

Rule 39-1915.3 Commencement of Action. Complaint. Order.

(a) **Commencement of Action**

- (1) Filing and Service Generally. All Complaints and/or Petitions to Modify relating to custody of minor children shall be presented to the Court Administrator for assignment, after filing, in accordance with these rules. Filing shall be accompanied by the payment of the designated filing and administrative fees. After the signing of the temporary order, the Order shall be filed with the Office of the Prothonotary and the Complaint and Order served in accordance with the Pennsylvania Rules of Civil Procedure governing the service of Custody Complaints.

- (2) Contents of Complaint. The Complaint shall specifically designate the relief sought by the party who filed the pleading and include specific terms of legal custody, physical custody, partial custody or visitation sought by the Moving Party as well as the factual basis therefor. In addition to those averments required by the Pennsylvania Rules of Civil Procedure governing actions relating to Custody, the Complaint shall also contain (1) an averment as to the Moving Party's knowledge of the Non-Moving Party's representation or non-representation by counsel, and if represented, an averment as to the Non-Moving Party's counsel's name; [2] an averment as to the form and time and manner of furnishing a copy of the Complaint to the Non-Moving Party or to legal counsel; and [3] if a Temporary Order is requested, the Proposed Temporary Order shall be stated as a paragraph of the Complaint.

- (3) Time for Furnishing a Copy of the Complaint and Proposed Order to the Non-Moving Party; Record Proof. When a Non-Moving Party is represented, a

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true, attested copy of the Complaint and Proposed Order shall be furnished to the Non-Moving Party's counsel not less than forty-eight (48) hours prior to its anticipated presentation to the Court. In the case of an unrepresented Non-Moving Party, a true, attested copy of the Complaint and Proposed Order shall be furnished directly to the Non-Moving Party not later than forty-eight (48) hours prior to its anticipated presentation to the Court; or it shall be furnished to the Non-Moving Party by regular First Class U.S. mail not later than the end of business five (5) actual days preceding the date of its anticipated presentation. The Moving Party shall allege in his/her Complaint the form and manner of providing service to the Non-Moving Party and whether said service was made directly to the named Non-Moving Party or to named legal counsel.

- (4) Scheduling Presentations; Pleadings Delivered to Court Administrator. To facilitate the proper giving of notice of the presentation of Custody Complaints, the Court Administrator shall establish a regular time each week for the presentation of Custody Complaints and the entry of Orders of Court establishing temporary custody arrangements pending a full hearing. Counsel may obtain the specific time for presentation of Complaints from the Court Administrator's Office and shall deliver a copy of the filed Complaint to the Court Administrator a minimum of five days in advance of the scheduled time of any planned presentations of Custody Complaints and Proposed Orders of Court.
- (5) Formal Presentation to the Court Not Necessary. Certain Complaints and Petitions may be presented in the same manner and at the same times as all

other petitions and need not be presented in open Court at the time assigned for presentation of Custody Complaints and Petitions in these cases:

- a. When the Proposed Temporary Order and Directive for Conciliation makes no provision at all for an interim custody of the child or children.
- b. When the Proposed Temporary Order and Directive for Conciliation simply maintains the status quo as evidenced by a prior Court Order, a copy of which must be attached to the Complaint or Petition.
- c. When all parties have stipulated to the entry of a Temporary Order and Directive for Conciliation, without respect to whether any party is represented by counsel. However, if counsel represents any party, they shall be so identified by name, and counsel's signature shall be required on the Stipulation.

(b) **Reference to Conciliator and Assignment to Judge.**

(1) Assignment to Conciliator. The Court Administrator shall assign all custody actions to a Conciliator designated by the Court, who shall conduct a Conciliation Conference with both legal counsel and the parties. Further, the Court Administrator shall assign the Conciliator, date, time and place for the Conciliation Conference after the Order has been signed by the Court. The Order of Court and Directive for Conciliation shall be in a form similar to Sample Form "A." (See Sample Form "A").

(2) Assignment to Judge. The Court Administrator shall assign all custody actions to a Judge after the Order has been signed by the Court and at the

same time that the Court Administrator assigns the Conciliator, date, time and place for the Conciliation Conference.

- (3) Conciliator. The Conciliator shall be a member of the Bar of this Court who, along with any other members of his/her professional practice, shall not be engaged in the practice of law in the field of Domestic Relations. The Conciliator shall not be subject to the subpoena power of this Court to force testimony regarding information revealed during the Conciliation Conference.

