

**BERKS COUNTY  
RULES OF CIVIL PROCEDURE**

**(AS OF November 26, 2018)**

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## TITLE AND CITATION OF RULES

### **Rule 10**

These rules shall be known as Berks County Rules of Civil Procedure and shall be cited as “B.R.C.P.”

## **ASSESSMENT APPEALS**

### **Rule 11            Real Estate Tax Assessment Appeal**

(a) Real Estate Tax Assessment Appeal from a decision of the Berks County Board of Assessment Appeals as to the amount of assessment for real estate tax purposes or as to exemption of real estate from payment of real estate taxes shall be captioned Real Estate Tax Assessment Appeal and shall be filed with the Prothonotary within the time prescribed by statute.

(b) Real Estate Tax Assessment Appeal shall contain the following:

(1) Caption designating the named party taking the appeal as Appellant, the Berks County Board of Assessment Appeals as Appellee, and if Appellant is a taxing authority it shall join the owner of the real estate involved as of course as a party in the assessment appeal by designating such named owner in the caption as Respondent.

(2) Brief description of the subject real estate, its location, name and address of the owner, and municipality and school district wherein the real estate is located.

(3) Nature of and reasons for the appeal.

(4) Reference to the decision of Berks County Board of Assessment Appeals (Board) from which the appeal is taken. A copy of the Board's notice of decision shall be attached as an exhibit.

(5) Verification consisting of a verified statement as "verified" is defined in Pa.R.C.P.No. 76.

(c) Appellant shall serve copies of the Real Estate Tax Assessment Appeal by certified or registered mail upon the Board addressed to 633 Court Street, 3rd Floor, Reading, PA 19601, and upon the following except if named as the Appellant: Board of County Commissioners of Berks County (County) addressed to 633 Court Street, 13th Floor, Reading, PA 19601, upon the governing board of the municipality and the board of school directors of the school district wherein the real estate is located addressed to the governing board and to the board of school directors at the respective offices of the municipality and school district, or, in the absence of an office of the municipality addressed to the governing board and secretary thereof at the secretary's last known residence address, and upon Respondent owner of the real estate at such owner's last known address.

(d) Appellant shall file with the Prothonotary within five (5) days of the filing of the Real Estate Tax Assessment Appeal proof of service of copies thereof consisting of a verified statement as "verified" is defined in Pa. R.C.P.No. 76 that service was made by certified or registered mail, with sender's receipt for certified or registered mail attached thereto.

(e) No response is required to be made by Appellee or by the County, municipality, school district or Respondent owner of real estate served with copy of Real Estate Tax Assessment Appeal.

## **Rule 12 Intervention**

(a) The County, municipality, or school district not named as Appellant may intervene as of course during pendency of the appeal by filing a Notice of Intervention with the Prothonotary.

(b) Notice of Intervention shall contain the name of the intervening party as an additional party designated as intervenor in the caption, and shall set forth that such identified party is intervening.

(c) Intervenor shall serve copies of Notice of Intervention by certified or registered mail upon Appellant, Appellee, any Respondent owner and any other intervening parties of record.

(d) Intervenor shall file with the Prothonotary within five days of the filing of Notice of Intervention proof of service of copies thereof consisting of a verified statement as “verified” is defined in Pa.R.C.P.No.76 that service was made by certified or registered mail, with sender’s receipt for certified or registered mail attached thereto.

(e) No response is required to be made by any party served with copy of Notice of Intervention.

## **Rule 13 Discovery**

Pa.R.C.P. No. 4001 et seq. encompassing Depositions and Discovery shall be applicable to real estate tax assessment appeals, unless otherwise ordered by the court.

## **Rule 14 Pretrial Status Conference**

(a) The court sua sponte or upon application of a party shall schedule a pretrial status conference for a time not less than sixty days after the filing of the Real Estate Tax Assessment Appeal. Notification of conference need be given by the court only to Appellant, Appellee, Respondent owner if any, and such other parties who have intervened of record.

(b) Each party of record shall file with the Prothonotary a Pretrial Status Conference Memorandum and serve a copy thereof on the trial judge at least seven days prior to the date of scheduled conference along with proof of service of copies thereof upon parties of record by personal service or by regular mail. Proof of service shall consist of a verified statement as “verified” is defined in Pa.R.C.P. No. 76.

(c) Pretrial Status Conference Memorandum shall contain a summary statement of facts, stipulations desired, witnesses expected to be called, exhibits expected to be offered, legal issues, and special problems.

## **Rule 15 Pretrial Settlement Conference**

The court sua sponte or upon application of a party may schedule a pretrial settlement conference.

## **Rule 16 Conference Attendance**

(a) The attorney attending a pretrial status or settlement conference shall be the trial attorney, and such attorney, or a party in attendance without counsel, shall be prepared to discuss settlement.

(b) In the event of unexcused failure of trial counsel or party without counsel to attend a pretrial conference, the conference may nevertheless be held and the presiding judge may make findings and conclusions and enter an order pertaining to subject matter under B.R.C.P. 14(c), and shall otherwise impose such sanctions as deemed appropriate.

## **BANKRUPTCY**

### **Rule 20      Notice of Bankruptcy Stay**

So that this court is informed of an automatic stay under 11 U.S.C. Section 362, in all civil cases pending before the Court of Common Pleas of Berks County, a party in such a case who files a Federal Bankruptcy case shall within ten (10) days of such filing file written notice in this court.

The written notice shall be filed to the caption and number of the case in this court and have attached to it a photocopy of the face sheet of the Bankruptcy petition certified by the Clerk of the Bankruptcy Court clearly showing the filing date.

All other parties shall be served with a copy of said notice in the manner provided by B.R.C.P. 440/441.

If a pre-trial matter, arbitration or trial is scheduled to occur within ten (10) days from the Federal Bankruptcy filing, in addition to the written notice required above, the filing party shall immediately give oral notice to all other parties and to the court administrator or other court personnel affected by the automatic stay.

Upon termination of the stay, any party may move to reactivate the case in this court.

If the notice required by this rule is not given, the action shall proceed, and the court may issue an order of sanction imposing court costs upon the party who fails to so comply.

## **MONEY IN COURT**

### **Rule 30            Payment into Court**

A defendant may, upon motion, pay into court the amount which he admits to be due, together with the costs up to that time. The plaintiff may receive the amount so paid, and either enter a discontinuance or proceed to trial at his option. In the latter case, he shall pay all costs subsequently accruing, unless he shall recover judgment for a sum additional to that admitted to be due and paid into court.

### **Rule 31                            Deposit by Prothonotary. Monthly Statement. Drawn Out. Copy of Rule to Depository.**

Payment of money into court to abide its order shall be made to the prothonotary and shall, unless another depository or depositories be specially designated by the court, be deposited by the prothonotary with a bank or trust company in an account or accounts fully insured by the Federal Deposit Insurance Corporation and shall be held pursuant to Section 3561 of the Judicial Code, 42 Pa.C.S.A. Section 3561. Each depository bank shall render a monthly statement to the prothonotary and deliver to him therewith the cancelled checks; the prothonotary shall examine each monthly statement and shall make a report in writing to the court with respect to any discrepancies which may exist. Money deposited in the official depository shall be deposited in an account designated "Money Paid Into Court of Common Pleas of Berks County, Pennsylvania". Any interest earned on money paid into court shall periodically be paid to the County of Berks unless otherwise provided by the court order and in such event the funds covered by the court order shall be deposited in a separate account to be held subject to said order. Money deposited in a specially designated depository shall be deposited in an account designated as directed by the court in the particular instance or instances. Money paid into court shall only be drawn out upon an order of the court attested by the prothonotary and delivered to the depository with an appropriate check signed by the prothonotary and one (1) of the judges of the court showing the particular case, or matter in respect with which it is drawn. A copy of this Rule shall be certified by the prothonotary and furnished by him to each depository designated by the court and each such depository shall file with the prothonotary an acknowledgment of the receipt of the Rule.

### **Rule 32    Petition for Distribution**

Except in cases in which there is an agreement in writing of the parties filed of record and cases involving distribution of money under provisions of the Eminent Domain Code, the court upon the presentation of a petition praying for the distribution of money paid into court, shall forthwith enter a decree nisi directing payment, which decree shall, unless exceptions be filed thereto, become absolute as of course ten (10) days after the service of a copy of said petition and of said decree nisi upon all other parties due proof of said service as directed by the court having first been filed.

## SALES OF REAL ESTATE

### **Rule 35 Factual Averments of Interest and Advantage**

To the extent not governed by specific statutory provisions or Pennsylvania Rules of Civil Procedure, in all cases in which leave of court to sell or mortgage real estate is required, the petition shall set forth sufficient facts to enable the court to determine whether the proposed sale or mortgage will be to the interest and advantage of all parties in interest.

### **Rule 36 Contents of Petition for Public Sale. Required Notice if Granted. Return of Sale.**

(a) When leave of court is required to sell real estate at public sale in the cases referred to in B.R.C.P. 35, in addition to the requirement of B.R.C.P. 35, the petition shall also set forth in separate paragraphs:

- (1) The petitioner's interest in said real estate;
- (2) If the petitioner is a fiduciary, the date of his or its appointment and his or its acceptance of the trust and the terms imposed;
- (3) The names of all parties in interest stating such as are minors or incompetents and if so, the names of their fiduciaries, if any, and the notice given them of the intended presentation of the petition;
- (4) A description of the real estate which it is desired to sell.

(b) Attached to the petition to sell real estate at public sale must be an affidavit of two disinterested and competent persons familiar with said real estate as to the value of the tract or tracts desired to be sold.

(c) If all parties in interest do not voluntarily appear as petitioners or respondents or join in the petition to sell real estate at public sale, a rule to show cause why the prayer of the petition should not be granted shall be issued by the court upon motion of the petitioner to be served upon all parties who have not appeared or joined in the petition, returnable on a day to be fixed in the order granting the rule which order shall also direct the manner of service by advertisement upon all parties who cannot otherwise be served.

(d) If the prayer of the petition for sale be granted, the order granting the same shall contain the date, time and place for approval or confirmation of the sale to the purchaser at said public sale, and said sale and the fact that it is subject to approval or confirmation by the court, together with the said date, time and place fixed for the approval or confirmation shall be advertised once a week for three (3) successive weeks in the Berks County Law Journal and in one other newspaper of general circulation in Berks County, and notice shall be given by posting a notice on the premises and three (3) additional notices in the immediate vicinity of the premises to be sold. At least fifteen (15) days' prior notice of the time and place of the proposed sale shall be given to all parties in interest, by personal service or registered or certified mail, unless otherwise ordered by the court.

(e) The return of the sale for the purpose of approval or confirmation by the court shall be in the form of an affidavit, which shall set forth the notice given, the advertisement made, the price obtained, the name and address of the purchaser and that he was the highest bidder, and in addition, if a fiduciary was authorized to sell, that he or it was not and is not interested therein as purchaser either directly or indirectly. Court approval or confirmation must be obtained before delivery of a deed.

**Rule 37            Contents of Petition for Private Sale. Notice of Hearing Thereon. Rule to Show Cause.**

(a) When leave of court is required to sell real estate at private sale in the cases referred to in B.R.C.P. 35, in addition to the requirement of B.R.C.P. 35, the petition shall also set forth in separate paragraphs:

(1) The name and address of the proposed purchaser;

(2) The price to be paid and the terms of sale;

(3) If a fiduciary shall seek authorization to sell, that he or it is not interested therein as purchaser either directly or indirectly;

(4) Where the proposed sale is of an undivided interest, whether the other parties in interest desire the sale to be made and are willing to join in a deed.

(b) To the petition to sell real estate at private sale must be attached an affidavit of two disinterested and competent persons acquainted with the value of real estate in the particular locality showing that under all the circumstances the price offered is better than could be obtained at public sale.

(c) In all such cases wherein a petition to sell real estate at private sale is presented to the court, the court shall fix a time for hearing thereon and notice of such hearing and the purpose thereof shall be advertised once, which advertisement shall be at least one (1) week before the time appointed for said hearing in at least one (1) newspaper of general circulation in Berks County and in the Berks County Law Journal.

(d) If the parties in interest shall not join in the petition to sell real estate at private sale or concur therein, a rule to show cause why the prayer of the petition should not be granted shall be issued by the court upon motion of the petitioner to be served on all parties who have not so petitioned or concurred, returnable on the day fixed by the court's order fixing a time for a hearing on the petition, which order granting such rule shall also direct the manner of service by advertisement upon all parties who cannot otherwise be served.

## MINOR JUDICIARY

### **Rule 40 Certiorari Issued to District Justice**

(a) Where a Writ of Certiorari has been issued pursuant to the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges, the party causing the writ to issue shall, within ten (10) days after the return of the record:

(1) file exceptions setting forth in detail the reasons in support of the claim or claims contained in the praecipe filed for issuance of the writ, and serve a copy of such exceptions by personal service or first class mail on opposing counsel of record or party without counsel, or

(2) if deficiency or error in the record is alleged, present a petition to the court that a rule issue upon the Magisterial District Judge to show cause why a corrected record should not be filed, setting forth in the petition in what respect the record is deficient or in error, returnable within ten (10) days, and serve copies of the petition and rule by personal service or first class mail on the Magisterial District Judge and on opposing counsel of record or party without counsel.

(b) If a corrected record or an answer to the petition acceptable to petitioner is not filed within ten (10) days, and the parties are unable to stipulate of record what corrections are to be made to the record, upon application of the petitioner the court shall fix a hearing date, direct that the Magisterial District Judge bring into court for inspection all records pertaining to the proceedings, and upon hearing held determine by order of court what corrections, if any, should be made to the record. Upon such order being entered, the petitioner shall proceed in accordance with subsection (a)(1) of this Rule.

(c) Failure of the party filing the praecipe for issuance of the writ to proceed in accordance with this Rule shall be grounds for dismissal of the writ.



## PETITIONS, MOTIONS AND ANSWERS

### **Rule 205.2(a) Physical Characteristics of Pleadings and Other Legal Papers**

All pleadings, motions, affidavits and other legal papers presented to the Prothonotary for filing shall conform to the following:

- (1) The paper shall be white, opaque, unglazed and of good quality.
- (2) The size of the paper shall be eight and one-half (8½) inches in width and eleven (11) inches in length.
- (3) All text shall be typewritten or printed. All printed text shall be legible. All typewritten text shall be in ten (10) or twelve (12) pitch and of letter quality.
- (4) Captions, titles, citations to legal authority, footnotes and blocked quotations may be single-spaced, but the main body of the text shall be double-spaced.
- (5) All filings shall comply with the Public Access Policy of the Unified Judicial System of Pennsylvania; Case Records of the Appellate and Trial Courts which can be found at the Administrative Office of Pennsylvania Courts website [www.pacourts.us](http://www.pacourts.us) as well as on the Berks County Court website [www.co.berks.pa.us](http://www.co.berks.pa.us) and with Berks County Rule of Judicial Administration 510.

The Prothonotary shall accept a party's pleadings, motions, affidavits and other legal papers for filing without regard to that party's failure to comply with any of the above requirements, as long as sufficient information is provided for the Prothonotary to identify the case to which the pleadings, motions, affidavits and other legal papers apply.

### **Rule 205.4 Electronic Filing and Service of Legal Papers**

(a)(1) Beginning on the date established by the President Judge by Administrative Order, parties shall file all "legal papers" as defined by Pa.R.C.P. No. 205.4(a)(2), with the Prothonotary through the Berks County Electronic Filing System "EFS" as more specifically provided here and in Pa.R.C.P. No. 205.4.

*Explanatory Note: The term "legal paper" as defined in Pa.R.C.P. No. 205.4(a)(2) encompasses all pleadings and other papers filed with the Prothonotary, including exhibits and attachments – even if the legal papers are not adversarial in nature and do not require the non-filing party or parties to respond.*

(2) As used in this rule, the following words shall have the following meanings:

**CMS (Case Management System):** A Court case management system manages the receipt, processing, storage and retrieval of data associated with a case and performs actions on the data.

**Electronic Filing (E-Filing):** The electronic transmission, acceptance, and processing of a filing. A submission consists of data, one or more documents, and/or images. The definition of electronic filing does not apply to facsimile or e-mail.

(b)(1) Authorized Electronic Format of Legal Papers Electronically Filed. All legal papers shall be filed in a portable document format (“pdf”) or other format as may from time to time be established for electronic filing. A paper presented for filing in hard copy or in a format other than the required format shall be converted to the required format and maintained by the Prothonotary in that format pursuant to Pa.R.C.P. No. 205.4(b)(1).

...

(c)(2) Website. Access to the Website

(i) Website. All legal papers shall be filed electronically through the Berks County Electronic Filing System “EFS” which shall be accessible through the County of Berks website, [www.co.berks.pa.us](http://www.co.berks.pa.us), or at such other website as may be designated from time to time.

(ii) Use of the EFS shall be in accordance with the User Manual.

(iii) Access to the Website. To obtain access to the Berks County Electronic Filing System, counsel and any unrepresented party must apply for and receive a User Name, Password, and Personal Identification Number (“PIN”).

(iv) Registered users shall be individuals, and not law firms, agencies, corporations, nor other groups.

(v) User access may be suspended to prevent fraud, to maintain security of the system and network, to prevent an unacceptable level of congestion, or to prevent a disruption to the EFS or another user.

...

(d)(1) Payment of Filing Fees

The Prothonotary will accept filing fees through PayPal or as set forth in the User Manual. The Prothonotary will not accept advance deposits for future filings.

...

(f)(1) Filing Status Messages

(i) Upon receipt of the legal paper, the Prothonotary shall provide the filing party with an acknowledgment, which includes the date and time the legal paper was received by the Berks County Electronic Filing System.

(ii) After review of the legal paper, the Prothonotary shall provide the filing party with e-mail notification, or notification on the Berks County Electronic Filing System, that the legal paper has been accepted for filing (“filed”) or refused and not accepted for filing.

