

BAR NEWS ITEM

March 3, 1995

The Pennsylvania Defense Institute and the Philadelphia Association of Defense Counsel have announced that they will present the second in a series of joint CLE programs for 1995 on Saturday, March 18, at the Doubletree Hotel, Philadelphia.

Entitled "Workers' Compensation Issues As We Know Them Today," the program the presenters state the program has been approved for six hours of CLE credit, including one hour in ethics.

Another joint program is scheduled for April 29 at the Doubletree Hotel on automobile law issues.

This month's morning session runs from 9:00 a.m. to 12:30 p.m., with registration beginning at 8:00 a.m. It opens with a one-hour segment on Ethics and Workers' Compensation by Thomas G. Wilkinson, of Cozen & O'Connor, Philadelphia.

Other morning segments include Medical Cost Containment Issues by Patricia A. Mattern, of Rawle & Henderson, Philadelphia, Americans With Disabilities Act by Daniel V. DiLoretto, of Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, and Family Medical Leave Act by Michael D. Jones, of Montgomery, McCracken, Walker & Rhoads, Philadelphia.

Say the presenters, the afternoon program, from 1:30 p.m. to 5:00 p.m. provides three credit hours in substantive law.

Topics include Issues Regarding Direct Liability Against

Employers, Issues Regarding Vocational Services and Job Availability, Issues Regarding Subrogation, Claimant's Perspective, Judge's Perspective, and questions and answers.

The afternoon faculty includes Jeffrey D. Newby, Weber, Goldstein, Greenberg & Gallagher, Philadelphia, Stephen J. Harlen, Swartz, Campbell & Detweiler, Philadelphia, Paul Ziegler, of Ziegler & Zimmerman, Camp Hill, Halmon L. Banks, III, Martin, Banks, Pond & Lehocky, Philadelphia, and Judge Joseph A. Stokes, of the Workers' Compensation Bureau, Upper Darby.

Thomas R. Bond, of Marshall, Dennehey, Warner, Coleman & Goggin, one of the course planners, will also be moderator. Other course planners are Ms. Mattern, James F. Pearn, Jr., of the Marshall, Dennehey firm, Wayne A. Schaible, of Britt, Hankins, Schaible & Moughan, and Barbara A. Pennell, of Pennell, Jenkins, Robinson & Wolf, both also of Philadelphia.

NOCK V. NOCK, C.P. Franklin County Branch, F.R. 1985-288.

Civil Action-Law-Plaintiff seeking leave to file untimely exceptions to a master's report due to her inability to retain counsel to represent her in the matter, citing Pa.R.C.P. 1920.55 which allows a court to grant leave to file exceptions at any time prior to entry of a final decree. Plaintiff has also filed exceptions to a supplemental master's report raising issues which were addressed in the original master's report.

1. As long as no final decree in divorce has been entered, the court may look at whether or not the party seeking leave to file untimely exceptions to a master's report has a reasonable excuse for failing to file those exceptions in a timely manner.
2. Rules of civil procedure will only be reconsidered to allow a violation of those rules when there are compelling reasons for doing so.
3. Inability to retain counsel is not a sufficient excuse justifying leave to file exceptions outside the required ten day period when there is evidence presented which shows that the petitioning party had ample opportunity to retain such counsel.
4. A supplemental master's report which restates issues addressed in the original master's report does not revive a party's ability to raise exceptions to those restated issues when they have failed to raise timely exceptions to the original master's report.
5. Rule 1920.55(b) ensures that both party's interests will ultimately be protected as it mandates the court to review the master's report prior to entry of the final decree.

*D. Lloyd Reichard, Esquire, Attorney for Plaintiff
James W. Harris, Esquire, Attorney for Defendant
Kathleen W. Cramer, Esquire, Master*

OPINION AND ORDER

WALKER, P.J., January 16, 1995:

FINDINGS OF FACT

A master's report was filed and mailed on July 6, 1994 following a hearing conducted on April 8, 1994. Defendant claims she received the report on July 8, 1994 and due to her

inability to retain counsel, failed to file timely exceptions to the master's report.

Defendant contacted her present attorney on July 19, 1994 for the purpose of retaining him, which was ultimately accomplished on July 25, 1994. Defendant's attorney filed a petition for leave to file exceptions to the master's report on August 1, 1994, and on August 5, the exceptions were filed.

President Judge John R. Walker ordered the master to file a supplemental master's report consisting of a revised recommended order providing an option for the payment by plaintiff to defendant of a sum equal to defendant's marital share of plaintiff's military pension on August 4, 1994. The master filed a supplemental master's report on August 5, 1994 consisting of an amended proposed order which in addition to items addressed in the previous proposed order, addressed the payment option to defendant's marital share of plaintiff's military pension. On August 12, 1994, defendant filed exceptions to this document.

Plaintiff opposes defendant's petition for leave to file exceptions claiming that defendant has waived her right to raise exceptions by not filing timely exceptions to the master's report. Plaintiff supports his claim by citing Pa.R.C.P. 1920.55 which requires that exceptions to the master's report be filed within ten days after notice of the filing of the report has been mailed or they are deemed waived.

Plaintiff also opposes the exceptions to the supplemental master's report although they were timely filed. Plaintiff argues that these exceptions are in fact exceptions to the original master's report rather than the supplemental report and should therefore be disallowed due to their untimeliness.

Defendant also cites Rule 1920.55 to support her petition for leave to file exceptions, for it allows a court to grant leave to file exceptions prior to entry of the final decree. Defendant argues that she had a plausible reason for her failure to file timely

exceptions due to her inability to retain counsel to represent her at the master's hearing and directly thereafter.

