

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 5 AND 6]

Order Renumbering Rule 520 to 620 and Adopting New Rules 622, 625, and 628 of the Rules of Juvenile Court Procedure; No. 560 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 23rd day of February, 2012, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 41 Pa.B. 3528 (July 2, 2011), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 19, No. 3, July 1, 2011), and on the Supreme Court’s web-page, and an Explanatory Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the renumbering of Rule 520 to 620 and adoption of new Rules 622, 625, and 628 of the Rules of Juvenile Court Procedure are approved in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2012.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART C. [POST-DISPOSITIONAL MOTIONS] (Reserved)

Rule [520] 620. Post-Dispositional Motions.

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Official Note: Rule 520 adopted May 17, 2007, effective August 20, 2007[; amended]. Amended July 28, 2009, effective immediately. Amended January 11, 2010, effective March 1, 2010. **Renumbered Rule 620 on February 23, 2012, effective April 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 520 published with the Court’s Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendment to Rule 520 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the renumbering of Rule 520 to 620 published with the Court’s Order at 42 Pa.B. 1214 (March 10, 2012).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART C. MOTIONS AND NUNC PRO TUNC RELIEF

Rule 620. Post-Dispositional Motions.
622. Motion for *Nunc Pro Tunc* Relief.
625. Hearing and Findings on Motion for *Nunc Pro Tunc* Relief.
628. Order of Court on Motion for *Nunc Pro Tunc* Relief.

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

Rule 622. Motion for *Nunc Pro Tunc* Relief.

A. *Timing.* A motion for *nunc pro tunc* relief shall be filed by the juvenile with the clerk of courts in the court in which the alleged error occurred as soon as possible but no later than sixty days after the date that the error was made known.

B. *Counsel.* If alleged ineffective assistance of counsel is the basis for the motion, counsel is to withdraw pursuant to Rule 150(C) and the judge shall assign new counsel.

C. *Contents of Motion.* A motion for relief under this rule shall include:

- 1) the name of the juvenile and case docket number;
- 2) the location of the juvenile;
- 3) the delinquent act(s) for which the juvenile was adjudicated delinquent;
- 4) if ineffective assistance of counsel is alleged, the name of counsel who allegedly rendered ineffective assistance;
- 5) the relief requested;
- 6) a statement that one of the following requirements for the relief has been met:
 - a) there is a need for correction of an error to accurately reflect the court’s findings; or
 - b) allegations that:
 - 1) the juvenile has been adjudicated delinquent and is under the court’s supervision;
 - 2) there is a legitimate basis for the relief requested; and
 - 3) there are sufficient facts upon which to conclude the delay was justified and should be overlooked in the interest of justice;
 - 7) the facts supporting the grounds for relief and sufficient facts to support any delay in filing the motion for relief that:
 - a) appear in the record, and the place in the record where they appear; and
 - b) do not appear in the record, and an identification of any affidavits, documents, and other evidence showing such facts;
 - 8) whether the grounds for the relief requested were raised before, and if so, at what stage of the proceedings;
 - 9) a verification that the facts set forth in the motion are true and correct to the best of the movant’s personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
 - 10) if applicable, any request for an evidentiary hearing, including:
 - a) a signed certification by counsel as to each intended witness, stating the:
 - i) witness’s name;
 - ii) witness’s address;
 - iii) witness’s date of birth; and

- iv) the substance of the witness's testimony; and
 - b) any documents material to the witness's testimony, attached to the motion; and
- 11) if applicable, any request for discovery.

D. *Answer.*

1) The Commonwealth may answer the motion. If the Commonwealth chooses to respond to the motion, such response shall:

a) be submitted within ten days of receipt of the motion; and

b) include a verification that the facts set forth in the answer are true and correct to the best of the attorney's personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

2) The court may order the Commonwealth to file an answer within a timeframe established by the court.

Comment

A motion for relief under this rule is to be filed with the clerk of courts in the court in which the alleged error occurred. Rule 120 defines "court" as the Court of Common Pleas. See Rule 120. Because the court has continual supervision over a juvenile until court supervision is terminated pursuant to Rules 631 or 632, the juvenile court is the appropriate forum for such a motion.

