

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 85, 87, 89, 91 AND 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 73

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated March 19, 2012, April 9, 2012, and May 17, 2012, the Supreme Court of Pennsylvania amended Pa.R.D.E. 216, 218, 214, 219, 102, 203, 204, 205, 207, 208, 215 and 402, respectively. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments. This order also updates the address of the Board's District III Office, reduces the number of briefs required to be filed with the Board and makes clarifying corrections to Rule 89.4(c) and the third official note to Rule 89.273.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(12), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Public Reprimand—Public reprimand by the Board.

Respondent-attorney—Includes any person subject to the Enforcement Rules (See § 85.3(a) (relating to jurisdiction)).

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§ 85.5. Location of Office of Disciplinary Counsel.

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(b) *Disciplinary District Offices*. The present locations of the district offices of the Office of Disciplinary Counsel and the office of the Assistant Disciplinary Counsel for each such disciplinary district are:

* * * * *

(3) District III Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
[100 Pine Street
Suite 400
Harrisburg, PA 17101-1228]
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
PO Box 62675
Harrisburg, PA 17106-2675
(717) 772-8572
(fax: (717) 772-7463)

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§ 85.7. Grounds for discipline.

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(b) Enforcement Rule 203(b) provides that the following shall also be grounds for discipline:

(1) Conviction of a crime.

(2) Wilful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand, or informal admonition.

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§ 85.8. Types of discipline.

(a) *General rule.* Enforcement Rule 204(a) provides that misconduct shall be grounds for any of the following:

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(5) **Public reprimand by the Board with or without probation.**

(6) Private reprimand by the Board with or without probation.

[(6)] (7) Private informal admonition by [the] Disciplinary Counsel.

[(7)] (8) Revocation of an attorney's admission or license to practice law in the circumstances provided in § 85.7(b)(6) (relating to grounds for discipline).

(b) *Conditions attached to discipline.* Enforcement Rule 204(b) provides that conditions may be attached to an informal admonition [or], private reprimand, or **public reprimand** and that failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

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CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

**Subchapter A. PRELIMINARY PROVISIONS
COMPLAINTS**

§ 87.7. Notification to respondent-attorney of complaint and duty to respond.

(a) *Condition precedent to recommendation for discipline.* Disciplinary Counsel shall not recommend or undertake a disposition of discipline under Enforcement Rule 204 (relating to types of discipline) until the [**accused attorney**] **respondent-attorney** has been notified of the allegations and the time for response under [§ 89.54 (relating to answer)] **subdivision (b)(2) of this rule**, if applicable, has expired.

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§ 87.8. District office action or recommendation.

(a) *General rule.* Enforcement Rule 208(a)(2) provides that upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

- (1) Dismissal of the complaint.
- (2) A conditional or unconditional informal admonition of the attorney concerned.
- (3) A conditional or unconditional private reprimand by the Board of the attorney concerned.
- (4) **A conditional or unconditional public reprimand by the Board of the attorney concerned.**
- (5) The prosecution of formal charges before a hearing committee or special master.

(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent-attorney of complaint) the Assistant Disciplinary Counsel assigned to the district office shall promptly

complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

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(6) Conditional or unconditional informal admonition [or], private reprimand, or **public reprimand**. An informal admonition [or], private reprimand, or **public reprimand** shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.

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Subchapter B. REVIEW OF RECOMMENDED DISPOSITION OF COMPLAINT

§ 87.32. Action by reviewing hearing committee member.

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(c) *Modification.* If the reviewing hearing committee member determines to modify the recommendation of the Office of Disciplinary Counsel, the member shall set forth the determination on Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member) together with a brief statement of the reasons therefor. Such determination shall be one of the following:

- (1) Dismissal of the complaint.
- (2) A conditional or unconditional informal admonition.
- (3) A conditional or unconditional private reprimand.
- (4) **A conditional or unconditional public reprimand.**
- (5) Prosecution of formal charges.

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§ 87.33. Appeal by Office of Disciplinary Counsel [for] from modification of recommendation.

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(c) *Action by Board.* The Office of the Secretary shall transmit the Form DB-8 and related file to a panel of three members of the Board designated by the Chairman, who shall consider the appeal and, as provided by Enforcement Rule 208(a)(4), order that the matter be concluded by dismissal, conditional or unconditional informal admonition [or], conditional or unconditional private reprimand, or **conditional or unconditional public reprimand**, or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

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§ 87.34. Review of recommendation of private reprimand or **public reprimand**.

(a) *General rule.* Enforcement Rule 208(a)(5) provides that a recommendation by a reviewing hearing committee member for a conditional or unconditional private or **public reprimand** shall be reviewed by a panel composed of three members of the Board who may approve or modify.

(b) *Procedure.* Where a recommendation by a reviewing hearing committee member for a conditional or unconditional private or **public reprimand** is not appealed by Disciplinary Counsel, the Office of the Secretary shall transmit the file to a panel of three members of the Board designated by the Chairman, who shall consider the

matter and, as provided by Enforcement Rule 208(a)(5), approve or modify the recommendation for private or public reprimand.

(c) *Notice of Board [Action] action.* The Office of the Secretary shall return the file, showing the action of the reviewing panel of the Board, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

Subchapter C. FINAL DISPOSITION WITHOUT FORMAL PROCEEDINGS

§ 87.51. Notification of disposition of complaint.

(a) *General [Rule] rule.* Upon completion of the procedures prescribed by Subchapter B (relating to review of recommended disposition of complaint), the Office of the Secretary or the Office of Disciplinary Counsel, as appropriate, shall:

(1) Notify the complainant of the disposition of the complaint.

(2) Unless the disposition involves the institution of formal proceedings, notify the respondent-attorney:

(i) that the complaint has been dismissed; or

(ii) that the respondent-attorney shall appear in person before the Chief Disciplinary Counsel [or Board] for the purpose of receiving an informal admonition or before the Board for the purpose of receiving a private or public reprimand. The respondent-attorney shall also be notified of the place and date to appear. The date fixed shall be not earlier than 20 days after the date of the notice to the respondent-attorney of the disposition of the complaint.

(b) *Contents of notice.*

(1) **The notice to appear for public reprimand shall be on Form DB-12.2(IP) (Notice to Appear for Public Reprimand Following Informal Proceedings) and shall contain the statement required by § 89.205(c)(1) (relating to notice to appear).**

(2) The notice to appear for private reprimand shall be on Form DB-12(IP) (Notice to Appear for Private Reprimand Following Informal Proceedings) and shall contain the statement required by [§ 89.205(c)(1) (relating to informal admonition or private reprimand following formal hearings)] § 89.205(c)(2) (relating to notice to appear).

[(2)] (3) The notice to appear for informal admonition shall be given by the Office of Disciplinary Counsel on Form DB-12.1(IP) (Notice to Appear for Informal Admonition Following Informal Proceedings) and shall contain the statement required by [§ 89.205(c)(2)] § 89.205(c)(3) (relating to notice to appear).

[(3)] (4) The notice to appear for informal admonition or private reprimand shall advise the respondent-attorney of:

(i) The right of the respondent-attorney under § 87.54 (relating to demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

(ii) The limited availability of the record of informal admonition or private reprimand under § 93.104(d) (relating to restrictions on available information).

(5) **The notice to appear for public reprimand shall advise the respondent-attorney of the right of the respondent-attorney under § 87.54 (relating to**

demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

§ 87.53. Private reprimand or public reprimand without formal hearing.

(a) *General rule relating to private reprimand.* A respondent-attorney who is given notice of private reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the private reprimand. A record shall be made of the fact of and basis for the private reprimand, which record shall be available only as provided in § 93.104(d) (relating to restrictions on available information).

(b) *General rule relating to public reprimand.* **A respondent-attorney who is given notice of public reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the public reprimand, which proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality). A record shall be made of the fact of and basis for the public reprimand, which record shall be public.**

(c) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear for the purposes of private or public reprimand without good cause shall (as provided by Enforcement Rule 203(b)(2)) constitute an independent act of professional misconduct and shall automatically result in the institution of formal proceedings relating to such act of misconduct and to the grievance upon which such private or public reprimand was to relate.

§ 87.54. Demand by respondent-attorney for formal proceedings.

(a) *General rule.* Enforcement Rule 208(a)(6) provides that **in cases where no formal proceeding has been conducted**, a respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand, a public reprimand, or any conditions attached thereto [in cases where no formal proceeding has been conducted], but may demand as of right that a formal proceeding be instituted against such attorney in the appropriate disciplinary district; and that in the event of such demand, the respondent-attorney need not appear for the administration of the informal admonition [or], private reprimand, or public reprimand, and the matter shall be disposed of in the same manner as any other formal proceeding, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by § 89.205(b) (relating to taxation of expenses).

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Subchapter D. ABATEMENT OF INVESTIGATION

§ 87.74. Discipline on consent.

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(d) *Private discipline.* Enforcement Rule 215(f) provides that if a panel approves a Petition consenting to an informal admonition or private reprimand, with or with-

out probation, the Board shall enter an appropriate order, and [it] the Board shall arrange to have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(e) *Public discipline.* Enforcement Rule 215(g) provides that [,]: (1) if a panel approves a Petition consenting to a public reprimand, the Board shall enter an appropriate order, and the Board shall arrange to have the attorney appear before the Board or a designated panel of three members selected by the Board Chair for the purpose of receiving a public reprimand; and (2) if a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court; [and that,] if the Court grants the Petition, the Court shall enter an appropriate order disciplining the respondent-attorney on consent.

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CHAPTER 89. FORMAL PROCEEDINGS

Subchapter B. INSTITUTION OF PROCEEDINGS

§ 89.51. Grounds for institution of formal proceedings.

[The] (a) Except where the Office of Disciplinary Counsel and the respondent-attorney file a joint petition in support of *public discipline on consent* pursuant to § 87.74 (relating to discipline on consent) or the respondent-attorney submits a resignation statement under § 87.73 (relating to voluntary resignation by attorneys under disciplinary investigation and disbarment on consent), the Office of Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under § 89.52 (relating to petition for discipline) in [either of] the following cases:

(1) [Pursuant to a referral from the Supreme Court under § 91.35(a) (relating to institution of formal proceedings upon conviction of serious crime) following the conviction of the respondent-attorney for a crime. See Chapter 91 Subchapter B (relating to attorneys convicted of crimes).] Where a certificate of conviction is filed with the Supreme Court under § 91.33 (relating to notification by Office of Disciplinary Counsel of conviction of attorneys) and the Supreme Court directs that formal proceedings be instituted;

(2) After the Supreme Court has entered an order temporarily suspending the respondent-attorney under § 91.34(c) (relating to temporary suspension following the conviction of the respondent-attorney for a crime) or § 91.34(f) (relating to joint petition for temporary suspension); or

(3) Pursuant to a determination to institute formal proceedings made under Chapter 87 (relating to investigations and informal proceedings).

(b) Except where the Office of Disciplinary Counsel shall institute formal disciplinary proceedings pursuant to the provisions of subsection (a), the Office of Disciplinary Counsel may, upon the filing of a certificate of conviction with the Supreme Court under § 91.33 (relating to notification by

Office of Disciplinary Counsel of conviction of attorneys), institute formal disciplinary proceedings by filing with the Board a petition under § 89.52 (relating to petition for discipline). See § 91.35(a) (relating to authority of Office of Disciplinary Counsel to commence a formal proceeding following the conviction of a respondent-attorney for a crime).

Subchapter C. HEARING PROCEDURES

ABBREVIATED PROCEDURE

§ 89.181. Abbreviated procedure.

(a) *Scope.* [Experience has shown that frequently at the conclusion of the hearings it] At the conclusion of the hearing, it may be obvious to all participants that no showing of misconduct has been made or that there has been adequate proof of a violation of § 85.7 (relating to grounds for discipline) and that some form of private discipline or a public reprimand would be appropriate. In such circumstances the cost and delay of the preparation of a formal transcript is unnecessary and the preparation of a detailed report as provided by § 89.172 (relating to contents of report) is an unnecessary and time-consuming burden on the hearing committee and others. Where the participants can stipulate to an acceptable determination the procedures of this section minimize cost, effort and time for all participants. This section may be applicable to combined reinstatement and disciplinary hearings conducted before a hearing committee pursuant to § 89.273(b)(4) (relating to combined hearings in reinstatement matters where formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney).

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(c) *Procedures.*

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(8) Thereafter the Board shall either:

(i) affirm the finding that no violation of § 85.7 has been shown and dismiss the proceeding;

(ii) impose or cause to be imposed the type of private discipline, stipulated by the participants; [or]

(iii) impose the public reprimand, stipulated by the participants; or

(iv) remand the record to the hearing committee with instructions to fix a briefing schedule and to proceed as provided in paragraph (6), if for any reason the type of discipline stipulated by the parties is not accepted by the Board.

(9) Where the proceeding is disposed of as provided by paragraph (8)(i) [or], (ii), or (iii), the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

Subchapter D. ACTION BY BOARD AND SUPREME COURT

§ 89.202. Content and form of briefs on exceptions.

