

**LOCAL RULES OF COURT**  
**FAMILY DIVISION**

**Introductory Comment – 2006**

The Court of Common Pleas of Butler County has traditionally utilized the services of masters in a variety of family law cases, most prominently in juvenile and divorce matters. These rules continue the evolution of that tradition.

Historically, in divorce cases, Butler County has tried two, almost conceptually opposite, methods for the selection of masters. For many years, any locally based attorney licensed to practice law was eligible for inclusion on the divorce master list maintained by the prothonotary. The system worked reasonably well when the local bar consisted of fewer than 60 attorneys, and the substantive law of divorce had not been materially reformed in 200 years.

Following the adoption of the Pennsylvania Divorce Code in 1980, with the introduction of new and complex concepts related to equitable distribution of marital property and alimony, and the virtual elimination of fault divorce which had been the exclusive focus of master's proceedings prior to that time, the court quickly realized that the all-inclusive master system could not continue. With a new and unfamiliar Divorce Code, and little or no appellate guidance at the time, family law was being reinvented constantly on a local level by countless masters with differing experience levels and personal viewpoints as to how the new Code should be interpreted. Long delays in the completion of master's proceedings and inconsistent legal interpretations were typical. Practitioners had little ability to forecast the outcome of a master's proceeding and consequent inability to advise clients appropriately. Reform of the system for appointing masters was generally conceded to be necessary.

Responding to the outcry for consistency and predictability which were paramount considerations at the time, the court adopted a very restricted standing master system. Individual attorneys applied for the post of standing master and, if selected, were required to relinquish their family law practice within the county. The Local Rules provided for compensation of standing masters at an hourly rate far below what the same individuals could command in their private practices. In general, the standing master system in divorce cases did achieve the continuity and consistency of decision making which was its *raison d'être*.

Nevertheless, the local legal landscape continues to evolve. Butler County continues to grow and the demand for judicial time allocated to family law, civil, criminal, Orphans' Court and miscellaneous types of cases grows along with the population. The number of cases assigned to each judge has increased, while pressure to dispose of cases expeditiously has intensified. At the same time, on a statewide level, we now have a full generation of appellate case law to guide us to reasonably nuanced interpretations of the Divorce Code.

The court believes that now is an appropriate time to experiment with changes to the existing standing master system. Based on the relative stability of the Divorce Code, and the abundance of appellate case law, the court is less concerned than previously with the probability of inconsistent legal interpretations of similar factual matrices, provided that the court is careful

to limit the masters it appoints to practitioners with whom the court is familiar, and who possess both substantial family law experience and appropriate judicial temperament. Specifically, the court envisions appointing masters which the court is aware have particular expertise in the type(s) of issue(s) presented by the case requiring a master's appointment. The court also wants to permit the parties attorneys to mutually nominate a master to hear a particular issue, whom the court will appoint if the parties nominee meets the court's masters criteria.

Under these rules, the standing master system for divorces is replaced by a special master system. The court will still utilize standing masters in Juvenile cases. Standing masters and custody conciliators will still be prohibited from practicing family law in Butler County. However, other practitioners will be permitted to practice family law, in spite of their appointments from time to time as special masters.

Practitioners will also notice some changes to the custody rules. An additional Order is required at the time of filing directing registration and attendance at the divided families seminar. The issue of undue delay is addressed in several ways. In an effort to emphasize the importance of keeping cases from languishing in the evaluation phase of the process, a pre-trial conference will be scheduled as part of the original conciliation order, if evaluations are ordered. This emphasizes to all parties the need to comply with the schedule for arranging and completing any evaluations. Prior to the pre-trial conference, a type of pre-trial statement, with prescribed disclosures, will now be required. As of the pre-trial conference, such additional pre-trial disclosure as is mandated by the assigned judge will be discussed and ordered.

As an aid to understanding the new rules, and the court's perspective concerning the subject matter of the rules, footnotes have been inserted and comments have been appended at the end of the complete statement of a rule, when appropriate. This is consistent with Pa.R.C.P. No. 129(e). An asterisk (\*) has been employed to direct the reader's attention to the inclusion of a comment related to a particular rule or a particular subsection of a rule.

## **PROTECTION FROM ABUSE**

### **L1905 Orders**

At any time that the Court of Common Pleas of Butler County is participating in any program to develop a data base for protection from abuse orders, only orders produced by that system shall be presented to the court for review and signature, if the system is operational. If the system used to produce orders is temporarily non-operational, orders created outside the system shall be integrated therein as soon as possible.

## SUPPORT

### **L1910.4 Domestic Relations Fee Schedule**

(a) A fee schedule for Domestic Relations administrative costs, the filing of support complaints, petitions to modify support orders, issuance of bench warrants, petitions for contempt, and other related fees shall be as established by order of court from time to time.

(b) Except for the filing of an initial support complaint, the fee shall be required to be paid in advance. All fees shall be collected and administered by Domestic Relations personnel.

### **L1910.11 Motions to Continue Support Conferences and Hearings; Use of Masters**

(a) & (i) Support matters scheduled before the court or in the Domestic Relations section shall be continued only by leave of court, with good cause shown, presented at least 15 days before the actual support conference or hearing.<sup>1</sup>

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<sup>1</sup> The court will ordinarily consider the mutual written consent of the parties to be "good cause" for a continuance, regardless of the proximity to the scheduled conference or hearing date. However, motions for non-consensual postponements shall be filed at least 15 days before the scheduled Domestic Relations conference or court hearing. Butler County motions practice is described in Rule L208.3(a).