This process allows the juvenile court to accept late motions when there is a sufficient basis for the delay. See paragraph (C)(6) for requirement of the grounds for the motion. Because the court is providing relief *nunc pro tunc*, the requirements of 42 Pa.C.S. § 5505 do not apply. See *City of Philadelphia Police Dep't v. Civil Service Comm'n of City of Philadelphia*, 702 A.2d 878 (Pa. Commw. Ct. 1997) (absent specific rule, only technical errors may be corrected after 30-day period); see also *Justice v. Justice*, 417 Pa. Super. 581, 612 A.2d 1354 (1992) (after a 30-day period the order can be opened or vacated if there is fraud or some other circumstance so grave or compelling as to constitute extraordinary cause which justifies intervention by the court); *Com., Dep't of Transp., Bureau of Driver Licensing v. Duncan*, 144 Pa. Commw. 261, 601 A.2d 456 (1991) (after a 30-day period order can be opened or vacated upon extraordinary cause).

Pursuant to paragraph (A), the motion is to be filed as soon as possible but no later than sixty days after the date the error was made known or discovered. It is best practice to file the motion within thirty days.

Pursuant to paragraph (B), counsel is to remain in the case unless ineffective assistance of counsel is alleged. See Rule 150(B). If ineffective assistance of counsel is alleged, counsel is to withdraw and the court is to appoint new counsel. See Rule 150(C).

Pursuant to paragraphs (C)(6) & (7), the juvenile is to aver the basis for relief and allege facts to support the grounds for the relief upon which the court may conclude the delay was justified and should be overlooked in the interest of justice.

Second or subsequent motions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 633 A.2d 1098 (1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 (1988)). This standard is met if the

juvenile can demonstrate either: 1) the proceedings resulting in the juvenile's disposition were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or 2) the juvenile is innocent of the delinquent acts petitioned. See *Szuchon, supra*.

Official Note: Rule 622 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 622 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

Rule 625. Hearing and Findings on Motion for *Nunc Pro Tunc* Relief.

A. *Hearing.*

1) The judge may grant an evidentiary hearing to resolve material questions of fact.

2) The hearing shall be conducted as soon as possible but no later than thirty days after the filing of the motion for *nunc pro tunc* relief unless, upon good cause shown, the judge determines more time is necessary for investigation and preparation.

B. *Grant with No Hearing.* If sufficient facts exist in the record to warrant relief, the judge may grant the motion without a hearing. If the judge grants the motion, it shall be granted within thirty days of the filing of the motion unless an extension is granted.

C. *Dismiss with No Hearing.*

1) The judge shall give notice to the parties of the intention to dismiss the motion, stating the reasons for the dismissal in the notice upon conclusion that:

- a) there are no genuine issues concerning any material fact;
- b) the juvenile is not entitled to relief; or
- c) no purpose would be served by any further proceedings.

2) The juvenile may respond to the proposed dismissal within twenty days of the date of the notice.

3) The judge thereafter shall order the motion dismissed, grant leave to file an amended motion, or direct that the proceedings continue.

4) The judge may dispose of only part of a motion without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

D. *Findings.* The judge shall:

1) state the findings and conclusions of law for all material issues raised:

- a) on the record when there is a hearing; or
- b) in the order when there is no hearing; and

2) issue an order denying relief or granting a specific form of relief, and issue any supplementary orders or modification of dispositional orders appropriate to the proper disposition of the case.

E. *Dismissed by Operation of Law.* If the judge fails to decide the motion or grant an extension within thirty days:

- 1) the motion shall be deemed denied by operation of law and not subject to reconsideration; and
- 2) the clerk of courts shall forthwith:

- a) enter an order on behalf of the court; and
- b) as provided pursuant to Rule 167, shall serve a copy of the order on each attorney and the juvenile, if the juvenile has waived counsel, that the motion is deemed denied.

F. Appellate Rights.

1) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the juvenile on the record of the right to appeal from the final order disposing of the motion and of the time within which the appeal must be taken.

2) If the case is taken under advisement or the judge denies the motion without a hearing, the judge shall notify the juvenile of the right to appeal pursuant to Rule 628.

Comment

The judge is permitted, pursuant to paragraph (C), to summarily dismiss a motion in certain cases. To determine whether a summary dismissal is appropriate, the judge should review the motion, the answer, if any, and all other relevant information included in the record. If, after this review, the judge determines that the motion is patently frivolous and without support in the record, or that the facts alleged would not, if proven, entitle the juvenile to relief, or that there are no genuine issues of fact, the judge may dismiss the motion.