(f)(2) When an electronic document is accepted, the electronic document is the official record, except for documents containing a raised seal. Documents containing a raised seal shall be filed electronically, and the original with the raised seal shall be filed with the prothonotary’s office as the official record.

(i) If a document filed in paper format is digitized, recorded, scanned or otherwise reproduced into an electronic record, document or image, the electronic

record, document or image is the official record except for documents with raised seals.

(ii) Once a paper document is digitized, recorded, scanned or otherwise reproduced into an electronic record, document or image, the paper document may then be destroyed by the Prothonotary, unless the document is required to be preserved by law or order of court.

...  
(f)(3) Signatures and Verifications

(i) The electronic filing of legal papers utilizing the User Name, Password and PIN issued as provided by this rule and Pa.R.C.P. No. 205.4, constitutes the party's signature on electronic documents as provided by Pa.R.C.P. No. 1023.1 and, if the filing party is an attorney, constitutes a certification of authorization to file it as provided in Pa.R.C.P. No. 205.1. Additionally, the following provisions apply:

(ii) Filing Party. The legal paper must include a signature block, and the name of the filer under whose User ID, Password and PIN the legal paper is submitted. The legal paper may be submitted with the filer's scanned signature or "/s/" and the filer's name typed in the space where the signature would otherwise appear on the legal paper. If an attorney is the filing party, the Pennsylvania Supreme Court Attorney Identification number must be included under the signature line.

The correct format for an attorney signature is as follows:

/s/ ATTORNEY NAME  
PA Supreme Court ID #  
Attorney for (Plaintiff/Defendant) XYZ Corporation  
ABC Law Firm  
ADDRESS  
TELEPHONE NUMBER  
E-MAIL ADDRESS  
FAX NUMBER

(iii) An authorized electronic filer must not allow their user name and password to be used by anyone other than an agent who is authorized by the electronic filer.

(iv) Electronic filers shall notify the Prothonotary's Office immediately by calling 610-478-6970 if there has been any unauthorized use of their EFS user name and password.

(v) Client Verifications and Documents Executed By Clients or Other Persons. The Verification required by Pa.R.C.P. No. 206.1 and Pa.R.C.P. No. 1024 and the signature page(s) of any document or legal paper executed by any party other than the filing party must be scanned and attached to the electronic filing in a portable document format at the time the legal paper is submitted.

(vi) Documents requiring signatures of more than one party must be

scanned and attached to the electronic filing in a portable document format at the time the legal paper is submitted.

(vii) The original of a sworn or verified document that is electronically filed (e.g. affidavit) or is contained with an electronic filing (e.g. verification) shall be maintained by the electronic filer and made available upon direction of the court or reasonable request of the signatory or opposing party.

Note: This subsection is designed to address issues which may arise regarding signatures on legal papers and documents. A filer's use of the User Name, Password and PIN issued through the Berks County Electronic Filing System is the filer's "electronic signature". However, legal papers often require verifications executed by non-filers. In addition, many legal papers or documents require multiple signatures. Deficiencies in content and execution could be subject to preliminary objections. In order to avoid prejudicial delay, this section requires that the filing party scan such legal papers, documents or signature pages and include them as part of the electronic filing at the time of submission. Original signed copies should be kept as provided for in Pa.R.C.P. No. 205.4(b)(4).

(f)(4) Electronic Filing Fees and Costs

(i) The Prothonotary shall collect an electronic filing fee for each legal paper or exhibit filed as established by the Prothonotary with the approval of the President Judge of the Berks County Court of Common Pleas.

(ii) In addition to such electronic filing fee, the Prothonotary is authorized to charge a fee as set from time to time for each page of a legal paper or exhibit which is filed in hard copy format and which must be converted to the required format.

(iii) All fees collected pursuant to this rule shall be set aside by the Prothonotary and remitted monthly to the Berks County Treasurer's Office.

(iv) All such fees and costs collected will be used for the implementation and maintenance of the Berks County Electronic Filing System "EFS" and additional development, enhancements and training.

(v) Electronic filers shall alert the EFS to any payment errors within forty-five (45) days of the payment date by calling the Prothonotary's Office at 610-478-6970.

(f)(5) Other Procedures Necessary to the Operation of a System of Electronic Filing

(i) If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by the Berks County Electronic Filing System; provided, however, that if a legal paper is submitted without the requisite fee, the legal paper shall be deemed to have been accepted for filing as of the date payment was received. The Prothonotary is authorized to refuse for filing a legal paper submitted without the requisite payment. If the pleading or legal paper other than original process is accepted for filing, it will be electronically served as authorized by Pa.R.C.P. No. 205.4 (g)(1)(ii) and service shall be effectuated as provided in Pa.R.C.P. No. 205.4 (g)(2)(ii).

(ii) Termination Notice. In addition to the procedures set forth in Pa.R.C.P. No. 230.2, in cases where a party is a registered user of the Berks County Electronic Filing System, notice of proposed termination may also be electronic.

(iii) An electronic filer is not required to file any paper copies unless specifically required by the court.

(iv) An electronic filer is not required to file multiple copies of documents as specified elsewhere in these local rules.

(v) Electronic filing is permitted at all times when the EFS is available. If the EFS is unavailable at the time a registered user attempts to file a document, the registered user shall make reasonable efforts to file the document as soon as the unavailability ends.

(vi) If a registered user believes the unavailability of the EFS prevented a timely filing to the party's prejudice, the registered user may submit a motion to the court within ten (10) days of the registered user's unsuccessful attempt to file the document. The motion shall state the date and time of the first unsuccessful attempt to file the document electronically, the date(s) and time(s) of any subsequent attempts to file the document electronically, and why the delay was prejudicial.

(vii) The filing deadline for any document filed electronically is 11:59:59 p.m. EST/EDT.

(viii) Documents with Attachments. Attachments, including exhibits, that are part of any filing, shall be filed electronically at the same time as the document.

(ix) Pleadings seeking judicial action such as Proposed Orders or scheduling orders shall be filed as separate documents within the same electronic filing as the Motion or Petition they pertain to.

(x) An attachment or exhibit that exceeds the technical standards for the EFS or is unable to be electronically filed must be filed as ordered by the court. A Notice of Exhibit Attachment shall be filed in the EFS referencing such an exhibit with specificity and stating the reason why the exhibit was not filed electronically.

(xi) The Court may, on its own motion or for good cause shown, order a filing be made under seal. Filings requested to be made under seal shall be submitted to the Prothonotary's Office over the counter rather than through EFS.

(xii) Sealed or confidential documents may be submitted for electronic filing in a manner that maintains confidentiality under applicable law.

(xiii) All filings shall comply with the Public Access Policy of the Unified Judicial System of Pennsylvania; Case Records of the Appellate and Trial Courts which can be found at the Administrative Office of Pennsylvania Courts website [www.pacourts.us](http://www.pacourts.us) as well as on the Berks County Court website [www.co.berks.pa.us](http://www.co.berks.pa.us) and with Berks County Rule of Judicial Administration 510. Confidential data may

be collected on the EFS so that the data can be viewed by authorized personnel while being protected from public view.

(xiv) Family Court documents shall be confidential and shall not be viewable in CMS by the public without an Order of Court.

*Note:* Attorneys and litigants who file documents are required to comply with the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts.

...

(g)(2) Service by Electronic Transmission

(i) The electronic filing of a legal paper does not satisfy the filing party's obligation under the Pennsylvania Rules of Civil Procedure or the Berks County Rules of Civil Procedure to serve the legal paper on all parties to the litigation or on the Court.

(ii) Service of subsequent pleadings other than orders shall be made by the filing party to all other parties. Service of orders shall be made to registered EFS users by the Prothonotary's Office by e-mail notification or mail as elected by the EFS user and to all others by mail.

(h) Civil and Family Court Cover Sheets will not be required in EFS cases because any required data will be collected through the EFS for transmission to the Administrative Office of Pennsylvania Courts as required by Pa.R.C.P. No. 205.5(e).

### **Rule 206.1(a) Applications To Proceed In Manner Of Petition**

All applications of the following nature shall be governed by Pa.R.C.P. 206.1 et seq., governing the disposition of petitions:

- (1) An application for consolidation of actions;
- (2) An application for coordination of actions;
- (3) An application for discontinuance of an action in whole or in part, where contested;
- (4) An application to quash a subpoena;
- (5) An application for delay damages;
- (6) An application for leave to withdraw appearance as counsel;
- (7) An application for dismissal of a party to an action based upon an affidavit of non-involvement;
- (8) An application for entry of a judgment of non pros for failing to diligently prosecute an action;
- (9) An application to mold a compulsory arbitration award to correct obvious and unambiguous errors;
- (10) An application for partition of real property following commencement of a partition action;
- (11) An application by a plaintiff for joinder of other persons as plaintiffs or defendants;
- (12) An application by a defendant for joinder of additional defendants;
- (13) An application for interpleader by defendants;
- (14) An application for leave to intervene;
- (15) An application to open and/or strike a judgment entered by confession;
- (16) An application for permission to conduct pre-complaint discovery, as required;
- (17) An application to take a deposition outside Berks County;
- (18) An application for oral examination more than one hundred (100) miles from the Berks County Courthouse/Services Center;
- (19) An application for physical and mental examination of persons.
- (20) An application for discovery matters, except for protective orders; and

**Rule 206.4(c) Discretionary Issuance of Rule To Show Cause**

(1) This rule applies to:

(a) an application to open a default judgment or a judgment of non pros; and

(b) all applications designated by B.R.C.P. 206.1(a) as being governed by Pa.R.C.P. 206.1 et seq.

(2) A proposed rule to show cause order in substantially the form set forth in paragraph (5) below shall be attached to all applications governed by this rule.

(3) All other parties shall be given notice of the request to the Court to issue the rule by appropriate service of the application and proposed rule to show cause order by first class mail.

(4) If the application is properly pleaded and sets forth prima facie grounds for relief, the Court shall, except as set forth in subparagraphs (a) and (b) hereafter, enter an Order issuing a rule to show cause.

(a) If the application is properly pleaded and appears to set forth clear grounds for relief, the Court may enter an Order granting the requested relief. If an Order is entered without a rule to show cause being issued, the Court shall hear argument on an application by any party for reconsideration of such Order.

(b) If the application is not properly pleaded or if the application does not set forth prima facie grounds for relief, the Court may deny the application.

(5) The proposed rule to show cause Order referred to in paragraph (2) above shall be in substantially the following form:

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of the foregoing petition, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested.
- (2) the respondent shall file an answer to the petition within \_\_ days of this date.
- (3) the petition shall be decided under Pa.R.C.P. 206.7.
- ( ) (4) depositions shall be completed within \_\_ days of this date; or
- ( ) (4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_ at \_\_\_\_\_ before the undersigned Judge in the Berks County Courthouse/Services Center.
- ( ) (5) argument shall be held on \_\_\_\_\_ at \_\_\_\_\_ before the undersigned Judge in the Berks County Courthouse/Services Center.
- (6) notice of the entry of this Order shall be provided to all parties by the petitioner.

BY THE COURT:

\_\_\_\_\_J.



## **Rule 207.1 Presentation of Motions, Petitions and Applications**

(a) All routine motions, petitions and applications shall be filed in the prothonotary's office for transmission to the assigned judge for disposition.

(b) All motions, petitions or applications necessitating personal presentation to the court should be made in the courtroom of the judge assigned to the case either at 9:30 A.M. or 1:30 P.M. on a day he or she is scheduled to sit. If the motion, petition or application is of such nature that opposing parties have a right to be heard, the moving party shall give each opposing party at least forty-eight (48) hours notice of the time when the moving party will appear and present such motion, petition or application, unless the emergency nature of the matter prevents such notice. In the latter situation, the moving party shall give as much notice as is reasonably possible.

(c) No motion, petition or application shall be made or presented to any judge in chambers without pre-arrangement with that judge. No request for appointment in chambers shall be granted except for compelling reasons.

(d) All motions, petitions or applications in cases which have not yet been assigned to a judge shall be filed with the prothonotary; the court administrator shall promptly assign a judge to the case.

(e) All motions, petitions or applications which require immediate action in cases where the assigned judge is unavailable or in cases where no judge has been assigned to the case and the court administrator fails to assign a judge to the case in sufficient time to allow presentation to such judge shall be presented to the emergency motions judge in his courtroom at 9:30 A.M. or at 1:30 P.M. or by pre-arrangement with the emergency motions judge in his chambers.

(f) A party presenting a motion, petition or application for an order or decree shall file with the motion, petition or application a proposed form of the order or decree sought, together with a certificate signed by the party presenting the motion, petition or application or his or her attorney of record, setting forth the name and current address of each party's attorney of record, and if no attorney has entered an appearance of record for a party, the name and current address of each unrepresented party.

(g) A party presenting a motion, application or praecipe for the entry of judgment shall file with the motion, application or praecipe, a certificate signed by the party presenting the motion, petition or application or his or her attorney of record, setting forth the name and current address of each party's attorney of record, and if no attorney has entered an appearance for a party, the name and current address of each unrepresented party.

## **Rule 208.2 (c) Contested Motion. Statement Of Authority**

Any motion which is not accompanied by a written certification by the moving party and/or such party's counsel that such motion is uncontested shall contain a concise statement of the legal basis and authority relied upon in support of the motion.

## **Rule 208.2 (d) Uncontested Motion . Certification**

Any uncontested motion shall be accompanied by a written certification to that effect by the moving party and/or such party's counsel.

## **Rule 208.2 (e) Motion. Discovery. Attempted Resolution.**

No motion or other application relative to discovery matters shall be made unless it contains a certification that the moving party, after reasonable effort, has been unable to resolve the dispute after conferring with all interested parties or has made multiple written attempts to resolve the discovery issue, with no response being provided.

**Rule 208.3 (a) Motions. Generally**

- (1) Every motion accompanied by a written certification pursuant to B.R.C.P. 208.2(d) that it is uncontested shall be considered by the Court without a written response or argument brief.
- (2) Every other motion shall proceed in accordance with B.R.C.P. 208.3(b).
- (3) Every motion shall initially be considered by the Court. If the motion is properly pleaded and appears to set forth clear grounds for relief, the Court may enter an Order granting the requested relief. If an Order is entered without a rule to show cause being issued, the Court shall hear argument on an application by any party for reconsideration of such Order. At its initial consideration of the motion, the Court may deny the moving party's request for relief, without argument, when the motion is procedurally defective, is untimely filed or fails to set forth adequate grounds for relief.

**Rule 208.3(b) Motions. Response**

(1) Motions which do not involve disputed facts for which a record must be developed shall proceed in accordance with B.R.C.P. 211.1 through 211.7, inclusive, which can be found at the Berks County Web Site [www.co.berks.pa.us/courts](http://www.co.berks.pa.us/courts) .

(a) In addition to the requirements for filing briefs, the non-moving party may file a written answer to the motion simultaneously with the filing of an argument brief.

(2) For motions which do involve disputed facts for which a record must be developed, the Court, on its own motion or at the request of any party, may enter an order issuing a rule to show cause. The procedure following the issuance of the rule to show cause shall be in accordance with Pa.R.C.P. 206.7.

(3) The order referred to in paragraph (2) above shall be in substantially the following form:

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of the foregoing motion, it is hereby ordered that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested.
- (2) the respondent shall file an answer to the motion within \_\_ days of this date.
- (3) the motion shall be decided under Pa.R.C.P. 206.7.
- ( ) (4) depositions shall be completed within \_\_ days of this date; or
- ( ) (4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_ at \_\_\_\_ before the undersigned Judge in the Berks County Courthouse/Services Center.
- ( ) (5) argument shall be held on \_\_\_\_\_ at \_\_\_\_ before the undersigned Judge in the Berks County Courthouse/Services Center.
- (6) notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

\_\_\_\_\_J.

## **Rule 210 Form and Content of Briefs**

(a) All briefs filed in any civil matter shall be in the following form and sequence unless otherwise ordered by the court:

(1) Caption.

(2) Statement of questions involved. Each question involved shall be stated in brief and general terms, without names, dates, amounts or particulars.

(3) Statement of the case. The statement of the case shall contain a closely condensed chronological statement in narrative form of all the steps in the proceedings, followed by the facts which are necessary to be known in order to determine the points in controversy and should not contain any argument.

(4) Argument. The argument shall be divided into as many parts as there are questions to be argued and shall have at the beginning of each part the particular point addressed therein, followed by such discussion as is deemed pertinent.

(5) Conclusion. The conclusion shall state the precise relief being sought.

(b) Paper Size, Line Spacing and Margins. The brief must be on eight and one-half (8½) by eleven (11) inch paper. The text must be double-spaced, but quotations more than two lines may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(c) Text Size and Format. All text shall be typewritten or printed. All printed text shall be legible. All typewritten text shall be in ten (10) or twelve (12) pitch and of letter quality.

(d) Amended or Supplemental Briefs. No amended or supplemental brief may be filed except by direction of the Court.

## ARGUMENT COURT

### **Rule 211      Schedule for Arguments. Matters for Panel. Matters for Single Judge**

Civil Argument Court shall be held on the days as scheduled in the Court calendar for that year, subject to change by court order fixing special argument dates. As used throughout these rules, including B.R.C.P. 211.1 through 211.7 inclusive, and B.R.C.P. 1028(c), 1034(a), and 1035.2(a), the term “argument court date” shall mean one of the scheduled Civil Argument Court dates listed on the Court calendar, which calendar can be found on-line at [www.co.berks.pa.us](http://www.co.berks.pa.us).

(a) Panel list civil matters shall be heard by a panel of judges (consisting of two judges) or by the court en banc.

(b) All other civil arguments shall be heard by a single judge and shall consist of all other matters not specifically designated as Panel List Matters under subsection (a).

### **Rule 211.1      Ordered or Placed on Argument List**

Preliminary objections shall be ordered for argument court as required by B.R.C.P. 1028(c). All other cases may be ordered for argument court (a) by the party having the burden at argument by filing a praecipe and required documents with the prothonotary on or before the twenty-fourth (24th) day preceding such argument court date; (b) by the party not having the burden at argument by filing a praecipe and required documents with the prothonotary on or before the forty-fourth (44th) day preceding such argument court date; or (c) by special order of the court at any time.

