provides a date certain from which to measure the ten-day period and the language establishing the beginning of that period is derived from Rule 1308 governing appeals in compulsory arbitration.

Case law has imposed three requirements for opening a judgment by default: a petition timely filed, a reasonable explanation or legitimate excuse for the inactivity or delay and a showing of a meritorious defense. Rule of Civil Procedure 3051 similarly states these three requi-

sites for opening a judgment of non pros, substituting the showing of a meritorious cause of action rather than a meritorious defense. Rule 237.3(b) presumes that a petition filed within the required ten-day period is both timely and with reasonable explanation or legitimate excuse for the inactivity or delay. In this context, subdivision (b) requires that the judgment be opened if the petitioner attaches to the petition a verified complaint or answer which states a meritorious cause of action or defense. A note to the rule cautions that the rule is not intended to change the law relating to the opening of judgments in any way or to impose a new standard of timeliness in cases outside the limited circumstances set forth in the rule.

##### Illustrations

In illustrations 1 through 3, the defendant has failed to plead within the required time to a complaint containing a notice to plead.

1. Prior to receiving a notice of intention to enter a default judgment, defendant seeks an agreement with the plaintiff for an extension of time in which to plead. The parties may certainly agree to an extension of time and proceed in accordance with their agreement. However, such an agreement is really unnecessary since the plaintiff cannot enter judgment without giving the ten-day notice required by the rule and the ten-day notice cannot be waived. Defendant may plead within the time up to **[ receiving ] the date of mailing or delivery of the notice plus ten days.** This period of time may be more than might be provided by any agreement. In addition, there is no danger of a judgment being entered as the required notice has not been given.

2. Defendant has received the ten-day notice but cannot file the pleading within the ten-day period. Now, as provided by Rule 237.2, it is appropriate to seek an agreement to extend the time in which to plead since the plaintiff has given the notice which is prerequisite to the entry of judgment and actual entry of the judgment is imminent.

3. Defendant has received the ten-day notice and obtained an agreement extending the time to plead. However, defendant does not plead within the agreed time. Plaintiff may enter judgment by default without further notice as provided by Rule 237.2 and the form of agreement set forth in Rule 237.6.

In illustrations 4 through 6, the plaintiff has entered a valid judgment by default against the defendant and the prothonotary has entered the judgment in the docket and noted the date thereof. Thereafter, the defendant files a petition to open the judgment.

4. The defendant files the petition to open the judgment within ten days of the date on which the prothonotary entered the judgment on the docket and seeks leave to file the answer attached to the petition. The defendant is entitled to the benefit of Rule 237.3(b) by timely filing the petition and attaching an answer. Rule 237.3(b) requires the court to open the judgment upon the defendant demonstrating to the court that the filing of the petition was within the ten-day period and that the answer attached to the petition states a meritorious defense.

5. The defendant files the petition to open the judgment within ten days of the date on which the prothonotary enters the judgment on the docket and seeks leave to

file the preliminary objections attached to the petition. The defendant is not entitled to the benefit of Rule 237.3(b) because, although the petition is timely filed, the rule does not provide for preliminary objections to be attached to the petition. A defendant who wishes to file preliminary objections upon the opening of a judgment must proceed pursuant to case law and meet the standards set forth in *Schultz v. Erie Insurance Exchange*, 505 Pa. 90, 477 A.2d 471 (1984), cited in the note to the rule.

6. The defendant files a petition to open the judgment more than ten days after the date of entry of the judgment on the docket. The petition to open is not within the scope of Rule 237.3(b) which requires that the petition be "filed within ten days after the entry of the judgment on the docket". The defendant must proceed pursuant to case law and meet the standards of *Schultz v. Erie Insurance Exchange*, 505 Pa. 90, 477 A.2d 471 (1984).

Although these illustrations use the example of the entry of a judgment by default and a petition to open the judgment, they are adaptable and thus equally applicable to the entry of a judgment of non pros for failure to file a complaint and a petition to open such a judgment.

**Explanatory Comment**

The 1994 Explanatory Comment to Rule 237.3 provides several illustrations of the application of the rule. A discrepancy exists between Illustration 1 and Rule 237.1(a)(2)(ii) governing notice of praecipe to enter judgment of non pros or by default. The 1994 Explanatory Comment provides that the defendant may plead within the time of receiving the notice of praecipe plus ten days. Rule 237.1(a)(2)(ii) states that the ten-day period shall be calculated forward from the date of the mailing or delivery of the notice. The 1994 Explanatory Comment has been amended to conform with the text of Rule 237.1(a)(2)(ii).