A summary dismissal would also be authorized under this rule if the judge determines that a previous motion involving the same issue or issues was filed and determined adversely to the juvenile. *See* Comment to Rule 622 for second or subsequent motions.

Additionally, relief may be granted without a hearing pursuant to paragraph (D)(2) after an answer has been filed.

Official Note: Rule 625 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 625 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

Rule 628. Order of Court on Motion for *Nunc Pro Tunc* Relief.

A. *Order by court.* The court order shall:

- 1) state the judge's findings and conclusions of law;
- 2) provide for appropriate relief and supplementary orders or modifications of the dispositional order as to:
 - a) the detention of the juvenile;
 - b) whether a new adjudicatory hearing is granted;
 - c) correction of the adjudication of delinquency;
 - d) correction of the disposition;
 - e) termination of court supervision; and/or
 - f) other matters that are appropriate.

3) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

B. *Order by clerk of courts for deemed denied by operation of law.* When the clerk of courts has entered an order providing that the motion for *nunc pro tunc* relief is deemed denied by operation of law pursuant to Rule 625(E), the court order shall:

1) state that the motion is denied by operation of law pursuant to Rule 625(E); and

2) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

Official Note: Rule 628 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 628 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

EXPLANATORY REPORT

February 2012

The Supreme Court of Pennsylvania has adopted the renumbering of Rule 520 to 620 and new Rules 622, 625, and 628 with this Recommendation. The changes are effective April 1, 2012.

Rule 520 to 620—Post-Dispositional Motions

Rule 520 on Post-Dispositional Motions has been placed in Chapter Six under new Part C, Motions as Rule 620. This new Part C will include post-dispositional motions and motions for *nunc pro tunc* relief.

*Rule 622—Motion for *Nunc Pro Tunc* Relief*

This new rule sets forth the requirements for filing a motion for *nunc pro tunc* relief.

Paragraph (A) requires a motion for *nunc pro tunc* relief to be filed within sixty days of the date the error was made known. In many instances, the error will be discovered upon consultation with an attorney. It is sixty days from that discovery that the motion must be filed. It is best practice to file the motion immediately and within thirty days, however, in some instances, thirty days is not practicable.

Paragraph (B) requires counsel to withdraw pursuant to Rule 150(C) when ineffective assistance of counsel is alleged. The court must allow counsel to withdraw and appoint new counsel for the juvenile.

Paragraph (C) lists the requirements of the motion. For the motion to move forward, the allegations must aver that: 1) there is a need for correction of an error to accurately reflect the court's findings; or 2) the juvenile has been adjudicated delinquent for a delinquent act and is currently under the court's supervision; there is a legitimate basis for the appeal; and there are sufficient facts upon which to conclude the delay for the motion was justified and should be overlooked in the interest of justice. *See* paragraphs (C)(6)(a) and (b).

In addition, the specific relief requested must be stated. *See* paragraph (C)(5).

Paragraph (D) provides that the Commonwealth may answer the motion. The answer is discretionary unless the court orders the Commonwealth to answer. If the court orders an answer from the Commonwealth, the court must establish a deadline for the answer. *See* paragraphs (D)(1) & (2).

*Rule 625—Hearing and Findings on Motion for *Nunc Pro Tunc* Relief*

This new rule allows the judge to grant an evidentiary hearing if it is clear there is no evidence or insufficient evidence on the record upon which the Superior Court could base its decision. This is important because if an appeal was taken and there was no evidence in the record

for the Superior Court to review, the case would be remanded to the juvenile court for an evidentiary hearing. Remand to the lower court is common for ineffective assistance of counsel claims because there is no evidence in the record. Also, in some cases, there may be new evidence that was just made available and it did not appear in the record.

This bypass procedure of allowing evidentiary hearings in the juvenile court streamlines the process and will prevent an overload of cases to the Superior Court. It also saves judicial resources to have the juvenile court judge or another Common Pleas judge hear cases that would otherwise be remanded anyway.

The judge may also grant or deny a motion without a hearing. Before the judge denies the motion under paragraph (C), the judge is to give notice of the intention to dismiss the motion and state the reasons for the dismissal in the notice. The juvenile may respond to the notice within twenty days, whereupon the judge will make his or her final ruling.