No case shall be ordered or placed on any argument list unless at the day of its ordering the matter is at issue and notes of testimony directed to be filed have been transcribed and filed, unless (a) by agreement of the parties or their counsel such transcription is dispensed with and an adequate statement of the material facts has been filed in lieu thereof, or (b) the case is specially ordered for argument by the court.

### **Rule 211.2      Filing of Praecipe and Briefs**

(a) A party having the burden at argument in a civil case may file a praecipe with the prothonotary ordering that the case be listed for a particular argument court date, except that the date for argument on preliminary objections shall be as provided in B.R.C.P. 1028 (c), and shall file simultaneously with the prothonotary the required copies of his brief of argument and a proof of service that copies of such praecipe and brief of argument have been served upon all other parties in the case.

(b) A party not having the burden at argument in a civil case may file a praecipe with the prothonotary ordering that the case be listed for a particular argument court date and shall file simultaneously with the prothonotary a proof of service that copies of such praecipe have been served upon all other parties in the case. The party not having the burden shall not be required to file a brief of argument at the time of filing such praecipe.

(c) A party filing a praecipe for argument shall set forth in writing on such praecipe:

(1) the particular date the case is ordered to be listed for argument, which date shall be the next argument court date that is at least twenty-four (24) days from the date of filing (if filed by the party having the burden at argument), the next argument court date that is at least forty-four (44) days from the

date of filing (if filed by the party not having the burden at argument), or any later argument court date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge.

(2) the matter to be argued

(3) the party who has the burden at argument

(4) whether it should be argued before a panel of judges under B.R.C.P. 211(a) or a single judge under B.R.C.P. 211(b)

(5) the name of the judge assigned to the case

(d) In those cases where the party having the burden at argument has filed a praecipe for argument and accompanying documents in compliance with the requirements of subsection (a), each opposing party shall file with the prothonotary on or before the Tuesday (or Monday if Tuesday is a holiday) prior to the argument court date the required copies of his brief of argument accompanied by a proof of service that copies of brief of argument have been served upon all other parties in the case. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, each opposing party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

(e) In those cases where a party not having the burden at argument has filed a praecipe for argument and proof of service in compliance with the requirements of subsection (b), the party having the burden shall file with the prothonotary on or before the twenty-fourth (24th) day preceding the argument court date the required copies of his brief of argument accompanied by a proof of service that copies of briefs of argument have been served upon all other parties in the case. Each opposing party thereafter shall file with the prothonotary on or before the Tuesday (or Monday if Tuesday is a holiday) before the argument court date the required copies of his brief of argument accompanied by proof of service that copies of briefs of argument have been served upon all other parties in the case. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the party having the burden shall file its argument brief no later than twenty-four (24) days prior to the agreed upon argument date, and each opposing party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

(f) In those cases where the court specially orders a case for argument, the court shall fix the briefing schedule as a part of its order listing the case for argument, or by separate order.

(g) The required copies of briefs of argument to be filed shall be two (2) for cases under B. R.C. P. 211 (a) Panel List and one (1) for cases under B. R.C. P. 211 (b) Single Judge List.

(h) Where there has not been strict compliance with these rules as to time for filing, content or praecipe and proof of service of praecipe and/or brief of argument, as applicable, the prothonotary shall still accept the praecipe or brief of argument for filing, and Court Administration shall list the case for oral argument. The non-compliant party, however, shall be prohibited from participating in oral argument before the court unless the non-compliant party timely cures any defects and there is no prejudice to any opposing party, or the court, in its discretion, allows the non-compliant party to participate after good cause is shown.

### **Rule 211.3     Service. Proof of Service**

(a) Service of any document or notice under these rules relating to argument court shall be made on counsel of record or on a party without counsel by personal service or by registered, certified or first-class mail addressed to the last address of such counsel or party as listed with the prothonotary for the subject case.

(b) Proof of service shall consist of a verified statement, as verified is defined in Pa.R.C.P. 76, setting forth the date, time and method of service of the described document upon the named counsel of record or party without counsel and the address or place where such person was served.

**Rule 211.5      Extension of Time for Filing of Brief. Continuance of Argument. Disposition of Matters Upon Stipulation. Failure to File Brief or Appear at Argument**

(a) If a party is unable to file and serve his brief of argument as required by these rules, or is unable to appear and argue the case when scheduled, such party shall make timely application to the court for an extension of time in which to file and serve his brief and/or for a continuance, and upon good cause shown the court may grant such additional time and/or continue the argument as may be proper under the circumstances.

(1) There can be no extension of time for filing and serving of briefs of argument by agreement of the parties, except that if the praecipe for argument is filed by a party not having the burden, a reasonable extension of time for filing and serving of briefs by the party having the burden will be allowed without cause upon written stipulation of all parties and order entered thereon by the court and filed at least twenty-four (24) days prior to the argument court date. Except for argument on preliminary objections, a continuance without cause will be allowed one time on any other matter listed for argument, upon written stipulation of all parties and order entered thereon by the court and filed no later than on the Tuesday (or Monday if Tuesday is a holiday) prior to the argument court date.

(2) Unless otherwise ordered by the court because of emergency, any application for extension of time for cause for filing and serving of briefs must be made to the court on or before the due date for filing, and any application for continuance of argument must be made to the court on or before the Tuesday (or Monday if Tuesday is a holiday) prior to the scheduled argument date. A party making either such application must give written notice to all other parties in accordance with B.R.C.P. 211.3(a) of the intended date, time and nature of the application at least three (3) days prior to making such application, except that notice may be waived by such other party who appears before the court at the time such application is made. If the other party does not appear, the party making application shall file proof of service of notice in accordance with B.R.C.P. 211.3(b) at or before the time of making such application.

(3) Disposition of matters in issue for argument may be made by written stipulation of all parties if approved by order entered thereon by the court prior to or at the time of scheduled argument.

(4) The court may order sua sponte that the time for filing of an argument brief be extended, that an argument be continued or that a case be stricken from the argument list.

(b) If a party fails to appear and argue his case at the time scheduled, the court may hear argument of one party nevertheless, may consider the position of the party so failing to appear and argue as abandoned and may, without further notice, order the matter granted or dismissed with prejudice, depending on which party has failed to appear, or act upon the matter in such manner as the court deems appropriate, including the imposition of sanctions for failure to comply with these rules.

### **Rule 211.6 Assignment of Cases for Argument**

(a) At the end of the Tuesday (or Monday if Tuesday is a holiday) preceding the next scheduled argument court date, Court Administration shall prepare the list of all those cases praeciped for argument, noting the caption, nature of the matter to be argued, names of counsel or parties without counsel, and name of the judge assigned to the case, whether argument is before a panel of judges or a single judge.

(b) Court Administration shall prepare a schedule of assignment of cases designating courtrooms, judges and times that arguments will be heard at argument court, and shall post such schedule by noon of the Thursday (or Wednesday if Thursday is a holiday) preceding argument court in the prothonotary's office and online at [www.co.berks.pa.us](http://www.co.berks.pa.us) , and shall post such schedule on argument court day in the first floor lobby at the Courthouse and County Services Center.

(c) Upon such posting in the prothonotary's office the prothonotary shall notify the judge or judges assigned to hear arguments in the respective cases. On argument court day counsel and/or parties shall report directly to the assigned courtroom prior to the time fixed for oral argument for their respective cases.

### **Rule 211.7 Length of Oral Arguments**

Arguments shall be limited to fifteen (15) minutes on each side; provided, however, if there are multiple plaintiffs or defendants, argument shall be limited to a total of thirty (30) minutes for each side to be divided between or among counsel for the parties of the same side as they may decide, unless otherwise ordered by the court. No oral testimony shall be heard at the time of argument except by direction of the court.

### **Rule 211.8 Argument Court Procedures for Family Argument**

(a) Instead of a praecipe as stated in B.R.C.P. No.s 211.1 through 211.6, a party requesting that Family Argument be scheduled shall:

(1) Contact the assigned Judge to get a date, time and location for argument court. Such information shall be included on a scheduling order and filed along with the other required documents with the Prothonotary. The party shall simultaneously file with the Prothonotary the required copies of his brief of argument and a proof of service that copies of the scheduling order and brief of argument have been served on all other parties in the case; or

(2) File a blank scheduling order along with the other required documents with the Prothonotary. The party shall simultaneously file with the Prothonotary the required copies of his brief of argument and a proof of service that copies of the blank scheduling order and brief of argument have been served on all other parties in the case;

(3) If a blank scheduling order is filed, the assigned Judge shall set forth the date, time and location for argument court and notify all parties.

(b) An argument court brief shall be filed by the party not having the burden at argument court at least seven (7) days preceding the argument court date set forth in the scheduling order unless another date has been set by the Court. This brief of argument shall be accompanied by a proof of service that copies of the brief of argument have been served on all other parties in the case.

(c) A party filing for argument shall set forth in writing on such documents:

- (1) the matter to be argued
- (2) the party who has the burden at argument; and
- (3) the name of the judge assigned to the case, if known.

**Rule 211.9     Argument Court Procedures for Support Argument**

(a) Instead of a praecipe as stated in B.R.C.P. No.s 211.1 through 211.6, a party requesting that Support Argument be scheduled shall:

(1) File exceptions to the finding of fact and recommendations of the Support Hearing Officer with the Domestic Relations Section together with a request for transcript and the required fee.

(2) Once a month, the Domestic Relations Section shall forward the list of all cases that are ready for argument to the Administrative Family Court Judge for assignment.

(3) The assigned Judge shall set forth the date, time and location for argument court and notify all parties. Such notice may also include a briefing schedule, or the briefing schedule may be issued by separate order.



## **PRETRIAL CONFERENCES**

### **Rule 212      Scope**

Pretrial Conferences are mandatory in all civil trials before a jury, before a judge for which a jury trial has been waived.

### **Rule 212.1      Filing of Certificate of Readiness and Scheduling of Pretrial Conferences**

(a) The parties shall indicate their readiness for trial by filing the prescribed form of certificate of readiness (available from the prothonotary) in duplicate with the prothonotary signed by all parties or their attorneys of record. The forms are available in the Prothonotary's Office and online at [www.co.berks.pa.us](http://www.co.berks.pa.us).

(b) A certificate of readiness may be ordered filed in duplicate by the court, although the same has not been signed by all parties, provided that either of the following two (2) procedures is followed:

(i) First Procedure:

(A) The party desiring that a certificate of readiness be filed shall first send a letter all other parties in substantially the following form:

“A certificate of readiness without being signed by all the parties shall be filed with the Prothonotary ten days from the date of this letter unless objections thereto are sent in writing to the undersigned and received within the said ten days.”

(B) If no objection to the filing of a certificate of readiness is sent to the party desiring that the certificate of readiness be filed within the ten day period referred to in (b)(i)(A) above, that party shall file with the prothonotary the certificate of readiness, a copy of the letter sent to the other parties together with a proof of service and the documents required by B.R.C.P. 207.1(f).

(C) If an objection to the certificate of readiness is sent to the party desiring that the certificate of readiness be filed, the party intending to present the certificate of readiness may serve notice upon all other parties that such party intends to present the certificate of readiness to the court for approval and filing at a regularly scheduled motion court, scheduled to be held not less than ten days after service of said notice upon the other parties. Said notice shall set forth the time, date and place of the motion court at which said party intends to present the certificate of readiness for filing.

(1) The party intending to present the certificate of readiness shall make and file a proof of service of said notice with the prothonotary setting forth the time, date and manner of service, and the person upon whom such service was made.

(b) The party intending to present the certificate of readiness, and any party objecting thereto, shall appear in motion court at the time and place designated and the court shall determine whether or not the certificate of readiness should then be filed. If a party fails to appear in motion court on the day and at the time and place designated, the issue may be determined by the court in such party's absence without further notice or delay.

(ii) Alternative Procedure:

(A) The party desiring that a certificate of readiness be filed, may serve notice upon all other parties that such party will present the certificate of readiness for approval and filing at a regularly scheduled motion court, scheduled to be held not less than ten (10) days after the service of said notice upon the other parties. Said notice shall set forth the time, date, and place of the motion court at which such party intends to present the certificate of readiness for filing.

(1) The party intending to present the certificate of readiness shall make, and file, a proof of service of said notice with the prothonotary setting forth the time, date, and manner of service, and the person upon whom each service was made.

(B) The party intending to present the certificate of readiness for filing shall, and any other party who wishes to object to such filing may, appear in motion court at the time and place designated and the court shall determine whether or not the certificate of readiness should then be filed. If a party fails to appear in motions court on the day and time designated, the court may determine the issue in such party's absence without further notice or delay.

(c) After the certificate of readiness has been filed, Court Administration shall advise the judge assigned to the case and the judge shall promptly schedule a pretrial conference to be held not later than sixty (60) days after the filing of the certificate of readiness. Notice of the date for the pretrial conference shall be provided to counsel and/or unrepresented parties no later than three (3) weeks prior to the scheduled date.

#### **Rule 212.2 Memorandum**

(a) Counsel for each party or a party without counsel shall file a pretrial conference memorandum with the prothonotary at least seven (7) calendar days prior to the date of the scheduled pretrial conference along with a proof of service of a copy of the memorandum upon counsel of record or a party without counsel. Service shall be made by personal service or by registered, certified or first-class mail addressed to the last address of such counsel or party as listed with the prothonotary. Proof of service shall consist of a verified statement, as verified is defined in Pa.R.C.P. 76.

(b) Each party's pretrial conference memorandum shall contain the following information where applicable:

- (1) Summary Statement of Facts.
- (2) Amendments to Pleadings.
- (3) Admissions in Pleadings.
- (4) Admissions in Discovery by:
  - (i) Requests for Admission.
  - (ii) Answers to Interrogatories.
  - (iii) Oral Depositions of a Party.
- (5) Itemized Special Damages.
- (6) General Unliquidated Damages.
- (7) Stipulations Desired.

- (8) Objections to Depositions Taken Specifically For Use at Trial.
- (9) Witnesses Expected to be Called.
- (10) Exhibits Expected to be Offered Into Evidence.
- (11) Legal Issues Anticipated.
- (12) Special Problems.

**Rule 212.3 Settlement Negotiation**

Each attorney shall consult with the client and obtain authority to settle and shall confer with opposing counsel regarding settlement prior to the conference. At the time of the conference, counsel shall exchange letters setting forth their respective settlement demand and settlement offer.

**Rule 212.4 Authority of Attorney**

The attorney attending the pretrial conference shall be the attorney who will be the trial attorney, shall be prepared to discuss at the pretrial conference all phases of the case to be tried, including possible settlement, and shall have authority to bind the client by stipulation.

**Rule 212.5 Failure to Attend Conference**

In the event of unexcused failure of trial counsel or party without counsel to attend a pretrial conference the conference may nevertheless be held and the presiding judge may make findings and conclusions and enter an order pertaining to subject matter under B.R.C.P. 212.2 and shall otherwise impose such sanctions as deemed appropriate.

## **TRIALS**

### **Rule 214      Scope**

The rules pertaining to Trial shall apply to all civil trials whether before a jury or before a judge without a jury.

### **Rule 214.1      Trial Date**

At the conclusion of the pretrial conference, the judge assigned to the case shall issue an order, if appropriate, certifying the case for trial and stating the estimated length of trial and number of jurors required and the date it is scheduled for trial. Either party may move for continuance upon cause shown.

### **Rule 214.2      Time for Holding Civil Trials**

Civil trial shall be held at such times as shall be set forth in the court calendar, or at such times as may be specially ordered by the court.

### **Rule 214.3      Scheduled List of Cases**

The court follows the individual calendar. It shall be the responsibility of the individual judge to schedule jury selection and/or trial of his/her cases.

### **Rule 216      Continuances**

The court may permit continuances in accordance with Pa.R.C.P. 216.

## **COSTS**

### **Rule 217      Costs on Continuance**

A bill of costs for attendance of witnesses when a case or hearing is continued must be filed within ten (10) days after the continuance and a copy thereof served upon the other parties or their attorneys of record. No bill of costs shall be allowed unless it has been filed and served as required by this rule.

### **Rule 217.1      Costs on Trial**

(a) A bill of costs for attendance of witnesses when a case is tried must be filed within ten (10) days after the last day of trial and a copy thereof served upon the other parties or their attorneys of record. No bill of costs shall be allowed unless it has been filed and served as required by this rule.

(b) A bill of costs for attendance of witnesses shall contain the name and post office addresses of the witnesses, the dates of their attendance and the place from which mileage is claimed. It shall be certified by the party filing it or his attorney and shall aver that the witnesses were actually present in court on the days stated, that in the opinion of the signature the witnesses were deemed material and their attendance necessary and that they are persons entitled to witness fees.

(c) In every proceeding the prothonotary shall note the whole amount of the taxable costs specifying the items belonging to each officer and party including the sheriff's costs upon the return of any writ in the action. Upon entry of a final order in such action, the costs of the officers up to that time and the parties' bills for witnesses shall be noted. There shall also appear a notation of all execution costs incurred subsequent to a final order.

### **Rule 217.2      Taxation of Costs. Exceptions.      Decision. Appeal. Collection**

(a) A bill of costs drawn, certified and filed in accordance with these rules shall be taxed in the first instance by the prothonotary.

(b) Exceptions to such bill of costs must be filed with the prothonotary, accompanied by a verified statement, as verified is defined in Pa.R.C.P. 76, of the truth of the allegations made therein within five (5) days after receipt of such bill of costs. Within five (5) days after the exceptions are filed, the prothonotary shall issue a rule for retaxation and shall forthwith notify all parties of the time and date for a hearing on such retaxation before the prothonotary. The hearing shall be held not less than five (5) days after notice is served on the parties.