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(d) *Copies.* [Fourteen] Three copies of each brief shall be filed with the Office of the Secretary in addition to the copies served on the participants in the proceedings.

§ 89.205. Informal admonition [or], private reprimand **or public reprimand** following formal hearing.

(a) *General rule.* Enforcement Rule 208(d)(2)(ii) provides that in the event that the Board determines that the proceeding should be concluded by informal admonition [or], private reprimand, [it] **or public reprimand, the Board** shall arrange to have the respondent-attorney appear in person before Disciplinary Counsel for the purpose of receiving informal admonition or before a **designated panel of three members selected by the Board Chair pursuant to Pa.R.D.E. 205(c)(11)** for the purpose of receiving private reprimand **or public reprimand**, in which case the [Chairman] **designated member** shall deliver the private reprimand **or public reprimand**. [In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12 (Notice to Appear for Admonition or Reprimand). The notice shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board or Disciplinary Counsel for private reprimand or informal admonition shall be an independent ground for discipline and that the Board and (when administering informal admonitions) Disciplinary Counsel are “tribunals” within the meaning of the Disciplinary Rules (see, e.g. DR 7-106(C)).]

(b) *Taxation of expenses.* Enforcement Rule 208(g)(2) provides that in the event a proceeding is concluded by informal admonition [or], private reprimand, **or public reprimand**, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney, and that all expenses so taxed shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel **for informal admonition** or the Board for [informal admonition or] private **or public reprimand**. The expenses taxable under this subsection shall be those prescribed by § 93.111 (relating to determination of reimbursable expenses).

(c) *Notice to appear.*

(1) In the event that the Board determines that the proceeding should be concluded by public reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12.2 (FP) (Notice to Appear for Public Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for public reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g., Rules 3.3, 3.4(c) and 3.5).

(2) In the event that the Board determines that the proceeding should be concluded by private reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12(FP) (Notice to Appear for Private Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for private reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. [§ 81.4 (relating to rules of professional conduct)], Rules 3.3, 3.4(c) and 3.5).

[(2)] (3) In the event that the Board determines that the proceeding should be concluded by informal admonition, the Office of Disciplinary Counsel shall notify the respondent-attorney and staff counsel by means of Form DB-12.1(FP) (Notice to Appear for Informal Admonition Following Formal Proceedings), which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before Disciplinary Counsel for informal admonition shall be an independent ground for discipline and that Disciplinary Counsel, when administering informal admonitions, constitutes a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. [§ 81.4,] Rules 3.3, 3.4(c) and 3.5).

[(3)] (4) The Office of the Secretary shall notify the respondent-attorney of the expenses of the proceeding which have been taxed pursuant to subsection (b) by means of Form DB-41 (Notice of Taxation of Expenses), which shall state that if the respondent-attorney fails to pay the taxed expenses on or before the date fixed for the appearance of the respondent-attorney before the Board [or Disciplinary Counsel] for private **or public reprimand** or **before Disciplinary Counsel** for informal admonition, action will be taken by the Board pursuant to § 93.112 (relating to failure to pay taxed expenses) which will result in the entry of an order placing the respondent-attorney on administrative suspension.

(d) *Appearance.* An attorney who is given notice to appear for informal admonition or private reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such informal admonition or private reprimand. A permanent record shall be made of the fact of and basis for such action as is taken. The fact of receipt of such **informal** admonition or **private** reprimand shall not affect the good standing of the [**respondant attorney**] **respondent-attorney** as an attorney and shall be kept confidential to the extent provided in Chapter 93 Subchapter F (relating to confidentiality). **An attorney who is given notice to appear for public reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such public reprimand. The proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality), and a record shall be made of the fact of and basis for the public reprimand, which record shall be public.**

(e) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear before Disciplinary Counsel for the purposes of informal admonition without good cause shall automatically convert the decision of the Board on informal admonition into one for private reprimand. The neglect or refusal of the respondent-attorney to appear before the Board for the purposes of private **or public** reprimand without good cause shall automatically convert the decision of the Board on private **or public** reprimand into a recommendation to the Supreme Court for censure, and the Office of the Secretary shall notify the respondent-attorney, and the Office of Disciplinary Counsel accordingly. [**The intention of a respondent-attorney to proceed further under subsection (d) shall not excuse the neglect or failure of the respondent-attorney to appear before the Board under this section.**]

(f) *Demand for Supreme Court review.*

(1) Enforcement Rule 208(d)(2)(iii) provides that a respondent-attorney who is unwilling to have the matter

concluded by an informal admonition or private reprimand must file, within 30 days after notice of the determination of the Board, a notice of appeal in the Supreme Court. **Enforcement Rule 208(d)(2)(iii) provides that within 30 days after notice of the determination of the Board, the respondent-attorney must file a notice of appeal with the Supreme Court.**

(2) A respondent-attorney who objects to an order taxing expenses in connection with a matter concluded by informal admonition or private reprimand may file a petition for review of such order in the Supreme Court under 42 Pa.C.S. §§ 725(5) and 5105(a)(2) (relating to direct appeals from constitutional and judicial agencies and right to appellate review). See 210 Pa. Code Chapter 15 (relating to judicial review of governmental determinations) with respect to the time limits for seeking review and other applicable procedures.

§ 89.206. Transmission of record to Supreme Court.

(a) *General rule.* Enforcement Rule 208(d)(2)(iii) provides that in the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition [or], private reprimand, or public reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition [or], private reprimand, or public reprimand, [it] the Board shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court.

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Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.272. Waiting period.

(a) *General rule.* Enforcement Rule 218(b) provides that a person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to § 91.51 (relating to reciprocal discipline and disability) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

* * * * *

§ 89.273. Procedures for reinstatement.

(a) Enforcement Rule 218(c) provides that the procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:

* * * * *

(3) The hearing committee shall promptly schedule a hearing at which a disbarred or suspended attorney shall have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary*

[*counsel*] *Counsel v. Keller*, 509 Pa. 573, [576] 579, 506 A.2d 872, 875 (1986) and its progeny applies.

Official Note: The requirement that a hearing be scheduled “promptly” means that a hearing should ordinarily be held within 60 days after [the response to] the petition for reinstatement has been filed with the Board and the response from Disciplinary Counsel has been received, unless the [chair] chairman of the hearing committee extends that time for good cause shown.

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CHAPTER 91. MISCELLANEOUS MATTERS
Subchapter B. ATTORNEYS CONVICTED OF CRIMES

§ 91.31. Notification by attorneys convicted of crimes.

Enforcement Rule 214(a) provides that an attorney convicted of a [serious] crime shall report the fact of such conviction within 20 days to the [Secretary of the Board] Office of Disciplinary Counsel; and that the responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to § 91.32 (relating to notification by clerks of conviction of attorneys).

§ 91.32. Notification by clerks of conviction of attorneys.

Enforcement Rule 214(b) provides that the clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court [(Form DB-18) (Certification of Conviction of Attorney)].

§ 91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.

Enforcement Rule 214(c) provides that upon being advised that an attorney has been convicted of a crime [within this Commonwealth], Disciplinary Counsel shall secure and file a [Form DB-18 (Certification of Conviction of Attorney) in accordance with the provisions of § 91.32 (relating to notification by clerks of conviction of attorneys); and that if the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a] certificate of such conviction with the Supreme Court.

§ 91.34. Temporary suspension upon conviction of [serious] a crime.

(a) *Commencement of summary [proceeding] proceedings* Enforcement Rule [214(d)] 214(d)(1) provides that upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a [serious] crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(b) *Subject of summary proceeding.* The Note to Enforcement Rule 214(d) provides that the subject of the

summary proceedings authorized by this section [is] will ordinarily be limited to whether the [conditions] condition triggering the application of this section [exist] exists, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged [and that the offense is a serious crime], [and will not include] although the Court has the discretion to consider such subjects as mitigating or aggravating circumstances.

* * * * *

(f) [At] *Joint petition for temporary suspension.* Enforcement Rule 214(d)(5) provides that at any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the respondent-attorney on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

§ 91.35. Institution of formal proceedings upon conviction of [serious] a crime.

(a) *General rule.* Enforcement Rule 214(f)(1) provides that upon [receipt] the filing of a certificate of conviction of an attorney for a [serious] crime, [the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of § 91.34 (relating to temporary suspension upon conviction of serious crime), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until sentencing and all appeals from the conviction are concluded. The Office of the Secretary shall transmit the file to the Office of Disciplinary Counsel by means of Form DB-31 (Reference for Proceedings in Response to Conviction).] Disciplinary Counsel may commence either an informal proceeding under Chapter 87 (relating to investigations and informal proceedings) or a formal proceeding under Subchapter 89B (relating to institution of formal proceedings), except that Disciplinary Counsel may institute a formal proceeding before a hearing committee or special master by filing a petition for discipline under § 89.52 (relating to petition for discipline) without seeking approval for the prosecution of formal charges under Subchapter 87B (relating to review of recommended disposition by reviewing hearing committee member). If a petition for discipline is filed, a hearing on the petition shall be deferred until sentencing and all direct appeals from the conviction have been concluded. The sole issue at the hearing shall be the extent of the discipline or, where the Court has temporarily suspended the attorney under § 91.34(c), the final discipline to be imposed.

* * * * *

§ 91.36. [Proceedings upon conviction of other crimes] (Reserved).

[(a) Enforcement Rule 214(g) provides that upon receipt of a certificate of conviction of any attorney

for a crime other than a serious crime, the Court shall take such action as it deems warranted; and that the Court may in its discretion take no action with respect to convictions for minor offenses.

(b) The Official Note to Enforcement Rule 214(g) provides that the actions the Court may take under Subsection (a) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.]

[§ 91.37] § 91.36. Effect of reversal of conviction.

(a) *General rule.* Enforcement Rule [214(h)] 214(g) provides that an attorney suspended under the provisions of § 91.34 (relating to temporary suspension upon conviction of [serious] a crime) may be reinstated immediately upon the filing by the Board with the Supreme Court of a certificate demonstrating that the underlying conviction has been reversed, but that the reinstatement shall not terminate any formal proceeding then pending against the attorney.

* * * * *

[§ 91.38] § 91.37. Definition of "[serious] crime."

As [used in this Subchapter 91B,] Enforcement Rule [214(i)] 214(h) provides [that] and as used in this Subchapter 91B, the term "[serious] crime" means a crime that is punishable by imprisonment [for one year or upward in this or any other jurisdiction] in the jurisdiction of conviction, whether or not a sentence of imprisonment is actually imposed. It does not include parking violations or summary offenses, both traffic and non-traffic, unless a term of imprisonment is actually imposed.

[§ 91.39] § 91.38. Definition of "conviction."

As [used in this Subsection 91B,] Enforcement Rule [214(j)] 214(i) provides [that] and as used in this Subchapter 91B, the term "conviction" means any guilty verdict, whether after trial by judge or jury, or finding of guilt, and any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

Subchapter C. RECIPROCAL DISCIPLINE AND DISABILITY

§ 91.51. Reciprocal discipline and disability.

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of [an order, judgment or disciplinary directive of another court, a federal government] a final adjudication any court or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or government administrative agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, disbarment, [or] revocation of license or pro hac vice admission, or has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction or has been transferred to disability inactive status, the Supreme Court shall forthwith issue

a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

(i) A copy of [**said order, judgment or directive from the other court, federal government agency or military tribunal**] the final adjudication described in paragraph (a).

(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline **or disability inactive status** in the Commonwealth would be unwarranted, and the reasons therefor. The Office of the Secretary shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with § 93.142(b) (relating to filing of annual [**statement form**] by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

(2) In the event the discipline imposed in the [**other court, federal government agency or military tribunal**] original jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(3) Upon the expiration of 30 days from service of the [**Form DB-19**] notice issued pursuant to the provisions of subdivision (1), the Supreme Court may impose the identical or comparable discipline **or transfer to disability inactive status** unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the [**face**] fact of the record upon which the discipline is predicated it clearly appears:

* * * * *

(5) An attorney who has been **transferred to disability inactive status** or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal [**government**] administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, shall report the fact of such **transfer**, suspension, disbarment, revocation or resignation to the Secretary of the Board within 20 days after the date of the order, judgment or directive imposing or confirming the discipline **or transfer to disability inactive status**.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.23. Powers and duties.

(a) *General rule.* Enforcement Rule 205(c) provides that the Board shall have the power and duty:

* * * * *

(7) To assign periodically, through its Secretary, senior or experienced hearing committee members within each disciplinary district to:

(i) review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands, **public reprimands** and institution of formal charges;

(ii) hear and determine attacks on the validity of subpoenas issued pursuant to § 91.2 (relating to subpoenas and investigations), as provided in [§ **91.3(2)**] § **91.3(a)(2)** (relating to determination of validity of subpoena; or

(iii) consider a petition for reinstatement to active status from retired or inactive status, or administrative suspension, under § 89.273(b) (relating to procedures for reinstatement).