Paragraph (D) requires the judge to state the findings and conclusions of law on the record when there is a hearing or in the court order when there is no hearing. The court is also required to state the specific form of relief granted or denied and may issue supplementary orders or modify the dispositional order when appropriate. *See* paragraph (D)(2).

If the judge fails to decide the motion within thirty days or grant an extension, the motion must be deemed denied by operation of law and the clerk of courts must enter an order on behalf of the court denying the motion and provide notice to the attorneys and the juvenile. *See* paragraph (E).

The juvenile may appeal the final order made by the judge. The judge shall notify the juvenile of this right. *See* paragraph (F).

Rule 628—Order of Court on Motion for Nunc Pro Tunc Relief

This new rule governs the contents of the court order. The order must include the judge's findings and conclusions of law; any appropriate relief and supplementary orders or modifications of the dispositional order; and advise the parties of the right to appeal and time within which the appeal must be taken.

[Pa.B. Doc. No. 12-390. Filed for public inspection March 9, 2012, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Mass Tort and Asbestos Programs; General Court Regulation No. 2012-01

Background: In an effort to consider and address a number of concerns and criticisms of this Court's Mass Tort Program and the Asbestos Program in particular, the Coordinating Judge of the Complex Litigation Center and the Administrative Judge of the Trial Division reviewed the Mass Tort protocols and subsequently issued a Notice to the Bar on November 28, 2011. This Notice confirmed the Court's decision to end reverse bifurcation in all

pharmaceutical cases, established a two month comment period whereby counsel were invited to submit comments concerning the utilization of consolidation and reverse bifurcation trial methodologies and further requested comment on addressing claims of punitive damages.

During the two month comment period spanning December and the month of January, 2012, this Court independently examined its docket of asbestos claims and reviewed certain relevant and pertinent information upon which it now bases the implementation of substantial changes and revisions to the conduct of its Mass Tort Program and in particular the trial of asbestos cases (asbestos cases constitute a large portion of the inventory of the Mass Tort Program).

The asbestos case inventory as of February 3, 2012 numbers 770 cases. Since 2006 when the asbestos inventory numbered 589 cases, there has been a pronounced upward trend in filings in each successive year. Although the disposition rate remained at an average of 244 cases per year over this six year period, the Court's disposition rate has not kept pace with filings and a significant backlog has developed and will continue to develop if measures are not implemented to ameliorate the trend.

In January and again in March, 2009, certain Court leadership invited the filing of asbestos cases from other jurisdictions and did so apparently unaware that, at that time, this Court's asbestos program was only meeting the ABA's suggested standards for resolving these cases in 24-25 months in 42% of the cases filed. During a five year period from 2007 through 2011, 82.2% of the cases were disposed of within 31-36 months, leaving almost an entire fifth of the inventory undisposed after three years.

Administrators provided online "Age of Pending Cases" and "Disposed Age Analysis" reports, however, until now no corrective action was taken internally to address the growing backlog of asbestos cases.

From 2001 to 2008, an average of approximately one-third of the filings were from outside the Commonwealth. A dramatic increase in these filings occurred after this Court's leadership invited claims from other jurisdictions. In 2009, when published comments were offered encouraging the filing of claims in Philadelphia, out-of-state filings soared to 41% and in 2011 reached an astonishing 47%.

Preliminary Conclusion: With regard to other Mass Tort Programs, the Court failed to meet ABA suggested standards for the disposition of cases in the HRT, Paxil, Beryllium, Phen-Fen and Vioxx matters, but achieved 100% compliance with the Avandia, Trasyolol, Digitek, Firefighters' Hearing Loss, Gadolinium and Anti-Convulsant Drugs programs. The Asbestos Program was by far the one Mass Tort Program most out of compliance with the standards. Significant results were achieved in HRT, Paxil and pharmaceutical mass torts.

With regard to asbestos cases, this Court has invited out-of-state filings, has failed to meet the ABA's suggested standards in over half the filings and may not at the present time meet the needs of the citizens of the Commonwealth for the prompt and fair resolution of these claims, while at the same time addressing the claims of non-Pennsylvania residents. Therefore, in the interests of the orderly administration of justice, this Court is required to thoughtfully review the present methodologies employed in the trial of mass tort cases and, in particular, the asbestos inventory.