(c) The prothonotary shall serve a copy of his or her decision on the parties within five (5) days of the hearing. Any party may file an appeal to the court from such decision or retaxation within ten (10) days after receipt thereof by filing a specification of items to which objection is taken along with the grounds for such objection in the office of the prothonotary. Upon filing of such appeal, the prothonotary shall file a written report in which he or she shall set forth the facts upon which he or she based his or her decisions. Objections not raised before the prothonotary shall be deemed abandoned.

(d) Neither a rule for retaxation nor an appeal therefrom shall stay execution or prevent the collection of the judgment and costs, but upon application, the court may direct that the costs to which objections have been taken are not to be included in the execution or are not to be disbursed by the sheriff without order of the court.

(e) At any time prior to payment, any party may file exceptions to any costs taxed by the prothonotary other than those shown on a party's bill of costs. Such exceptions shall be accompanied by a

verified statement, as verified is defined in Pa.R.C.P. 76, of the truth of the allegations contained therein. Thereafter, the proceedings for retaxation shall be in accordance with the rules pertaining to the retaxation of items listed on a party's bill of costs.

**Rule 217.3 Jury Costs on Continuance or Settlement of a Cause of Action**

When a continuance is granted upon application, the Court may impose on the party making the application, the reasonable costs actually incurred by the County and/or the jurors in impaneling a jury.

When a continuance has been granted and costs imposed, the party upon whom such costs have been imposed may not, so long as such costs remain unpaid, take any further step in such or any other suit without prior leave of Court.

## **VERDICT BY AGREEMENT**

### **Rule 226      Certificate of Readiness**

Where a verdict is to be taken by agreement, a certificate of readiness shall be signed by counsel and filed, and shall contain a notation that a verdict will be taken by agreement. No pretrial conference shall be held.

## **POST-TRIAL RELIEF**

### **Rule 227.1 Motion for Post-Trial Relief**

(a) A motion for post-trial relief shall be filed with the prothonotary in accordance with B.R.C.P. 207.1 and the prothonotary shall forthwith deliver the motion to the judge assigned to the case for appropriate action.

(b) A motion for post-trial relief may contain a request for a conference to determine what notes of testimony or of other proceedings need be transcribed.

(c) Any claim raised in a motion for post-trial relief which is not supported by argument set forth in a written brief shall conclusively be considered abandoned and waived by the moving party. Any matter so abandoned and waived by the moving party shall not be thereafter considered.



## **JUDGMENTS**

### **Rule 227.4    Entry of Judgment by Prothonotary**

All judgments except those entered upon default or under a warrant of attorney or confession shall be entered by the prothonotary on receipt of a praecipe showing all data requisite to establish a present right to the entry thereof. When no appearance has been entered by or on behalf of the defendant, the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. App. Section 520, shall apply, and before any judgment shall be entered the required affidavits shall be filed by the plaintiff, setting forth the facts showing that the defendant is not in the military service of the United States, and if the plaintiff is without knowledge, it shall be so stated in an affidavit setting forth what efforts had been made to ascertain the facts. The affidavit of non-military service shall be filed on the date the praecipe is filed.

### **Rule 227.4(a)    Time for Entry of Judgment**

No judgment shall be entered upon a verdict within the time allowed for post-trial motions, unless allowed by special order of court.

### **Rule 236        Notice by Prothonotary of Court Action**

(a) In addition to the requirements of Pa.R.C.P. 236, the prothonotary and the clerk of the domestic relations section shall give written notice of every order, decree, judgment, appointment and copy of every opinion entered by the court to affected counsel of record and parties without counsel and shall note the time and method of service and the place at which served or the address to which mailed on the subject document as well as in the docket.

(b) With respect to a non-appearing party, a certified copy of each order or decree shall be mailed by the prothonotary by ordinary mail at such non-appearing party's address as shown on the certificate filed pursuant to subsections (f) (4) or (g) (1) of B.R.C.P. 207.1.

## **IN FORMA PAUPERIS**

### **Rule 240      Application. Verification**

(a) Except as otherwise provided by statute or rule of the Supreme Court of Pennsylvania, all applications to proceed in forma pauperis alleging financial inability to pay costs or fees for filing papers, including posting of bond, shall be supported by a verified statement, as verified is defined in Pa.R.C.P. 76, of the applicant setting forth in detail all assets, income, benefits and financial obligations of such applicant in the form prescribed in Pa. R.C.P. 240.

(b) If a pleading is filed which is not accompanied by the required verified statement, the prothonotary shall nevertheless accept the pleading for filing and file the same without payment of costs or fees and shall furnish to the applicant the form of the verified statement with a request that it be executed and returned for filing with the pleading. However, the prothonotary shall take no further steps in such proceedings without the payment of the required costs or fees, unless otherwise ordered by the court. If application is made to the prothonotary for any further filing or the taking of any further action without the payment of costs and fees, the matter shall be referred to the judge assigned to the case or, if none, to the emergency motions judge for disposition.

## **DAMAGES**

### **Rule 251      Damages Accruing After the Filing of the Complaint or Counterclaim**

No claim for damages or mesne profits accruing after the filing of a complaint or counterclaim shall be allowed unless the party claiming the same gives written notice to the party or parties from whom such damages are sought, at least fifteen (15) days before trial, that "said party claimant, at trial, proposes to claim damages or mesne profits accruing up to the date, of trial. Such notice having been given, the party claimant may prove such damage or mesne profits not barred by the statute of limitations accruing up to the date of trial.

A pleading which claims future damages arising from a cause of action pleaded shall meet the requirements of this Rule and the Act of May 2, 1876, P.L. 95.

Comment: This rule restates the requirements of the Act of May 2, 1876, P.L. 95. The Act of May 2, 1876 was repealed by the Judiciary Act Repealer Act, Act of April 28, 1978, P.L.202, No, 53; 42 Pa. C.S. section 20002(a)(668) but remains in full force and effect as a part of the common law of Pennsylvania pursuant to section 20003(b) of said Judiciary Act Repealer Act and will remain in effect until a Pennsylvania Rule of Civil Procedure is promulgated with respect to said Act of May 2, 1876 and the practice and procedure provided therein. Act of April 28, 1978, P.L.202, No. 53, 42 Pa. C.S. section 20003(b).

### **Rule 252      Requirements for Indexing an Action as a Lis Pendens**

When a praecipe for a writ of summons, a complaint or a counterclaim is filed, the prothonotary shall index the action as a lis pendens against real property if, but only if, the party filing the praecipe, the complaint or the counterclaim, or his attorney:

(1) files a separate praecipe describing real property by metes and bounds or a sufficient description to identify it, and the volume and page in the Recorder of Deeds Office of this county where a recorded description of said property appears;

(2) directs in said separate praecipe that the action shall be listed as a lis pendens against said real property; and

(3) files with said separate praecipe a certification that said action;

(A) is a proceeding to revive and continue the lien of debts against a decedents property, or

(B) is a proceeding conveying or vesting title to real property in this Commonwealth; or

(C) is a proceeding of which purchasers of the described real property should have constructive notice; and

(4) files with said separate praecipe a written verified statement, as verified is defined in Pa. R.C.P. 76, setting forth the basis and subject matter of the cause of action and that said action affects the title to the real property so described or of any interest in said real property.

## **SERVICE**

### **Rule 430(a) Service of Original Process**

Original process of actions filed with the Prothonotary of Berks County shall be served by the sheriff or a competent adult in the actions in partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and by the sheriff in all other actions.

### **Rule 430(b) By Publication**

(1) Where service is by publication in an equity action, an action to quiet title or an ejectment action, it shall consist of a brief statement of the contents of the complaint, a notice to the persons served by the publication to plead on or before a date fixed in the notice, which date shall be not less than thirty (30) days after the date of the last publication, along with a notice complying with the form prescribed in Pa.R.C.P. 430(b) and naming the agency from whom legal help can be obtained as designated in B.R.C.P. 1018.1. If the subject matter of the action is real estate, the published notice shall contain a sufficient description of the real estate involved to identify it, but need not set forth a full and detailed description, if reference is made in said advertisement to the volume and page in the Recorder of Deeds office of this county where a recorded description of said property appears. In the absence of a special order of court, the published notice shall be inserted in a newspaper of general circulation published in the county and the Berks County Law Journal as required by the Pennsylvania Rules of Civil Procedure. The publication required by Pa.R.C.P. 1507 shall conform to the requirements of this Rule insofar as said requirements are applicable.

(2) In all cases in which any statute, Pennsylvania Rule of Civil Procedure, Pennsylvania Rule of Criminal Procedure, Berks County Rule of Court or Order of Court, publication of legal notices or advertisement shall be required to be made in a legal periodical, the same shall be made in the Berks County Law Journal, which for all such purposes is designated as the legal periodical in Berks County. A copy of every legal issue of said periodical shall be furnished free of charge to the following: each judge of the Court of Common Pleas, the prothonotary, the clerk of court, the court administrator, the county solicitor, the office of the county commissioners and the law library, to be kept there on file.

### **Rule 440/441 Manner of Service. Proof of Service**

All notices, rules, pleadings, motions and papers required to be served shall, unless otherwise directed by statute, Pennsylvania Rules of Civil Procedure or Pennsylvania Rules of Criminal Procedure, or expressly provided in these rules, or specially ordered by the court, be served as follows:

(a) Whenever it shall be required that notice shall be given of any intended application to the court, copies of the application shall have already been served with such notice and proof of service filed of record. The service of all rules, citations or orders of the court shall be accompanied with copies of the petitions or motions upon which such rules, citations or orders shall have been granted, unless the opposing parties shall have already been served with such copy.

(b) Where an opposing party has not entered an appearance or filed a pleading containing an address endorsed thereon where papers may be served upon said party, service of pleadings shall be as provided by Pa.R.C.P. 400-441, and service of the rule, citation or order of the court entered upon a motion, petition or application shall be as provided by B.R.C.P. 207.1.

(c) Where the opposing party has entered an appearance or filed a pleading containing any address endorsed thereon where papers may be served upon said party, service of pleadings shall be as provided by Pa.R.C.P. 440, and service of the rule, citation or order of the court entered upon a motion, petition or application shall be as provided by B.R.C.P 207.1.

(d) Proof of service by verified statement, as verified is defined in Pa.R.C.P 76, of the time, place and manner of the service shall be filed in all cases unless specifically excused by these rules, and except where service is made by the sheriff, and when the service is by filing a copy in the prothonotary's office, the reason for so serving it must be stated in detail in the verified statement.

## **VENUE AND PROCESS**

### **Rule 1008B Appeal from Judgment of Possession**

In cases where a tenant in possession of real property desires to appeal from a judgment for the possession of real property entered by a magisterial district judge and is financially unable to file a bond with surety as required by Pa. R.C.P.M.D.J. 1008B, such tenant, upon petition averring such financial inability to file a bond with surety and supported by a verified statement, as verified is defined by Pa. R.C.P. 76, required by B.R.C.P. 240, to file a bond, and upon approval by the court may be permitted to deliver to the prothonotary rental payments coming due during the proceedings in the court of common pleas for deposit in an escrow account in a bank or trust company approved by the court. At the conclusion of the said proceedings, such deposits shall be applied to the payment of any judgment (including damages and costs) against the tenant rendered on the appeal.

### **Rule 1012 Entry of Appearance**

Every initial pleading or legal paper filed with the Prothonotary or the Domestic Relations Office by an attorney should be accompanied by a written entry of appearance. The written appearance will facilitate proper notification being given to all counsel of record. In the event an initial pleading or legal paper, including an initial responsive pleading or legal paper, filed by an attorney is not accompanied by a written entry of appearance, the Prothonotary or the Domestic Relations Office shall enter the name of the attorney as counsel of record provided that the attorney's full name, signature, Supreme Court ID number and address are contained on the pleading.

#### **Rule 1012.1 Admission Pro Hac Vice**

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(g) Attorneys admitted pro hac vice in a case using the Berks County Electronic Filing System (EFS) may file as a non-attorney user since the EFS system only allows attorney users with a valid Pennsylvania Supreme Court identification number.

## **PLEADINGS**

### **Rule 1018.1 Notice to Defend**

The notice to defend as required by Pa.R.C.P. 1018.1 to be contained in every complaint filed by a plaintiff, and in every complaint filed by a defendant against an additional defendant, shall be required to be set forth in both English and Spanish and shall designate the following agency from whom legal help can be obtained:

Lawyers' Referral Service of the  
Berks County Bar Association  
544 Court Street  
Reading, Pennsylvania 19601  
Telephone (610) 375-4591  
www.berksbar.com

### **Rule 1024 Affidavits Taken or Attested by Attorneys**

Attorneys holding commissions as notaries public, or otherwise authorized to administer oaths, shall not, in any judicial proceeding in which they appear as counsel, take or attest any affidavit to be filed or read therein. All affidavits taken or attested in violation hereof shall be null and void.

### **Rule 1028(c) Preliminary Objections**

(a) A party filing preliminary objections which are not endorsed with a notice to plead, as they involve issues raised under Pa.R.C.P. No.s 1028(a)(2), (3) or (4), shall file simultaneously with the Prothonotary an original and one copy of the preliminary objections, a praecipe for argument, an argument brief and a proposed order granting the relief requested, accompanied by a proof of service of copies of those documents upon counsel for all other parties and any unrepresented parties by first class mail. The praecipe shall order that the preliminary objections be listed for argument on the next argument court date that is at least twenty-four (24) days from the date of filing, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found online at [www.co.berks.pa.us](http://www.co.berks.pa.us).

(b) A party filing preliminary objections which are endorsed with a notice to plead, as they involve issues raised under Pa.R.C.P. No.s 1028(a)(1), (5), (6), (7) or (8), shall file with the Prothonotary an original and one copy of the preliminary objections, accompanied by a proof of service of copies of the preliminary objections and the completed form of order upon counsel for all other parties and any unrepresented parties by first class mail.

(1) The form of order referred to in paragraph (2) above shall be substantially in the following form, PROVIDED that the bracketed, italicized language is explanatory only and should not appear in the completed form of order served with the preliminary objections:

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, preliminary objections endorsed with a notice to plead having been filed in this matter and served on \_\_\_\_\_, *[date which appears on the proof of service]* it is hereby ordered that:

(1) Any party wishing to oppose the preliminary objections shall file with the Prothonotary an original and one copy of the answer to the preliminary objections and proof that the answer to the preliminary objections has been served by first class mail upon counsel for all other parties and any unrepresented parties no later than \_\_\_\_\_. *[In accordance with Pa.R.C.P. 239.5 and 1026(a), which require any party opposing preliminary objections endorsed with a notice to plead to respond thereto within twenty (20) days of service of the preliminary objections, the party filing the preliminary objections must here insert a date twenty (20) days after the date listed on the proof of service filed with the preliminary objections, unless counsel and any unrepresented parties stipulate to a different time.]*

(2) Depositions and/or any other discovery required for determination of the preliminary objections shall be completed by \_\_\_\_\_. *[The date inserted shall be no longer than sixty (60) days after the date listed on the proof of service accompanying the preliminary objections.]*

(3) An original and one copy of a brief of argument and proposed order granting the relief requested, along with proof that such documents were served by first class mail upon counsel for all other parties and any unrepresented parties, shall be filed with the Prothonotary by \_\_\_\_\_ *[the party which filed the preliminary objections]* on or before \_\_\_\_\_ *[the date inserted shall be no longer than twenty (20) days after the date on which discovery ends]*.

(4) Any party opposing the preliminary objections shall file with the Prothonotary an original and one copy of a brief of argument, proposed order and proof that such documents were served by first class mail upon counsel for all other parties and any unrepresented parties, no later than twenty (20) days after the date listed on the proof of service accompanying the brief of the party which filed the preliminary objections.

(5) Argument on the preliminary objections shall be held in the assigned courtroom of the Berks County Courthouse/Services Center on the next argument court date that is at least twenty-four (24) days from the date of filing, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge.

(6) The party which filed the preliminary objections shall serve notice of the entry of this order, along with copies of the signed order bearing the entry date, upon all counsel and any unrepresented parties no later than two (2) business days after receiving a copy of the order.

BY THE COURT:

\_\_\_\_\_ J.



(2) Following service of copies of the preliminary objections and the above form of order, all counsel and any unrepresented parties should confer and agree upon the dates to be included in the order prior to its submission to the Court for consideration and entry.

(3) The party filing the preliminary objections shall file the original of the completed form of order with the Prothonotary no later than twenty (20) days following service of copies of the preliminary objections and accompanying documents upon counsel for all other parties and any unrepresented parties, whereupon the Prothonotary shall deliver the file of the case to the Court. Nothing in this rule shall preclude the Court from changing the dates set forth in the above-referenced form of order, whether or not such dates were set by agreement of the parties.

(c) If the party filing the preliminary objections fails to simultaneously file any of the additional documents required by paragraphs (1) and (2) above, the Prothonotary shall notify the Court, whereupon the Court may, unless all defects are corrected within five (5) business days of receipt of the file, overrule the preliminary objections.

(d) If an amended pleading is filed in response to preliminary objections, the preliminary objections shall be deemed moot, along with all requirements of this rule relating to discovery and responding to such preliminary objections. Where an argument date has been set, the Prothonotary and Court Administration, Court Information Management Division, shall strike the preliminary objections from the argument list, if any of the following conditions are met:

(1) The amended pleading is filed within twenty (20) days following the date of service of copies of the preliminary objections and accompanying documents as set forth in Pa.R.C.P. No. 1028(c)(1);

(2) The amended pleading is accompanied by or follows the filing of a written stipulation of counsel waiving the time limitation set forth in Pa.R.C.P. No. 1028(c)(1) for the filing of the amended pleading; or

(3) The amended pleading is accompanied by or follows the filing of a court order permitting the amended pleading to be filed notwithstanding the time limitation set forth in Pa.R.C.P. No. 1028(c)(1).