(8) To review, through a designated panel of three members, and approve or modify a determination by a reviewing hearing committee member that a matter should be concluded by dismissal, private informal admonition, private reprimand, **public reprimand** or the institution of formal charges before a hearing committee.

(9) To review, through a designated panel of three members, and approve or reject a joint petition in support of discipline on consent filed with the Board pursuant to Enforcement Rule 215(d).

(10) To review, through a single member designated by the Board Chair, and approve or reject a certification filed by Disciplinary Counsel under Enforcement Rule 218(d)(2)(ii) indicating that Disciplinary Counsel has determined that there is no impediment to reinstatement of the petitioner, and to issue the report and recommendation required by subdivision (d) of Enforcement Rule 218.

(11) To administer, **by the Board or through a designated panel of three members selected by the Board Chair**, private reprimands **or public reprimands** to attorneys for misconduct.

* * * * *

Subchapter D. OFFICE OF DISCIPLINARY COUNSEL

§ 93.63. Powers and duties of Office of Disciplinary Counsel.

(a) *General rule.* The Office of Disciplinary Counsel shall have the power and duty (pursuant to Enforcement Rule 207(b)):

(1) To investigate all matters involving alleged misconduct called to its attention whether by complaint or otherwise except, unless as otherwise directed by the Supreme Court or the Board, complaints against Disciplinary Counsel and members of the Board.

(2) To dispose of **any matter that is governed by Enforcement Rules 214 (Attorneys convicted of crimes), 215 (Discipline on Consent), and 216 (Reciprocal discipline) in accordance with the substantive and procedural provisions of those rules, and to dispose of all other matters [(subject to review by a senior or experienced hearing committee matter when required by these rules)]** involving alleged misconduct by dismissal[,] **or (subject to review by a senior or experienced hearing committee member) by recommendation for informal admonition, [recommendation for] private or public reprimand, or the prosecution of formal charges before a hearing committee or special master.**

* * * * *

(b) *Party status of Disciplinary Counsel.* Enforcement Rule 207(c) provides that Disciplinary Counsel:

(1) Shall be a party to all proceedings and other matters before the Board or the Supreme Court under the Enforcement Rules.

(2) May urge in the Supreme Court a position inconsistent with any recommendation of the Board where in the judgment of Disciplinary Counsel a different disposition of the matter is warranted by the law or the facts.

(3) May within the time and in the manner prescribed by [210 Pa. Code] Title 210 (relating to the Pennsylvania Rules of Appellate Procedure) obtain in the Supreme Court judicial review of any final determination of the Board, except a determination to conclude a matter by dismissal, informal admonition [or], private reprimand, or public reprimand.

(4) May within the time and in the manner prescribed by [210 Pa. Code] Title 210 petition the Supreme Court for allowance of an appeal from any final determination of the Board to conclude a matter by dismissal, informal admonition [or], private reprimand, or public reprimand.

Subchapter F. CONFIDENTIALITY

§ 93.102. Access to disciplinary information and confidentiality.

(a) *General rule.* Enforcement Rule 402(a) provides that, except as provided in subsections (b) and (d) and §§ 93.104 (relating to access by judicial system agencies to confidential information) and 93.108 (relating to restoration of confidentiality), all proceedings under these rules shall be open to the public after:

- (1) the filing of an answer to a petition for discipline;
- (2) the time to file an answer to a petition for discipline has expired without an answer being filed;
- (3) the filing and service of a petition for reinstatement; [or]
- (4) **the Board has entered an Order determining a public reprimand; or**
- (5) after the expiration of any order restricting access to disciplinary information.

* * * * *

Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.111. Determination of reimbursable expenses.

* * * * *

(c) *Administrative fee.* Enforcement Rule 208(g)(3) provides that the expenses taxable under § 89.205(b) (relating to informal admonition [or], private reprimand, or public reprimand following formal hearing) or § 89.209 (relating to expenses of formal proceedings) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an

informal admonition; and that the administrative fee shall be \$250.

[Pa.B. Doc. No. 12-1501. Filed for public inspection August 10, 2012, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed New Pa.R.Crim.P. 151 and Revision of the Comment to Pa.R.Crim.P. 150

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) and to revise the Comment to Rule of Criminal Procedure 150 (Bench Warrants). The proposed new rule and correlative Comment revision establish new procedures for court cases after the execution of a bench warrant that was issued for a witness who is under the age of 18 years. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 text of the proposed changes to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200, P. O. Box 62635
Harrisburg, PA 17106-2635

fax: (717) 231-9521 or e-mail: criminal.rules@pacourts.us
no later than Friday, August 31, 2012.

By the Criminal Procedural Rules Committee

PHILIP D. LAUER,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
AND DEFINITIONS, LOCAL RULES**

PART E. Miscellaneous Warrants

Rule 150. Bench Warrants.

* * * * *

Comment

This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth,

which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

* * * * *

Official Note: Adopted December 30, 2005, effective August 1, 2006; **Comment revised** , 2012, **effective** , 2012.

Committee Explanatory Reports:

* * * * *

Report explaining the Comment revision adding a cross-reference to new Rule 151 published for comment at 42 Pa.B. 5165 (August 11, 2012).

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

Rule 151. Bench Warrant Procedures When Witness is Under Age of 18 Years.

(A) In a court case when a bench warrant for a witness under the age of 18 years is executed, except as provided in this rule, the case is to proceed in accordance with the procedures in Rule 150.

(B) Upon execution of the warrant for a minor witness, the arresting officer immediately shall inform the proper judicial officer and a parent or guardian of the minor witness of the arrest of the minor witness.

(C) Execution of Bench Warrant in County of Issuance

(1) If the judicial officer who issued the bench warrant, or another judicial officer designated by the president judge or by the president judge’s designee, is not available to conduct the bench warrant hearing without unnecessary delay, the minor witness shall be taken before the on-call judge of the court of common pleas.

(a) The on-call judge shall determine whether to release the witness or to detain the witness pending the bench warrant hearing. If the bench warrant specifically orders detention of the minor witness, the on-call judge shall not release the witness.

(b) If the on-call judge determines the witness must be detained, the witness shall be detained in a detention facility. The on-call judge shall notify the parent or guardian of the minor witness of the detention.

(2) The minor witness shall not be detained without a bench warrant hearing on that bench warrant longer than 24 hours, or the close of the next business day if the 24 hours expires on a non-business day.

(D) Execution of Bench Warrant Outside County of Issuance

(1) The minor witness shall be taken before a common pleas court judge of the county of arrest without unnecessary delay and in no case later than the end of the next business day.

(2) The judge shall identify the minor witness as the subject of the bench warrant, decide whether detention as a minor witness is necessary, and order that arrangements be made immediately to transport the minor witness to the county of issuance.

(3) If transportation cannot be arranged immediately, the minor witness shall be released unless the bench warrant specifically orders detention of the witness. In this case, the minor witness shall be detained in an out-of-county detention facility.

(4) If detention is ordered, the minor witness shall be brought to the county of issuance within 72 hours from the execution of the bench warrant.

(5) If the time requirements of this paragraph are not met, the minor witness shall be released.

Comment

This rule was adopted in 2012 to establish the procedures when a witness subject to a bench warrant is under the age of 18. The procedures following the execution of a bench warrant set forth in Rule 150 apply to cases when the witness is under the age of 18, except as otherwise provided in this rule.

Paragraph (B) ensures that the judicial officer who issued the bench warrant is aware that the minor witness has been arrested, and that a parent or guardian of the arrested minor witness is notified of the arrest.

The procedures in paragraph (C) for cases in which the bench warrant is executed in the county of issuance, recognize the need, when the issuing judicial officer is unavailable to conduct the bench warrant hearing, for the common pleas court judge who is on call to determine whether a minor witness may be released or must be detained. If the minor witness is detained, the bench warrant hearing must be held no later than the end of the next business day. If the bench warrant hearing is not conducted within this time period, the minor witness must be released.

The minor witness may not be detained in an adult facility pending a bench warrant hearing unless the witness is separated by sight and sound from incarcerated adult offenders and is under continuous visual supervision by facility staff.

In cases in which the bench warrant is executed outside the county of issuance, the minor witness must be transported to the county of issuance within 72 hours of the execution of the bench warrant, and the bench warrant hearing must be conducted by the end of the next business day.

As used in this rule, “minor witness” means a witness who is under the age of 18 years, and “proper judicial officer” means the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge’s designee.

Official Note: Adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining proposed new Rule 151 providing procedures for bench warrants when a witness is under the age of 18 published for Comment at 42 Pa.B. 5165 (August 11, 2012).

REPORT

Proposed new Pa.R.Crim.P. 151, and Proposed Revisions to the Comment to Pa.R.Crim.P. 150

Bench Warrant Procedures for Witnesses Who are Under the Age of 18 Years

I. Background

For the past several years, the Committee has been developing procedures governing the use of subpoenas in

the courts of common pleas and in magisterial district courts.¹ During that time, Rule of Juvenile Court Procedure (“Juvenile Rule”) 123 was amended to require parental notification when a subpoena is issued for a minor witness.² The Committee agreed a comparable procedure should be included in the proposed changes to Rule 107 that were being developed.

Correlative to this discussion, the Committee also discussed procedures for the issuance of bench warrants for witnesses under the age of 18 who have failed to appear when issued a subpoena. The Committee reviewed the provisions for bench warrants in Juvenile Rule 140 (Bench Warrants for Failure to Appear at Hearings), specifically in paragraph (D) for witnesses. The Committee agreed there should be comparable special procedures for bench warrants for minor witnesses in the Rules of Criminal Procedure, and that these special procedures should be set forth in a separate rule, proposed new Rule 151.

II. Discussion

Proposed new Rule 151 sets forth the procedures after a bench warrant for a witness who is under the age of 18 years is issued and executed.

Paragraph (A) establishes that, except as provided in Rule 151, the bench warrant procedures in Rule 150 govern cases in which the bench warrant is for a witness under the age of 18 years.

Paragraph (B) requires the arresting officer to notify the judicial officer that the minor witness has been arrested on the bench warrant. The arresting officer also is required to notify the parent or guardian of the minor witness. This parental notification requirement is comparable to the requirements in Juvenile Rule 140(D)(3).

The Committee discussed at length the procedure when a minor witness is arrested on a bench warrant and the issuing judicial officer is not available. The issue was whether magisterial district judges (MDJs) are permitted to lodge juveniles in detention facilities. The consensus was that MDJs do not have the authority to lodge juveniles in a detention facility on these bench warrants.

The Committee also discussed the issue of detention of underage witnesses in common pleas court cases in judicial districts without easy access to detention facilities. The members opined that alternatives to detention should be considered such as release on an electronic monitor.

The Committee agreed that the best resolution of issues related to the detention of a minor witness when the issuing judicial officer is not available, whether the bench warrant was issued by an MDJ or by a common pleas court judge, is to require that the minor witness be taken before the on-call the emergency common pleas court judge for a bail decision, including release on an electric monitor, or a detention decision. Paragraph (C)(1) and paragraph (C)(1)(a) require the minor witness to be taken to the on-call common pleas court judge for a determination whether to set bail or to detain the witness pending

the bench warrant hearing if the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge’s designee, is not available to conduct the bench warrant hearing without unnecessary delay. Paragraph (C)(1)(a) also limits the on-call judge’s ability to release when the bench warrant specifically orders the detention of the minor witness. *See also* Juvenile Rule 140(D)(1)(b). If the on-call judge determines that the minor witness must be detained, paragraph (C)(1)(b) requires that the witness be detained in a detention facility.

Paragraph (C)(2) is taken from Juvenile Rule 140(D)(2) (Prompt Hearing) that requires the bench warrant hearing to be conducted “by the next business day” when the minor witness is detained, and if the hearing is not conducted within this time frame, the witness must be released. This language has been modified slightly in Rule 151(C)(2) to provide that the hearing be conducted “before the end of the next business day.” The Committee believes this language is clearer.

Paragraph (D) (Execution of Bench Warrant Outside County of Issuance) is taken from Juvenile Rule 140(D)(4) (Out-of-County Custody). Rule 140(D)(4)(a) is addressed in Rule 151(B) by the requirement that the arresting officer notify the proper judicial officer of the arrest of the minor witness.

Paragraphs (D)(2), (D)(3), (D)(4), and (D)(5) follow the requirements in Rule 140(D)(4)(b), (c), (d), (e), (f), and (g). When a minor witness is arrested on a bench warrant out of the county of issuance, paragraph (D)(1) requires the minor witness to be taken before a judge of the county of arrest without unnecessary delay. In no case may there be a delay longer than the end of the next business day. When the minor witness appears before the judge, the judge is required to confirm that the minor witness is the subject of the bench warrant, must decide whether to detain the minor witness, and make arrangements to transport the minor witness to the county of issuance. If the judge is not able to arrange transport, the minor witness must be released unless the bench warrant specifically orders detention. In these cases, the minor witness must be brought to the county of issuance within 72 hours from the execution of the bench warrant or be released.

Because Rule 151 is a court case rule and not a Juvenile Court rule, the Committee did not include the provisions in Juvenile Rule 140(D) for a master or for an “other order of court.” Rule 151 applies only to bench warrants issued in court cases unlike the bench warrants that are issued pursuant to Juvenile Rule 140.