During the comment period, 32 comments were submitted by a broad cross-section of the Asbestos Bar and the

Court expresses its sincere and grateful appreciation for all recommendations received. These comments were instrumental in formulating revisions of this Court's Mass Tort Program and have facilitated this Court's examination of various methodologies allowing for the disposition of a vast number of cases against the ultimate imperative of providing a fair and prompt resolution of each and every claim. Furthermore, the Court cautions out-of-state plaintiffs to seek other venues to file their claims until and unless this Court's revisions have successfully resolved the backlog of outstanding claims and achieved compliance with the ABA suggested standards.

Order

And Now, this 15th day of February, 2012, it is hereby *Ordered, Adjudged and Decreed*, for all of the reasons expressed herein above and considering the thoughtful recommendations of many members of the Bar engaged in the trial of mass tort cases in Philadelphia and elsewhere, that the following protocols are hereby adopted for the prompt, efficient and orderly administration of justice in the disposition of all mass tort and asbestos claims with the understanding that the Court will monitor the implementation of these revisions over the coming year and make revisions as necessary:

1. There shall be no reverse bifurcation of any mass tort case, including asbestos, unless agreed upon by all counsel involved.

2. Consolidation of mass tort cases shall not occur absent an agreement of all parties, except in the asbestos program in accordance with the protocols set forth herein.

3. All punitive damage claims in mass tort claims shall be deferred.

4. Pro hoc vice counsel shall be limited to no more than two (2) trials per year, but otherwise will not be limited on pre-trial appearances. The Court encourages non-Pennsylvania counsel to pass its Bar Examination and thereby become familiar with Pennsylvania law, rules and procedures.

5. Unless otherwise agreed by defense counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia.

6. Except for those cases already scheduled for trial through February 29, 2012, asbestos cases thereafter shall be grouped in groups of a minimum of 8 and a maximum of 10 and counsel shall be required to propose cases for consolidation considering the following criteria:

a. *Same law*. Cases that involve application of the law of different states will not be tried together;

b. *Same disease*. The disease category for each case in a group must be identical. The disease categories of cases to be grouped for trial are mesotheliomas, lung cancers, other cancers and non-malignancy cases;

c. *Same plaintiff's law firm*. Primary trial counsel for all cases in each group will be from a single plaintiff firm. Cases where Philadelphia plaintiff firms serve as local counsel for out-of-state counsel will not be grouped with cases from the local firm;

d. Fair Share Act cases will not be consolidated with non-Fair Share Act cases;

e. Pleural mesothelioma is a disease that is distinct from mesotheliomas originating in other parts of the body, and will not be tried on a consolidated basis with non-pleural mesothelioma cases and not necessarily tried on a consolidated basis. Non-pleural mesothelioma cases will be further classified for trial, so that non-pleural

mesothelioma cases allegedly caused by occupational exposure will not be tried on a consolidated basis with non-pleural mesothelioma cases allegedly caused by para-occupational (bystander) exposure;

f. And such other factors as determined appropriate in weighing whether all parties to the litigation can receive a prompt and just trial. The Court's present backlog of asbestos cases shall not be an overriding factor in the consolidation determination.

7. Any grouping of cases less than 8-10 in number shall not receive a trial date until a group is formed of 8-10 cases. A maximum of 3 of these 8-10 cases may be tried, with the other 5-7 cases either resolving through settlement or returned to the Coordinating Judge for regrouping and relisting for trial.

8. *Mediation*: Once grouped, assigned a trial date and after Motions for Summary Judgment have been decided by the Court, counsel are urged to seek mediation from a special panel of former judges named herein below. Either side may request mediation. The mediator selected by the parties shall advise the Court whether the plaintiff firm's participation was in good faith or not. In the discretion of the Coordinating Judge, any plaintiff firm's failure to proceed in good faith in mediation may constitute just cause to remove that group of cases from the trial list and any defendant's failure to proceed in good faith may result in an increase of the maximum 3 cases consolidated for trial. Since no more than 3 cases may be consolidated and proceed to trial in any group of 8-10, the remaining 5-7 cases should be resolved and settled. Otherwise, those unresolved cases shall be relisted for trial. All parties will share the expense of mediation.

9. The panel of former judges invited to participate in the special mediation of mass tort cases are the following:

1. Jane Cutler Greenspan, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
2. G. Craig Lord, Judge
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5496
3. James R. Melinson, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
4. Russell Nigro, Judge
210 W. Washington Square
Philadelphia, PA 19106
(215) 287-5866
5. Diane M. Welsh, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

10. The plaintiff firm shall designate which of the cases will proceed to trial. The defendants have the right to object to the cases selected to be tried together.

