

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,  
PENNSYLVANIA**

In re: LOCAL RULES OF COURT

MsD No. 09-40249

**ADMINISTRATIVE ORDER OF COURT**

**AND NOW**, this 9<sup>th</sup> day of September, 2009, it is hereby ordered and decreed that Local Rules of Court listed below pertaining to Family Court, adopted February 1, 2007 are hereby amended:

- L1915.4-1 -- Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to attend Conference
- L1915.7 -- Custody Conciliation Conference Consents and Recommendations
- L 1915.10 --Request for Pretrial Conference. Pretrial Conference. Decision.

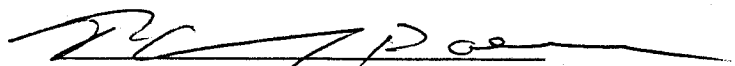
These amendments are effective thirty days after publication of this notice and the within Amendments to Local Rules in the Pennsylvania Bulletin.

It is further ordered and directed new Local Rules L1915.11, L1915.18 and L 1930.2 are hereby *Adopted*. These Local Rules shall be effective thirty days after publication of this notice and the within Local Rules of Civil Procedure in the Pennsylvania Bulletin.

The Court directs the Court Administrator to:

1. File seven (7) certified copies of this Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of the Pennsylvania Courts.
2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*
3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rules Committee.
4. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the administrative office of the *Butler County Legal Journal for publication*.
5. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the Butler County Law Library.
6. Keep continuously available for public inspection copies of this Administrative Order of Court and the within Local Rules of Court in the Office of the Butler County Prothonotary, the Butler County Domestic Relations Section and the Office of the Court Administrator.

By the Court

  
Thomas J. Doerr, PJ

## Explanatory Comment – 2009 Amendments

### **Children's Fast Track Appeals**

On January 13, 2009 the Supreme Court amended the appellate court rules, designating special procedures and compressed deadlines in appeals from any order involving dependency, termination of parental rights, adoptions, custody or paternity. Such appeals are now known as "children's fast track appeals."

As the term implies, children's fast track appeals are to be processed more quickly than other appeals. A comprehensive recitation of all of the shortened deadlines associated with children's fast track appeals is beyond the scope of this comment. However, one of the rule changes invites a local rule response, specifically, that the Certified Record is to be transmitted to the appellate court within 30 days after the appeal is filed, instead of the normal 60 days.

This change places a premium on rapid transcription of the trial testimony. Pa.R.A.P. 904(c) already requires that an Order for Transcript accompany the filing of the Appeal, and that the Order for Transcript be served on the court reporter by the appellant. Rule of Judicial Administration 5006 authorizes court reporters to require deposits towards the estimated cost of transcription, and specifically authorizes the adoption of local rules specifying the recipients of those deposits. Court reporters are authorized to retain completed transcripts until payment is fully made or adequate security for payment posted.

At this time, the court chooses to exercise its local rule making authority in an effort to abet the intention of the children's fast track appeal rule changes, to insure timely payment of transcription expenses in such cases, and to clarify for the bar the appropriate procedure to be followed when ordering transcripts for children's fast track appeals in Butler County.

The new appellate rules relating to children's fast track appeals apply to a variety of cases outside the context of existing local rules, such as dependency and termination of parental rights. Rather than set up additional rule sets for each type of matter affected, and separately amending each set of existing rules affected, the decision was made to add a single Local Rule 1930.2 which would have global effect in all matters affecting children, including those encompassed within the definition of children's fast track appeals.

### **Custody Rule Changes**

For some years there has been a trend toward requiring courts to dispose of custody matters efficiently, albeit with due regard for the need to conduct a searching inquiry into the facts. One aspect of that inquiry which the court invariably finds helpful is the input of court appointed evaluators. The local rules adopted in 2006 attempted to insure that evaluator's reports would be available to the parties in time for the pretrial conference. This has not always occurred because the evaluators have not always been informed of the pretrial conference date in a timely fashion. A simple rule change requiring notice by the prothonotary, to the evaluator, of the date of the pre-trial conference addresses this problem. The prothonotary is also charged with sending the evaluator any order scheduling a custody trial.