The Rule 151 Comment elaborates on the provisions of the new rule and includes a cross-reference to Rule 150. The fourth paragraph explains that a minor witness may only be detained in an adult facility pending the bench warrant hearing if the witness is separated by sight and sound from the incarcerated adult offenders and is under continuous visual supervision by facility staff.

The Rule 150 Comment would be revised to include a cross-reference to new Rule 151 and to cross-reference Rule 107.

[Pa.B. Doc. No. 12-1502. Filed for public inspection August 10, 2012, 9:00 a.m.]

¹ See Committee explanatory Report at 35 Pa.B. 1557 (March 5, 2005) and Supplemental Report at 35 Pa.B. 5677 (October 15, 2005).

² The Committee also looked at Act 98 of 2008 that amended 42 Pa.C.S. § 6333 to require notice to a parent or guardian of the subpoena issued to any witness who is under the age of 18 years. Changes correlative to this statutory provision also have been added to Civil Rule 234.2 and MDJ Rule 214.

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Civil Procedure; No. 11379 Misc.
2012

Administrative Order

The following amendments to the Beaver County Local Rules of Civil Procedure are hereby adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239(d). Local Rules of Civil Procedure previously adopted are hereby repealed as of the effective date of the following Rules.

The District Court Administrator is Directed to:

(1) file one (1) certified copy of the Local Rules with the Administrative Office of Pennsylvania Courts;

(2) submit two (2) certified copies of the Local Rules and a copy on computer diskette or CD-ROM containing the text of the Local Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) submit one (1) certified copy of the Local Rules to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

(4) submit one (1) certified copy of the Local Rules to the Domestic Relations Procedural Rules Committee of the Pennsylvania Supreme Court;

(5) keep a copy continuously available for public inspection and copying in the Office of the Prothonotary of Beaver County;

(6) keep a copy continuously available for public inspection and copying in the Beaver County Law Library.

By the Court

JOHN D. McBRIDE,
President Judge

BEAVER COUNTY

Local Rules of Civil Procedure Local Rules of Judicial Administration

PREFACE

The Local Rules of the Court of Common Pleas of Beaver County are intended to supplement the Pennsylvania Rules of Civil Procedure. The latter's system of numbering has been preserved. A local rule dealing with the same or related subject matter as that dealt with by a Pennsylvania rule of Civil Procedure has been given the same number as the Pennsylvania Rule of Civil Procedure and is preceded by the letter "L" to indicate its local character. All local rules should be read in connection with the Pennsylvania Rules of Civil Procedure bearing the same numbers.

The rules of construction found in the Pennsylvania Rules of Civil Procedure shall apply to all Local Rules of the Court of Common Pleas of Beaver County. The Local Rules may be cited as "Beaver County L.R. No. _____."

BUSINESS OF THE COURTS

LR205.1. Court Action On Legal Papers.

Any party who desires the signature of, or action by a judge on a legal paper and who has delivered or will deliver the paper to the Prothonotary for filing in accord-

ance with Pa. R.C.P. No. 205.1, must present the paper in motions court for entry of the order.

Note: The paper must be presented to the court personally by or through counsel. After action is taken on the paper, the court will return the paper to counsel for filing and service. This rule does not apply to motions for summary judgment, motions for judgment on pleadings or post-trial motions.

LR 206.1(b). Presentation of Petitions.

The Court will be available to receive petitions at the times and in accordance with the practice which is published for the presentation of motions in the annual Court Calendar.

Note: The prescribed time to receive motions appears on the Beaver County web site: <http://www.beavercountycourts.org/motions.htm>

LR 206.1(c). Notice to All Parties.

The Court will not entertain a petition in any matter unless the opposing party or his counsel has consented in writing or has received three (3) business days written notice of the intention to present the petition. The petition shall set forth the manner in which notice has been given, attaching a copy thereof. Counsel may present a petition after oral notice only in emergency situations. Ex parte petitions will not be entertained without prior notice unless notice is not possible.

LR207.1. Motions to Exclude Expert Testimony Which Relies Upon Novel Scientific Evidence.

All motions to exclude expert testimony authorized by Pa. R.C.P. No. 207.1 shall be filed and served no later than 30 days after the pre-trial conference unless otherwise directed by Court or the case management order. The content of the motion shall be in accordance with Pa.R.C.P. 207.1 (a).

Note: This rule is intended to require a party to raise the issue of the admissibility of testimony of an expert witness prior to trial pursuant to Pa. R.C.P. No. 207.1(b). If a motion is filed untimely, the issue will be deemed waived and the motion dismissed sua sponte.

LR208.3(a). Procedure Governing Motions.

(1) All motions, as defined in Pa.R.C.P. No. 208.1, whether or not they have been filed, shall be presented to the Court by the moving party.

(2) The Court will be available to receive motions at the times and in accordance with the practice which is published in the annual Court Calendar.

Note. The prescribed time to receive motions appears on the Beaver County web site: www.beavercountycourts.org. Links are available to the Court and then to Motions Court.

(3) *Notice to All Parties.*

The Court will not entertain a motion in any matter unless the opposing party or his counsel has consented in writing or has received three (3) business days written notice of the intention to present the motion. The motion shall set forth the manner in which notice has been given, attaching a copy thereof. Counsel may present a motion after oral notice only in emergency situations. Ex parte motions will not be entertained without prior notice unless notice is not possible.

LR211A. Oral Arguments.

The court will be available to hear oral arguments on the dates designated on the court calendar or such other dates as may be determined by the court.LR211B Argument Lists.

(1) Cases shall be placed on the argument list by Praecept of a party or by order of court. Immediately after the last day to file a praecipe for argument, the Court Administrator shall compile a list of cases to be argued. Thereafter, the Court Administrator shall assign the cases to those judges assigned to preside over civil cases, schedule the cases for oral argument, cause notice of the assignment and the time and place for oral argument to be mailed to all parties unrepresented by counsel as well as all counsel of record, and publish the assigned list in the *Beaver County Legal Journal*.

(2) The praecipe for argument shall be in the form approved and revised from time to time by the court. The original praecipe for argument shall be filed with the Prothonotary and a copy thereof delivered to the Court Administrator.

(3) All interested parties must be present for the oral argument; failure to appear may result in an order being entered against the party.

(4) Cases may be submitted on briefs only without oral argument upon written, filed stipulation of all parties filed with the Prothonotary and a copy of the stipulations shall be delivered to the Court Administrator.

LR211C. Briefing Schedule.

(1) The moving party's brief shall be submitted to the Court Administrator and served in accordance with the following schedule:

(a) where the moving party files the praecipe for argument, not later than simultaneously therewith;

(b) where the responding party files the praecipe for argument or the court orders the matter on the argument list, at least twenty (20) days prior to the argument date;

If the moving party fails to timely submit a brief, the court may deny the relief sought or impose other sanctions.

(2) The responding party's brief shall be submitted to the Court Administrator and served at least ten (10) days prior to the argument date provided that the moving party's brief has been timely served. If the brief is not timely submitted, the court may prohibit the responding party from presenting oral argument or may impose other sanctions.

LR211D. Miscellaneous Provisions.

(1) Any issue which has not been raised and properly discussed in a timely submitted brief may be deemed absolutely to have been waived.

(2) Each party will be allowed fifteen (15) minutes to present oral argument subject, however, to the court's power to limit or extend the time for argument. The time for argument shall be limited to not more than thirty (30) minutes for each side notwithstanding the existence of more than two moving or responding parties. The maximum time shall be divided between or among the moving parties or between or among the responding parties as they may decide.

(3) Oral argument will not be continued except on written motion, for cause shown. Such motion shall be subject to L208.3(a).

LR212.1. Civil Actions. Certification For Trial. Time for Initiating Motions for Pre-Trial Judgment or Discovery.

A. All civil actions which are to be tried by a jury may be tried, at the earliest, during the term of trials next following the filing of a Certificate of Readiness for Trial.

Note: This provision is intended to constitute the Notice Required by Pa. R.C.P. No. 212.1(a).

B. (1) A civil action shall be certified for trial by jury, judge or board of arbitration, by filing with the Prothonotary of Beaver County a Certificate of Readiness for Trial. A copy of the Certificate of Readiness for Trial shall likewise be transmitted by the moving party to the Court Administrator of Beaver County.

(2) No case may be certified for trial without having first given at least sixty (60) days written notice of intention to do so to all other parties or their counsel of record.

The notice of intent to certify for trial shall be given to counsel for all parties in all companion cases. Thereafter, the filing of a certificate of readiness for trial shall operate as the certification for trial of all companion cases unless exceptions thereto are filed pursuant to subdivision five (5) hereof.

(3) After a case has been certified for trial, no motion for judgment on the pleadings or for summary judgment may be filed without having first secured leave of court to do so for cause shown.

(4) After a case has been certified for trial, no discovery, including an independent medical examination, may be initiated without having first secured leave of court to do so for cause shown.

(5) Any other party may file exceptions to the certificate of readiness within ten (10) days of the filing thereof. The exceptions shall be presented to the judge assigned to receive civil motions after notice pursuant to Rule L208.3(a) has been given.

Note: The purpose of subdivision (2) is to provide parties with an opportunity to initiate appropriate pre-trial procedures prior to the certification of the case for trial. Failure to do so prior to certification for trial may result in the waiver of the right to do so under subdivisions (3) and (4).

LR212.2A. Pre-Trial Conference and Pre-Trial Statements.

A. Unless otherwise directed by the court, a Pre-Trial Conference shall be scheduled by the Court Administrator for every case certified for jury trial. Pre-Trial Conferences shall be scheduled on those dates designated for that purpose on the court calendar and on such other dates as may from time to time be designated by the court.

(1) Prior to the Pre-Trial Conference, a party shall provide the opposing party with a copy of all documents or records secured through an authorization of the opposing party. Any such documents or records not so provided may not be used at trial for any purpose.

(2) Pre-Trial statements which comply with Pa.R.C.P. No. 212. Shall be submitted to the judge assigned to conduct the Pre-Trial Conference not later than seven (7) days prior thereto. Failure to file a timely pre-trial statement may result in continuance of the Pre-Trial Conference and sanctions in the form of counsel fees payable to opposing counsel. In addition, to the requirements of Pa.R.C.P. No. 212.2, the Pre-Trial Statement shall contain:

(a) A statement of legal and evidentiary issues which are anticipated to arise together with a citation to authority;

(b) An itemized statement of all medical and hospital and other bills and expenses claimed;

(c) An itemized statement of lost earnings and impairment of earning power together with the basis therefore;

(d) A statement, if applicable, as to the plaintiff's selection of the limited or full tort option. If a limited tort option applies, a statement to support eligibility for recovery of non-economic damages shall be included;

Note: Although Pa.R.C.P. No. 212.2(a)(5) requires the inclusion of an expert report or proper answer to interrogatory, and the note thereto permits physician notes or records in lieu of a report, neither copies of hospital records, nor illegible office notes, are to be included.

(e) All trial exhibits are to be marked for identification but need not be attached to the Pre-Trial Statement.

(3) Unless excused by the court upon cause shown, the Pre-Trial Conference shall be attended by trial counsel as well as the plaintiff, a representative of the defendant's insurance carrier who has settlement authority, a representative of the MCARE Fund and any defendant whose personal approval of a settlement offer is required and has not been given.

Note: Where a liability insurance carrier, the MCARE Fund or a party has given counsel written authority to settle in an amount deemed by the court to be reasonable, the court will probably excuse attendance at the Pre-Trial Conference. All requests to be excused should be by formal motion setting forth the reasons for the request and shall be presented in accordance with LR 208.3 (a).

If trial counsel is excused by the court from attending, substitute counsel shall be equally familiar with the case and its issues or sanction may be imposed.

(4) After the Pre-Trial Conference has concluded, no Supplemental Pre-Trial Statement may be filed without leave of court for cause shown.

LR212.2B. Case Management Conferences and Complex Cases.

A. At any time after the pleadings have closed (e.g. Complaint, Answer and New Matter and Reply to New Matter), any party may move the Court, or the Court may move on its own, to schedule a case management conference, without the need for consent from the other party or parties.

B. After receiving the motion, the Court shall schedule a case management conference, at which the Court will set a discovery schedule, date for filing of dispositive motions, date for exchange of expert reports, and a date for a pretrial conference. Said dates will only be extended for good cause shown.

C. If the case is a complex case (one that involves significant legal and factual issues, has multiple experts, will take more than several days to try and requires significant attention of the Court in connection with pretrial and trial motions), the party filing the motion for a case management conference should advise the Court of that fact in the motion so that a special schedule and trial date can be set.

LR212.3. Pre-Trial Conference—Imposition of Sanctions for Obdurate Conduct.

A. The Court may request the presence of an official court stenographer, or utilize the digital audio recording system, during a pre-trial conference. The record shall not be transcribed unless ordered by the presiding judge.