11. Immediately prior to trial of up to 3 consolidated asbestos cases, the assigned trial judge shall independently determine whether the cases will be tried in a consolidated manner based on the criteria herein above set forth and any other factors deemed relevant to the issue of consolidation and a fair trial.

12. *Expediting of Cases.* There shall be no expediting of cases based on exigent medical or financial reasons until the backlog of pending cases has been resolved, unless otherwise agreed by a majority of the defendants. When this Program achieves 80% of all asbestos cases resolved in 24-25 months, advanced listings based on exigent medical circumstances will be considered for plaintiffs with Pennsylvania exposure only.

13. Effective May 1, 2012, the Honorable Arnold New, presently assigned to the Commerce Program, will be reassigned as a Co-Coordinating Judge of the Complex Litigation Center and will join the Honorable Sandra Mazer Moss in administrating all programs in the Complex Litigation Center. Judge Moss will assume senior status as of December 31, 2012 at which time Judge New will thereupon serve as the sole Coordinating Judge of the Complex Litigation Center and its Mass Tort Program.

14. Effective May 1, 2012, the Honorable Gary Glazer will be reassigned to the Commerce Program and will assume Judge New's commerce inventory. Judge Glazer's assignment to the Commerce Program shall not interfere or impair in any fashion his continued services to the Supreme Court as Administrative Judge of Traffic Court.

15. Throughout this year, the Court will entertain suggestions to improve these protocols. During the month of November, 2012, the Court will once again invite and consider comments from interested members of the Bar addressing these protocols and the necessity for any changes and/or modifications.

This General Court Regulation is promulgated in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the General Court Regulation shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://courts.phila.gov/regs>.

By the Court

HONORABLE JOHN W. HERRON,
Administrative Judge, Trial Division

[Pa.B. Doc. No. 12-391. Filed for public inspection March 9, 2012, 9:00 a.m.]

Title 25—LOCAL COURT RULES

SUSQUEHANNA COUNTY

New Rules of the Civil Division of the Court of Common Pleas; 2012-209 C.P.

Order

Now To Wit, this 17th day of February, 2012, it be and is hereby Ordered that the following rules of the Civil Division of the Court of Common Pleas of Susquehanna County, Susquehanna County Rules of Civil Procedure Civil Rule 1940.2. Definitions., Susquehanna County Rules of Civil Procedure Civil Rule 1940.3. Order for Child Custody Mediation. Selection of Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.4. Minimum Qualifications of the Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.5. Duties of Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.6. Termination of Mediation., be and the same are hereby promulgated herewith to become effective thirty (30) days after the publication of the rule in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that (1) certified copy shall be filed with the Domestic Relations Procedural Rules Committee; and that one (1) copy shall be filed with the Prothonotary of the Court of Common Pleas of Susquehanna County.

By the Court

KENNETH W. SEAMANS,
President Judge

New Rules of The Civil Division of the Court of Common Pleas; 2012-209 C.P.

Order

Now To Wit, this 17th day of February, 2012, it is ordered that, effective sec. leg., Susquehanna County Rules of Civil Procedure Civil Rule 1940.2. Definitions., Susquehanna County Rules of Civil Procedure Civil Rule 1940.3. Order for Child Custody Mediation. Selection of Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.4. Minimum Qualifications of the Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.5. Duties of Child Custody Mediator., Susquehanna County Rules of Civil Procedure Civil Rule 1940.6. Termination of Mediation., be and the same are hereby Adopted as follows:

Civil Rule 1940.2. Definitions.

As used in this Chapter, the following terms shall have the following meanings:

"Mediation" is the confidential process by which a neutral mediator assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. The role of the mediator is to assist the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties must be based on the voluntary decisions of the parties and not the decision of the mediator. The agreement may resolve all or only some of the disputed issues. Parties are required to mediate in good faith, but are not compelled to reach an agreement.

While mediation is an alternative means of conflict resolution, it is not a substitute for the benefit of legal advice.

“Memorandum of Understanding” is the written document prepared by a mediator which contains and summarizes the resolution reached by the parties during mediation. A Memorandum of Understanding is primarily for the benefit of the parties and is not legally binding on either party.

Civil Rule 1940.3. Order for Child Custody Mediation. Selection of Child Custody Mediator.