(e) If no amended pleading is filed in accordance with paragraph (4) above, any party opposing preliminary objections which are not endorsed with a notice to plead, as they involve issues raised under Pa.R.C.P. No.s 1028(a)(2), (3) or (4), shall, on or before the Tuesday (or Monday, if Tuesday is a holiday) before the argument court date, file an argument brief in response to the preliminary objections, accompanied by a proposed order and proof of service of copies of the argument brief and proposed order upon counsel for all other parties and any unrepresented parties by first class mail. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the non-moving party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

(f) If any party to whose pleading preliminary objections have been filed fails to file either an amended pleading or a response to the preliminary objections, the Prothonotary shall deliver the file of the case to the Court, whereupon the Court may deem the preliminary objections to have been admitted and, without further notice, either sustain the preliminary objections; hear oral argument and rule upon the preliminary objections; rule upon the preliminary objections without oral argument; or, if an issue of fact is raised, direct that the matter be continued for no more than sixty (60) days for the parties to produce sufficient evidence for the Court to consider in making its ruling.

(g) If preliminary objections are filed which involve issues raised under Pa.R.C.P. No.s 1028(a)(1), (5), (6), (7), or (8) but are not endorsed with a notice to plead and no response thereto is filed, the Court shall deem the preliminary objections to be denied in accordance with Pa.R.C.P. No. 1029(d), and may, without further notice, overrule the preliminary objections, although it may permit the preliminary objections to be re-filed, endorsed with the required notice to plead, no later than twenty (20) days after the order is entered. In the alternative, the Court may hear oral argument from the party that filed the preliminary objections and any other party wishing to be heard, or, if an issue of fact is raised, may direct that the matter be continued for no more than sixty (60) days in order to permit the party that filed the preliminary objections, and any other party wishing to participate, the opportunity to produce sufficient evidence for the Court to consider in ruling upon the preliminary objections.

(h) If preliminary objections are in the nature of preliminary objections to preliminary objections, the filing, argument and disposition of the second set of preliminary objections shall proceed in accordance with paragraphs (1) through (7) above and oral argument on the first set of preliminary objections shall be continued to the date set for argument on the second set of preliminary objections. If the Court overrules the second set of preliminary objections or does not make a decision on the second set of preliminary objections, the Court may proceed with the consideration and disposition of the first set of preliminary objections in accordance with paragraphs (5) through (7) above immediately after the conclusion of argument on the second set of preliminary objections, or may schedule oral argument on the first set of preliminary objections for a date and time after it has ruled on the second set of preliminary objections.

(i) The Court shall promptly determine all preliminary objections after the argument date, or, if the matter was continued in accordance with paragraphs (6) or (7) above, may re-list the matter for oral argument, request or permit additional argument briefs from the parties or, if an issue of fact is raised, shall consider the evidence produced by the parties.

(j) At the Court's discretion, the preliminary objections may be determined upon the pleadings, any evidence produced and the argument briefs submitted by the parties, without oral argument. Notice thereof shall be provided by the Court to the parties and/or their counsel by letter or telephone at least three (3) business days prior to the scheduled argument date.

#### **Rule 1034(a) Motion for Judgment on Pleadings**

(1) A party filing a motion for judgment on the pleadings shall file simultaneously with the Prothonotary a praecipe for argument and an argument brief, accompanied by a proof of service of copies of the motion, praecipe and brief of argument upon all other counsel and any unrepresented parties by first class mail, all in accordance with the Berks County Rules of Civil Procedure governing Civil Argument Court. The praecipe shall order that the motion be listed for argument on the next argument court date that is at least twenty-four (24) days from the date of filing, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found online at [www.co.berks.pa.us](http://www.co.berks.pa.us) .

(2) If a party filing a motion for judgment on the pleadings fails to simultaneously file such praecipe, argument brief and/or proof of service, the Prothonotary shall immediately notify the Court, whereupon the Court may, unless all defects are corrected within five (5) business days of the receipt of the file, deny the motion.

(3) If the party filing a motion for judgment on the pleadings complies with paragraph (1) above, the non-moving party shall, on or before the Tuesday (or Monday, if Tuesday is a holiday) before the

argument court date, file an argument brief accompanied by a proof of service of copies of the argument brief upon counsel for all other parties and any unrepresented parties by first class mail. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the non-moving party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

(4) If the non-moving party does not file an argument brief, the Court shall decide the motion based on the record. In doing so, the Court may in its discretion hear oral argument from the party that filed the motion for judgment on the pleadings, but not from the non-moving party.

#### **Rule 1035.2(a) Motion for Summary Judgment**

(1) A party filing a motion for summary judgment shall file the original motion with the Prothonotary, accompanied by a proof of service of copies of the motion upon counsel for all other parties and any unrepresented parties by first class mail. No praecipe for argument shall be filed at the time that the motion is filed.

(2) The non-moving party shall file a response to the motion for summary judgment no later than thirty (30) days after the date of service of the motion in accordance with Pa.R.C.P. 1035.3(a). If no response is filed within that thirty (30) day period, upon written notice to the Court by the moving party, pursuant to Pa.R.C.P. 1035.3(d), the Court may in its discretion grant the motion for summary judgment.

(3) At the end of the 30-day response period, any party may list the motion for summary judgment for oral argument by filing a praecipe for argument, accompanied by a proof of service, with the Prothonotary indicating that copies of the praecipe have been served upon counsel for all other parties and any unrepresented parties by first class mail.

(4) If the moving party files the praecipe for argument, an argument brief shall be filed therewith and the case shall be listed for the next argument court date that is at least twenty-four (24) days thereafter, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge, accompanied by a proof of service of copies of the praecipe and argument brief upon counsel for all other parties and any unrepresented parties by first class mail. Said argument court date must be in accordance with the Civil Argument Court calendar, which can be found at [www.co.berks.pa.us](http://www.co.berks.pa.us). The non-moving party shall thereafter file an argument brief on or before the Tuesday (or Monday, if Tuesday is a holiday) before the argument court date, accompanied by a proof of service of copies of the argument brief upon counsel for all other parties and any unrepresented parties by first class mail. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the non-moving party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

(5) If the non-moving party files the praecipe for argument with a proof of service, the case shall be listed for the next argument court date that is at least forty-four (44) days thereafter, or any later date that the party filing the praecipe certifies is agreeable to all parties and the assigned judge, and the moving party shall file a brief of argument with the Prothonotary on or before twenty-four (24) days prior to the argument court date, accompanied by a proof of service of copies of the argument brief upon counsel for all other parties and any unrepresented parties by first class mail. The non-moving party shall thereafter file an argument brief with the Prothonotary on or before the Tuesday (or Monday, if Tuesday is a holiday) before the argument court date, accompanied by a proof of service of copies of the argument brief upon counsel for all other parties and any unrepresented parties by first class mail. When the argument date is by agreement of the parties and the assigned judge, unless the assigned judge orders otherwise, the moving party shall file its argument brief no later than twenty-four (24) days prior to the

agreed upon argument date, and the non-moving party shall file its argument brief no later than seven (7) days prior to the agreed upon argument date.

**Rule 1037      Default Judgments**

The prothonotary shall not enter a judgment by default for money damages except for the specific dollar amount alleged to be due on the date of judgment, as demanded on the face of the complaint, or any amended complaint, duly filed and served in accordance with the Pennsylvania Rules of Civil Procedure, or which can be mathematically calculated as a sum certain from such complaint or amended complaint.

## **ARBITRATION**

### **Rule 1301      Cases Subject to Arbitration. Amount In Controversy. Agreement of Reference**

(a) All civil actions, actions in replevin and actions upon mechanics' liens where the amount in controversy shall be \$50,000 or less shall first be submitted to and heard by a panel of arbitrators pursuant to Pa. R.C.P. 1301 at seq. All cases that have not yet been certified for trial will be subject to this change in the arbitration limits.

(b) For purposes of determining the amount in controversy, every complaint or counterclaim in such civil action, in replevin or upon a mechanics' lien, shall set forth in the first paragraph thereof a statement that the total amount of damages claimed in such pleading, exclusive of interest and costs, is Fifty Thousand Dollars \$50,000 or less or is more than Fifty Thousand Dollars \$50,000 or in replevin that the value of the property claimed is Fifty Thousand Dollars \$50,000 or less or is more than Fifty Thousand Dollars \$50,000.

(c) The amount in controversy shall be determined from the complaint and/or counterclaim as required by Subsection (b) or by an agreement of reference filed by the attorneys. If an agreement of reference is filed, it shall define the issues involved for determination by the panel and, when agreeable, shall also contain stipulations with respect to facts submitted and agreed and defenses waived. In such cases, the agreement of reference shall take the place of pleadings and be filed with the Prothonotary before a certificate of readiness is filed. The amount in controversy when determined from the pleadings shall be the largest amount claimed *by any* one party.

(d) Actions in mandamus, actions in quo warranto, actions in quiet title, actions in ejectment, actions upon municipal claims, actions upon tax claims, actions of mortgage foreclosure, and actions upon ground rents shall not be submitted to arbitration.

### **Rule 1301.1      Striking of Case From Arbitration or Trial List**

The court may, on its own motion or upon the motion of any party, strike any case from the trial list which should have been arbitrated in the first instance or strike any case from the arbitration list which the court determines should be tried by a judge or jury or by a judge without a jury. If a case is stricken from the trial list by the court, counsel shall file a certificate of readiness for arbitration on the form approved by the court, together with the appropriate filing fee.

If a case is stricken from the arbitration list, counsel shall file a certificate of readiness for trial on the form approved by the court in accordance with B.R.C.P. 212.1.

### **Rule 1302      Administration**

(a) Proceedings under the arbitration rules of this Court shall be administered by Court Administration.

(b) Court Administration shall have the power to prescribe forms, subject to review by the court.

(c) Every attorney admitted to practice before the Supreme Court of Pennsylvania with a primary office located in Berks County shall file with Court Administration appropriate information on a form designated by Court Administration for this purpose, indicating whether or not said attorney is practicing alone, is a member of a firm, or is associated in some way with one or more other lawyers (either in

private practice or as an employee of some public office such as the district attorney's office, public defender's office, legal aid, etc.). Said attorney shall also notify Court Administration on said form whether said attorney is willing to serve as an arbitrator, the location of his/her primary office, whether he/she is admitted to practice law in the Commonwealth of Pennsylvania and any qualifications for chairperson as required in B.R.C.P. 1302.2. Any change in status in this regard shall immediately be reported to Court Administration.

(d) Court Administration shall maintain such records as are necessary for the proper administration of the arbitration system, and shall give the arbitrators such assistance as may be necessary to expedite the arbitration process.

(e) Court Administration shall within thirty (30) days of the filing of a certificate of readiness for arbitration designate the time and place for the arbitration hearing. The arbitration hearing shall be set not less than sixty (60) days after mailing the notice scheduling the arbitration hearing.

(f) Arbitrations are scheduled by Court Administration in half day and full day increments, a half day being three (3) hours or less and a full day being more than three (3) hours. Half day arbitrations are scheduled at 9:30 a.m. or 1:30 p.m.

#### **Rule 1302.1 Selection of Arbitrators and Substitutions**

(a) Each board of arbitrators shall be composed of one attorney from the "Qualified List of Chairpersons" and two attorneys from the "Qualified List of Arbitrators." Not more than one member or associate of any firm or association of attorneys shall be appointed to the same arbitration panel.

(b) The minimum qualifications for service as an arbitrator are as follows:

(1) Membership in the Bar of the Supreme Court of Pennsylvania;

(2) The active practice of law for a minimum of one year following admission to the Bar of the Supreme Court of Pennsylvania;

(3) The maintenance of a principal office for the practice of law in Berks County;

(4) Participation in at least one (1) trial or evidentiary hearing; and

(5) The completion of a training program sponsored by the Mandatory Continuing Legal Education Committee of the Berks County Bar Association, which is approved for Continuing Legal Education (CLE) credit.

(c) If a qualified arbitrator is unable to serve at the hearing at which he or she has been appointed to serve, that arbitrator shall notify Court Administration and counsel of record at least three working days prior to the scheduled date of the hearing. If that arbitrator notifies Court Administration of his or her inability to serve less than three working days prior to the scheduled hearing date, that arbitrator shall make all arrangements to ensure that a substitute arbitrator who appears on the "Qualified List of Arbitrators" is present for the hearing and shall notify Court Administration and counsel of record accordingly. If any arbitrator simply fails to appear at the scheduled hearing, he or she shall not receive any further appointments until his or her name reappears for appointment in due course. If an arbitrator fails to appear a second time, his or her name shall be removed from the "Qualified List of Arbitrators" and he or she shall not thereafter be appointed as an arbitrator in any case unless he or she is reinstated upon application to the President Judge of the Court.

### **Rule 1302.2 Chairperson of Arbitration Boards**

(a) The board of arbitrators shall be chaired by an arbitrator who appears on the "Qualified List of Chairpersons."

(b) The minimum qualifications for service as a Chairperson are as follows:

- (1) Membership in the Bar of the Supreme Court of Pennsylvania;
- (2) The active practice of law for a minimum of seven years following admission to the Bar of the Supreme Court of Pennsylvania;
- (3) The maintenance of a principal office for the practice of law within Berks County;
- (4) Participation in at least five (5) trials or evidentiary hearings;
- (5) Being the principal attorney in at least ten (10) litigation cases which have been filed in a court of record;
- (6) The completion of a training program sponsored by the Mandatory Continuing Legal Education Committee of the Berks County Bar Association, which is approved for Continuing Legal Education (CLE) credit; and
- (7) Concentration of practice in the area of law which is involved in the case before the panel.

### **Rule 1303 Certification for Arbitration**

Arbitration cases shall be certified for arbitration in accordance with the procedure set forth in the rule pertaining to certification for civil trial. (See B.R.C.P. 212.1.) The party requesting that the case be listed for arbitration shall file a certificate of readiness for arbitration on a form approved by Court Administration. To the extent possible, an accurate estimate of the number of hours, or portion thereof, required to present the claim or defense shall be noted by each party to assist Court Administration in scheduling.

#### **Rule 1303.1 Notification of Hearing Date and Appointment of Arbitrators**

The Prothonotary's Office, under the direction of Court Administration, shall mail a copy of the completed certificate of readiness for arbitration scheduling the hearing date, time and place to each arbitrator appointed, each attorney of record and, in the event a party is not represented of record by an attorney, to such party at his or her last known address by first-class mail and file of record proof of service in each case.

#### **Rule 1303.2 Continuances**

(a) No later than seven (7) days prior to the hearing date, the case may be continued one (1) time by agreement of all counsel and unrepresented parties. The counsel or party requesting the continuance shall give written notice of such continuance to the arbitrators, Court Administration and the Prothonotary's Office. Court Administration shall reschedule the case to be heard within sixty (60) days, with notice of hearing to be provided by the Prothonotary's Office to all arbitrators, counsel and unrepresented parties in accordance with B.R.C. P. 1301.1.

(b) In the event that the parties cannot agree to a continuance more than seven (7) days prior to hearing under subparagraph (a) above, an application for a continuance of the case must be made to and ruled upon by the assigned judge. Counsel making such application shall comply with B.R.C.P. 207.1.

(c) If the case is continued upon application, Court Administration shall reschedule the hearing in accordance with Subsection 1303.2(a) above.

#### **Rule 1304 Pre-Arbitration Memorandum**

(a) At least seven (7) days before the date of the arbitration hearing, all parties shall file with the Prothonotary a memorandum in the form hereinafter provided and shall immediately serve a copy on each party and each arbitrator. This memorandum shall set forth the following:

- (1) A brief statement of the important facts of the claim or defense;
- (2) A statement of the legal basis for the claim or defense;
- (3) A list of all special damages claimed, such as lost earnings, loss of future earning capacity, medical expenses (itemized), property damage;
- (4) A list of the names and addresses of all the witnesses whom that party intends to call at arbitration;
- (5) A list of all exhibits to be offered by that party at arbitration. All exhibits shall be numbered prior to the arbitration;
- (6) An estimate of the number of hours, or portion thereof, necessary to present your claim or defense;
- (7) Special comments regarding legal issues; and
- (8) Any stipulations between the parties for purposes of the arbitration.

(b) Except in extraordinary circumstances, as determined by the arbitrators, a party will not be allowed to call a witness at the arbitration hearing who is not listed in a timely filed pre-arbitration memorandum.

(c) Except in extraordinary circumstances, as determined by the arbitrators, a party will not be allowed to offer an exhibit at the arbitration hearing that is not listed in a timely-filed pre-arbitration memorandum.

(d) In the event that a party does not file a pre-arbitration memorandum as required by paragraph (a), the other party may file a written motion with the assigned judge to strike the case from the arbitration list.

#### **Rule 1304.1 Amendment to Pleadings**

No amendments to the pleadings shall be allowed by the arbitrators except by stipulation of the parties.



## **Rule 1305      Conduct of Hearing**

On the date fixed for the hearing, the chairperson and the members of the panel shall report to the designated location for the hearing and shall organize for the hearing at least fifteen (15) minutes before the scheduled time. The panel shall conduct the hearing in accordance with Pa. R.C.P. 1302, 1304 and 1305 and in accordance with courtroom decorum. The chairperson of the panel shall preside and see to the proper conduct of the hearing, announce all rulings of a majority of the panel pertaining to the law and/or the admissibility of evidence and be responsible for the proper filing with the Prothonotary of the completed oath and award.

Comment: It is the intention of these rules that the arbitration proceed in an expeditious fashion and that all parties will take full advantage of submitting documentation and tangible evidence pursuant to Pa. R.C.P. 1305 without the need for expert testimony unless extraordinary circumstances warrant.

### **Rule 1305.1      Continuation of Hearing**

If a hearing is held and cannot be concluded at the initially scheduled time as indicated on the certificate of readiness, a continued hearing shall be scheduled at an available and agreed upon site by the chairperson upon stipulation by the parties with written notice on the award form to Court Administration and the Prothonotary. If a stipulation cannot be reached as to the date, time and place of the next hearing, the chairperson shall notify Court Administration thereof and the hearing shall be rescheduled as provided in B.R.C.P. 1303.2(a).