B. The presiding judge shall recommend a settlement amount to counsel for parties if the judge determines that he or she can fairly evaluate the case for settlement purposes. The recommendation and the reasons in support thereof shall be included in the stenographer's notes as well as the parties' settlement positions and the reasons therefore.

C. The court may make a finding that a party has engaged in obdurate conduct in regard to the party's settlement position either sua sponte or on petition of another party. In either event, not later than ten (10) days after a jury verdict or a decision of the court, upon petition of a party or the court, a rule shall be issued to show cause why counsel fees should not be awarded under 42 Pa.C.S.A. § 2503(7). The Petition Practice set forth in Pa.R.C.P. No. 206.1 et seq. will apply.

D. The court should consider and weigh the following factors determining whether or not to impose sanctions:

1. The facts and circumstances which existed at the time of the pre-trial conference;
2. Whether there was a change in such facts or circumstances to account for a variation between the plaintiff's demand, the defendant's offer and the jury's verdict;
3. The final settlement demand and offer;
4. The settlement value;
5. Whether there was substantial merit to the parties' claim or defense, and;
6. Whether a party's settlement position had a reasonable basis in law or in fact.

LR213. Joinder of Cases.

All Orders which join separately filed actions shall specify whether the joinder is intended to provide for a joint trial or hearing, or is intended to consolidate the actions for all purposes. The Order shall further specify the caption(s) and court number(s) to be utilized thereafter.

LR213A. Motion for Joint Hearing or Trial.

All Motions for a Joint Hearing or Trial shall contain a Proposed Order of Court in substantially the following form:

(Caption)

ORDER

AND NOW, this ____ day of _____, upon consideration of the foregoing Motion for Joint Hearing or Trial, it is hereby ORDERED and DECREED that a joint hearing or trial shall be held in the cases of _____, _____ filed at No. _____, and _____, filed at No. _____. Each case shall maintain its separate caption and case number. The Prothonotary shall docket this Order at both case numbers and shall place a duplicate copy of same in the file at No. _____. All future filings shall be docketed and maintained separately at the case number they relate to.

BY THE COURT

J.

LR213B. Motion For Consolidation.

All Motions to Consolidate shall contain a Proposed Order of Court in substantially the following form:

(Caption)

ORDER

AND NOW, this ____ day of _____, upon consideration of the foregoing Motion to Consolidate, it is hereby ORDERED and DECREED that the cases of _____ at No. _____, and _____ at No. _____, shall be consolidated for all purposes at No. _____. The Prothonotary shall transfer all previous filings at No. _____ to the consolidated case number at No. _____. All future filings shall be captioned and docketed as follows:

vs.

and No. _____

vs.

BY THE COURT

J.

Note: Rules LR213, LR213A and LR213B are intended to clarify for the parties, Court, Prothonotary and Appellate Courts, the intended effect of a joinder and whether the cases are to have a separate or consolidated identity as discussed by the Pennsylvania Superior Court in *Keefer v. Keefer*, 741 A.2d 808 (Pa. Super. 1999).

LR214. Trial Lists.

A. The Court Administrator shall maintain a master list of cases to be tried before a jury and a master list of cases to be tried by a judge without a jury. Cases shall be placed on either list pursuant to order of court.

B. After consultation with the court, the Court Administrator shall prepare a list of cases to call for trial before a jury from the master list. The trial list shall be prepared so as to give preference in accordance with Pa. R.C.P. No. 214 and then as the court may see fit. Cases that have not been given preference shall be listed for trial, as nearly as possible, in the chronological order in which they were placed on the master trial list.

The Court Administrator shall then mail a notice of trial to counsel for each party and to each party not represented by counsel. Notice may be by regular mail addressed to counsel or the party at the address they have endorsed on their last pleading.

C. The Court Administrator shall assign cases from the master list of non-jury cases to a judge and give notice of the assignment by regular mail to counsel for each party and each party not represented by counsel. All scheduling of such cases will be done by the assigned judge.

LR217. Costs on Continuance.

A. Bills of costs must set forth the names of witnesses, the dates of their attendance the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his attorney that the witnesses named were actually present in Court, and that, in his opinion they were material witnesses. A copy of the bill of costs shall be served on opposing counsel pursuant to Pa.R.C.P. 440.

B. The party upon whom a bill of costs has been served waives all objections to it unless, within ten (10) days after such service, exceptions thereto are filed. Thereafter,

the issue shall be determined by the Court in accordance with Pa.R.C.P. No. 206.1-206.7.

C. Where the plaintiff resides out of the state, or is a foreign corporation, the defendant, upon filing a petition, may have a rule issued on the plaintiff to enter security for costs within twenty (20) days after notice. In the meantime, all proceedings may be stayed. Upon proof of default filed, the court may enter a judgment of non pros.

LR220.1. Voir Dire of Prospective Jurors.

Voir Dire of Prospective Jurors will be conducted in accordance with Pa.R.C.P. 220.1.

The standard questions in Pa. R.C.P. 220.1 may be deleted or revised to accommodate the particular case either by agreement of counsel for all parties or by leave of court. Additional questions may be posed to prospective jurors by agreement of counsel for all parties or by leave of court. Such deletions, revisions or additions may be requested orally during voir dire provided that all parties or their counsel consent thereto. Otherwise, all deletions, revisions and additions to the list of questions shall be in writing, filed with the Prothonotary and submitted to the trial judge or, if unknown, to the Court Administrator and served on all other parties or their counsel at least seven (7) days prior to the first day of trial term and, unless agreed upon by counsel for all parties, shall not be propounded to the prospective jurors without court approval.

LR223. Custody and Storage of Trial Exhibits.

A. All non-documentary exhibits and documentary exhibits larger than 8.5 x 11 inches shall remain in the custody of the moving party and shall be removed from the courthouse at the conclusion of the trial. Such exhibits shall be retained by the moving party until conclusion of the case and shall be produced upon order of the trial judge to do so when necessary.

B. Any party desiring to utilize a magnified copy of a document or photograph or image at trial, either in hard copy or on a projection screen, shall first submit the original or a copy thereof to be marked as an exhibit for receipt into evidence.

Note: The purpose of this rule is to eliminate problems encountered by the court stenographers relating to custody and storage of large exhibits. The rule is not intended to limit the exhibits which are either shown to the jury or sent out with the jury during deliberation.

C. A hard copy of any photograph or document admitted into evidence at a trial must be provided to the court.

LR229.1. Sanctions For Failure to Pay an Award From an Arbitration or Dispute Resolution From Which No Appeal Has Been Taken.

A. As used in this rule, the following words shall have the following meaning:

“Award.” The finding of a Board of Arbitration, an arbitrator(s), or a dispute resolution proceeding which compels payment, in any form of monetary exchange, to a prevailing party from a non-prevailing party.

B. The provisions of this rule shall not apply to the annuity or future installment portion of a structured settlement award.

C. The Prevailing Party and Non-prevailing Party may agree in writing to modify or waive any of the provisions of this rule.

D. A Non-prevailing Party shall have thirty-five (35) calendar days from receipt of an award within which to deliver the award to the prevailing Party or its counsel.

E. If awarded funds are not delivered to the Prevailing Party or its counsel within aforesaid thirty-five day period, the Prevailing Party may present to the Court a Petition for Sanctions which shall include: (a) an affidavit attesting to nonpayment; (b) a copy of any document evidencing the procedural history of the matter; (c) a copy of the award; (d) a copy of a receipt reflecting delivery of the award more than thirty-five (35) days prior to the date of filing of the Petition; and (e) the form of Order specified in paragraph (G) below. The attorney shall certify to the Court the applicable interest rate specified in paragraph F below and shall certify that the Petition and its accompanying documents have been served on all interested counsel.

F. Upon receipt of the Rule to Show Cause, the Petition and its supporting documentation required by paragraph (E) above, the Non-prevailing Party shall have twenty (20) days to file an Answer to the Rule and thereafter shall conduct discovery and appear for a hearing, if the Court deems necessary. If the Court finds that the Non-prevailing Party has violated this local rule and that there is no material dispute as to the terms of the award, the Court shall impose sanctions in the form of simple interest calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for the calendar year last preceding the date on which the Petition was filed, running from the thirty-fifth day to the date of delivery of the award; reasonable attorneys' fees incurred in the preparation and presentation of the Petition and any subsequent action related thereto; and such other sanction as the Court deems necessary, including liquidated damages not in excess of 10% of the award.

G. The Petition shall be accompanied by two Orders in substantially the following form:

ORDER

AND NOW, this ____ day of _____, 20 ____, a Rule is issued upon _____ to show cause why sanctions should not be imposed for failure to deliver awarded funds to _____ or _____ within thirty-five (35) days after receipt of an award. Rule returnable twenty (20) days hereafter, or _____, 20 _____, by which time an Answer shall be filed. If necessary, a hearing or discovery on this matter will be held following the return of the Rule at a time or in a manner to be designated by the Court. Thereafter, an appropriate Order shall be entered.

BY THE COURT

J.

ORDER

AND NOW, this ____ day of _____, 20 _____, upon consideration of the Petition for Sanctions and its attachments, the Answer thereto, and upon a finding that payment was not made to _____ or _____ within thirty-five days of receipt of the award in the above captioned action, and _____ conduct in failing to deliver the awarded funds is dilatory, obdurate and vexatious, it is hereby ORDERED and DECREED that in addition to the award of \$(_____), _____ is ordered to pay forthwith simple interest thereon at the rate of on \$(_____) from _____ to the date of delivery of the awarded funds, together with \$(_____) in attor-

neys' fees, and \$ _____ in liquidated damages, pursuant to Beaver County Local Rule 229.1.

BY THE COURT

J.

SERVICE OF ORIGINAL PROCESS

LR430. Service By Publication.

The Beaver County Legal Journal is designated as the publisher of legal notices in Beaver County. Unless the manner of publication of service of process or notice is otherwise specified by law or rule of court, such service or notice shall be made by publishing the same once in the *Beaver County Legal Journal* and once in a newspaper of general circulation in Beaver County.

CIVIL ACTION

LR1018.1. Notice To Defend.

The following organization shall be named in the Notice to Defend as the organization from whom legal help can be obtained:

Lawyer Referral Service of the Beaver County Bar Association, 788 Turnpike Street Beaver, PA 15009 Telephone Number: (724) 728-4888

MORTGAGE FORECLOSURE

LR1147(a)(2). Mortgage Foreclosure.

1. In order to comply with Pa.R.C.P. No. 1147(a)(2), every complaint in mortgage foreclosure shall contain a full and complete description of the land subject to the mortgage. *Note:* A Metes and bounds description of the land is preferable. The attachment as an Exhibit to the complaint of a copy of the deed which conveyed the land to the mortgagor(s) will usually constitute compliance with this rule. A reference in the complaint to a recorded deed or mortgage for a fuller description will not constitute compliance with this rule)

2. The Prothonotary of Beaver County shall not accept for filing a complaint in mortgage foreclosure which does not contain a full and complete description of the land subject to the mortgage.

COMPULSORY ARBITRATION

LR1301A. These Rules apply to the following civil matters or issues which shall be submitted to compulsory arbitration under Section 7361 of the Judicial Code.

1. All civil actions, as defined in Pa. R.C.P. No. 1001(a) and (b)(1), as amended, for money damages where the amount in controversy on any claim is \$25,000.00 or less, exclusive of interest and costs. The amount in controversy shall be determined from the pleadings, by agreement of the parties or by the court.

2. Where no appearance has been entered or a default judgment has been entered in a civil action and the plaintiff desires to have the damages assessed in an amount not to exceed \$25,000.00.

3. By agreement of reference signed by the parties or their counsel. Such agreement shall define the issues and contain such stipulation as to facts, admissions or waivers of defenses or proofs as are agreed upon.

4. Cases in which the amount in controversy exceeds \$25,000.00 but does not exceed \$50,000.00 may be submitted to arbitration under these rules where all parties have consented thereto in writing and such written consent is filed.

LR1301B. Exceptions.

These rules shall not apply to the following matters:

1. Action in Ejectment;
2. Action to Quiet Title;
3. Action in Replevin, unless authorized by the court;
4. Action in Mandamus;
5. Action in Quo Warranto;
6. Action of Mortgage Foreclosure;
7. Actions upon Ground Rent;
8. Foreign Attachment;
9. Fraudulent Debtors Attachment; and

10. Where claims for relief were heretofore asserted in an action in equity.

LR1301C. Compensation of Board.

Each member of the Board of Arbitration who has signed an award, whether as a majority or as a dissenter, shall receive as compensation a daily fee in an amount as set by the Court from time to time by special order. Where hearings exceed one day, the arbitrators may petition the court for additional compensation which may be granted for cause shown. Any such request should be made prior to submitting the award to the Court Administrator as required by Local Rule 1306.

LR1301D. Procedure for Payment.

Upon the filing of the arbitrator's award, the Prothonotary shall certify such filing to the County Commissioners and to the County Controller, together with the names of the members of the Board and an Order for payment. The County Commissioners and Controller shall thereupon pay the applicable fee to each member of the Board. Such fees shall not be taxed as costs in the case.