- (4) Service. Counsel for the Moving Party shall serve a copy of the Complaint and Order for Conciliation upon the Non-Moving Party in accordance with the Pennsylvania Rules of Civil Procedure. The Court Administrator shall notify the Conciliator of the list of cases scheduled for conciliation. The Moving Party shall serve a copy of the Complaint and Order for Conciliation upon the assigned Conciliator and shall certify service by filing a Certificate of Service with the Office of the Prothonotary.

- (5) Administrative Fee. The Moving Party shall deposit a nonrefundable administrative fee of \$200.00 with the Office of the Prothonotary upon the filing of the Complaint. The Conciliator shall be compensated at the rate of \$200.00 for each custody conciliation scheduled. Each conference is expected to last one (1) hour. In the event the Conciliation lasts more than one hour, the Conciliator may petition the Court for additional compensation at the rate of \$100.00 per hour. This additional fee shall be added to the cost of the action and shall be collected by the Prothonotary as directed by the Court. The fee may be changed from time to time upon direction from the Court without the necessity for amending these Rules. The Prothonotary shall post the

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administrative fee for such filings in its office. The fee shall be paid to the Conciliator by the Prothonotary upon receipt of the conciliator's billing statement.

In the event the Moving Party is unable to pay the administrative fee, such party may apply for an Order to Proceed In Forma Pauperis. If the Court authorizes In Forma Pauperis status, the administrative fee shall be paid by the County of Franklin.

In the event a party files a request for an additional Conciliation, the party shall pay an additional administrative fee for such Conciliation Conference which must be paid prior to the scheduling of an additional Conciliation Conference.

In the event a party requests a general continuance of a scheduled Conciliation Conference, if the rescheduled Conciliation Conference is scheduled more than six months after the continued Conciliation Conference, the party shall pay an additional administrative fee of \$200.00 for such Conciliation Conference which must be paid prior to the scheduling of an additional Conciliation Conference.

(6) Authority of Conciliator. The Conciliator shall have the following authority and responsibility:

- a. To conciliate custody cases which specifically includes meeting with the parties and children, if appropriate. If a party desires the children to be present at the Conciliation Conference, he/she shall make said request of the Conciliator no later than seven days prior to the scheduled conference. The Conciliator shall determine the appropriateness of the request on a case-by-case factual basis after consultation with counsel for both parties or with a pro se party;

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- b. To address the need for home studies, as appropriate;
- c. To address the issue of utilization of expert witnesses, as appropriate; and
- d. To recommend a resolution of the custody conflict which recommendation shall be included in the Summary Report and submitted to the Court for further action.

If the parties are not able to agree upon the need for home studies and/or the need for any other expert witnesses, either party may petition the Court pursuant to Pa.R.C.P. 1915.8 for the appointment of an expert and the payment of his or her fees.

(7) Memorandum by Parties. At least three (3) days prior to the scheduled Conciliation Conference, the Conciliator and counsel for the opposing party, or the pro se party individually, shall receive a Memorandum addressing the following:

- a. Factual background, including a brief history of the case.
- b. Names and ages of the children.
- c. A proposed order for resolution of matters.
- d. Issues, both factual and legal, for resolution.
- e. Whether a home study is requested.
- f. Whether the parties will agree to a particular psychologist/psychiatrist for evaluation or request psychological evaluations.

The parties are directed to supplement the Memorandum from time to time if new information becomes available prior to conciliation.

(8) Summary by Conciliator. Following the conclusion of each conference and within seven (7) business days thereof, the Conciliator shall file with the Prothonotary a Summary Report and Proposed Order of Court if applicable in the original plus two (2) copies.

- a. In the event the parties reach a comprehensive agreement at the Conciliation Conference, the Summary Report shall so state and the Proposed Order of Court shall reflect the terms of the agreement and shall be titled a Final Order of Court.
- b. In the event the parties reach a partial agreement, or fail to reach any agreement to modify the existing order, said Summary Report shall include the following:
 - i. Custody status at the time of conciliation;
 - ii. Summary of the parties' positions;
 - iii. Identification of legal and factual issues before the Court; and
 - iv. The Conciliator's recommendation and rationale therefore.

The Proposed Order of Court shall reflect the terms of any partial agreement reached and the need for home studies, psychological evaluations, or both. If the proposed order of court amends the temporary order entered at the custody presentation, the order shall also include a provision stating that the order will become a final appealable order of court 181 days after the date of filing of the complaint/petition and shall include the exact date that the order will become final.