## **Rule 1306      Award, Damages for Delay**

An award shall be made promptly upon termination of the hearing pursuant to Pa. R.C.P. 1306. If delay damages are an issue, the parties shall submit to the arbitrators in a sealed envelope a stipulation containing the following:

- (a) Whether an offer was made in writing;
- (b) The amount of the offer; and
- (c) The date of the offer.

It shall be the plaintiff's obligation to provide said stipulation to the arbitrators. If the parties are unable to stipulate to the above facts, a separate evidentiary hearing will be scheduled pursuant to B.R.C.P. 1305. 1.

## **Rule 1308      Appeal - Listing Case for Trial**

(a) Any party may appeal from an award of arbitrators within such time after the entry of the award and upon compliance with the requirements of Pa. R.C.P. 1308 through 1311. The cost for appealing the arbitration award shall be the amount of compensation paid to the arbitrators, or 50% of the amount in controversy, whichever is less, unless otherwise provided by the Pennsylvania Rules of Civil Procedure.

(b) Any appeal duly taken from the award of arbitrators shall be filed with the Prothonotary, in duplicate. One copy of the appeal shall be forwarded by the Prothonotary to Court Administration, which shall notify the judge assigned to the case for scheduling a pretrial conference.

**Rule 1315 Compensation**

Each arbitrator shall receive a fee of \$200.00 as compensation for each half day of hearing required and each Chairperson shall receive a fee of \$250.00 as compensation for each half day of hearing required. (A half-day shall be no more than three hours.) In cases where an award is to be entered by the arbitrators pursuant to an agreed settlement before the hearing, each member of the arbitration panel shall receive as compensation Seventy-Five Dollars (\$75.00). When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation is concerned. The chairperson of the panel of arbitrators shall certify to Court Administration the amount of time spent hearing the matter.

**Rule 1316 Witness Fees and Costs**

Witness fees and costs shall conform to fees and costs pertaining to civil actions in the Court of Common Pleas of Berks County.

**Rule 1317 Arbitration Administrator**

The arbitration administrator shall be the prothonotary of Berks County, or his/her designee, or the Berks County court administrator as the president judge shall from time to time designate.

**Rule 1318 Settlements**

In the event that a case is settled or postponed prior to the date of the scheduled hearing, counsel of record shall notify each member of the board of arbitrators in writing as well as Court Administration. Failure to comply with this rule may lead to the imposition of costs of the arbitration proceeding, including but not limited to all arbitrators' compensation and any other costs the Court deems appropriate, upon either one party or all parties, depending upon the facts and circumstances of each particular case.

## **EQUITABLE RELIEF**

### **Rule 1534      Accounts**

(a) Fiduciaries filing accounts with the prothonotary shall comply with Pa.R.C.P. 1534 if applicable, and insofar as practicable, shall follow the procedure provided by the Orphans' Court Rules of the Supreme Court of Pennsylvania and the Orphans' Court Division of the Court of Common Pleas of Berks County, except as hereinafter provided in subsections (b) and (c). All duties imposed by said rules on the register of wills or clerk of the orphans' court, as applicable for the particular account, shall be performed by the prothonotary.

(b) If at the expiration of thirty (30) days after the filing of said account, provided that notice shall have been given as required and proof thereof filed, no exceptions are filed to the account or to the proposed distribution, the account shall be confirmed absolutely as of course and the accountant shall make the distribution proposed and file in the prothonotary's office a release or satisfaction of award from the distributees.

(c) If exceptions are filed to the account or to the proposed distribution, the exceptions shall be forwarded to the judge assigned to the case who shall list the account for audit on a date following the expiration of thirty (30) days from the date of filing the account, and the court shall make such adjudication and order such distribution as shall be proper under the circumstances.

### **Rule 1535      Objection to Sufficiency of Security**

In all cases where a party has given security to entitle that party to appeal in any case in which bond is taken by the prothonotary, if the opposing party shall deem the security insufficient, the opposing party may, at any time within five (5) days after such appeal is filed, present his petition to the court objecting to the sufficiency of such security and shall give notice thereof in writing within five (5) days from the filing thereof to the party entering the bond or that party's attorney. The court shall hold a hearing on the petition and the party entering such bond shall either justify the bond or add new surety and justify the same and the court may after hearing, upon failure of the party entering such bond to justify the bond or add new security, strike said bond.

## SUPPORT

### **Rule 1910.10            Office Conference and Hearing Procedure**

Support proceedings shall be conducted in accordance with Pa.R.C.P. 1910.12.

### **Rule 1910.12            Office Conference. Hearing. Record. Exceptions. Transcripts. Failure to Appear.**

(a) Conference. If a party fails to appear at the conference before the conference officer or at the hearing before the hearing officer after notice and without good cause shown, the conference or hearing may proceed without that party. If the plaintiff or petitioner fails to appear at the conference before the conference officer or at the hearing before the hearing officer after notice and without good cause shown, the court may dismiss the action or petition and may place the costs on the party who failed to appear.

(b) Hearing. If no agreement is reached at the time of the support conference, the case shall be scheduled for a hearing before a hearing officer without further request by a party. If a party who failed to appear at the conference and objects to the interim order recommended at the conference, the objecting party shall file a written demand for a hearing before a hearing officer within twenty (20) days from the date of mailing of the interim order, as set forth in Pa.R.C.P. 1910.12(b)(2). The filing deadline appears on the DRS notice which is sent with the interim order. If no hearing is requested by the filing deadline, the interim order shall become final.

(c) Exceptions. Parties choosing to file exceptions to the report and recommendation of the hearing officer shall comply with the written exceptions procedure (regarding filing, transcription of the record, and associated costs) and filing deadline, which is sent to each party and counsel of record with the report and recommendation. Upon filing of exceptions, the court shall issue an order scheduling the matter for argument, directing the party filing exceptions to obtain a hearing transcript, and setting a briefing schedule.

(d) Transcript of Record Hearing. The party filing exceptions is responsible for immediately requesting transcription of the record of the proceeding by filing a motion for transcription on the form which accompanies the written exceptions procedure. Failure to request or make payment for the transcript may result in the dismissal of the exceptions.

*Comment:* For requirement of physical presence of a non-resident party or intrastate petitioner in a UIFSA (interstate) or IFSA (intrastate) case, see 23 Pa.C.S.A. § 7316(a) and 23 Pa.C.S.A. §8311(a).

### **Rule 1910.19(1)            Termination of Alimony *Pendente Lite* and Spousal Support Orders Upon Entry of Divorce Decree**

In any DRS case in which there is a current charging order of alimony *pendente lite* (APL) or spousal support, or an allocated order which includes APL or spousal support, the party filing to finalize the related divorce action shall promptly provide the DRS Docketing Division with a copy of the signed final divorce decree. The party filing to finalize the divorce action shall include a proposed form of order to terminate APL or spousal support in substantially the form set forth below.

If APL or spousal support is included in an unallocated order of support, the party filing to finalize the divorce action shall also file a Petition to Modify the unallocated order of support to terminate the APL or spousal support obligation and recalculate the remaining child support obligation with the DRS Docketing Division along with the copy of the signed final divorce decree unless an agreed order is filed.

|           |                                 |
|-----------|---------------------------------|
|           | : IN THE COURT OF COMMON PLEAS  |
| Plaintiff | : OF BERKS COUNTY, PENNSYLVANIA |
|           | :                               |
| Vs.       | :                               |
|           | : DIVORCE DOCKET NO:            |
|           | : SUPPORT DOCKET NO:            |
| Defendant | : PACSES CASE ID:               |
|           | : ASSIGNED JUDGE                |

ORDER TO TERMINATE APL/SPOUSAL SUPPORT

AND NOW, this            day of           , 20   , it is hereby ORDERED that the alimony *pendente lite* or spousal support order is TERMINATED effective as of the entry of the decree of divorce in the parties' related divorce action. The party filing to finalize the divorce shall provide the Domestic Relations Section Docketing Division with a copy of the divorce decree in the related divorce action upon receipt of the signed decree. Arrears, if any, shall stand and remain payable at a rate of (\$            per month) or (at 25% of the amount of the monthly APL or spousal order to be terminated).

This order is entered without prejudice such that if an appeal is filed, the APL or spousal support order may be reinstated. This order shall become final thirty (30) days from the entry of the divorce decree if no appeal has been filed or, if an appeal has been filed, when all appeals have been exhausted.

By the Court:

\_\_\_\_\_ J.

Distribution:

Prothonotary  
Domestic Relations Section  
Plaintiff/Plaintiff's Attorney  
Defendant/Defendant's Attorney

**Rule 1910.19(2)            Alimony-Only Orders Collected Through the Domestic Relations Section**

Parties seeking to have an alimony-only order paid through the Domestic Relations Section shall file a DRS alimony order, copy of signed divorce decree in the parties' related divorce action, and post-nuptial or property settlement agreement containing terms of the alimony in the Domestic Relations Section Docketing Division. The form of order for alimony payments through the DRS may be obtained in the DRS Docketing Division or on the Berks County DRS website at <http://www.co.berks.pa.us/dr/>. The order for alimony payments through the DRS shall be in substantially the same form as is available through the DRS. The DRS order for alimony shall include a provision for payment of any arrears which may accrue. The arrears payment will not be collected unless arrears have accrued on the order. Alimony-only orders are subject to limited enforcement measures (wage attachment) by the DRS. Parties seeking modification, termination, enforcement or other relief related to an alimony-only order shall file the appropriate motion before the assigned judge or court.

### **Rule 1910.32 Subpoena**

The parties to a hearing before the hearing officer shall have the right to subpoena necessary witnesses and records as provided by the law for presentation at the hearing before the hearing officer. Application to enforce any such subpoenas shall be made to the court.

### **Rule 1910.33 Testimony Transcriptions**

Whenever, in any support proceeding, notes of the testimony or other transcript are requested by a party or parties to be transcribed, and it is so ordered by the court, payment shall be in accordance with the Pennsylvania Rules of Judicial Administration. Failure to make payment may result in dismissal of the pending matter.

### **Rule 1910.34 Continuances**

Applications for continuance of a support proceeding (conference before a DRS establishment or compliance officer, hearing before a support hearing officer, hearing before a judge) shall be made by the attorney of record or a self-represented party on the Domestic Relations Section Application for Continuance form. The form may be obtained in the DRS Docketing Division or on the Berks County DRS website at <http://www.co.berks.pa.us/dr/> under Forms/Filing Requirements. Applications for a continuance shall be submitted at least 25 days prior to a scheduled proceeding or at the earliest possible opportunity. The applicant shall follow the instructions on the continuance form.

- (a) An application for continuance for a matter scheduled before an establishment or compliance conference officer shall be submitted to the DRS Docketing Division, to be forwarded to the appropriate unit manager for review and decision. Any party objecting to the decision may seek relief before the emergency family court judge.
- (b) An application for continuance for a hearing before a hearing officer shall be submitted to the DRS Docketing Division, to be forwarded to the assigned hearing officer for review and decision. Any party objecting to the decision may seek relief before the emergency family court judge.

An application for continuance for a hearing scheduled before a judge shall be submitted to the DRS Docketing Division, to be forwarded to the assigned judge for review and decision.

## CHILD CUSTODY

### **Rule 1915.1**            **Scope**

These rules shall apply to actions for custody, partial custody and visitation of minor children governed by Pa.R.C.P. 1915, et seq.

### **Rule 1915.3**            **Commencement of Action; Filing**

(a) An action shall be commenced by filing a verified complaint and three (3) copies of same substantially in the form provided by Pa.R.C.P. 1915.15(a).

(b) A Custody Scheduling Order substantially in the form provided on the Berks County Family Court website [www.co.berks.pa.us](http://www.co.berks.pa.us) shall be filed as a separate document along with the complaint in (a), unless a stipulated custody agreement signed by all parties is being submitted simultaneously with the complaint.

(c)(1) In the event a claim for custody is joined with an action for divorce, a form entitled “Notice to the Prothonotary”, substantially in the form provided by B.R.C.P. No. 1915.15(a) shall be included.

(c)(2) If a claim for custody is asserted in a divorce complaint, it shall receive a separate term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. No. 1915.15. If a custody count is filed as part of a divorce complaint or counterclaim to a divorce complaint, the filer must attach a stipulated custody agreement or custody scheduling order simultaneously with the filing. If the filer does not want the custody matter to proceed forward at the time the divorce complaint or counterclaim is being filed, the custody count may not be included with the divorce complaint or counterclaim. If a stipulated custody agreement or scheduling order is not attached when a custody count is filed as part of a divorce complaint or counterclaim, the custody count may be dismissed.

(d) An Order shall be attached to the complaint directing both parties to attend the “Children In the Middle” program, or other suitable alternative program, and pay the costs thereof. The Order shall be substantially in the form provided by B.R.C.P. 1915.15(b).

(e) All custody actions shall contain a notation in the caption to identify it as a CHILD CUSTODY filing.

### **Rule 1915.5**            **Question of Jurisdiction and Venue**

All references to a hearing in the proposed Order required by B.R.C.P. 1915.3(b) shall be construed as referring to a conference before the Custody Conciliator. If a question of jurisdiction or venue is raised by timely preliminary objections, the conference shall be continued until decision by the Court.

### **Rule 1915.7**            **Consent Order**

If an agreement for custody is reached prior to commencement of an action and the parties desire a consent Order to be entered, they shall submit to the Court a proposed Order bearing the written consent of the parties or counsel and shall file of record and serve a custody complaint, but shall not be required to file the proposed order otherwise required by B.R.C.P. 1915.3(b).

**Rule 1915.8 Physical and Mental Examination of Persons**

(a) Court Administration shall maintain a list of experts acceptable to the Court for conducting evaluations. The list shall be on the Berks County Family Court website [www.co.berks.pa.us](http://www.co.berks.pa.us) and shall be updated from time to time as the Court directs.

(b) In the event it is determined that an evaluation shall be conducted, either party or the Custody Conciliator shall prepare a proposed Order directing the evaluation to be conducted and setting forth how the costs of the evaluation shall be paid. The form shall be substantially in the form prescribed by B.R.C.P. 1915.18.

(c) The contents of an expert report prepared pursuant to Pa.R.C.P. 1915.8 shall be disclosed to the parties, the Court, attorneys in the case and other experts involved in the case. Disclosure to an unauthorized person, including the child who is the subject of the action, may result in sanctions.

**Rule 1915.11 Appointment of Guardian Ad Litem**

(a) Court Administration shall have on file a list of attorneys deemed suitable by the Court for appointment as a guardian ad litem when it is necessary for a child involved in a custody proceeding to be independently represented by counsel.

(b) The guardian ad litem shall have the authority to interview all parties to the custody action, to interview the child, and to gain access to all documentary evidence needed for the representation of the child and such other authority as granted by the Court.

(c) The Court shall direct the manner and amount of payment of attorney's fees and costs in cases where a guardian ad litem has been appointed, including whether the fees and costs shall be paid by the parties or the County.

**Rule 1915.15 Forms**

(a) In a divorce complaint containing a count for custody the Notice to the Prothonotary shall be substantially in the following form:

**NOTICE TO PROTHONOTARY**

A claim for custody is asserted in this pleading. [There have been no prior proceedings between the parties, or there has been a prior proceeding between the parties which is as follows:

(Include the caption and term number and the nature of such prior proceedings)]

(b) The Custody Scheduling Order shall be substantially in the form provided on the Court's website [www.co.berks.pa.us](http://www.co.berks.pa.us).

**Rule 1915.17 Relocation**

(f)(4) In addition to the documents required by Pa.R.C.P. 1915.17(f), the party proposing relocation shall also file a scheduling order for the court to designate a date and time for an expedited hearing

(g)(3) In addition to the documents required by Pa.R.C.P. 1915.17(g), the non-relocating party shall also file a scheduling order for the court to designate a date and time for an expedited hearing.

(h)(3) In addition to the documents required by Pa.R.C.P. 1915.17(h), the non-relocating party shall also file a scheduling order for the court to designate a date and time for an expedited hearing



**Rule 1915.26****Conciliation Conference**

(a) The court shall refer all actions for custody of minor children to a Custody Conciliator for purposes of a conciliation conference. Applicable Pennsylvania and local Mediation Rules shall be followed.

(b) The Custody Conciliator shall be an attorney of law authorized to practice before the Supreme Court of Pennsylvania and shall be appointed to such position by the Board of Judges of the Court of Common Pleas of Berks County. The Custody Conciliator shall not practice family law before a Judge, conference officer, or hearing officer employed in the same Judicial District.

(c) The Custody Conciliator shall attempt to mediate the differences between the parties, encourage amicable resolution of those differences and may recommend mediation, counseling services or physical and mental examinations of persons under Pa.R.C.P. 1915.8. The Custody Conciliator shall attempt to negotiate a settlement by stipulation in writing, signed by the parties and counsel, for approval and entry as an Order of the Court.

(d) The Custody Conciliator may conduct an informal hearing, take testimony of the parties under oath, and hear the position of the parties relative to custody. The Custody Conciliator shall have the right to conduct oral examination of the child who is the subject matter of the proceeding. No other witnesses shall be permitted, except in extreme cases, and at the discretion of the Custody Conciliator. The testimony shall not be recorded or transcribed. The Custody Conciliator shall not be bound by technical rules of evidence and all evidence of reasonably probative value may be received. The Custody Conciliator shall consider the Court-Ordered written evaluations of experts. The hearing shall not be considered a hearing of the type permitted by Pa.R.C.P. 1915.4-1 but shall be considered an extension of the conciliation process.

(e) The hearing shall be concluded on the date fixed for the hearing, except that the Custody Conciliator may continue the hearing to a date certain for good cause shown, or to obtain investigative or evaluative reports from a social service agency or private providers.

(f) Any investigative or evaluative reports ordered and obtained shall be considered by the Custody Conciliator.

(g) If a written settlement is not reached, by stipulation, the Custody Conciliator shall file a recommended order. At the discretion of the Custody Conciliator the Conciliator may also file findings of fact, conclusions of law and a written report.