*By the Civil Procedural Rules Committee*

ROBERT C. DANIELS,  
*Chair*

[Pa.B. Doc. No. 11-1. Filed for public inspection December 30, 2010, 9:00 a.m.]

**Title 237—JUVENILE RULES**

**PART I. RULES**

[ 237 PA. CODE CHS. 1, 8, 11, 12 AND 18 ]

**Proposed Rule 195 and Proposed Amendments to Rules 120, 800, 1120, 1202 and 1800**

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 800, 1120, 1202, 1800 and new Rule 195 be adopted and prescribed. These proposed modifications set forth the procedures regarding the authority, duties, and training of juvenile probation officers.

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

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

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

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

All comments shall be received no later than Friday, February 11, 2011.

*By the Juvenile Court  
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,  
*Chair*

**Annex A**

**TITLE 237. JUVENILE RULES**

**PART I. RULES**

**Subpart A. DELINQUENCY MATTERS**

**CHAPTER 1. GENERAL PROVISIONS**

**PART A. BUSINESS OF COURTS**

**Rule 120. Definitions.**

\* \* \* \* \*

**JUVENILE PROBATION OFFICER is a person who has been appointed by the court or employed by a county's juvenile probation office, who is properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195 and the Juvenile Act.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

The term "disposition" includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case "with prejudice" prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

**A "juvenile probation officer" is an officer of the court. "Properly commissioned" as used in the definition of a juvenile probation officer includes the swearing in under oath or affirmation and receipt of a document, certificate, or order of the court memorializing the authority conferred upon the juvenile probation officer by the court. In addition,**

the powers granted by the commission are to be specified by the President Judge of each judicial district.

The President Judge may enact a local rule specifying the authority granted by the commission or that specifically lists the authority granted to specific juvenile probation officers or class of juvenile probation officers. For example, a supervisory juvenile probation officer may have more authority than a new juvenile probation officer, or a juvenile probation officer who has completed specific training may have more authority than officers who have not received training.

As a part of the authority conferred upon the juvenile probation officer, the President Judge of each judicial district or his or her designee may authorize the juvenile probation officer to be a duly authorized officer to take not only delinquent children into custody but perform any other functions designated by court order. This may include taking a child, juvenile, or minor into custody pursuant to a bench warrant or protective custody order, or there are reasonable grounds to believe that the child, juvenile, or minor: 1) is suffering from an illness or injury, or is in imminent danger from his or her surroundings, necessitating removal; or 2) has run away from his parents, guardian, or other custodian. See 42 Pa.C.S. §§ 6304(a) and 6324 for authority of a duly authorized officer.

Pursuant to Rule 800, 42 Pa.C.S. § 6324 is suspended only insofar as it is inconsistent with this rule, which authorizes the President Judge of each judicial district to designate whether a juvenile probation officer is a duly authorized officer of the court.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

\* \* \* \* \*

**Official Note:** Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.  
**Amended** , **effective** .

*Committee Explanatory Reports:*

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

**Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 8 (January 1, 2011).**

**PART (D)(2). JUVENILE PROBATION OFFICERS**

195. Authority, Duties, and Training of Juvenile Probation Officer.

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

**Rule 195. Authority, Duties, and Training of Juvenile Probation Officer.**

A. *Authority of Juvenile Probation Officer.* A juvenile probation officer shall have the authority to:

1) take children, juveniles, and minors into custody pursuant to the following:

- a) the Juvenile Act, 42 Pa.C.S. §§ 6304 and 6324;
- b) the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6301 *et seq.*;
- c) a bench warrant as set forth in Rules 140, 141, and 1140; or
- d) an order by the President Judge of each judicial district or his or her designee granting the juvenile probation officer the authority of a duly authorized officer;

2) supervise and assist a juvenile placed on probation or a child under the court’s protective supervision or care; and

3) perform any other functions as designated by the court.