Another "housekeeping" change involves requests for refunds of conciliator fees, when the parties settle prior to conciliation. Although refunds are not required by rule or law, they have been customarily granted as a matter of course; however, there comes a point in time when too long delayed refunds adversely affect budgeting considerations within the judicial system and related considerations within the county budget office. Therefore, the court elects to impose a time limit within which a party seeking a refund of the conciliator's fees must apply for that refund.

A new rule provides that if the moving party to a custody action fails to appear at a conciliation conference, the conciliator will so report, and the action will be dismissed of record.

Another new rule clarifies the court's ability to require deposits from time to time to insure that guardian's *ad litem* are paid in a timely fashion and without the necessity for collection procedures.

The conciliator's office and the court have received questions from custody evaluators concerning fee arrangements for in-court testimony, refunds or partial refunds when the case settles before the testimony is given, and the availability of the evaluators to counsel for the parties, both during the evaluations and between the release of the evaluator's report and trial. The court is somewhat reluctant to address such matters by hard and fast rules, as the circumstances often vary significantly from case to case, and different evaluators have different preferences. However, certain principles do apply.

Counsel should not initiate contact with an evaluator after the evaluation is ordered for any purpose which could be construed as attempting to influence the course or outcome of the evaluation. Any such contact should be reported to the conciliator's office, and by the conciliator to the court.

Evaluators should provide the conciliator's office with a schedule of fees for the evaluation and for trial testimony. Such fees should provide a daily rate and a half day rate and the time, prior to trial, by which payment will be required to secure the evaluator's availability in court. Both the daily rate and half day rate should include time for a 1 hour telephone or in-person preparation session with counsel who will be a proponent of the evaluator's report at trial. The cost of additional preparation time, if needed, is a contractual matter between the evaluator and counsel. Advance preparation of the evaluator's direct testimony does assist the court by insuring a well thought out presentation. The evaluator's cancellation and refund policies should also be stated in the fee schedule provided to the conciliator's office.

Although the amended rules insure that the evaluator will be notified by the prothonotary of the scheduling of a trial, it remains the responsibility of the party advocating on behalf of the report to arrange for the evaluator's testimony at trial at the earliest possible date. The evaluator is not expected to assume, merely because he/she is notified of a trial date that his/her expert testimony will be required.

The evaluator is not obligated to discuss the case with the party or counsel who will not be advocating on behalf of the report at trial; however, the evaluator may elect to do so at least 10 days before trial, for a fee to be agreed between the evaluator and the non-advocating party. In such event, the evaluator should promptly provide an oral summary of said conference to counsel for the party (or the party, if unrepresented) advocating on behalf of the report, at no additional charge to that party. If the evaluator does not agree to speak with the party or attorney opposing the evaluator's report, or refuses to read correspondence from either of them, such refusal will not support an inference that the evaluator is biased against such party or is uncertain of his/her conclusions and opinions.

Finally, while it is legal to secure the attendance of any witness, including an evaluator, through the compulsion of a subpoena, to do so is essentially fruitless in terms of compelling the witness to testify to the conclusions and opinions set forth in the report. The witness can only be required to state legally admissible facts – his/her expert opinions cannot be compelled. Accordingly, potential payment problems should be addressed frankly and in advance with the evaluator so that, if possible, arrangements can be made to secure his/her expert testimony at trial. Counsel is encouraged to extend the professional courtesy of granting as much time as possible to the evaluator to ensure that the evaluator's schedule can be set to allow for testimony before the court. It remains within the discretion of the trial court to determine if sufficient notice has been provided to the evaluator to permit appearance at trial.

