

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY
PENNSYLVANIA
CIVIL ACTION - DIVORCE

IN RE: ADOPTING NEW RULE W 1960)
) No. 3 of 2010
)

ORDER

AND NOW, this 5th day of May, 2010 IT IS HEREBY ORDERED that,
Westmoreland County Rule of Civil Procedure W 1960 is adopted. This Rule is effective
thirty (30) days after publication in *The Pennsylvania Bulletin*.

BY THE COURT:

John E. Blahovec PJ
John E. Blahovec

John J. Driscoll J
John J. Driscoll

Christopher A. Feliciani J
Christopher A. Feliciani

Michele G. Bononi J
Michele G. Bononi

Chris Scherer J
Chris Scherer

ATTEST:

Christina O'Brien,
Prothonotary

Date: 5-7-10

Certified to be a
True Copy

Christina O'Brien
Prothonotary

FILED IN
PROTHONOTARY'S OFFICE

MAY 7 2010

BY: [Signature]
CLERK

RULE W 1960 Voluntary Alternative Dispute Resolution. Summary Divorce Master

- A. *Consent of Parties.* A consent motion may be presented to schedule a Summary Divorce Master's hearing in a divorce proceeding together with a certification that ninety days have passed since service of the Divorce Complaint, both parties have filed Affidavits of Consent under Section 3301(c) of the Divorce Code, and both parties have filed Inventory and Appraisal of Property forms. Because the Summary Divorce Master's hearing can only be scheduled with the consent of the parties, the Court shall, upon presentation of the consent motion and certification, determine from the attorneys or unrepresented parties that the motion is consensual and the waiver of rights is knowing and voluntary. Thereafter, the Court shall appoint a Summary Divorce Master.
1. The aforementioned consent motion shall certify:
 - a. The parties can read, write and understand the English language;
 - b. The parties are not being treated for any mental or emotional illness that hinders their judgment;
 - c. The parties are not under the influence of any medications, drugs or intoxicants;
 - d. Each litigant is giving up all rights of appeal voluntarily;
 - e. Each represented party discussed this matter/procedure carefully with their respective attorneys.
 2. The parties, if not represented, or attorneys representing the respective parties shall sign the consent motion certifying that they are satisfied that they or their respective clients fully understand the rights they are waiving by agreeing to a hearing before a Summary Divorce Master, and to be bound by the Summary Divorce Master's decision.
- B. *Attendance of Parties.* Individual parties shall attend the Summary Divorce Master's hearing. The summary hearing is not on-the-record and no court reporter is required.
- C. *Binding Effect.* Summary Divorce Master's hearings are for final disposition and are binding upon the parties who have consented to the process. The parties are prohibited from presenting motions for reconsideration, filing exceptions or appealing from the Order of Court entered.
- D. *Specific Issues to be Addressed by the Summary Divorce Master.* Each counsel or unrepresented party shall file, serve, and submit to the Summary Divorce Master a Statement of Proposed Issues. Any equitable distribution or alimony issues that are presented to the Summary Divorce Master may be floored and capped with a high/low agreement of counsel and the parties.

- E. *Narrative Statements.* Counsel shall be required to file and serve concise narrative statements consisting of a brief of one (1) to two (2) pages in length setting forth an exposition of each party's respective positions on the facts and the law.

NOTE: The purpose of the narrative statement is to provide the Summary Divorce Master with a short overview of each party's case relative to equitable distribution and alimony, a proposed distribution plan, and any high/low agreement consented to by the parties prior to presentation by counsel.

- F. *Pre-Trial Motions.* The Summary Divorce Master shall rule on any pre-trial motions before the Summary Divorce Master's hearing. Any pre-trial motion shall be submitted to the Summary Divorce Master no later than ten (10) days prior to the hearing. Within five days prior to the Summary Divorce Master's hearing, the Summary Divorce Master shall inform counsel or unrepresented parties in writing of the rulings on the Pre-Trial Motions submitted. The parties are prohibited from presenting motions for reconsideration, filing exceptions, or appealing from the Summary Divorce Master's rulings on Pre-Trial Motions.

- G. *Pre-hearing Conference.* The Summary Divorce Master is encouraged to facilitate a settlement by holding a pre-hearing conference. In the event a settlement is not reached at the conclusion of the conference, the Summary Divorce Master shall conduct a final colloquy and have the parties sign confirming that they fully understand that this proceeding will result in a final non-reviewable decision rendered by the Summary Divorce Master. The colloquy shall include the provisions set forth in the sample colloquy at the end of this local rule.

- H. *Presentation of the Case.* Each side shall be entitled to one (1) hour to present its case unless additional time is permitted by the Summary Divorce Master for good cause. The presentation of the case may involve a combination of argument, summarization of the evidence which would be presented at a regular master's proceeding, and a statement of the applicable law. Arguing the reasonable inferences that may be drawn from the discovery is permissible. No live testimony will be presented except in cases where credibility will determine the major issues. In such cases, no more than two (2) witnesses for each side may be called for direct and cross-examination. Time spent in direct examination and cross-examination of witnesses counts against the respective one (1) hour allotted time. Counsel or unrepresented parties may quote from depositions, if applicable, and may use exhibits and videotapes. The plaintiff shall proceed first.

- I. *Summary Divorce Master's Determination and Final Order of Court.* The Summary Divorce Master shall render a final disposition on all issues within five (5) business days after the presentations are completed. The Summary Divorce Master shall file the final disposition and forward copies to counsel and unrepresented parties within five (5) business days.

- J. *Existing Offer and Demand.* The existing offer and demand shall remain unaltered through the Summary Divorce Master's hearing.
- K. *Cost of the Proceeding.* The cost of the Summary Divorce Master's proceeding shall be a total of one thousand dollars (\$1,000.00) divided equally by the parties. The Summary Divorce Master shall have discretion to increase the cost of the proceeding if additional time is required for the presentation of the case and/or additional research is required on a complex issue.

Note: This local rule is modeled after the voluntary alternative dispute summary jury trial process that is utilized by counties throughout the Commonwealth of Pennsylvania and is not meant to amend any procedures relating to adjudicating matters before a divorce master as provided by the Pennsylvania Rules of Civil Procedure.

COLLOQUY

1. I have informed my attorney all of the facts and circumstances known to me about this case.
2. I am satisfied with the representation provided by my legal counsel.
3. I am not under the influence of any drugs, alcohol or medications.
4. I am able to read, write and understand the English language.
5. I understand that I have the right to have this divorce matter and the issues relating to equitable distribution (i.e. division of all marital property) heard by way of a full trial before a Master assigned by a Court of Common Pleas to convene a hearing and prepare a report at the conclusion of the hearing deciding all of the issues of equitable distribution. I understand that I have the right to have my legal counsel appeal the decision of the Master to a Court of Common Pleas Judge through the filing of exceptions. Thereafter, my legal counsel will be permitted to file a brief and argue my position to a judge and an order of court will be issued thereafter. I then have the right to file an appeal with the appellate courts. **I acknowledge and understand that by electing to have my case heard through this Summary Divorce Master's proceeding, the decision that is rendered by the Summary Divorce Master is final and non-reviewable. I acknowledge and understand that I give up my right to appeal the decision of the Summary Divorce Master to any Court and that I have absolutely no right to appeal the decision.**
6. I certify that I have discussed my case and the applicable procedures carefully with my legal counsel and knowingly and without any undue influence or duress wish to proceed with having my case assigned and heard by a Summary Divorce Master who will render a final decision that will conclude this divorce action and that I will be divorced thereafter.

_____ (Date)

_____ (Signature)

_____ (Notarial Seal)