B. *Duties of Juvenile Probation Officer.* Subject to any limitations imposed by the court, a juvenile probation officer shall:

1) receive and examine written allegations unless the District Attorney has elected to receive and approve all written allegations pursuant to Rule 231(B);

2) make appropriate referrals for informal adjustment, consent decree, or other diversionary programs;

3) file petitions if diversionary programs are not appropriate unless the District Attorney has elected to file all petitions pursuant to Rule 330(A);

4) make investigations, reports, including social studies pursuant to Rule 513, and recommendations to the court;

5) make appropriate referrals to private and public agencies, psychological or psychiatric providers, drug and alcohol facilities or programs, or any other necessary treatments or programs;

6) communicate to the court and parties, and facilitate any special needs, including health and education, of the juvenile;

7) supervise and assist a juvenile on probation;

8) take into custody any children, juveniles, or minors pursuant to paragraph (A)(1); and

9) regularly oversee and visit juveniles in placement facilities.

C. *Training.* No later than one year after being appointed or employed, a juvenile probation officer shall be trained on:

- 1) the Juvenile Act;
- 2) the Pennsylvania Rules of Juvenile Court Procedure;
- 3) the Child Protective Services Law (CPSL); and
- 4) any local procedures.

**Comment**

Pursuant to paragraph (A)(1), a juvenile probation officer has the authority to take children, juveniles, and minors into custody pursuant to the CPSL, the Juvenile Act, a bench warrant, or an order of the President Judge of each judicial district or his or her designee. 23 Pa.C.S. § 6301 *et seq.* and 42 Pa.C.S. § 6301 *et seq.*

When a juvenile is under the court’s supervision, the juvenile probation officer may take a juvenile into custody pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(5) and 6324(2) and (5), and bench warrants as set forth in Rules 140, 141, and 1140.

When a child, juvenile, or minor is not under the court’s supervision, the juvenile probation officer may act as a duly authorized officer and take a child, juvenile, or minor into custody pursuant to the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6315 and the Juvenile Act, 42 Pa.C.S. §§ 6304 (a)(3) and 6324(1), (3), & (4).

The President Judge or his or her designee may limit the authority of a juvenile probation officer. The President Judge should consider the education, training, and experience of the juvenile probation officer before granting the juvenile probation officer the authority of a duly authorized officer of the court. The juvenile probation officer should be able to exercise discretion when encountering an emergent situation and should be able to take a child into protective custody. For example, the juvenile probation officer may visit a juvenile on probation and encounter a situation when the juvenile or the juvenile’s siblings are in imminent danger or are victims of abuse. The juvenile probation officer should be able to take custody of the siblings, in addition to the juvenile on probation, and immediately notify the county agency.

In these situations, it would be the juvenile probation officer’s duty to protect the child, juvenile, or minor and remove him or her safely. The juvenile probation officer has authority over a juvenile but may bring a child or minor to the county agency for supervision pending a court order that is to be issued immediately. The juvenile probation officer’s duty is enforcement and removal, whereas the county agency’s duty is to supervise and identify an appropriate placement for a child or minor. *See* Rule 1202 and its Comment.

The juvenile probation officer may also assist or supervise a child in the court’s protective supervision or care.

Pursuant to paragraph (A)(3), a juvenile probation officer may perform any other function designated by the court or his or her designee to carry out the purposes of the Juvenile Act.

Pursuant to paragraph (B)(1), the juvenile probation officer is to receive written allegations from local law enforcement agencies to determine if a case may proceed to juvenile court. However, pursuant to Rule 231(B), the District Attorney of any county may require initial receipt and approval of written allegations before a delinquency proceeding may be commenced. *See* Rule 231(B).

Pursuant to paragraph (B)(4) and (5), the juvenile probation officer is to prepare reports compiling the juvenile’s information for the court and make the necessary referrals to programs supported by a need revealed during the investigation.

Pursuant to paragraph (B)(6), the juvenile probation officer is to communicate the information to all parties before approaching the court. *See* Rule 136 for *ex parte* communication.

Pursuant to paragraph (B)(9), the juvenile probation officer, when acting as a duly authorized officer, may take any child, juvenile, or minor into protective custody, including juveniles not currently on probation, if there is reasonable cause to believe that the child, juvenile, or minor is suffering from illness or injury or is in imminent danger. If the danger does not stem from delinquency charges, the juvenile probation officer is to immediately contact the county agency. For protective custody, *see* discussion *supra*, Rule 1210, and 42 Pa.C.S. § 6304.