#### **L1915.4-1 Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to Attend Conference**

(a) Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. General continuances will not be granted. A date certain for the rescheduled conference will be included in every order continuing a conciliation conference. For a request for a continuance to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

(b) Except in the case of a documented medical emergency, or upon consent of both parties, motions to continue, cancel or withdraw a custody conciliation conference must be presented at least 10 days prior to the scheduled conciliation.

(c) If the case is withdrawn from the conciliators consideration prior to any conciliation conference occurring, and the party paying the initial conciliators fee seeks a refund thereof, he/she shall present a motion requesting a refund not later than 10 days after the last scheduled conciliation conference.\*

(d) If the party seeking the imposition of an initial custody order, or the modification of a custody order already in existence, i.e. the moving party, fails to appear at a scheduled custody conference, the court will dismiss the case, and the conciliator's fee will not be refunded.

Comment. Requests for refund presented more than 10 days after the conciliation conference will not be granted. The intent of this rule is to process refunds in a timely manner consistent with budgeting and accounting needs of the judicial system and the county.

**Comment:** Butler County motions practice is described in Rule L208.3(a).

### **L1915.7 Custody Conciliation Conference Consents and Recommendations.**

(a) All parties named in an action for custody shall be present at the custody conciliation conference unless excused by the custody conciliator. Failure of a party to appear at the conference may result in the entry of a custody or visitation order by the court on the recommendation of the conciliator in the absence of that party. Unless ordered by the court for good cause shown, children shall not be brought to the conciliation and shall not be heard on the issues by the conciliator.<sup>5</sup>

(b) To facilitate the conciliation process and to encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties or their attorneys at the conference shall not be admissible as evidence at a later custody hearing. The custody conciliator shall not be a witness for or against any party.

(c) The court-appointed custody conciliator shall encourage consent agreements on the custody issues pending between/among the parties. If agreements are reached, they shall be reduced to writing and submitted to the court for adoption as an order. The parties will also be encouraged to equitably divide the custody administrative fee.

(d) If no consent agreement is reached, the conciliator shall file a report with the court within five days of the conference which may contain the following:

(1) recommendations that custody investigations, such as physical or mental evaluations, home studies, drug and alcohol evaluations, counseling, and education seminars be undertaken, as well as equitable division of the fees for same. In order to insure that all studies

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<sup>5</sup> The previous Rule required children nine or older to attend the conference. The children were not usually part of the mainstream conciliation process. Participation was marginal and infrequent. School was missed. Only when both parties agreed to be bound by a child's stated preference did children's participation become meaningful. Bringing children to court, even the conciliator's office, invited parties to lobby the children for support at the expense of the other parent, often before the parents have attended the educational seminar which discourages such conduct. Lobbying also suggests to the children that their views may be more dispositive of the ultimate custody determination than is in fact the case, and does little to promote agreements or the orderly process of advancing those cases which are not resolved by agreement. On balance, under the new Rule, the court has chosen to excuse children from most conferences. If a party feels strongly that his/her child(ren) should attend, he/she may present a motion setting forth the basis of that belief and requesting an order for attendance.

and evaluations ordered, expert testimony supplied, and seminar attendance occur without delay, the Order directing such activities shall provide that each parties share of the relevant fees be paid as allocated in the Order, subject to reallocation at a later stage of the case as provided in Rule L1915.4(c). A non-paying or non-participating party shall be subject to the contempt powers of the court;

- (2) conciliator's review of jurisdiction, venue, standing and relocation issues;
- (3) progress, if any, on issues before the conciliator, as well as any recommendations for temporary custody/visitation orders, including the need for an expedited hearing in emergency cases.
- (4) recommendations concerning an equitable division of the custody administrative fee among the parties.
- (5) recommendations that a case be diverted to counseling.
- (6) scheduling of pre-trial conferences, or requesting trial dates.