The Prothonotary shall serve copies of the Summary Report and any Order entered upon the parties, or their legal counsel if represented in accordance with Pa.R.C.P. 236.

(c) **Entry of Court Order.** Upon review of the Conciliator's Summary, the Court may issue an Order addressing the appropriate issues. A copy of said Order of Court shall be furnished to legal counsel for the parties or in the event a party is unrepresented, to the party directly, according to the procedures outlined in local rule 39-1915.3(b)(8).

(d) **Scheduling of Pre-Trial Conferences and Hearings.** Upon the completion of home studies and psychological evaluations (if applicable), and at any time after the entry of the Order of Court approving the Conciliator's Summary, either party may present a Motion and Proposed Order for scheduling a Pre-Trial Conference with the Court. (See Sample Form "B"). The Order of Court for Pre-Trial Conference shall contain language requiring the parties to the proceedings to attend and successfully complete the Education Program for Divorcing Parents. The party filing the Motion for Pre-Trial Conference shall provide the Prothonotary with a pre-addressed, envelope for each party to the custody action. The Court Administrator's office shall send to each party the pamphlet regarding the Education Program for Divorcing Parents. Every effort shall be made by the Court Administrator to schedule a Pre-Trial Conference within thirty (30) days of the submission of a Motion by either party requesting said conference taking into consideration the availability of the Court. Each party's presentation at the Pre-trial Conference shall not exceed a time limit of fifteen (15) minutes. At least three (3) days prior to the scheduled Pre-Trial Conference, a Pre-Trial memorandum containing the following matters shall be filed of record:

- a. Statement of the case.
- b. Issues to be resolved.

- c. Stipulated issues and facts.
- d. Names and addresses of all factual witnesses, and a brief summary concerning the anticipated testimony of each listed witness and a certification by counsel that all witnesses listed have been directly contacted by counsel or by pro se party to confirm the substance of the testimony proffered.
- e. Names and addresses of all expert witnesses.
- f. Identification of exhibits for trial.
- g. Expected length of trial.

Failure to produce the information set forth in this Rule may be grounds for imposition of sanctions upon legal counsel or the party directly if appearing pro se.

At the scheduled Pre-Trial Conference, both counsel shall be present and the parties shall be personally present. In the event that neither legal counsel nor a party appears, the Pre-Trial Conference shall be held in that party's absence upon proof of service of the Order of Court for Pre-Trial Conference in accordance with the Pennsylvania Rules of Civil Procedure. Although the Court may not discuss the case with represented parties, they are directed to be present in the event issues arise where the parties' input may be beneficial.

In the event that an agreement is not reached at the Pre-Trial Conference, a hearing date shall be established by the Court Administrator at the Conclusion of said conference.

SAMPLE FORM "A"

**IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
PENNSYLVANIA – FRANKLIN/FULTON COUNTY BRANCH**

	,	: Civil Action - Law
Plaintiff	:	
	:	: No. F.R.
vs.	:	
	:	: Custody
,	:	_____
Defendant	:	

J.

ORDER OF COURT AND DIRECTIVE FOR CONCILIATION

NOW, this _____ day of _____, 20____, this Order will notify _____, Defendant, that you have been sued in Court to obtain custody of the child(ren): _____, date of birth _____.

It is ordered and directed that _____, Esquire, the Court’s Child Custody Conciliation Officer, is hereby directed to conduct a Conciliation Conference on _____, 20__ at ____ o’clock __.M at the Assigned Room, Third Floor, Franklin County Courthouse, Chambersburg, Pennsylvania. The anticipated length of the Conciliation Conference is one (1) hour. The parties along with their legal counsel shall appear in person at the designated time for the Conciliation Conference. A memorandum shall be furnished to the Conciliator at least three (3) days prior to the scheduled Conciliation Conference pursuant to 39th Judicial District Civil Rule No. 1915.3(b)(7). Failure to provide said memorandum may result in the imposition of sanctions.

At the Conciliation Conference, an effort will be made to see if the issues can be resolved by an agreement between the parties. If an agreement cannot be reached, the Conciliator will assist in defining and narrowing the issues to reduce the time required for hearing by the Court. At the conclusion of the conference, the Conciliator will prepare a Conference Summary Report for further action by the Court.

You have the right to be represented by an attorney who may attend the Conciliation Conference with you. If you have not secured an attorney by the date of the scheduled Conciliation Conference, you shall nonetheless personally appear at the time scheduled for the Conciliation Conference without an attorney.