LR1301E. Discovery.

Discovery in cases subject to these rules shall be governed by LR4011.

LR1302A. Eligibility to Serve as Arbitrators.

Only persons actively engaged in the practice of law in Beaver County shall be eligible to serve as Arbitrators. For purposes of this rule, "persons actively engaged in the practice of law" is defined as: persons who are authorized by the Pennsylvania Supreme Court to practice law and who regularly maintain their principal office in Beaver County for the practice of law, excluding all attorneys employed full time by Beaver County unless their Department Head consents in writing to their eligibility.

LR1302B. Qualifications as Chairman.

Only persons admitted to the practice of law for at least fifteen (15) years and who have extensive civil trial experience are eligible to serve as Chairman of the Boards of Arbitrators.

LR1302C. List of Arbitrators.

The Court Administrator of Beaver County shall, with the approval of the President Judge, on or before October 1 of each year, compile a list of persons eligible to serve as Arbitrators including persons eligible to serve as Chairmen of Boards of Arbitrators. Persons who have been determined to be eligible shall file a written consent to serve as an Arbitrator or Chairman with the Court Administrator. Arbitrators and Chairmen shall be selected alphabetically as nearly as possible by the Court

Administrator in accordance with L1302D from the persons who have filed a consent to serve.

LR1302D. Selection of Board.

Boards of Arbitrators shall be selected by the Court Administrator to serve on each arbitration day designated by the Court. Two Arbitrators and a Chairman shall be selected from the list of eligible persons who have consented to serve and appointed to each Board. At least one of the two other arbitrators shall have significant civil trial experience. The Court Administrator shall give each Arbitrator at least ninety (90) days written notice of the date the Arbitrator is to serve.

LR1302E. Scheduling of Cases.

Upon the filing of a Certificate of Readiness as provided in LR212.1.B., the Court Administrator shall schedule the case of arbitration.

The Court Administrator shall schedule a sufficient number of cases for hearing on each arbitration day and give at least 45 days written notice of the hearing date to counsel for the parties and to pro se litigants. All requests for a continuance must be submitted to and approved by the Court to a date to be selected by the Court Administrator. Copies of all hearing notices shall be filed with proof of mailing.

When scheduling cases for hearing, the Court Administrator shall avoid the creation of conflicts of interest with Arbitrators. The notice of hearing shall identify the members of the Board of Arbitration. Any objection to an Arbitrator shall be made to the Court within twenty (20) days of mailing the notice and, if sustained, will be grounds to continue the hearing.

LR1302F. Vacancies.

Should a vacancy on the Board of Arbitration occur for any reason prior to hearing, or should a member of the Board be unable to serve or fail to attend on the arbitration day, the Court Administrator shall be notified and shall appoint a substitute. The appointment of the substitute Arbitrator shall be communicated to all parties or their counsel prior to the commencement of the hearing. If a party has an objection to the substitute, it shall be made forthwith or be waived.

Should an Arbitrator fail to appear on the scheduled arbitration day, without good cause or without having notified the Court Administrator at least ten (10) days prior thereto, that Arbitrator shall be removed from the list of eligible Arbitrators. In the event a substitute Arbitrator cannot be appointed, sanctions may be imposed against the delinquent Arbitrator.

LR1303. Arbitration Hearings.

Arbitration hearings shall be conducted at the Beaver County Courthouse pursuant to assignment by the Court Administrator. Prior to the commencement of the hearing, the Prothonotary shall administer the oath of office in the form mandated by Pa.R.C.P. 1312, to each arbitrator and deliver the file to the Chairman.

LR1304. Powers of Arbitrators.

The Board of Arbitrators shall have the powers conferred upon them by law, including the power to permit the amendment of any pleading. The Arbitrators' permission and the amendment must be filed in writing promptly.

Note: 1. See Pa.R.C.P. Nos. 1303(b) and 1304(a) for the power of arbitrators to act when a party fails to appear or is not ready.

LR1306. Arbitration Award.

The Board shall submit its award to the Court Administrator who shall note the same on its records and forthwith file the award with the Prothonotary. Failure to submit the Award promptly may result in the imposition of sanctions, including forfeiture of the Arbitrator's fees.

CLASS ACTIONS**LR1703. Class Actions—Assignment to a Judge.**

A party who commences a class action shall forthwith deliver a copy of the complaint to the Court Administrator who shall forthwith assign the case to a Judge of the Court assigned to preside over civil cases.

ACTIONS PURSUANT TO PROTECTION FROM ABUSE ACT**LR1901.5. Procedure for Enforcement of Protection From Abuse Orders.**

A. When a defendant is arrested for violation of a Protection From Abuse Order issued by the Court or a Temporary Protection Order issued by a District Justice, the defendant shall be preliminarily arraigned by a District Justice forthwith.

B. In that event, a complaint for a violation of an existing order must be filed with the District Justice by the plaintiff in such action or by the police. The complaint shall be substantially in following form:

(Caption)

COMPLAINT FOR INDIRECT CRIMINAL CONTEMPT FOR VIOLATION OF PROTECTION FROM ABUSE ORDER

I, the undersigned, do hereby state:

1. My name is _____ and I live at _____;
2. I accuse _____, who lives at _____, with violating a Protection From Abuse Order entered by Judge _____ on the _____ day of _____, 20____ (attach a copy of the Order if available);
3. The date (and the day of the week) when the accused committed the offense was on or about _____;
4. The place where the offense was committed in the County of Beaver;
5. The acts committed by the accused were _____; all of which were in violation of the Protection From Abuse Order entered in accordance with the Protection From Abuse Act, 35 P. S. § 10181, et seq.;
6. If the defendant has not already been arrested, I ask that a warrant of arrest be issued and that the accused be required to answer the charges I have made.

I verify that the statements made in the complaint are true and correct to the best of my knowledge, information and belief. I further understand that any false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date _____ (Signature of Affiant)

The above subscribed affiant personally appeared before me on _____, _____, signed the complaint in my presence and asserted that the facts therein are true and correct; and wherefore it appears that there is probable cause for the issuance of process.

_____ (SEAL) (Issuing Authority)

C. At the Preliminary Arraignment, the defendant shall be notified:

(a) that he or she is charged with indirect criminal contempt for violation of the Protection From Abuse Order. A copy of the complaint shall be given to the defendant;

(b) that a hearing will be held before a judge of the Court on the first available date; and

(c) that the defendant is entitled to be represented by counsel and, if unable to afford counsel and otherwise qualifies, counsel will be appointed.

D. Bail shall be set to insure defendant's presence at the contempt hearing in accordance with Pennsylvania Rule of Criminal Procedure No. 4004 including, without limitation, the condition that the defendant not contact the petitioner or members of the petitioner's household, or anyone with whom the petitioner then resides, directly or indirectly.

E. If the defendant is not able to post bail, he shall be committed to the Beaver County Jail. Bail may be thereafter posted through Beaver County Pre-Trial Services at the earliest appropriate time.

F. The office of the District Justice shall cause the following completed forms and bail, if entered, to be forwarded immediately to the Beaver County Court Administrator's Office, Beaver County Courthouse: (a) complaint charging a violation of the Protection From Abuse Order; (b) probable cause affidavit, if any; and (c) certificate of bail and commitment.

G. Upon receipt of papers from the District Justice, the Office of the Beaver County Court Administrator will forward said papers to the appropriate Judge of the Court who will set a hearing on the contempt charge at the earliest possible time.

ACTIONS FOR SUPPORT**LR1910A. Procedure.**

(a) Actions for support shall proceed as prescribed by P.A.R.C.P. 1910.11.

(b) A conference scheduled as a result of the filing of a complaint or petition shall be continued by the Domestic Relations Section only if the parties, or their counsel, agree thereto in writing or if an order of Court is obtained directing the same. A motion seeking such an order shall be presented in Motions Court after appropriate notice of same is given to the opposing party or that party's lawyer pursuant to local rule LR208.3(a)3.

(c) A demand for de novo hearing filed after the entry of an Interim Order following a Domestic Relations conference should set forth the issues to be raised with specificity. A copy of the demand for de novo hearing is to be served within five days of its filing upon the opposing party or that party's counsel of record.

LR1910B. Appearance of Counsel.

(a) All counsel shall file a Praeceptum for Appearance with the Domestic Relations Section, which includes the attorney's name, business address, telephone and facsimile numbers, and Supreme Court identification number. If counsel fails to enter his or her appearance as prescribed by this Rule, he or she shall not be entitled to receive copies of orders, notices, or other record matters.

(b) Following entry of a final order from the matter for which counsel entered his or her appearance as set forth in LR1910B(a) counsel may withdraw his or her appearance by filing of record a praeceptum to withdraw to which is

attached a certificate of service on that attorney's client as well as on the opposing party or that party's counsel forthwith.

LR1910C. Special Relief Orders.

All motions seeking immediate relief shall be presented to the assigned Motions Judge after notice of same is given to the opposing party or that party's counsel of record pursuant to local rule LR208.3(a)3.

A copy of any such motion which is anticipated to be contested shall be delivered to the Motions Judge at least twenty four hours prior to presentation.

LR1910D. Temporary Suspension of Order.

(a) An enforcement officer of the Domestic Relations Division who suspends or adjusts any order in the absence of an order to do so, must send written notification of the suspension or adjustment, and the reason therefore, to all parties the same day that the action is taken.

(b) Under circumstances where it is anticipated that continuation of a support order will result in an uncollectible overpayment of that obligation any party may move the court for a suspension of the obligation in accordance with Rule L1910C.

LR1910E. Review of Court Files.

Parties, and their attorneys of record in the Domestic Relations action, may upon written request at the Domestic Relations Office view the entire file maintained by the Domestic Relations Office, with the exception of the confidential notes of the hearing officers. No documents from the file may be removed from the Domestic Relations Office.

LR1910F. Marriage Settlement Agreement and Divorce Decree.

A party who wishes to terminate an alimony pendente lite obligation or to initiate enforcement of an alimony obligation in accordance with the terms of a divorce decree or a decree with marriage settlement agreement shall forward a true and correct copy of the decree to the Domestic Relations Division with a copy of the request forwarded to the opposing counsel or the opposing party if not represented by counsel. Unless the decree or decree with marriage settlement agreement specifically directs collection of alimony by the Domestic Relations Division, the Domestic Relations Division will not enforce collection without a court order.

ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

LR1915A. Custody.

1. Scheduling the Custody Conference

When filing a claim for custody, partial custody, or visitation in a Complaint or a subsequent claim, the moving party shall:

(a) Present the pleading to the Administrative Custody Judge during Motion's Court to obtain the court's signature on the scheduling Order. Immediately thereafter, obtain a date and time for the conference from the Administrative Custody Judge. The judge's chambers will make a copy of the pleading and Order to be forwarded to Juvenile Services Division.

(b) File the original pleading and Order in the Prothonotary's Office.

(c) Serve a clocked copy of the pleading and Order on counsel of record and/or unrepresented parties, with proof

of service to be filed in the Prothonotary's Office, and a copy of the proof of service to be provided to the Child Custody Conference Officer at or prior to the time set for the Conference.

(d) When a petition for contempt of a custody Order is filed, the judge shall schedule the contempt petition for a status conference or hearing before the court, or for a conciliation conference before a conference officer. If a petition for contempt is filed at or about the same time as a petition for modification of a custody order, the judge may order the contempt petition to be mediated by the conference officer at the same time as the petition for contempt. If the matter is not resolved at the conciliation conference, the court shall schedule a status conference or a hearing on the contempt matter, or if exceptions are filed to the proposed order of custody, the judge may consolidate the contempt matter with the pre-trial conference and/or trial scheduled on the modification petition.

(e) In order to facilitate compliance with the requirements of the Uniform Child Custody Jurisdiction Act, a party shall provide the Court with all known information concerning a Custody proceeding pending in another state which involves the same parties or children.

Note: In particular, the Court should be informed of the following: (1) the name and address of the Court in which such case is pending; (2) the caption of such case; (3) the name, address and telephone number of the Judge to whom the case might have been assigned, and (4) any Orders entered in such case. Information provided under this Rule should be submitted in writing and attached to the Complaint/Petition

2. Preliminary Objections.

Any party filing Preliminary Objections raising issues of jurisdiction or venue of the court to act, shall, concurrently with filing the same with the Prothonotary, deliver a true and correct copy of the Preliminary Objections to the Judge assigned to handle Custody matters and to opposing counsel and/or to any party not represented by counsel. The Judge will schedule the matter for Argument on a priority schedule to dispose of the issues as expeditiously as possible.

3. Conduct of Conciliation Conference Officer

(a) The Child Custody Conference Officer will convene a Conciliation Conference, as scheduled by the Court, which Conference shall be attended by the parties and their legal counsel, if any.

(b) Before counsel appears before the Child Custody Conference Officer, counsel must enter his/her Appearance on the record in the Prothonotary's Office, provide notice to all opposing counsel or party(ies) and have proof of entry of Appearance available at the Conference.