(h) Notice of the Custody Conciliator's findings of fact, conclusions of law and/or recommended order shall be served on counsel of record, parties without counsel of record, and on any other persons without counsel of record who were given notice of the hearing before the Custody Conciliator. The notice shall state that each party has twenty (20) days from the date of notice to file written exceptions with the Prothonotary to the findings of fact, conclusions of law or recommended order, and that upon failure to file such exceptions within twenty (20) days, the recommended order of the Custody Conciliator will be submitted to the Court for entry as an Order of Court.

**Rule 1915.27****Nonappearance at Hearing Before Custody Conciliator**

(a) If a plaintiff/petitioner fails to appear, without proper cause shown, at the hearing before the Custody Conciliator, and the Custody Conciliator is satisfied that proper notice of the order fixing the hearing has been given to plaintiff/petitioner, the Custody Conciliator shall recommend to the Court that an order be entered dismissing the complaint or petition to modify with respect to that party.

(b) If a defendant/respondent or party joined in the case fails to appear, without proper cause shown, at the hearing before the Custody Conciliator, and the Custody Conciliator is satisfied that proper service of the order has been given to the defendant/respondent or non-appearing party, it shall be presumed that said party has agreed to a conciliation conference in that party's absence, and the Custody Conciliator shall proceed and recommend an order to be entered by the Court.

(c) If all parties fail to appear at a conciliation conference before the Custody Conciliator, and the Custody Conciliator is satisfied that proper service has been given to all parties, the Custody Conciliator shall recommend to the Court that an Order be entered dismissing the complaint or petition to modify.

**Rule 1915.28                      Exceptions. Hearing By Judge**

(a) If there are exceptions to the recommended order, a pre-trial conference followed by a hearing de novo shall be held before the Judge assigned to the case.

(b) Any exceptions shall be filed in accordance with B.R.C.P. 207.1(a), including therewith a copy for the Custody Conciliator.

(c) The proposed Order to be submitted by the party filing the exceptions shall be in the following form:

O R D E R

AND NOW, \_\_\_\_\_, exceptions having been filed to the Order recommended by the Berks County Custody Conciliator, a pre-trial conference is hereby scheduled for \_\_\_\_\_ at \_\_\_\_\_ in \_\_\_\_\_ of the Berks County Courthouse/Services Center. A pre-trial conference memorandum shall be filed in accordance with B.R.C.P. 212.2 (a). The memorandum shall contain the following: (1) Summary Statement of Facts; (2) Witnesses Expected to be Called; (3) Expert Witnesses Expected to be Called; (4) Exhibits Expected to be Offered Into Evidence; (5) Legal Issues Anticipated; and (6) Special Problems.

BY THE COURT:

\_\_\_\_\_  
J.

**Rule 1915.29                      Scheduling of Pre-trial Conference**

A pre-trial conference will be scheduled by the Judge assigned to the case whenever a trial de novo is demanded. A Court Order will be sent to the parties advising them of the date and time for the pre-trial conference, as well as the issues to be addressed. The purpose of the pre-trial conference is to identify issues which will be the focus of the trial, to determine the time required for trial, address other pre-trial matters such as discovery requests and exchanges of expert reports, set the date for a trial and discuss other relevant matters, including settlement of the action.

A trial before the Court shall comport with the requirements for conducting nonjury trials, and the parties shall adhere to established trial procedure and the rules of evidence.

**Rule 1915.30                    Pre-trial Conference**

The attorneys of record, or party if there is no attorney of record, shall be prepared to discuss the following:

- (a) Whether any agreement can be reached regarding custody, partial custody and visitation of the child or children;
- (b) The relative positions of the parties concerning custody, partial custody and visitation of the minor child or children;
- (c) The witnesses each party intends to call to testify at the time of trial and their anticipated testimony;
- (d) The expert witnesses each party intends to call to testify at the time of trial and their anticipated testimony and any reports prepared by said witnesses;
- (e) A list of exhibits that each party intends to introduce at the time of trial;
- (f) An estimation of the length of time the trial is expected to take;
- (g) Any special legal issues which any party believes are relevant to the determination of custody, partial custody or visitation; and
- (h) Whether an expedited trial is required due to the special circumstances of the case.

**Rule 1915.31                    Notice of Disposition by Court**

The Prothonotary shall give notice to all counsel of record and to parties without counsel of record of all final Court Orders entered.

**Rule 1915.32                    Appendix**

Any Order for custody, partial custody or visitation entered by the Court, either by stipulation or after hearing held, shall have affixed to it one or more appendixes that shall be made a part of the Court Order. The appendixes shall be substantially in the form provided on the Court's website [www.co.berks.pa.us](http://www.co.berks.pa.us) .

**Rule 1915.33                    Continuance Requests**

Continuance requests for custody conferences before the Custody Conciliator shall be faxed, mailed, e-mailed or personally delivered to the Custody Office in the form of a letter. The request shall include the docket number, the names of the parties, the date of the conference, the reason for the requested continuance, and an indication of whether or not the opposing party is in agreement with the request. The Custody Office shall notify the requesting party whether or not the request has been granted.

## **DIVORCE**

### **Rule 1920.3                   Caption**

All divorce actions shall contain a notation in the caption to identify it as a DIVORCE filing.

### **Rule 1920.21                   Bill of Particulars**

No rule requiring a bill of particulars shall issue after the appointment of a Master except by agreement of counsel or by leave of court for cause shown.

### **Rule 1920.22                   Interim Counsel Fees and Discovery**

A party seeking interim counsel fees, or discovery under Pa.R.C.P. 1920.22(a), shall file a petition with the court, together with a proposed order for a rule to show cause, which shall be disposed of in accordance with B.R.C.P. 206-208.

### **Rule 1920.31(a)(1)           Filing Claims for Alimony *Pendente Lite*, Child Custody, Child Support or Paternity**

(A) A Confidential Family Court Cover Sheet shall be attached to any pleading under the Divorce Code, wherein a party asserts a claim for alimony *pendente lite*, child custody, child support or paternity. The filing party shall certify the existence or non-existence of any former proceeding between the parties including the caption and term number thereof, and the nature of such prior proceeding on the Confidential Family Court Cover Sheet.

(B) If a claim for alimony *pendente lite*, child support or paternity, or pleadings responding to such claim, are filed in a divorce action, the party filing such pleading shall file such additional copies with the Domestic Relations Section as shall be required by the Berks County Rules pertaining to Support.

(C) If a claim for custody is asserted in a divorce complaint, it shall receive a separate term and number as the divorce action. Such pleading shall contain the information required by Pa.R.C.P. No. 1915.15. If a custody count is filed as part of a divorce complaint or counterclaim to a divorce complaint, the filer must attach a stipulated custody agreement or custody scheduling order simultaneously with the filing. If the filer does not want the custody matter to proceed forward at the time the divorce complaint or counterclaim is being filed, the custody count may not be included with the divorce complaint or counterclaim. If a stipulated custody agreement or scheduling order is not attached when a custody count is filed as part of a divorce complaint or counterclaim, the custody count may be dismissed.

(D) Where pleadings under the Divorce Code asserting a claim for custody or pleadings responding to such claims, are filed, the party filing the same shall file such additional copies as shall be required by the Berks County Prothonotary Office.

**Rule 1920.31(a)(2)****Sanctions**

(A) The court may after reasonable notice enter an appropriate order if a party fails to file a timely income and expense statement and related papers required under Pa.R.C.P. 1920.31 or a sufficient inventory and appraisal required under Pa.R.C.P. 1920.33 including:

(i) An order refusing to allow the noncomplying party to support or oppose designated claims or defenses, or prohibiting such party from introducing into evidence designated documents, testimony, or other evidence, or from introducing evidence contrary to the claim of the party obtaining the order.

(ii) An order striking out pleadings, claims or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the noncomplying party.

(iii) An order imposing punishment for contempt.

(iv) After reasonable notice to the noncomplying party, and application by the complying party, an order directing the filing of the inventory and appraisal by a date certain.

(v) Such other order as it deems just under the circumstances.

(B) If, following the refusal, objection or failure of a party to comply with any provision of this rule, the court, after opportunity for hearing, enters an order compelling compliance and the order is not obeyed, the court, in a subsequent motion for sanctions, may, if the motion is granted, require the noncomplying party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses, including attorneys' fees, incurred in obtaining the order of compliance and the order for sanctions, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(i) If the motion for sanctions is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(ii) If the motion for sanctions is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons.

(C) If the filing of a motion or making of an application is for the purpose of delay or in bad faith, the court may impose on the party making the motion or application, the reasonable costs, including attorneys' fees, actually incurred by the opposing party by reason of such delay or bad faith. The court may further order that a party upon whom such costs have been imposed may neither (1) take any further steps in the suit without prior leave of court so long as such costs remain unpaid, nor (2) recover such costs if ultimately successful in the action.

(D) The filing of interrogatories or answers thereof or any other discovery allowed by the court shall not relieve a party from the filing of the documents required by Pa.R.C.P. 1920.31 and 1920.33.

**Rule 1920.31(b)****Disposition of Alimony *Pendente Lite*, Child Support and Paternity Claims**

(1) All pleadings under the Divorce Code asserting or responding to a claim for alimony *pendente lite*, child support or paternity shall comply with and be governed by the rules pertaining to Support. The claimant shall furnish any additional forms required by the Domestic Relations Section.

(2) Upon filing with the Domestic Relations Section as provided in subsection (1), the alimony *pendente lite* and/or child support claim shall proceed in accordance with the rules pertaining to Support including B.R.C.P. 1910.19(1).

**Rule 1920.32                    Disposition of Child Custody, Partial Custody or Visitation Claim**

(a) All pleadings under the Divorce Code asserting or responding to a claim for child custody shall comply with and be governed by the rules pertaining to child custody, including, but not limited to, the filing of an Order pursuant to Pa.R.C.P. 1915.3(b) at the time of the divorce filing so that the custody matter can be promptly scheduled.

(b) Upon filing of a pleading under the Divorce Code containing a claim for child custody the prothonotary shall deliver a copy of said pleading to the Custody Office.

(c) The child custody claim shall proceed in accordance with the rules pertaining to child custody.

**Rule 1920.33(c)                Sanction for Failure to File Inventory and Appraisal**

See B.R.C.P. 1920.31(a)(2).

**Rule 1920.42                    Filing of Praecepto to Transmit Record**

(a) When the divorce decree is requested under Section 3301(c) of the Divorce Code, at least twenty (20) days prior to filing a praecipe to transmit the record under Pa.R.C.P. 1920.42, the moving party shall serve all counsel of record and any unrepresented party with a copy of said praecipe and the proposed decree, and written notice of the intention to file the praecipe and proposal decree, substantially in the form set forth in Pa.R.C.P. 1920.73 unless such notice is not required in accordance with Pa.R.C.P. 1920.42(e). Written objections, if any, shall be filed and served on all counsel of record and on any unrepresented party on or before the filing date.

(b) When the divorce decree is requested under Section 3301(d) of the Divorce Code, Pa.R.C.P. 1920.42(d) and 1920.72(d) shall be followed.

(c) An administrative fee in an amount set by the President Judge through an Administrative Order, in addition to any fees imposed by the Commonwealth, shall be paid upon the filing of the praecipe to transmit the record.

(d) The party filing the praecipe to transmit the record shall also file a proposed divorce decree and a certificate of addresses.

(e) Upon submission of a praecipe to transmit the record, the file will be reviewed for procedural compliance. If procedural compliance had been achieved, a Divorce Decree will be entered in the normal course. If procedural defects are found to exist, counsel and unrepresented parties will receive a form indicating the defects found and sixty (60) days to correct the defects. If the defects are not corrected within sixty (60) days, the file will be returned to the Prothonotary's Office and a new praecipe to transmit the record together with the administrative fee will be required to be filed.

**Rule 1920.45                    Request for Counseling**

(a) A request for counseling under the Divorce Code shall be made to the court by written motion, and the court shall thereafter enter an order requiring a maximum of three (3) counseling sessions within the appropriate time period provided in the Divorce Code.

(b) Where the court requires counseling as provided in the Divorce Code, a report shall be made to the court by the qualified professional stating whether the parties attended.

**Rule 1920.46                      Affidavit of Non-Military Service.  
   Appointment of Counsel for Defendant in Military Service**

(a) The affidavit regarding military service where required to be filed under Pa.R.C.P. No. 1920.46 shall set forth the facts establishing that the defendant is not in the military service of the United States. If unable to file such affidavit, plaintiff shall file certifications from the five branches of the armed services that defendant is not a member.

(b) When counsel is appointed by the court for a defendant in the military service, said attorney shall file a brief report of the services performed and shall receive a fee for such services as determined by the court.

**Rule 1920.51                      Divorce Masters to be Appointed**

A Divorce Master shall be appointed by the court to hear testimony and make a report and recommendation as to divorce and annulment actions under the Divorce Code (except claims for divorce under Section 3301(c) or Section 3301(d)(1)(i) of the Divorce Code), and as to related claims except claims for child custody, child support or paternity.

**Rule 1920.51.1                      Divorce Masters**

The court will maintain a list of Divorce Masters. The Divorce Masters shall be members of the bar of this court, appointed to such position by the court.

**Rule 1920.51.2                      Appointment and Duties of Divorce Masters**

The court shall appoint a Divorce Master to hear contested divorce and annulment actions and ancillary claims. The Divorce Master shall hear testimony on all outstanding issues and shall file a report and recommendation in compliance with Pa.R.C.P. 1920.53. and 1920.54.

**Rule 1920.51.4                      Motion and Order for Appointment of Divorce Master**

- (a) When the action is at issue any party may file a motion for the appointment of a Divorce Master substantially in the form provided by Pa.R.C.P. No. 1920.74.
- (b) In addition to the requirement for grounds for divorce to be established by the filing of the proper 3301 (c) or 3301 (d) documents prior to the appointment of a Divorce Master, the court may delay the appointment of a Divorce Master if:
1. The filing party did not file their inventory pursuant to Pa.R.C.P. 1920.33(a) or the motion for appointment was filed less than thirty (30) days following the filing of their inventory.
  2. The defendant has failed to appear in the action and the affidavit of non-military service pursuant to Pa.R.C.P. 1920.46 was not filed.
  3. A copy of the notice pursuant to B.R.C.P. 1920.51.4(c) is not attached to the motion to appoint or the motion was filed less than twenty (20) days after the date of the notice.

4. The motion does not indicate that discovery is complete for the claims for which the Divorce Master is requested.
  5. Either party has raised a claim for alimony, counsel fees, or costs and expenses and the filing party failed to file their Income and Expense Statements as required by Pa.R.C.P. 1910.27(c)(2)(B), copies of their pay stubs for the preceding six months and copies of their most recent federal income tax return as required by Pa.R.C.P. 1920.31.
- (c) The court shall appoint a Divorce Master, in accordance with the claims to be determined as set forth in the motion.
- (d) At least twenty days prior to filing the motion for the appointment of a Divorce Master, the moving party shall serve all counsel of record and any unrepresented party with a copy of said motion and written notice of intention to file the motion. Written objections, if any, shall be filed and served on all counsel of record and any unrepresented party prior to the filing date. A copy of the notice shall be attached to the motion for appointment when it is filed.

**Rule 1920.51.5                    Deposit of Costs to Accompany Motion for Appointment of Divorce Master**

Upon filing a motion for the appointment of a Divorce Master, the moving party shall pay an amount set by the President Judge through an Administrative Order. The Divorce Master has the discretion to apportion the fee paid by the filing party in their report as appropriate by law.

**Rule 1920.51.7                    Review of Pleadings by Divorce Master**

Before appointing the time and place of taking testimony, the Divorce Master shall examine the pleadings and determine whether the court has jurisdiction and whether the matter is ready for hearing, and if so shall schedule the hearing in accordance with B.R.C.P. 1920.51.8. If the matter is not ready for hearing, the Divorce Master shall either report to the court or notify counsel and suspend further action for a reasonable time to enable the necessary corrections to be made. Upon the expiration of said time without such corrections having been made, the Divorce Master shall report this to the court, and seek advice on how to proceed with the matter.

**Rule 1920.53                    Hearing by Divorce Master**

(a) The Divorce Master shall have the same powers, in reference to hearing witnesses and admitting testimony, as a judge sitting without a jury, subject to the direction of the court from time to time, upon motion of either party. When objection is made to the competency or relevancy of testimony, the Divorce Master shall rule upon its admissibility. The testimony before a Divorce Master shall be recorded in the manner as from time to time approved by the court. The testimony shall be transcribed in the event a party files timely exceptions to the report of the Divorce Master, as set forth in B.R.C.P. 1920.55-2.

(b) The Divorce Master shall give at least 20 days' written notice of any hearing to all counsel of record and at least 25 days' written notice to any unrepresented party. Notice of the hearing shall be given in accordance with Pa.R.C.P. 1920.51.

(c)(i) If, at least 10 days prior to the date for hearing, a party gives all other parties written notice of intention to offer documentary evidence, including a written report, bill, statement, estimate of value, worth or cost, or report of any appraiser, medical, valuation or other expert witness, or official or certified record of any governmental or judicial body, the same may be admitted into evidence without further proof; provided, however, any other party may, at least 2 days prior to the date for hearing, object to the



admission of such documentary evidence without further proof, whereupon the document may be admitted only in compliance with the rules of evidence. Costs of subpoena and production of documentary evidence may be assessed against any party or partly on each.

(ii) If the documentary evidence objected to is substantiated at the time of hearing and if it appears that the objection to the admission of said evidence was made in bad faith, the cost of producing the witness may be assessed against the party compelling the witness' production.

**Rule 1020.53.1 Divorce Master's Compensation**

Divorce Masters shall be compensated as determined from time to time by the Court.