(e) As part of the order resulting from the initial conciliation conference, custody cases will ordinarily<sup>6</sup> be scheduled for a pre-trial within 120 days after service of the initial pleading, in those cases when evaluations are ordered by which time the evaluations are expected to be completed and available. The initial conciliation order shall also provide that the costs of any evaluations, home studies or tests, including the cost of in-court testimony needed to authenticate and explain expert reports of the results thereof, shall be shared by the parties, initially as allocated by the court in the post-conciliation order, but subject to reallocation as part of the pre-trial conference order and the final order in the case as the equities in the case may dictate. In cases where no agreement is reached, and no evaluations are ordered, and the case is not diverted to counseling on the Conciliator's recommendation, either party may request a Pretrial Conference within 30 days. See Rule L 1915.10, *infra*. A copy of the order scheduling the pre-trial conference shall be mailed to the custody evaluator by the prothonotary, to insure that the evaluator's report is available to counsel for the parties at least 15 days prior to the pre-trial conference.\*

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<sup>6</sup> Delays may occur for various reasons, most commonly the untimely submission of court ordered custody evaluations. Custody evaluation reports are delayed for many reasons, some of which include deliberate delay in scheduling or postponing meetings with the evaluator or delay in the payment needed to secure release of the report, by a party perceiving him/herself to benefit from the status quo. Other reasons for delay are wholly innocent and beyond the control of either party, such as the press of other duties upon the custody evaluator. The court firmly believes that delay in resolving custody cases perpetuates stress on the parties and children involved, is harmful, and is to be eliminated. Consequently, the parties are charged with the knowledge that a finding of deliberate and unexcused conduct by him or her, which significantly delays the trial of the case may adversely affect that party's position in the litigation, because dilatory conduct is itself harmful to the children.

(f) At the request of either party, the report under subsection (d) shall be filed with the court before the judge assigned to that case and presented at his/her motion court. The parties and/or the attorneys shall be informed at the conclusion of the conference of the date of the applicable motion court session.

(g) Upon receipt of evaluation reports, the conciliator's office will make the same available to counsel of record, or *pro se* litigants where applicable.<sup>7</sup>

Comment: The 2006 rule is restated here in its entirety. The only change effected by the 2009 amendment is the addition of the language in bold print added to subsection (e).

#### **L1915.10. Request for Custody Pretrial Conference. Pretrial Conference. Decision**

(a) A party may request a Custody Pretrial Conference anytime within 30 days after service of a Custody Order issued as a result of a Conciliation Conference, in cases where a comprehensive agreement is not reached at the Conference. The moving party shall deliver the Request to the chambers of the assigned judge for the scheduling of a Pretrial Conference. Said request shall be served on the opposing party, or counsel, if represented.<sup>8</sup> The assigned Judge will transmit the completed Pretrial Scheduling Order to the prothonotary for filing and service.<sup>9</sup>

(b) The Request for Custody Pretrial Conference and Scheduling Order shall be substantially as follows:

#### *Caption*

#### **REQUEST FOR CUSTODY PRETRIAL CONFERENCE**

I, \_\_\_\_\_, hereby request a pretrial conference before the Court of Common Pleas. This Request is being filed within 30 days of the date of Service of the Custody Order.

The issues to be considered are:

Relocation  
Time/Length/Number of Visits

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<sup>7</sup> The mandatory second conciliation contemplated in the prior rules is abandoned in favor of more judicial involvement in the form of a pre-trial conference. The pre-trial judge will determine if a second conciliation is likely to be helpful in resolving the case, in which case he/she may direct one, or if the matter should proceed to trial.

<sup>8</sup> The requirement of service is a matter of courtesy. The "Request" contemplated by the rule is in the nature of a Praecipe, requesting a ministerial act. The Court will not entertain argument as to the propriety of a scheduling order. If an opposing party believes that a Pretrial Conference is not appropriate, that party may present a motion to vacate the scheduling order, at which time the issue may be argued.

<sup>9</sup> Pursuant to Rule 1915.7(e) when Custody Evaluations *have* been ordered, a Pretrial Conference is automatically scheduled and a Request need not be filed.