(a) Upon commencement of an action for custody, partial custody or visitation of minor children, or the filing of a petition seeking modification or contempt of an existing order or seeking relocation, the Prothonotary shall collect a nonrefundable fee of \$20.00 which will be used to benefit the newly enacted custody mediation program.

(b) After the initial filing, the filing party shall present the complaint or petition to the Court of Common Pleas during Motions Court on any Tuesday at 10:00 a.m. Once presented, the Court Administrator shall schedule a custody conference within forty-five (45) days.

(c) If the parties can agree to a custody schedule on or before the date of the custody conference, that schedule shall be accepted by the Court if it is in the best interests of the minor child or children.

(d) If the parties do not agree as to any part of the custody schedule, or if the Court does not accept the proposed agreement at the custody conference, the case shall be set down for mediation.

(e) Mediation shall occur within 60 days of the custody conference in all cases, unless the parties are ineligible for mediation, or if the appointed Child Custody Mediator determines that mediation would be fruitless after speaking with the parties. The Court Administrator shall schedule the Mediation.

(f) Pursuant to 23 Pa.C.S.A. § 3901, parties cannot be ordered to participate in mediation if a party or a child of either party is or has been the subject of domestic violence or child abuse either during the pendency of the action or within 24 months preceding the filing of the action.

(g) Parties ineligible for court ordered mediation, because of domestic violence, may request in writing that they be permitted, by the Court, to attend mediation.

(h) If at any time during the mediation process, the Child Custody Mediator reasonably believes that the proceedings are inappropriate for mediation, the Child Custody Mediator shall advise the Court of the decision to terminate the mediation and will further recommend what fee, if any, should be returned to the parties.

(i) If mediation is not appropriate, the Court Administrator shall set a custody hearing date.

(j) Mediation shall be held at the Susquehanna County Courthouse. The appointed Child Custody Mediator shall contact the parties, using the contact information provided at the time of filing of the complaint or petition to discuss mediation fundamentals and collect information. The duties of the Child Custody Mediator are defined in CIVIL RULE 1940.5.

(k) An initial fee of \$500.00 shall be paid by the parties to the Office of the Susquehanna County Prothonotary at least seven (7) days prior to the mediation. Each party shall pay one half of the mediation fee. Further, if either party is indigent, he or she shall motion that the other

party pay the full mediation fee and the Court will direct what party shall make payment. If both parties are indigent, petition to proceed in forma pauperis shall be submitted to the Court in the form specified in Pa. R.C.P. 240.

(l) Additional fees may be assessed as necessary by the Court in accordance with the recommendation of the Child Custody Mediator. These fees shall be paid to the Office of the Susquehanna County Prothonotary before mediation continues.

(m) Only the parties shall attend the scheduled mediation. If parties are represented by counsel, counsel will be permitted to approve any Memorandum of Understanding. However, counsel is not permitted to attend or participate in any mediation session. Third parties are not permitted to participate in, or attend, the mediation.

(n) All applications for continuances of mediations shall be made in writing to the court and shall be delivered via hand delivery, postal mail, or facsimile to the Court Administrator no less than 24 hours before the scheduled mediation.

Civil Rule 1940.4. Minimum Qualifications of the Child Custody Mediator.

(a) A Child Custody Mediator must have at least the following qualifications:

(1) a bachelor's degree and practical experience in law, psychiatry, psychology, counseling, family therapy or any comparable behavioral or social science field;

(2) successful completion of basic training in domestic and family violence or child abuse and a divorce and custody mediation program approved by the Association for Conflict Resolution, American Bar Association, American Academy of Matrimonial Lawyers, or Administrative Office of Pennsylvania Courts;

(3) mediation professional liability insurance; and

(4) additional mediation training consisting of a minimum of 4 mediated cases totaling 10 hours under the supervision of a mediator who has complied with subdivisions (1) through (3) above and is approved by the court to supervise other mediators.

(b) The Child Custody Mediator shall comply with the ethical standards of the mediator profession as well as those of his or her primary profession and complete at least 20 hours of continuing education every two years in topics related to family mediation.

(c) A post-graduate student enrolled in a state or federally accredited educational institution in the disciplines of law, psychiatry, psychology, counseling, family therapy or any comparable behavioral or social science field may mediate with direct and actual supervision by a qualified mediator.