Pursuant to paragraph (B)(10), the juvenile probation officer is to oversee all juveniles ordered to placement facilities. The juvenile probation officer should visit the placement facilities at least twice a year to determine if: 1) the juvenile is receiving the appropriate treatment; and 2) the facility is meeting the needs of the child. The juvenile probation officer is to report any irregularities or controversies to the court and all parties as soon as they are made known to the juvenile probation officer.

Pursuant to paragraph (C), the juvenile probation officer is to be trained in the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the CPSL, and any local procedures. The training is to occur within one year of the juvenile probation officer’s appointment or employment. It is best practice for juvenile probation officers to receive training within the first ninety days of employment; however, training programs are offered periodically. It is also best practice that juvenile probation officers receive specialized training and educational updates on a continuing basis.

Specialized training for juvenile probation officers should include delinquency and dependency procedures and areas that address their duties as officers of the court.

**Official Note:** Rule 195 adopted , effective

*Committee Explanatory Reports:*

**Final Report explaining the provisions of Rule 195 published with the Court’s Order at 41 Pa.B. 8 (January 1, 2011).**

**CHAPTER 8. SUSPENSIONS**

**Rule 800. Suspensions of Acts of Assembly.**

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

\* \* \* \* \*

7) **The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 195, which provides that juvenile probation officers may take a child into custody when duly authorized by the President Judge or his or her designee of the officer’s judicial district.**

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

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

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

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

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

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

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

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

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

provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

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

**Comment**

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

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

*Committee Explanatory Reports:*

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

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

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

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

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

**Final Report explaining the amendments to Rule 800 published with the Court's Order at 41 Pa.B. 8 (January 1, 2011).**

**Subpart B. DEPENDENCY MATTERS  
CHAPTER 11. GENERAL PROVISIONS  
PART A. BUSINESS OF COURTS**

**Rule 1120. Definitions.**

\* \* \* \* \*

**JUVENILE PROBATION OFFICER** is a person who has been appointed by the court or employed by a county's juvenile probation office, who is properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195 and the Juvenile Act.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

For the family service plan, see 55 Pa. Code § 3130.61

A "juvenile probation officer" is an officer of the court. "Properly commissioned" as used in the definition of a juvenile probation officer includes the

swearing in under oath or affirmation and a document or order of the court memorializing the authority conferred upon the juvenile probation officer by the court. In addition, the powers granted by the commission are to be specified by the President Judge of each judicial district.

The President Judge may enact a local rule specifying the authority granted by the commission or that specifically lists the authority granted to specific juvenile probation officers or class of juvenile probation officers. For example, a supervisory juvenile probation officer may have more authority than a new juvenile probation officer, or a juvenile probation officer who has completed specific training may have more authority than officers who have not received training.

As a part of the authority conferred upon the juvenile probation officer, the President Judge of each judicial district or his or her designee may authorize the juvenile probation officer to be a duly authorized officer to take not only delinquent children into custody but perform any other functions designated by court order. This may include taking a child, juvenile, or minor into custody pursuant to a bench warrant or protective custody order, or there are reasonable grounds to believe that the child, juvenile, or minor: 1) is suffering from an illness or injury, or is in imminent danger from his or her surroundings, necessitating removal; or 2) has run away from his parents, guardian, or other custodian. See 42 Pa.C.S. §§ 6304(a) and 6324 for authority of a duly authorized officer.

Pursuant to Rule 800, 42 Pa.C.S. § 6324 is suspended only insofar as it is inconsistent with this Rule, which requires the President Judge of each judicial district to designate whether a juvenile probation officer is a duly authorized officer of the court.

The definition of "law enforcement officer" does not give the power of arrest to any person who is not otherwise given that power by law.

\* \* \* \* \*

**Official Note:** Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. **Amended** , **effective**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1120 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1120 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 1120 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

**Final Report explaining the amendments to Rule 1120 published with the Court's Order at 41 Pa.B. 8 (January 1, 2011).**

**CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT**

**PART A. COMMENCING PROCEEDINGS**

**Rule 1202. Procedures for Protective Custody by Police And County Agency.**

*A. Protective custody.*

1) *No court order.*

a) A police officer or a juvenile probation officer when duly authorized by the court may take a child into protective custody pursuant to Rule 1200 if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from the surroundings and removal is necessary.

\* \* \* \* \*

2) *Court order.*

a) A police officer, juvenile probation officer, or county agency may obtain a protective custody order removing a child from the home pursuant to Rule 1210 if the court finds that remaining in the home is contrary to the welfare and the best interests of the child.