DISCUSSION

Rule 1920.55 of the Rules of Civil Procedure provides in pertinent parts that:

(a) Within ten days after notice of the filing of the master's report has been mailed, exceptions may be filed by any party to the report or any part thereof, to rulings on objections to evidence, to statements of findings of fact, to conclusions of law, or to any other matters occurring during the hearing. . . . Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters.

(b) If no exceptions are filed to the master's report within the ten-day period, the court shall review the report and if approved shall enter a final decree.

I. EXCEPTIONS TO THE MASTER'S REPORT

There is no dispute concerning the timeliness of defendant's filing of exceptions to the master's report. Both parties concede that defendant failed to file those exceptions within ten days after notice of the filing of the master's report. However, as no final decree has been entered, this court will also look at whether or not defendant has a reasonable excuse for failing to file timely exceptions which would justify granting her leave to file exceptions outside the ten-day period.

Defendant testified that she contacted a plethora of attorneys to represent her in the proceedings leading up to the present one, but all of these relationships fell apart for one reason or another. Specifically, defendant testified that she had counsel at a pre-hearing conference before the master on February 4, 1994, but defendant terminated the representation at that time and chose to continue pro se.

Defendant failed to provide the master and opposing counsel with a complete pre-hearing statement as provided for under

Pa.R.C.P. 1920.33 at the time of the pre-hearing conference. As defendant represented that she wished to retain counsel in this matter, the master granted a continuance, ordered that the pre-hearing statement be filed, and scheduled a second pre-hearing conference for March 4, 1994. Defendant failed to file the pre-hearing statement and also failed to retain counsel by the date ordered by the master. Thereupon, notice of a master's hearing was mailed to the parties and took place with defendant appearing pro se on April 8, 1994. At the time of the filing of the master's report on July 6, 1994, defendant asserts that she was still unable to retain counsel. By the time defendant retained her present counsel, she had missed the deadline for filing exceptions to the master's report.

This court finds little merit in defendant's argument that she should be granted leave to file exceptions to the master's report outside the period required in Rule 1920.55. Evidence presented shows defendant had counsel who was willing to represent her at the time of the pre-hearing conference. Had defendant continued to retain such counsel, the court is confident that any exceptions to the master's report which defendant would have wanted to make would have been timely filed.

Defendant also testified that she contacted several other attorneys who were willing to represent her. Defendant argues that she could not retain them as counsel at the fee they were requesting and therefore she should be excused from following court rules. Attorneys are free to charge any fee they so choose; the court cannot dictate what fees attorneys choose to charge. Additionally, the court is under no duty to appoint counsel for one not able to afford one in a civil matter. This court feels that defendant was given a sufficient amount of time in which to engage counsel to advocate her position in these proceedings following her dismissal of counsel in February of 1994.

Rules are enacted to be followed and only under compelling circumstances will they be reconsidered to allow a violation of those rules. Otherwise, those rules would have little merit.

Therefore, the court is denying defendant's petition for leave to file exceptions to the master's report.

Defendant must keep in mind the requirement imposed upon the court by Subsection (b) of Rule 1920.55 which mandates that the master's report be reviewed prior to entering a final decree. This provision ensures that both parties' interests will be protected up to the time a final decree is entered by the court.

II. EXCEPTIONS TO THE SUPPLEMENTAL MASTER'S REPORT

Defendant has also raised exceptions to the supplemental master's report. Plaintiff opposes the filing of these exceptions claiming that they are in fact exceptions to the original master's report. Upon reviewing defendant's exceptions to the supplemental master's report, the master's original report, and the master's supplemental report consisting of an amended proposed order, it appears to this court that the exceptions to the supplemental master's report would have been appropriate subjects for exceptions to the original master's report. The only additional topic discussed by the master in her amended proposed order concerned the payment option of plaintiff's military pension. All other topics were addressed previously in the original proposed order. Secondly, it is important to note that the master was only ordered to file a supplemental master's report consisting of an amended proposed order. Therefore, defendant's exceptions are really exceptions to the amended proposed order rather than to a master's report.

Although the master addressed matters in her second proposed order that defendant raised in her timely exceptions to the master's supplemental report, this court finds that the master was merely restating topics which were already addressed in the original master's report and proposed order for reasons of efficiency. Had the master only discussed the payment option of defendant's marital share of plaintiff's military pension in the second proposed order, the court would have had to incorporate

the first proposed order into the second. The master, in the interests of judicial economy and efficiency, simply provided a single concise proposed order addressing all of the topics previously addressed in the original proposed order as well as the topic the master was ordered to address via an amended proposed order by order dated August 4, 1994.

CONCLUSION

Although Pa.R.C.P. 1920.55(a) requires that exceptions to a master's report be filed within ten days of the mailing of that report, a court is given the discretion to allow untimely exceptions up to the time a final decree is entered by the court by subsection (b) of the same rule. Because procedural rules are created to expedite proceedings, they will be bypassed under compelling circumstances. This court feels that defendant has not shown circumstances which would allow her to circumvent the rules. Therefore, defendant's petition for leave to file exceptions to the master's report is denied.

The court finding that defendant's exceptions to the master's supplemental report are in reality exceptions to the original master's report, is also denying defendant's exceptions to the supplemental report.

ORDER OF COURT

January 16, 1995, the defendant's exceptions to the original master's report were not filed in a timely manner and are denied. Defendant's exceptions to the supplemental report are also denied.

THE DREAM TEAM

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- | | |
|----------|-----------|
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| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

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