(c) Counsel for the parties, or the parties themselves if unrepresented, are to provide true and correct copies of any exhibits to be shown to the Child Custody Conference Officer at the Conference, to counsel for the opposing party or to the opposing party if unrepresented, at least five (5) days prior to the scheduled Conference. Failure to comply may, at the discretion of the Child Custody Conference Officer, result in the exclusion of the exhibit from consideration, the rescheduling of the Conference to allow the opposing party an opportunity to respond or other action deemed appropriate by the Child Custody Conference Officer, keeping in mind the Officer's need to evaluate the best interest of the child(ren).

(d) The parties, counsel and the Child Custody Conference Officer, as mediator or conciliator, shall make a

good-faith effort to resolve the issues and reach agreement on custody, partial custody and/or visitation. The Child Custody Conference Officer shall conduct the Conciliation Conference as an informational and conciliatory proceeding rather than confrontational or adversarial.

(e) No scheduled Custody Conference shall be rescheduled by any party or counsel without the prior expressed consent of the opposing party or counsel or Order of Court issued upon a Motion to Continue submitted in accordance with LR 208.3(a)3.

4. Procedure After Conciliation Conference.

(a) If the parties reach agreement, the Child Custody Conference Officer shall submit an Agreed Order to the Court bearing the written consents, evidenced by signatures of the parties and their counsel, if any. Neither the parties nor counsel need to appear before the Court for the Court's approval of the Agreed Order.

(b) If, for any reason, the parties do not reach agreement, the Child Custody Conference Officer shall file a written report with the Court within five (5) business days, unless otherwise extended by agreement of counsel, or the parties if unrepresented. The report shall be in a narrative form and shall include the positions of the parties, proposed settlements of the parties, if any, and the recommendation of the Child Custody Conference Officer, together with reasoning for the recommendations and either a Proposed Order or a proposed Temporary Order. Upon receipt and review of the report, the Court shall issue a Proposed Order or a Temporary Order and promptly provide a copy thereof, together with a copy of the Child Custody Conference Officer's report, except for that portion of the report relating to comments from the minor child(ren), to counsel for the parties, or the parties themselves if not represented by counsel.

(c) A Proposed Order shall be entered as a Final Order unless Exceptions thereto are filed by either party within twenty (20) days after the effective date set forth in the Proposed Order. Exceptions may also be filed to a Temporary Order at any time during the existence of the Temporary Order, but the Court will decide whether the Exceptions will be remanded back to the Child Custody Conference Officer for further proceedings and recommendation or set down by the court for a Pre-Hearing Conference as provided for herein. The Court may Order, if circumstances warrant, that should Exceptions be filed, the Proposed Order shall be effective as a Temporary Order pending further Order of Court.

(d) Exceptions to the Proposed Order or Temporary Order must be in writing and should state, with particularity, the portion(s) of the Order objected to. The Exceptions must be filed with the Prothonotary, and copies thereof must be delivered forthwith to the Court Administrator's Office, as well as to all counsel and/or unrepresented parties of record.

(e) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(f) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present and may result in the imposition of sanctions.

5. Pre-Trial Conference.

(a) Upon receipt of the Exceptions by the Court Administrator's Office, the Court will schedule a Pre-Trial Conference to be attended by all counsel and parties, whether represented by counsel or not. A Pre-Trial Conference with the Court will be scheduled in every case and will be waived only with the consent of the Court.

(b) No later than five (5) days prior to the date scheduled for Pre-Trial Conference, each attorney and each party not represented by counsel must file a completed Pre-Hearing Information Statement, on or in a form approved by the Court, at the Court Administrator's Office for the Presiding Judge, with copies provided to opposing counsel and/or unrepresented parties of record.

(c) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(d) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Pre-Trial Conference may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present and may result in the imposition of sanctions.

LR1915B. Reduced Fee Program.

1. Any individual who is referred under Neighborhood Legal Services Association's Pro Bono or Reduced-Fee Programs to a participating member of the Beaver County Bar Association for representation as a litigant in a Custody Action and who is certified by NLSA to be income eligible under Legal Services regulations, shall be granted leave to proceed In Forma Pauperis. Counsel representing these individuals shall present to the Prothonotary a Praeceptum for Permission to Proceed In Forma Pauperis, which shall be endorsed by counsel, and which shall have attached to it a Certificate of Eligibility prepared by NLSA. The Praeceptum shall be substantially in the following form:

(Caption)

Praeceptum to Proceed in Forma Pauperis

To the Prothonotary: Kindly allow {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, to proceed In Forma Pauperis.

I, {Attorney's Name}, attorney for the party proceeding In Forma Pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal services or reduced-fee legal services to the party pursuant to the Reduced-Fee or Pro Bono Referral Programs of Neighborhood Legal Services Association. The party's Certificate of Eligibility prepared by Neighborhood Legal Services Association is attached hereto.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

2. Any participating member of the Beaver County Bar Association who provides representation to a Custody litigant on a Motion for Special Relief or at a Child Custody Conference pursuant to a referral from NLSA's Pro Bono or Reduced-Fee Programs, shall be permitted to

enter a Limited Appearance. The Praecipe for Entry of Limited Appearance shall be substantially in the following form:

(Caption)

Praecipe for Entry of Limited Appearance

To the Prothonotary: Kindly enter my Limited Appearance for {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, in the above-captioned matter.

This Appearance is limited to providing representation {on the _____ filed on behalf of this party/at the Custody Conference scheduled in this matter for [date of Conference]}.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

3. Upon completion of the representation under the above-described referral programs, the attorney shall file a Praecipe for Withdrawal of Limited Appearance. This Praecipe shall be filed without leave of Court, and it shall not be required to, but may, contain information about another attorney who may be entering his/her Appearance at the same time. This Praecipe shall direct the Prothonotary to send all future notices directly to the client and shall set forth the client's last-known address. The Praecipe for Withdrawal of Limited Appearance shall be substantially in the following form:

(Caption)

Praecipe for Withdrawal of Limited Appearance

To the Prothonotary: Kindly withdraw my Limited Appearance for {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, in the above-captioned matter. Withdrawal of this Limited Appearance is permitted pursuant to Miscellaneous Order No. ____ of _____. All future notices should be sent directly to {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, at {set forth last-known address for this party}.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

LR1915C. Educational Seminar Pertaining to Children of Divorcing Parents.

All parties to Custody Actions filed on or after June 1, 1994 where the interests of children under the age of eighteen (18) years are involved, shall, unless excused by the Court, complete a program which we have entitled the Educational Seminar Pertaining to Children of Divorcing Parents (the "Seminar").

All parties shall register for the first available Seminar after the date the Defendant has been served with process. Counsel for the Plaintiff shall require the Plaintiff to register for the Seminar and shall have a copy of the attached Notice and Registration Form served on the Defendant at the same time as the Complaint.

Failure of a party to successfully complete the Seminar will result in sanctions by the Court, including Contempt.

ACTIONS OF DIVORCE OR ANNULMENT OF MARRIAGE

LR1920.33(b). Pre-Trial Conference.

When a divorce case which contains contested claims is at issue, either party may present to the judge assigned

to divorce matters a motion for a pre-trial conference. A party requesting a pre-trial conference must first have filed an inventory prepared in compliance with Pa.R.C.P. No. 1920.33(a); the motion requesting the pre-trial conference must so certify.

Advance notice must be given in accordance with LR208.3(a)3. At least five (5) calendar days prior to a scheduled pre-trial conference, each party shall file, serve, and deliver to the trial judge a pre-trial statement prepared in compliance with Pa.R.C.P. No. 1920.33(b). This requirement will be strictly enforced. The issues to be addressed at a pre-trial conference shall include settlement, simplification of any unresolved issues, and whether the court or a Master will hear any unresolved issues.

LR1920.42. Affidavit under Section 3301(d) of the Divorce Code.

The affidavit required under Section 3301(d) of the Divorce Code (the "Affidavit") shall be filed with the Prothonotary before it is served. The opposing party must be served with a certified copy of the Affidavit. The moving party must wait a minimum of twenty (20) days after service of the Affidavit before serving the Notice of Intention to File Praecipe to Transmit the Record and Counter Affidavit or filing the Waiver of Notice authorized by Pa.R.C.P. 1920.42(e).

LR1920.43. Special Relief.

A party seeking special relief must give notice to opposing counsel, or to an unrepresented opposing party, of his or her intention to seek such special relief in accordance with LR206.1(c). If immediate relief is requested, or if the request for relief is such as would likely be opposed, a copy of the notice, the petition, and the proposed order shall be delivered to the judge to whom the request is to be made at least three (3) business days before the request is to be presented.

LR1920.51. Proceedings Before Master.

If a party seeks to continue a hearing or other proceeding which has been set by the Master, and the other party opposes the continuance, the motion requesting a continuance of the matter pending before the Master shall be presented to the judge who appointed the Master in accordance with LR208.3(a)3.

LR1920.55-2. Exceptions to a Master's Report.

Counsel or an unrepresented party who files exceptions to a Master's Report shall, concurrently with the filing, deliver a copy of the exceptions to the judge who appointed the Master.

MINORS AS PARTIES

LR2039A. Approval of Compromise and Settlement by the Court.

The Court may approve the compromise, settlement or discontinuance of an action filed on behalf of a minor or an action in which a minor has interest without a hearing provided that the petition complies with LR2039B. Should the Court determine that a hearing is necessary, the Petition will be entertained pending the hearing.

LR2039B. Content of Petition.

A petition for leave to compromise, settle or discontinue an action in which a minor is a party, or an action in which a minor has an interest shall set forth:

- (a) the facts out of which the cause of action arose;
- (b) the elements of damage sustained;

(c) all expenses incurred or to be incurred, including the counsel fees requested;

(d) the facts relied upon by the adverse party; and,

(e) all circumstances relevant to the propriety of granting the petition including any significant medical reports and records.

INCAPACITATED PERSONS AS PARTIES

LR2064. Approval of Compromise and Settlement by the Court.

The procedure to secure Court approval of the compromise and settlement of actions in which incapacitated persons have an interest shall be governed by LR2039A and LR2039B.

ACTIONS FOR WRONGFUL DEATH

LR2206. Approval of Compromise and Settlement of Actions for Wrongful Death.

The procedure to secure Court approval of the compromise and settlement of an action for wrongful death in which a minor or incapacitated person has an interest shall be governed by LR2039A and LR2039B.

DEPOSITIONS AND DISCOVERY

LR4002. Place of Depositions.

Unless counsel for all parties agree otherwise, all discovery depositions shall take place in Beaver County. Depositions for use at trial may be taken outside Beaver County upon agreement of counsel or leave of court.

Note: It is contemplated that depositions will take place in the office of counsel for a party so long as the office is located in Beaver County.

LR4011. Limitation of Scope of Written Discovery and Deposition.

A. Written discovery in all civil cases shall be limited to 30 written questions, including subparts, except in those cases governed by Pa. R. C. P.1930.5 (domestic relations matters) and LR1301A et.seq. (compulsory arbitration)

B. In order to avoid unreasonable annoyance or expense, all requests for discovery or depositions in cases governed by Rule LR1301A et seq. (compulsory arbitration) shall be limited in scope to the standard interrogatories, attached hereto as Form A and Form B, unless leave of court to seek additional discovery is first secured for cause shown.

FORM A

**IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY
PENNSYLVANIA
CIVIL ACTION**

_____, :
Plaintiff, :
vs. : No.
_____, :
Defendant. :

**PLAINTIFF'S ARBITRATION DISCOVERY
REQUESTS FOR PERSONAL INJURY CLAIMS**

These discovery requests are directed to _____.

Within thirty (30) days following receipt of these requests, you shall provide the information sought in these discovery requests to every other party in this lawsuit.

IDENTITY OF DEFENDANT(S)

1. Set forth your full name and address.

INSURANCE

2. (a) Is there any insurance agreement that may provide coverage to you for this incident?
Yes _____ No _____

(b) If so, list the name of each company and the amount of protection that may be available.

WITNESSES

3. List the names, present addresses and telephone numbers (if known) of any persons who witnessed the incident (including related events before and after the incident) and any relationship between the witness and you.

STATEMENTS AND OTHER WRITINGS

4. (a) Do you have any written or oral statements from any witnesses, including the defendant?
Yes _____ No _____

(b) If you answered yes, attach any written statements signed, adopted or approved by any witness, attach a written summary of any other statements (including oral statements), and identify any witnesses from whom you obtained a stenographic, mechanical, electrical or other recording that has not been transcribed. (This request does not cover a statement made by a party to that party's attorney.)

I have _____ have not _____ fully complied with request 4(b).

(c) Do you have any photographs, maps, drawings, diagrams, etc. that you may seek to introduce at trial?
Yes _____ No _____.

(d) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 4(d).

MEDICAL DOCUMENTS

5. (a) Do you have any medical documents relating to the plaintiff? Yes _____ No _____

(b) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 5(b).

CRIMINAL CHARGES

6. (a) Were any felony or misdemeanor criminal charges filed against you or any of your agents as a result of the incident that is the subject of this lawsuit?
Yes _____ No _____

(b) If you answered yes, list each felony or misdemeanor charge that is pending and each felony or misdemeanor conviction.