Civil Rule 1940.5. Duties of Child Custody Mediator.

(a) The Child Custody Mediator shall explain the mediation process to the parties and shall further ensure that the parties understand that the Child Custody Mediator provides no legal representation to either party.

(b) The Child Custody Mediator shall ascertain the issues in the action through discussion with the attorneys and/or the parties. However, attorneys will not be permitted into the mediation session.

(c) The Child Custody Mediator shall not take testimony and the mediation shall not be of record. Rather, the Child Custody Mediator shall attempt to determine the relevant facts through discussion and shall suggest or

recommend a proposed settlement. The Child Custody Mediator shall ensure that the parties consider fully the best interests of the child or children.

(d) All communications with the Child Custody Mediator shall be confidential.

(e) The mediation procedure shall at all times be in the sole discretion of the Child Custody Mediator, in accordance with applicable rules of court.

(f) When the Child Custody Mediator determines that the parties have reached full agreement concerning the matter, he/she shall prepare a Memorandum of Understanding within ten (10) days following the mediation. Extensions for preparation may be granted by the Court for good cause shown.

(g) The Memorandum of Understanding shall be sent to the parties via postal mail and will not become a binding agreement until adopted by the Court. Parties are entitled to have an attorney review the Memorandum of Understanding before it is submitted, by the Child Custody Mediator, to become a Final Order. If either party wishes to amend the Memorandum of Understanding, he or she may contact the Child Custody Mediator and request that the revision be made. If both parties do not agree to revisions of the Memorandum, the Child Custody Mediator may schedule an additional mediation meeting at an additional fee.

(h) If the parties accept a Memorandum of Understanding which disposes of all of the issues regarding custody, it shall be the sole responsibility of the appointed Child Custody Mediator to prepare a Final Agreement and present it to the Court, and if the Final Agreement is found acceptable by the Court, it shall be made into a Final Order.

(i) If the parties can reach only partial agreement concerning the action, the Child Custody Mediator in his/her discretion may create a Memorandum of Understanding regarding the partial agreement and refer the disputed areas to the court for decision, or may refer the entire action to the court for decision.

(j) The Memorandum of Understanding regarding the proposed partial agreement shall be sent to the parties via postal mail and shall not become binding until incorporated into the Final Order of the Court. Parties are entitled to have an attorney review the Memorandum of Agreement. If either party wishes to amend the agreement, he or she may contact the Child Custody Mediator and request that the revision be made. If both parties do not agree to revisions, the matters shall be

submitted, in addition to the other disputed issues, to the Court for determination at the child custody hearing.

(k) In those actions where the parties cannot reach any agreement, the Child Custody Mediator shall prepare and file a report pursuant to LOCAL CIVIL RULE 1940.6.

(l) With the consent of the parties, the Child Custody Mediator may state in the report a concise summary of the mediation, including the background of the action, the allegations of the parties concerning the areas of dispute, and the recommendations, if any, of the Child Custody Mediator concerning disposition.

(m) After receiving a report of a Child Custody Mediator that a child custody hearing is necessary, the Court Administrator shall schedule the matter for a custody hearing in the Court of Common Pleas of Susquehanna County.

Civil Rule 1940.6. Termination of Mediation.

(a) Mediation shall terminate upon the earliest of the following circumstances to occur:

(1) a determination by the Child Custody Mediator that the parties are unable to reach a resolution regarding all of the issues subject to mediation;

(2) a determination by the Child Custody Mediator that the parties have reached a resolution regarding all of the issues subject to mediation;

(3) a determination by the Child Custody Mediator that the parties have reached a partial resolution and that further mediation will not resolve the remaining issues subject to mediation; or

(4) a determination by the Child Custody Mediator that the proceedings are inappropriate for mediation.

(b) If the parties reach a complete or partial resolution, the Child Custody Mediator shall, within ten (10) days, prepare and transmit to the parties a Memorandum of Understanding. At the request of a party, the Child Custody Mediator shall also transmit a copy of the Memorandum of Understanding to the party's counsel. Thereafter, pursuant to LOCAL RULE 1940.5(h), the Child Custody Mediator may be required to submit a Final Order to the Court.

(c) If no resolution is reached during mediation, the Child Custody Mediator shall, within ten (10) days, report this in writing to the Court, without further explanation, unless the parties agree to additional disclosure and the Child Custody Mediator finds that additional disclosure will be beneficial.

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