\* \* \* \* \*

**Comment**

Pursuant to Rules 120, 195, and 1120, a juvenile probation officer may be considered a duly authorized officer for purposes of these rules if the President Judge of a judicial district or his or her designee has granted such authority to the juvenile probation officer. Rules 800(7) and 1800(6) suspend § 6324 of the Juvenile Act, which authorizes law enforcement officers to take a child into custody, only insofar as the Act is inconsistent with this Rule, which provides authority for police officers and juvenile probation officers when duly authorized to take a child, juvenile, or minor into custody. See Comment to Rule 195.

Under paragraph (A)(1)(a) & (A)(2)(a), the police officer's or juvenile probation officer's duty is to protect the child and remove the child safely. A police officer or juvenile probation officer may bring the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's or juvenile probation officer's duty is enforcement and removal, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child. Only a police officer or duly authorized juvenile probation officer may take custody of the child. See Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides that law enforcement officers may take a child into custody. [ See Rule 1120 for definition of police officer, which may include a probation officer exercising their power of arrest when authorized by law. ]

\* \* \* \* \*

**Official Note:** Rule 1202 adopted August, 21, 2006, effective February 1, 2007. **Amended** , **effective**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1202 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

**Final Report explaining the amendments to Rule 1202 published with the Court's Order at 41 Pa.B. 8 (January 1, 2011).**

**CHAPTER 18. SUSPENSIONS**

**Rule 1800. Suspensions of Acts of Assembly.**

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

\* \* \* \* \*

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers **and duly authorized juvenile probation officers** taking a child into custody.

\* \* \* \* \*

**Official Note:** Rule 1800 adopted August 21, 2006, effective February 1, 2007[; **amended**]. **Amended** March 19, 2009, effective June 1, 2009[; **amended**]. **Amended** September 16, 2009, effective immediately. **Amended** , **effective** .

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1800 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 1800 published with the Court's Order at 39 Pa.B. 5546 (September 26, 2009).

**Final Report explaining the amendments to Rule 1800 published with the Court's Order at 41 Pa.B. 8 (January 1, 2011).**

**Explanatory Report**

These proposed rule modifications address the scope of the juvenile probation officer's authority, as well as, the duties, education, and training of those officers.

In looking at a juvenile probation officer's authority, it has been brought to the Committee's attention that in some judicial districts, juvenile probation officers are considered "duly authorized officers" as used in the Juvenile Act, 42 Pa.C.S. § 6324 while in other judicial districts, juvenile probation officers are not considered "duly authorized officers."

To provide clarity and a uniform procedure, these rule modifications allow the President Judge of each judicial district to determine whether juvenile probation officers should be duly authorized officers in that judicial district. The modifications also mandate minimum training requirements of all probation officers.

*Rules 120 and 1120*

A new definition for "juvenile probation officer" is being added to this rule. The Comment to this rule further clarifies the definition and outlines what a President Judge may include in a juvenile probation officer's commission.

A President Judge may determine the authority of its probation officers by local rule, or may specifically list the authority granted to specific probation officers or class of probation officers. For example, the President Judge may

give more authority to a supervisory juvenile probation officer or to an officer who has completed advanced training.

There are many factors to consider when granting authority to a juvenile probation officer. The Committee believed that the President Judge would be in the best position to determine the authority of juvenile probation officers in his or her judicial district. The current practice in some counties that allows juvenile probation officers to take alleged dependent children into custody may continue to be utilized if the President Judge designates a juvenile probation officer as a duly authorized officer.

*Rule 195*

This proposed new rule sets forth the authority, duties, and training of juvenile probation officers.

Pursuant to paragraph (A) and its Comment, juvenile probation officers shall have the authority to take children, juveniles, and minors into custody pursuant to the Juvenile Act, Child Protective Services Law (CPSL), bench warrants, and by order of court granting specific authority.

The President Judge may grant the Administrative Judge authority to decide which juvenile probation officers are appropriate duly authorized officers of the court. However, only the President Judge of each judicial district may enact a local rule, which grants authority of a duly authorized officer of the court onto a specific class of probation officers. See Rules 121 and 1121 for promulgation of local rules.

Therefore, if a court order directs that a specific juvenile probation officer is to have the authority of a duly authorized officer, the President Judge or his or her designee may grant that order. The Comment to Rules 121 and 1121 clarify that local rules do not include case-specific orders, which would include individual orders naming specific juvenile probation officers as duly authorized officers of the court.