## CUSTODY AND VISITATION

### L1915.1 Scope. Definitions.

(a) These rules govern all actions for custody, partial custody and visitation, including original actions, petitions for relocation, petitions to modify orders and petitions for contempt.

(b) These rules supplement the Pennsylvania Rules of Civil Procedure governing custody actions, Pa.R.C.P. No. 1915.1 et seq.

(c) These rules modify Rules L1915.1 - L1915.13 of the Butler County Local Rules of Court

### L1915.3 Commencement of Action. Complaint. Order. Service.

(a) All custody complaints shall be filed with the prothonotary.<sup>2</sup> In addition to the scheduling Order required by Pa.R.C.P. No. 1915.3, there shall be attached by the Conciliator's office, an additional Order with the following text:

**"All adult parties to this action, who have not yet attended the seminar for divided families endorsed by the Butler County Family Court, shall within 5 days of receipt of this Order register to attend the next available seminar. Contact 724 XXX-XXXX to register.<sup>3</sup> Attendance at this seminar is mandatory, unless, within 5 days of receipt of the Order, a party seeks permission to attend a comparable program in another county, and within 10 days, permission is granted by the custody conciliator."**

(b) In addition to the filing fees assessed by the prothonotary, an administrative fee for conciliation services shall be assessed by administrative order of court, and shall be submitted to the prothonotary at the time of the filing of the custody complaint unless otherwise directed by the court.

(c) After filing, all complaints or motions for conferences shall be immediately forwarded to the custody conciliator's office which shall set the time, date, and place for a

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<sup>2</sup> The traditional alternative practice of *ex parte* presentation of custody complaints, custody modification or custody contempt petitions in motions court is discouraged. The practice originated because of the need to secure a judge's signature on the order scheduling a conciliation conference or hearing. However, experience indicates that the prothonotary and custody conciliator's offices can be relied upon to bring the proposed scheduling order to the court's attention promptly and efficiently, eliminating the waiting and presentation time of attorneys at motions court, and thereby reducing the parties expenses. The parties or attorneys may monitor the progress of their pleadings, within the system, by communications with the prothonotary and conciliator's offices.

<sup>3</sup> The phone number of the endorsed seminar (which could change from time to time) will be published by Administrative Order.

custody conference. Said conference shall be held no less than 20, nor more than 40 days from the filing of the complaint/order or petition/order, unless the normal time interval is shortened or lengthened by the court, upon good cause shown.

(d) Within 5 days of service of any claim for custody, partial custody, or visitation, any party to an action who has not previously attended the education seminar for divided families shall register to attend said seminar. Information concerning the seminar shall be provided by the prothonotary of the Court of Common Pleas of Butler County, Pennsylvania, to the filing party. Said party shall be responsible for service of such information on the opposing party.

(1) Failure of either party to register for the seminar, prior to the conference, may subject the noncompliant party to such sanctions as may be appropriate, including an award of counsel fees.

(2) Unless otherwise requested by both parties, the parties will be scheduled for separate education seminar sessions.<sup>4</sup>

(e) Fees and policies pertaining to custody conciliation shall be adopted from time to time by administrative orders of court. A copy of said policies and fee schedule will be available at the Domestic Relations office/custody conciliator's office.

#### **L1915.4**

(a) The complaint/order or petition/order and the order to attend the divided families seminar, shall be served by the moving party in accordance with the Pennsylvania Rules of Civil Procedure.

(b) Proof of service of the complaint/order or the petition/order, and the Order to attend the divided parents seminar, shall be filed with the prothonotary prior to the custody conference.

#### **L1915.4-1 Continuances of Conciliation Conferences or Custody Hearings**

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<sup>4</sup> This rule is renumbered and changed. The previous Rule limited a party's right to request a separate seminar to cases in which abuse had been found or was alleged. The committee felt that many family situations not rising to the level of abuse might warrant a party seeking separate seminar registration. The goal is to promote and facilitate seminar attendance. Separate registrations cannot justifiably deter attendance; simultaneous registration might, even in non-abuse cases. The Court is advised that the practice of the current seminar provider is to schedule attendance of opposing parties on different dates. The Court endorses that practice.

Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. For such a request to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

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

#### **L1915.5 Jurisdiction, Venue, Standing, and Relocation Issues.**

(a) The court may direct that issues pertaining to jurisdiction, venue, standing, and relocation be referred to custody conciliation.

(b) Alternatively, the court may schedule a hearing before the court for disposition of the jurisdictional, venue, standing or relocation issue, or the court may take such other action as may be prescribed by statute, compact or treaty.

**Comment:** The court will always dispose of interstate or international jurisdictional issues, outside the conciliation process. In such cases the court may defer to a foreign court the right to conduct a fact-finding hearing related to the jurisdictional issue.

#### **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

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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.

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, education seminars to be undertaken, and appointment of a guardian at litem, as well as equitable division of the fees for same. In order to insure that all studies 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). Evaluations shall proceed without the participation of a party who fails to timely pay his/her share of the evaluator's fee. A non-paying or non-participating party shall also 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

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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

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*.

(f) At the request of either party, the report under subsection (c) 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>

#### **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:

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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.

<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.