DIVORCE

Introductory Comment – 2006

The court, counsel and litigants have all expressed continuing concern with the expense and delay involved in finalizing divorce cases. These rules attempt to address both issues.

Expense. Often under prior practice, the trial court did not become involved with the substantive issues in a case until conducting a *de novo* review of a master's recommendation, after a full hearing had already occurred. Extensive master's fees and court reporting costs were incurred, sometimes unnecessarily. These rules address the problem by mandating a conciliation by the court, after discovery is closed and before a master is appointed. It is contemplated that some cases which would otherwise be tried will be resolved through the conciliation process. Other cases, which do not settle at the conciliation, will nevertheless be simplified by settlement of some issues, stipulations arrived at through the conciliation process, and clarification of the parties positions through full disclosure, which is the *sine qua non* of successful conciliation.

Delay. At the outset, it may be observed that delay is not always a bad thing. Reconciliations do occur. And even when they do not, the cooling of the parties emotions across time may permit a more focused and constructive approach to necessary litigation. It is also true that the divorce law as currently constituted provides incentives for (or at least permits) delay in fully consummating divorce cases under certain factual scenarios. To take one example, a dependent spouse might want to take full advantage of the two year waiting period under §3301(d) before allowing a divorce to be finalized. It must be assumed that these incentives and opportunities for delay are well understood and intended as policy by the legislature. This court does not make policy. Consequently, these rules do not address policy driven/permitted delays.

However, there are other types of delays which can be addressed by the court in a variety of ways. These include the enforcement of existing temporal mileposts, such as the requirement of Pa.R.C.P. No. 1920.33(a) that each party file an inventory within 90 days after the filing of a claim for distribution of property, or the requirements of Pa.R.C.P. No. 4006(a)(2) and Pa.R.C.P. No. 4009.12(a) that interrogatories be answered or documents produced within 30 days. It is the responsibility of the parties to observe the time frames established by the rules, or secure written reasonable extensions. The court recognizes that many deadlines imposed by rule may be viewed as arbitrary. What is the difference between providing answers to interrogatories in 35 days instead of 30? In most instances, none. **However, the processes of disclosure and discovery which the rules abet are central to the problem of delay**. Delay is reduced, and settlements occur, when all appropriate information and documents have been exchanged, and not before. The court's goal is to promote settlements and process cases with a minimum of delay. Therefore, it is the policy of the court, as well as its duty, to insure compliance with the intent of the rules, and when necessary, impose sanctions.

From the standpoint of local rule making the court believes that the three keys to promoting settlements by minimizing delay are: (1) terminating discovery in a reasonable and orderly fashion, (2) insisting on full compliance with the intent of Pa.R.C.P. No. 1920.33 (b) which requires the filing and prescribes the content of pre-trial statements, and (3) timely judicial conciliation.

Too often, cases languish for years before discovery is undertaken because it is apparent that one party will not consent to the divorce within the two-year period afforded by the legislature. It does seem reasonable, however, to afford the moving party an opportunity to complete the case within a reasonable time after the two-year period has elapsed, especially in view of the current legislative emphasis on non-bifurcated divorce. Therefore, these rules provide for the establishment of a cut off date for discovery, on application of a party, when both parties have conceded that the marriage is irretrievably broken, or when an affidavit has been filed that the parties have lived separate and apart within the meaning of the divorce code for at least 18 months. This does not imply that the parties will be unable to update asset values reasonably proximate to trial.

Too often, cases fail to settle because the parties pre-trial statements are incomplete or misleading. The court believes that the primary function of the pre-trial statement is to reduce surprise at trial, both as to the claims and contentions of the parties, the witnesses, and the documentary evidence each will present. The court expressly disapproves such practices as: (1) referring to but failing to attach expert reports; (2) attaching previously filed inventories already of record; (3) failing to expressly assert all claims a party intends to pursue at trial, some of which, such as real estate rental claims, or reduction of equity claims in consideration of projected sales expenses or taxes, may not be directly referred to in the Inventory or discovery materials; (4) making general references to "other witnesses identified" or "other documents furnished during discovery." Some attorneys set forth in the pre-trial statement a summary of their client's perspective relative to salient equitable distribution or alimony factors. While not contemplated by Pa.R.C.P. No. 1920.33 (b) such statements may be helpful to the master or court as a trial outline and are therefore acceptable. In its review of evidentiary objections, the court will be vigilant to protect the parties from unfair surprise created by noncompliant pre-trial statements.

Too often, cases fail to settle because the parties are unaware of (or labor in disbelief about) how certain factors are likely to influence the overall outcome of the trial, from the trial court's perspective. Examples might include the impact of marital misconduct, future prospects for inheritance by a party, directly or in trust, how to quantify goodwill in connection with business valuations of sole proprietorships or other entities, and so on. The court believes that disclosure of these issues through the discovery process and the filing of pre-trial statements, followed by frank discussion of the issues at a judicial conciliation attended by the parties, may result in many cases being settled which in the past would have been tried before the master, simply because the parties did not have access to the court's perspective on the most complex issues.

After consideration of the procedure followed in several other counties, some of which prescribe the use of additional forms not contemplated by the statewide rules, the court has elected, at this time, not to prescribe special forms. For example, some counties provide a form checklist of documents to be introduced at trial, requiring the opposing party to either consent or oppose to both authenticity and admissibility of each document. However, if the same documents are disclosed as part of a parties pre-trial statement, and the authenticity or admissibility of any document is questioned, those issues will be addressed at the pre-trial judicial conciliation and, as appropriate, ruled upon or preserved for trial. All that is needed is a sentence in the pre-trial order indicating that it is the responsibility of each party to identify all documents in the opposing parties pre-trial statement to which there will be some objection at trial. Alternatively, a party may obtain admissions as to authenticity during discovery.

Finally, the court recognizes that not all cases are susceptible of successful conciliation, in terms of a total settlement. Even so, many issues may be capable of resolution, permitting the master's proceedings to be less expensive and time-consuming. For those cases requiring the services of a master, every effort has been made to streamline the process and reduce costs, particularly court reporting expenses.