**Rule 1920.53.2 Preparation of Divorce Master's Report**

(a) After completion of the hearing or hearings, the Divorce Master shall prepare a report and recommendation in accordance with either Pa.R.C.P. 1920.53 or 1920.54 as applicable. The Divorce Master shall make specific findings of fact. The papers shall be submitted in the following order from top to bottom:

- (1) Decree Recommended
- (2) Index
- (3) Divorce Master's Report
- (4) Copy of Docket Entries
- (5) Consents and other relevant papers in chronological order according to filing date with the most current on top (including non-military affidavit where required).

(b) The report shall be filed no later than thirty (30) days following the date of the final hearing in accordance with Pa.R.C.P. 1931 unless a motion to extend time for decision to sixty (60) days has been granted by the assigned Judge.

(c) In the event the Divorce Master fails to file the report within the time frame set forth in (b) above, a statement shall be filed with the court setting forth the reason therefor.

**Rule 1920.55-2 Exceptions to Divorce Master's Report**

(a) If exceptions are filed to the report of a Divorce Master, the excepting party shall within ten (10) days arrange for the transcribing of the testimony for filing with the court and pay to the stenographer within said time the estimated cost thereof, unless the court on motion shall grant an extension for cause shown. The completed transcript shall be filed within thirty (30) days of the filing of the exceptions unless the court on motion shall grant an extension for cause shown.

(b) Absent good cause shown, failure of the excepting party to act promptly in accordance with (a) above to pay the cost and secure the transcript shall result in the dismissal of said exceptions by the court upon motion.

**Rule 1920.74 Form of Motion for Appointment of Divorce Master**

The form of Motion for Appointment of Divorce Master shall be substantially as set forth in Pa.R.C.P. 1920.74 provided that the following shall be added:

I certify that the notice required by B.R.C.P. 1920.51.4(c) was mailed on \_\_\_\_\_ and a copy is attached hereto.

**Rule 1920.93                    Parties Continuing to Reside Together**

If the record dictates that the plaintiff and defendant are residing together, the court may conduct a hearing and issue such order or decree as it deems appropriate under the circumstances.

**Rule 1920.94                    Bifurcation**

(a) By agreement of the parties or upon petition of either party for cause show, the court may permit bifurcation, therefore separating the divorce and economic claims. Upon separation of the claims the divorce decree may be entered upon compliance with divorce procedures even though economic claims may still be outstanding. For purposes of this rule, bifurcation means decreeing a divorce when economic claims are outstanding.

(b) Where bifurcation is allowed, the decree shall be indexed in the judgment docket to give notice of the divorced spouses' equitable interest in the property of the other.

(c) The decree in divorce in such circumstances shall give notice of the outstanding claims in the manner set forth in Pa.R.C.P. 1920.76.

(d) Bifurcation shall have no effect on any order for support or alimony *pendente lite*. Such order shall continue until final disposition of all outstanding claims unless modified or terminated by the court for cause shown.

**Rule 1920.95                    Stay of Proceedings**

Except as provided in Pa.R.C.P. 1531, no stay of proceedings shall be granted by the court unless for cause shown and upon notice to all counsel of record as well as any unrepresented party with an opportunity to be heard.

**Rule 1930.1                    Form of Pleadings. Form of Caption**

To clearly identify the type of action under the unified docketing system. all Family Court pleadings shall contain a notation in the caption as to whether the pleading pertains to PROTECTION FROM ABUSE; CHILD CUSTODY; SUPPORT; OR DIVORCE.

**Rule 1930.5                    Designating a Support Case as Complex**

A party or parties seeking to have a support case designated as complex shall first proceed to a hearing before the assigned support hearing officer and request that the case be so designated. If appropriate, the hearing officer shall prepare a recommended order for the court which designates the case as complex and sets forth a discovery schedule which identifies with specificity the discovery to be conducted (other than the documents identified in the regular order to appear at the hearing), and dates by which the discovery shall be completed. If the parties agree to such designation, they shall appear at the first scheduled hearing and present a proposed order containing the above information. Thereafter, the DRS shall schedule a hearing before the hearing officer after the date on which all discovery is to be completed.

## **VOLUNTARY MEDIATION IN CUSTODY ACTIONS**

### **Rule 1940.1                    Applicability of Rules to Mediation**

(a) The rules in this chapter shall apply to all court-established custody mediation programs and to any court-ordered mediation of individual custody cases and such other family law matters as the parties may agree.

(b) Except as otherwise provided by these local rules, the court shall apply the mediation rules as set forth in Pa. R.C.P. 1940.1 et seq.

### **Rule 1940.3                    Order for Orientation Session and Mediation. Selection of Mediator**

(a) Except as provided in (b), the court may order the parties to attend an orientation session at any time upon motion by a party, stipulation of the parties, or the court's own initiative.

(b) The court may not order an orientation session if a party or a child of either party is or has been the subject of domestic violence or child abuse from the other party or person affiliated with the other party either during the pendency of the action or within 24 months preceding the filing of the action.

(c) Following the orientation session and with the consent of the parties, the parties may begin mediation. The mediation may address any issues agreed to by the parties unless limited by court order.

### **Rule 1940.4                    Minimum Qualifications of the Mediator**

In addition to meeting the qualifications set forth in Pa.R.C.P. 1940.4, mediators in Berks County who are attorneys shall certify to the Court in their application for inclusion on the list of court-approved mediators that the attorney is a member in good standing of the Bar of the Supreme Court of Pennsylvania as of the date of the application.

### **Rule 1940.10                   Confidentiality of Mediation Subsequent to Initial Orientation Session**

42 Pa. C.S.A §5949 shall govern confidentiality in admissibility issues.

**ACTIONS FOR WRONGFUL DEATH**

**Rule 2205                      Notice to Persons Entitled to Damages**

(a) Where, under the provisions of Pa.R.C.P. 2205, notice is required to be given to any person, it shall be given to such person in substantially the following form:

To \_\_\_\_\_ , \_\_\_\_\_

You are hereby notified that \_\_\_\_\_ , as plaintiff instituted action against \_\_\_\_\_ , as defendant in the Court of Common Pleas of Berks County, Pennsylvania, to No. \_\_\_\_\_ to recover damages for the wrongful death of \_\_\_\_\_ deceased, who died on \_\_\_\_\_.

(signed) \_\_\_\_\_  
Attorney for Plaintiff

(b) The notice required by subsection (a) of this Rule shall be given by certified mail as documented by a proof of service by a verified statement, as verified is defined in Pa.R.C.P. 76, filed with the prothonotary.

**JOINDER OF PARTIES**

**Rule 2232(a) Form of Notice**

Where, under the provisions of Pa.R.C.P. 2232(a), notice is required to be given to any person, it shall be given to such person in substantially the following form:

To \_\_\_\_\_.

You are hereby notified that \_\_\_\_\_ as plaintiff instituted action against \_\_\_\_\_, as defendant in the Court of Common Pleas of Berks County, Pennsylvania, to No. \_\_\_\_\_, to recover damages sustained by \_\_\_\_\_, on \_\_\_\_\_(date). You are hereby notified that unless you join as party plaintiff in such action within thirty (30) days from the date of the mailing of this notice, you will be forever barred from claiming any damages from the defendant by reason of the injury to \_\_\_\_\_.

(signed) \_\_\_\_\_  
Attorney for Defendant

**Rule 2253 Late Joinder of Additional Defendant**

A defendant or additional defendant seeking late joinder of an additional defendant shall do so by petition setting forth cause for late joinder, attaching a copy of the proposed complaint against the additional defendant to be joined, and requesting a rule upon all parties of record to show cause why late joinder should not be allowed.

## **CONFESSION OF JUDGMENT**

### **Rule 2951(a)                      Filing of Document**

In every case of the entry of a judgment by the prothonotary on a bond, note or other instrument containing a confession of judgment or authority to enter the same, the paper containing such confession of authority shall be retained in his or her office and duly filed. Where, however, the warrant of attorney constitutes an integral part of a lease or other original contract, from which it cannot be separated without injury to the whole, it shall be sufficient to file a copy of the lease or contract, the correctness of which copy shall be attested by an agreement of the parties or by the prothonotary or his or her deputy upon the paper filed from inspection of the original.

### **Rule 2951(d); 2952(h)    Leave of Court Required for Entry of Judgment**

Whenever leave of court and notice to the defendant is required in accordance with Pa.R.C.P. 2951(d), (e) and 2952(h), an application for an order of the court granting leave to enter judgment must be contained in the complaint and served upon the defendant pursuant to Pa.R.C.P. 440 and 441. The complaint shall be endorsed with a notice to answer said application within twenty (20) days after service. Proof of service shall be filed prior to the entry of judgment. Thereafter, the proceedings of the application shall be according to the Rules pertaining to petitions.

## **ENFORCEMENT OF JUDGMENTS**

### **Rule 3121                      Application for Stay of Execution**

Applications for stays of all executions made by one other than the plaintiff shall be upon motion. Reasonable notice of the time and place of an intended application for an order to stay an execution shall be given to the plaintiff's counsel of record or to the plaintiff without counsel.

### **Rule 3123                      Notice by Sheriff of Appraisement**

In the event that a defendant claims a statutory exemption, if the defendant's claim is received by the sheriff in sufficient time to do so, the sheriff shall give the record parties at least two (2) days written notice of the time and place of making the appraisement of the property out of which the exemption is claimed. In all cases, the parties and their attorneys shall have the right to be present when any appraisement and designation is made.

### **Rule 3130                      Sale of Over-the-Counter Securities**

If the sheriff elects to sell securities and negotiable documents of title not listed on any recognized stock or commodities exchange but regularly traded over the counter by brokers authorized to deal therein through a broker as provided in Pa R.C.P. 3130, the sheriff shall give one (1) week's written notice by mail to the defendant at such address as may be available to the sheriff. The notice shall set forth the security or negotiable document of title to be sold and the date on which said security or negotiable document of title will be delivered to the broker for sale and said notice shall give the name of said broker and his address.

### **Rule 3136                      Filing of Claims. Schedule of Distribution**

Municipal and tax claims and the amounts claimed by the respective lien holders who are claimants to the fund realized from the real estate sold by the sheriff shall be filed by the respective claimants with the sheriff within ten (10) days after the sale. Notice with a copy of the proposed schedule of distribution shall be given by the sheriff by mail of the filing of said proposed schedule within forty-eight (48) hours after the filing of the schedule of distribution provided for by Pa.R.C.P. 3136 to counsel or parties without counsel who have notified the sheriff they claim an interest in the proceeds of any real estate sold by the sheriff.

### **Rule 3143                      Dissolution**

Before the dissolution of any attachment is effective as between the defendants and the garnishee, the defendant must serve on the garnishee a copy of the dissolution certified to by the prothonotary in the same manner as provided for the service of a copy of the writ of execution under Pa. R.C.P 3140, and file with the prothonotary proof of said service.

## **DEPOSITIONS AND DISCOVERY**

### **Rule 4001**

#### **Discovery Applications/Discovery Master**

Legal issues relating to discovery applications and protective orders shall not be scheduled for regular argument court or be subject to the briefing schedule provided for in B.R.C.P. 211.2, unless the court specifically so orders. In order to facilitate the prompt disposition of discovery matters, discovery disputes may be referred by order of the assigned judge to be processed before a Master as part of the "Discovery Master Program" and shall follow the following procedure:

(a) The Board of Judges shall appoint members of the Bar who shall have practiced civil law in Berks County for a minimum of 10 years to serve as Discovery Masters, for an indeterminate term, without compensation, at the pleasure of the Court.

(b) Except as provided in B.R.C.P. 4005(b) and 4012, all discovery applications shall be filed with the Prothonotary along with a proposed order scheduling the matter for disposition before a Discovery master. The proposed order shall contain a space for the Court to enter a date, time and place for a hearing on the discovery application. The Prothonotary will forward the discovery application to the assigned judge, who will promptly enter an order scheduling a hearing on the discovery application before a Discovery Master on the next scheduled Discovery Master hearing date (which shall be a Friday) that is at least fourteen (14) days after the date the discovery application was filed. If the Friday of the week in which the discovery application would otherwise be heard is a court holiday, it shall be scheduled for a hearing on the next Friday that is not a court holiday. The moving party shall promptly serve the respondent with a copy of the motion, proposed order, and argument brief, if any, filed in support of the application. The moving party must also comply with B.R.C.P. 208.2(e) by certifying that it has conferred in a good faith effort to resolve the discovery dispute, which certification must specifically describe those efforts.

(c) Any party or interested third-party opposing relief sought in the application shall file with the Prothonotary a written response to the application, and if appropriate or desired an argument brief in opposition, no later than four (4) days prior to the scheduled Discovery Master hearing date. If no opposition is timely filed, the discovery application shall be deemed to be unopposed, the moving party shall be excused from appearing at the scheduled hearing, and the Discovery master shall submit a written recommendation and proposed order granting the requested relief to the assigned judge for entry of an appropriate order.

(d) If the discovery application is resolved amicably prior to the scheduled hearing date, the moving party shall either file a praecipe withdrawing the application or submit a stipulated order to the assigned judge. If an opposition is timely filed, the parties shall appear in the designated courtroom or hearing room on the date and time for the scheduled hearing to provide evidence and argue the matter before the assigned Discovery Master. If not previously filed, argument briefs in support of or in opposition to the discovery application may be filed no later than four (4) days prior to the scheduled Discovery Master hearing date.

(e) After hearing or argument and considering the discovery application and opposition, and any briefs filed, the Discovery Master shall submit a written recommendation and proposed order to the assigned judge for entry of an appropriate order.



(f) Any party may file an application under this rule to have the case scheduled to a Discovery Management Conference before a Discovery Master. The Discovery Master may recommend a Discovery Management Order, which establishes the following:

(1) A date for completion of all discovery, except for depositions for use at trial;

(2) A date for plaintiff to submit expert reports and curricula vitae of said experts, or answer expert interrogatories; and

(3) A date for defendant to submit expert reports and curricula vitae of said experts, or answer expert interrogatories.

(g) The parties may, by agreement in writing, extend any dates set forth in the Discovery Management Order.

(h) Upon request of any party, for good cause shown, the Discovery Master may recommend an extension of any dates set forth in the Discovery Management Order.

#### **Rule 4004                      Written Depositions**

(a) When a written deposition is used at a trial in lieu of the personal appearance of the witness, other than that of a party who is present at trial, the cost incurred in taking such written deposition shall be allowed as a proper taxable cost.

(b) Counsel fees and the fees of expert witnesses shall not be considered as or included in the cost of a written deposition.

#### **Rule 4005                      Written Interrogatories**

(a) No party serving written interrogatories pursuant to the applicable Pennsylvania Rules of Civil Procedure shall serve upon any other party, as of right, more than fifty (50) interrogatories including interrogatories subsidiary to, or incidental to, or dependent upon, other interrogatories however the same may be grouped or combined, but the interrogatories may be served in two (2) or more sets, as long as the total number of interrogatories served does not exceed fifty (50). Each interrogatory of whatever nature shall be numbered consecutively.

(b) The party interrogated may agree to service of additional interrogatories in excess of fifty (50) by written stipulation, filed of record. In the absence of such written stipulation the party undertaking the interrogation may present an application for allowance of specific additional interrogatories to the judge assigned to the case, together with a proposed order, after at least forty-eight (48) hours prior oral notice to each opposing party, or, in lieu thereof, after at least five (5) days prior written notice mailed to each opposing party, not orally noticed, at such party's address of record and the court, upon cause shown, may allow service of some or all of the additional interrogatories. The specific additional interrogatories shall be set forth verbatim and attached to said motion.

#### **Rule 4007.1                      Costs and Notice of Oral Deposition**

(a) Unless otherwise ordered by the court, reasonable notice for the purposes of Pa.R.C.P. 4007.1(a) shall be deemed to be not less than twenty (20) days.

(b) When an oral deposition is used at trial in lieu of the personal appearance of the witness, other than that of a party who is present at trial, the costs incurred in taking such oral deposition shall be allowed as proper taxable costs.

(c) Counsel fees and the fees of expert witnesses shall not be considered as, or included in, the costs of an oral deposition.

**Rule 4008                      Taking of Deposition Outside of Berks County**

The taking by a party of a deposition of any resident of or person otherwise available to be deposed in Berks County, at any location outside of Berks County, shall be deemed to cause unreasonable burden and expense to every other party and the deposition shall not be taken outside of Berks County unless the party taking the deposition shall first obtain leave of court upon due cause shown why the deposition should be taken outside Berks County, or unless all other parties shall have consented to the taking of the deposition at a place outside Berks County.

**Rule 4009.1                      Location for Production of Documents and Things and Inspection**

Unless otherwise ordered by the court, a place, in order to be deemed reasonable, shall be located within Berks County.

**Rule 4012                      Application for Protective Orders and/or Sanction Orders  
   Pertaining to Oral Depositions**

Applications for protective orders pertaining to oral depositions pursuant to Pa. R.C.P. 4012(b), or applications for sanction orders pertaining to oral depositions under Pa. R.C.P. 4019(b) may be made without adjournment of the deposition by application to the judge assigned to the case or in his or her absence, to the emergency motions judge. Oral arguments shall be presented by the parties desiring to be heard, without the filing of briefs. The judge shall rule upon the application after such oral argument, and the ruling of the court shall be transcribed as part of the record of the deposition.

**Rule 4014                      Redaction of Confidential Information**

Unless otherwise ordered by the Court, court reporters and transcriptionists shall redact confidential information as defined by the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of Appellate and Trial Courts from transcripts and orders.

**Rule 4017.1                      Costs of Videotape Deposition**

(a) The costs of a videotape deposition shall not be taxable as costs unless the taxation thereof has been approved by the court.

(b) The costs of videotaping a deposition, to the extent approved by the court, shall be allowed as proper taxable costs.

(c) Counsel fees and the fees of expert witnesses shall not be considered as, or included in, the costs of a videotaped deposition.

**Rule 4020                      Use of Deposition at Trial**

Any party proposing to use at trial any part or all of the deposition of a witness, whether or not a party, as substantive evidence, shall provide to the court a complete copy of the transcript of the deposition of such witness.