Paragraph (B) addresses the duties of the juvenile probation officer, which may be limited by the court.

Paragraph (C) requires juvenile probation officers, no later than one year after being appointed or employed, to be educated and trained in the procedures of the Juvenile Act, Rules of Juvenile Court Procedure, and the CPSL. This is the minimal requirement. The Committee believes; however, juvenile probation officers should be educated on a continuing basis in all areas of delinquency practice and law, including specialized training as funding permits.

It is best practice to have all juvenile probation officers trained within the first ninety days of employment; however, this may not be feasible in some judicial districts. As educational and training opportunities become available, all juvenile probation officers should be encouraged to attend.

*Rule 800 and 1800*

These rules suspend the Juvenile Act only insofar as the Act is inconsistent with this new proposal, which authorizes juvenile probation officers to take children, juveniles, and minors into custody when duly authorized by the court.

*Rule 1202*

This rule proposes allowing a juvenile probation officer when authorized as a duly authorized officer of the court to take a child into protective custody.

The Comment clarifies that a juvenile probation officer's authority is equivalent to a police officer's duty when removing a child from the home. The juvenile probation officer must protect the child and remove the child safely. The juvenile probation officer must immediately transport the child to the county agency. The county agency will then supervise the child and immediately identify an appropriate placement.

[Pa.B. Doc. No. 11-2. Filed for public inspection December 30, 2010, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DAUPHIN COUNTY

#### Promulgation of Local Rules; No. 1989 CV 1793

##### Order

*And Now*, this 16th day of December, 2010, Dauphin County Local Rules 1915.3, 1915.4-2 and 1915.15(c) are amended as follows and Dauphin County Local Rule 1930 is rescinded:

#### **Rule 1915.3. Custody Actions.**

##### (a) Commencement of Custody Actions

1. A custody action shall be commenced by the filing of an original and one copy of either a custody complaint or a divorce complaint that contains a custody count with the Prothonotary.

2. In addition to the filing fees assessed for the filing of complaints, an additional administrative fee in the amount of \$110.00 shall be paid to the Prothonotary simultaneously with the filing of the custody complaint or the divorce complaint which contains a custody count.

3. The Prothonotary shall forward the original custody complaint or divorce complaint which contains a custody count to the Court Administrator's Office for assignment to a Custody Conference Officer.

4. The Custody Conference Officer shall set the date, time and place of the conference and file a scheduling order with the Prothonotary.

5. Plaintiff(s) shall serve the complaint and the scheduling order upon Defendant(s) promptly in accordance with the applicable Rules of Civil Procedure and shall thereafter file an appropriate certificate of service with the Prothonotary before the date of the scheduled conference.

##### (b) Subsequent actions (petitions for modification or contempt)

1. An original and one copy of the petition for modification of a custody order or a petition for contempt of a custody order shall be filed with the Prothonotary.

2. An administrative fee of \$110.00 shall be paid to the Prothonotary simultaneously with the filing of either the petition for modification of a custody order or a petition for contempt of a custody order.

3. The Prothonotary shall forward the original petition for modification of a custody order or petition for contempt of a custody order to the Court Administrator's Office for assignment to a Custody Conference Officer.

4. The Custody Conference Officer shall set the date, time and place of the conference and file a scheduling order with the Prothonotary.

5. The Petitioner shall serve the petition for modification or contempt and the scheduling order upon the Respondent promptly in accordance with the applicable Rules of Civil Procedure and shall thereafter file an appropriate Certificate of Service with the Prothonotary before the date of the scheduled conference.

6. A copy of the most recent custody order shall be attached to the petition for modification or contempt.

**(c) All parties in a contested custody case are strongly encouraged to attend the Seminar for Separated Families before attendance at the custody conference before a conference officer. To this end, when a custody complaint, petition for modification or petition for contempt are filed with the Prothonotary, all parties shall be provided with a copy of this rule and a pamphlet which provides information on the Seminar for Separated Families. If the filing party is represented, the attorney shall provide this information to his/her client and to all opposing parties. If the filing party is not represented, the conference officer shall provide this information to all parties.**

#### **Rule 1915.4-2. Custody Conference Officers.**

(a) Custody Conference Officers shall be appointed by the Court to:

1. meet with the parties and counsel in a custody action to try to work out an agreed custody arrangement;

2. recommend the appointment of counsel for the child(ren) in appropriate situations;

3. recommend the utilization of home studies and/or expert witnesses in appropriate situations;

4. prepare agreed interim or final orders for review by the Court.