(c) Were you ever convicted of a crime that involved dishonesty or false statement, whether by verdict, or by plea of guilty or nolo contendere? Yes _____ No _____

(d) If you answered yes, list the charge you were convicted of, the court where the conviction was entered and the date of the conviction.

Defendant verifies the statements made herein are true and correct. Defendant understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Date: _____

Defendant

FORM B
IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY
PENNSYLVANIA
CIVIL ACTION

_____,
Plaintiff,
vs. _____, No.
Defendant.

DEFENDANT'S ARBITRATION DISCOVERY
REQUESTS FOR PERSONAL INJURY CLAIMS

These discovery requests are directed to _____.

Within thirty (30) days following receipt of these requests, you shall provide the information sought in these discovery requests to every other party in this lawsuit.

IDENTITY OF PLAINTIFF(S)

1. Set forth your full name and address.

WITNESSES

2. List the names, present addresses and telephone numbers (if known) of any persons who witnessed the incident (including related events before and after the incident) and any relationship between the witness and you.

STATEMENTS AND OTHER WRITINGS

3. (a) Do you have any written or oral statements from any witnesses, including the defendant?
Yes _____ No _____

(b) If you answered yes, attach any written statements signed, adopted or approved by any witness, attach a written summary of any other statements (including oral statements), and identify any witnesses from whom you obtained a stenographic, mechanical, electrical or other recording that has not been transcribed. (This request does not cover a statement made by a party to that party's attorney.)

I have _____ have not _____ fully complied with request 3(b).

(c) Do you have any photographs, maps, drawings, diagrams, etc. that you may seek to introduce at trial?
Yes _____ No _____

(d) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 3(c).

MEDICAL INFORMATION CONCERNING
PERSONAL INJURY CLAIM

4. (a) Have you received any inpatient or outpatient treatment from any hospital for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(b) If you answered yes, list the names of the hospitals, the names and addresses of the attending physicians, and the dates of hospitalization.

(c) Have you received any chiropractic treatment for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(d) If you answered yes, list the name and address of each chiropractor and the dates of treatment.

(e) Have you received any other medical treatment not covered by the previous interrogatories for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(f) If you answered yes, list the names and addresses of each physician or other treatment provider and the dates of treatment.

(g) Attach complete hospital and office records covering the injuries or other medical conditions for which you seek damages for each hospital, chiropractor, and other medical provider identified in response to interrogatories 4(b), 4(d) and 4(f) or authorizations for these records.

I have _____ have not _____ fully complied with request 4(g).

OTHER MEDICAL INFORMATION

5. (a) List the name and address of your family physician for the period from five (5) years prior to the incident to the present date.

(b) Have you received inpatient or outpatient treatment for injuries or physical problems that are not part of your claim in this lawsuit from any hospital or medical office within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(c) If you answered yes, attach a separate sheet which lists the name and address of the hospital or medical office, the date of each treatment, the reasons for the treatment, and the length of the hospitalization.

(d) Have you received chiropractic treatment for injuries or physical problems that are not part of your claim in this lawsuit from any hospital within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(e) If you answered yes, attach a separate sheet which lists the chiropractor's name and address, the dates of the treatment, and the reasons for the treatment.

(f) Have you received any other medical treatment for injuries or physical problems that are not part of your claim in this lawsuit within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(g) If you answered yes, attach a separate sheet which lists the name and address of the medical treatment provider, the dates of the treatment, and the reasons for the treatment.

I have _____ have not _____ fully complied with requests 5(c), 5(e) and 5(g).

WORK LOSS

6. (a) Have you sustained any injuries which resulted in work loss within the period from five (5) years prior to the incident to the present date?

(b) If you answered yes, for each injury list the date of the injury, the nature of the injury, and the dates of the lost work.

7. If a claim is being made for lost income, state the following information:

- (a) the name and address of your employer at the time of the incident;
- (b) the name and address of your immediate supervisor at the time of the incident;
- (c) your rate of pay;
- (d) the dates of work loss due to the injuries from this alleged accident; and
- (e) the total amount of your work loss claim.

OTHER BENEFITS

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

(b) If you answered yes, set forth the type and amount of these benefits.

INSURANCE INFORMATION

9. (a) Are you subject to the "Limited Tort Option" or "Full Tort Option" as defined in Title 75 P. S. § 1705 (a) and (b)?

_____ Limited Tort Option (no claim is made for nonmonetary damages)

_____ Limited Tort Option (claim is made for nonmonetary damages because the injuries fall within the definition of serious injury or because one of the exceptions set forth in 75 P. S. § 1705(d)(1)–(3) applies).

_____ Full Tort Option

(b) (Applicable only if you checked "Full Tort Option".) Describe each vehicle (make, model and year) in your household.

(c) (Applicable only if you checked "Full Tort Option".) Attach a copy of the Declaration Sheet for the automobile insurance policy covering each automobile in your household.

I have _____ have not _____ fully complied with request 9(c).

Plaintiff verifies the statements made herein are true and correct. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Date: _____ Plaintiff

LR4017.1. Use of Videotape Depositions at Trial.

The trial judge may refuse permission to use a videotape deposition at trial if either the audio or video portions of the tape are of poor quality. Prior to offering a videotape deposition of a witness at trial, counsel for the proponent of the deposition shall file a certification that he or she has reviewed the videotape and that both the audio and the video portions thereof are of good quality. Failure to comply with this rule may result in the refusal of permission to use the videotape at the time of trial.

Material to which objection has been sustained shall be excluded at trial by "fast forward" by the video machine operator so as to eliminate both the image and the sound of the objectionable material. A copy of the stenographic transcript of the deposition shall be delivered to the court

stenographer with redacted portions, if any, clearly marked, before the close of the parties' case in which the deposition was utilized.

Note: The videotape should be marked as an exhibit and physical custody thereof remain with counsel for the proponent subject to surrender to the court upon order to do so pursuant to L.R. 223.

LR4019. Discovery Motions.

No motion relating to discovery will be entertained by the court unless counsel for the parties involved shall have first conferred and attempted to resolve the issues. All such motions shall be accompanied by a written certification of counsel for the moving party. The certification shall state the date and manner of the conference with respect to each matter in dispute and that counsel was unable to resolve the issues.

In the event counsel has not conferred, counsel for the moving party shall certify the reason or reasons therefore.

LR4020. Use of Depositions at Trial.

Objections made during the taking of depositions or intended to be made at trial pursuant to Pa. R.C. P. No. 4020(c) shall be submitted to the court for ruling thereon prior to the first day of the trial term.

The proponent of the deposition shall petition the court to assign the case to a judge of the court for trial for the purpose of review and ruling on all objections.

Note: This rule is designed to make more efficient use of juror time by avoiding the need to preview depositions while venire persons are present and waiting to be selected. However, the rule is not intended to prevent the judge to whom the case is assigned for trial to elect to preview depositions immediately prior to jury selection or to elect to rule on objections as the testimony is being presented to the jury.

[Pa.B. Doc. No. 12-1503. Filed for public inspection August 10, 2012, 9:00 a.m.]

LACKAWANNA COUNTY

Adoption of Rule of Civil Procedure; 2012 CIV 1

Order

And Now, this 26th day of June, it is hereby *Ordered* and *Decreed* that the following Lacka. Co. R.C.P. 1301 is adopted to govern the management of civil cases in the Court of Common Pleas of Lackawanna County.

The adoption of Lacka. CO. R.C.P. 1301 shall become effective thirty (30) days from the date of its publication in the *Pennsylvania Bulletin* pursuant to Pa. R. Civ. P. 239. The Lackawanna County Court Administrator shall file seven (7) certified copies of the new Local Rule with the Administrative Office of the Pennsylvania Courts and shall forward two (2) certified copies of the same to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One certified copy of the Lacka. Co. R.C.P. 1301 shall be filed with the Civil Procedural Rules Committee for the Supreme Court of Pennsylvania and new Local Rule 1301 shall be available for public inspection and copying in the Clerk of Judicial Records, Civil Division.

By the Court

THOMAS J. MUNLEY,
President Judge

Rule 1301. Arbitration.

(a). All civil actions brought in the Court of Common Pleas of Lackawanna County in which the amount in controversy is \$50,000.00 or less shall first be submitted to Arbitration and heard by a panel of three (3) Arbitrators selected from Members of the Bar of this Court in accordance with the provisions of this Rule, with the exception of:

- (1). Cases involving title to real estate; and,
- (2). Cases which have been consolidated for Trial with cases in which the amount in the controversy exceeds \$50,000.00.

Once a case has been certified for Compulsory Arbitration or otherwise directed by the Court for same, the Court Administrator shall notify the Parties or their Legal Representatives of the date and time of the Arbitration. **This matter will be heard by a Board of Arbitrator at the time, date, and place specified, but, if one or more of the Parties is not present at the Hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent Party or Parties. There is no right to a Trial De Novo on Appeal from a Decision entered by a Judge.**

(h). Except as provided in Sub-Section (a), any Party may appeal from the Findings or Award of the Arbitration Panel to the Court of Common Pleas of Lackawanna County in the same manner as Appeals De Novo are commenced before the Court.

The Court Administrator's Notice of the Arbitration forwarded to the Parties or their Legal Representatives shall contain the following language:

FAILURE TO APPEAR AT THE ARBITRATION MAY JEOPARDIZE A PARTY'S APPEAL RIGHTS TO A TRIAL DE NOVO. Pa. R.C.P. 1303(a)(2); Lacka. Co. R.C.P. 1301(a).

[Pa.B. Doc. No. 12-1504. Filed for public inspection August 10, 2012, 9:00 a.m.]

LACKAWANNA COUNTY

Rules of Procedure, Rules of Court and Rules of Procedure Governing Orphans' Court Proceedings; 2012 CIV 1

Order of Court

Now, this 7th day of June, 2012, it is hereby *Ordered* and *Decreed* that the Lackawanna County Rules of Procedure, Rules of Court, and Rules of the Orphans' Court are amended as follows:

1. Said Rules are amended as reflected in the following Rule.
2. Pursuant to Pa.R.C.P. 239(c)(2)—(6), the following Local Rule shall be disseminated and published in the following manner:

a. Seven certified copies of the following Local rule shall be filed with the Administrative Office of the Pennsylvania Courts;

b. Two certified copies of the following Local Rule and a computer diskette containing the text of the following Local rule in Microsoft Word format and labeled with the Court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. One certified copy of the following Local Rule shall be filed with the Civil Procedural Rules Committee;

d. The following Local Rule shall be kept continuously available for public inspection and copying in the Office of the clerk of Judicial Records, Civil Division, and the Office of the Register of Wills, and upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Judicial Records and the Register of Wills shall furnish to any requesting person a copy of the requested Local Rule; and

e. A computer diskette containing the text of the following Local Rule in Microsoft Word format and labeled with the Court's name and address and computer file name shall be distributed to the Lackawanna Bar Association for publication on the website of the Lackawanna Bar Association.

f. The amendment to the Rules shall become effective thirty days after the date of its publication in the *Pennsylvania Bulletin* pursuant to Pa.R.C.P. 239(d).

By the Court

THOMAS J. MUNLEY,
President Judge

Order of Court

Now, this 7th day of June, 2012, this Court hereby *Orders* and *Decrees* that Rule 8 of the Lackawanna County Rules of Orphan's Court, "Auditor and Masters," is amended as follows:

Rule 8.8(1): With the exception of adoption matters, including voluntary relinquishments of parental rights, involuntary terminations of parental rights, and terminations under the alternative procedure utilizing consent to adoption, all Orphans' Court hearings and arguments may be assigned to an Orphans' Court Hearing Master on the motion of the parties to the litigation, or at the discretion of the President Judge, unless the parties request that the matter be scheduled before and heard by a Judge of this Court's Orphans' Court division.

By the Court

THOMAS J. MUNLEY,
President Judge

[Pa.B. Doc. No. 12-1505. Filed for public inspection August 10, 2012, 9:00 a.m.]

WESTMORELAND COUNTY

Imposition of Clerk of Courts Administrative Fee

Administrative Order of Court

And Now, to wit, this 9th day of July, 2012, I direct, pursuant to 42 Pa.C.S.A. § 9728(g), that, effective on the 1st day of August, 2012, a one-time administrative fee of Eleven Dollars and fifty-cents (\$11.50) be imposed in all cases disposed of by the Court. Payments of any and all court-imposed financial obligations must be allocated to satisfy the payment of this Fee, thereafter, allocation is administered by the Clerk of Courts as required.

By the Court

GARY P. CARUSO,
Judge

[Pa.B. Doc. No. 12-1506. Filed for public inspection August 10, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Anderson J. Ward having been suspended from the practice of law in the State of Illinois for a period of 3 years by Order of the Supreme Court of Illinois dated September 20, 2011, the Supreme Court of Pennsylvania issued an Order dated July 25, 2012, suspending Anderson J. Ward from the practice of law in this Commonwealth for a period of 3 years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 12-1507. Filed for public inspection August 10, 2012, 9:00 a.m.]