The Plaintiff has deposited a sum of \$200.00 with the Prothonotary for the cost of the Conciliation Conference and the Court reserves the right to further assign or divide these costs.

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_____, Defendant, is notified that if you fail to appear as provided by this Order, an Order of Court for Custody, partial custody or visitation may be entered against you or the court may issue a warrant for your arrest.

Pending the hearing, with emphasis placed on the arrangements for the six (6) months preceding the filing of this Complaint and with particular attention paid to the role of primary caretaker, the Court hereby establishes the following temporary Order for custody pending a hearing: (the appropriate language should be inserted at this point detailing the custody arrangements sought by the Plaintiff keeping in mind the emphasis to be placed upon the prior six (6) months and the role of primary caretaker). (It is suggested one (1) inch of blank space be left for judge's comments or changes to the proposed Order)

This Order shall become a final appealable order 181 days after the date of filing of the attached Complaint/Petition, that is, on ____ (fill in date 181 days after the date of filing of the complaint/petition) _____, unless prior to that date [1] a party files a praecipe, motion or request for a trial, or [2] there is filed a final intervening order.

Defendant is hereby notified that if (s)he disputes the Plaintiff's averments regarding the current status of the custody arrangements and this Order is entered on the basis of those averments, (s)he has the right to request a prompt conference with the Court. If the matter of the temporary custody arrangements is not resolved at the Conference, the Court may in atypical factual situations and at its sole discretion schedule a brief hearing limited to the issues of determining temporary custody arrangements pending the scheduled Conciliation Conference.

The parties and their legal counsel, if applicable, are hereby directed to engage in meaningful negotiations to resolve this matter before the Conciliation Conference.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Pennsylvania Bar Association
Lawyer Referral Service
1-800-692-7375 (PA ONLY) or 1-717-238-6715

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AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Franklin County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court.

By the Court,

J.

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SAMPLE FORM "B"

**IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
PENNSYLVANIA – FRANKLIN/FULTON COUNTY BRANCH**

	,		: Civil Action - Law
	Plaintiff		:
			: No. F.R.
vs.			:
	,		: Custody
	Defendant		: _____
			J.

ORDER OF COURT

AND NOW, this _____ day of _____, 20____, upon consideration of the within Motion,

IT IS HEREBY ORDERED, that a Pre-Trial Conference in the above-captioned custody matter is scheduled for _____, 20____, at _____ o'clock ____m. in the Chambers of the Honorable _____, Franklin County Courthouse, Chambersburg, Pennsylvania.

A Pre-Trial Memorandum shall be furnished to the Court at least three (3) days prior to the scheduled Pre-Trial Conference pursuant to 39th Judicial District Civil Rule No. 1915.3(d). Failure to provide said Pre-Trial Memorandum may be grounds for imposition of sanctions.

Failure of a party or legal counsel to appear upon proper notice shall result in the holding of the conference in absentia and the entry of an Order of Court that may be to the detriment of the absent party.

IT IS FURTHER HEREBY ORDERED that all parties to this custody proceeding shall enroll in, attend and successfully complete the Education Program for Divorcing Parents, a four-hour educational seminar which has been established by the Court to provide guidance to the parties in helping children to adjust to custody changes. Failure of any party to comply with this provision of this Order may result in a finding of contempt with the imposition of sanctions including fine or imprisonment or both.

BY THE COURT

J.

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**IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
PENNSYLVANIA – FRANKLIN/FULTON COUNTY BRANCH**

	,	:
	Plaintiff	: Civil Action - Law
		:
vs.		: No. F.R.
		:
	,	:
	Defendant	: Custody

MOTION FOR SCHEDULING OF A PRE-TRIAL CONFERENCE

AND NOW comes _____, Esquire, legal counsel for the above-captioned Plaintiff and moves the Court as follows:

1. A Conciliation Conference in the above-captioned matter was held on _____.
2. A Summary Report and proposed Order of Court was prepared by the Conciliator and filed of record on _____.
3. An Order of Court was signed on _____ containing further directives in this matter.
4. The undersigned legal counsel hereby certifies that all Court-ordered directives have been complied with and the matter is now ready for a hearing.
5. Notification of this Motion has been given to _____, Esquire, attorney for (Plaintiff/Defendant) who concurs with/opposes the request.

WHEREFORE, it is respectfully requested that an Order be entered by the Court establishing a date and a time for a Pre-Trial Conference.

Date:

By _____
(Signature), Esquire
Counsel for (Plaintiff/Defendant)

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I verify that the statements made in this Motion are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: _____

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