(b) The compensation of Custody Conference Officers shall be set by order of court.

(c) If the parties are able to reach an agreement during the custody conference, the Custody Conference Officer shall prepare a proposed order memorializing the agreement. The proposed order shall be submitted to the judge assigned to handle custody matters for review. The proposed order shall not contain any reference to child support. If approved, the order shall be filed with the Prothonotary and copies shall be distributed to all parties.

(d) To facilitate the conference process and encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties, or their witnesses, shall not be admissible as evidence in a custody hearing before the court. The Custody Conference Officer shall not be a witness for or against any party in a custody hearing before the court or in any other proceeding whatsoever.

(e) 1. If the parties are unable to reach an agreement during the custody conference, the Custody Conference Officer shall prepare a Conference Summary Report. The Conference Summary Report shall contain facts gathered by the Custody Conference Officer during the conference and outline the issues for resolution by the Court. The Conference Summary Report shall be filed with the Prothonotary and copies shall be distributed to all parties. The Prothonotary shall forward the Conference



Summary Report to the Court Administrator's Office and the case will be assigned to a judge.

2. All parties are required to attend the Seminar for Separated Families (Seminar) if an agreement is not reached at the custody conference. At the conclusion of the conference, the Custody Conference Officer will serve the parties with the date and time they are scheduled to attend the Seminar.

3. All parties must attend the Seminar prior to the hearing before a judge. Any request for an extension of time within which to attend the Seminar shall be made to the assigned judge in a motion filed with the Prothonotary. The fee for the Seminar shall be determined by the provider and must be paid prior to the Seminar. Payment shall be made by certified check, money order or cash. No personal checks will be accepted. No hearing or trial shall be delayed because of the failure of a party to attend the Seminar.

**Rule 1915.15(c). Cover Sheet to Custody Complaint, Petition for Modification or Petition for Contempt.**

In addition to the information required by Pa.R.C.P. 1915.15(a) or 1915.15(b), each Complaint, Petition for Modification or Petition for Contempt relating to child custody or visitation shall contain a cover sheet in the following format:

Plaintiff : IN THE COURT OF COMMON PLEAS  
 : DAUPHIN COUNTY, PENNSYLVANIA  
 :  
 : CIVIL ACTION  
 : CUSTODY/VISITATION  
 :  
 Defendant : NO.

ORDER OF COURT

AND NOW, upon consideration of the attached Complaint, Petition for Modification or Petition for Contempt of a Custody Order, it is hereby directed that the parties and their respective counsel appear before the Custody Conference Officer, on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, Dauphin County Courthouse, Front and Market Streets, Harrisburg, Pennsylvania for a Custody Conference. At such Conference, an effort will be made to resolve the issues in dispute; or if this cannot be accomplished, to define and narrow the issues to be heard by the Court, and to enter into a Temporary Order. Children should not attend the conference unless requested by the Custody Conference Officer.

[ If the Defendant or Respondent should fail to appear at the custody conference, the conference may proceed in accordance with Pa.R.C.P. 1915.4-2 (b). ]

The Court strongly recommends that all parties immediately attend the Seminar for Separated Families presented by Interworks which provides helpful information on communication concerning the child(ren) despite disagreements of the parties on those and other topics. Call Interworks to schedule attendance at (717) 236-6630. If resolution is not reached at the custody conference, the Court will order the parties to attend the Seminar.

FOR THE COURT:

Date: \_\_\_\_\_ By \_\_\_\_\_  
 Custody Conference Officer

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

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

DAUPHIN COUNTY LAWYER REFERRAL SERVICE  
 213 North Front Street  
 Harrisburg, PA 17101  
 (717) 232-7536

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Dauphin 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 the Court Administrator's Office at (717) 780-6624. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference.

**Rule 1930. Seminar for Separating Parents in Contested Custody Matters.**

**Rescinded**

**Note: See Rules 1915.3 and 1915.4-2 for information about the seminar for separated families.**

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

TODD A. HOOVER,  
 President Judge

[Pa.B. Doc. No. 11-3. Filed for public inspection December 30, 2010, 9:00 a.m.]