

Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was **[required]** ordered to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(i) the order of court scheduling the conference and/or hearing was served by ordinary mail with the return address of the domestic relations section appearing thereon, that the mail was not returned to the domestic relations section within fifteen days after mailing, and that, at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed; or

(ii) the party signed a receipt indicating acceptance of a copy of the court order; or

(iii) an employee of the court handed a copy of the order to the party; or

(iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Official Note

See Rule 76 for the definition of “competent adult.”

(b) The request for a bench warrant shall be made by the domestic relations office within sixty days following the party’s failure to appear. The request shall be in the form provided by Rule 1910.13-2(b), and shall include the hearing officer or conference officer’s certification that the party has not appeared for any domestic relations matter involving the same parties since the date the party failed to appear.

(c) Upon appearance in court by a party on the matter underlying the bench warrant, the bench warrant shall be vacated forthwith and the notice shall be given to all computer networks into which the bench warrant has been entered.

(d) [The bench warrant shall direct that if the court is unavailable at the time of the party’s arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff’s office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. Under no circumstances shall the party remain in the county jail longer than seventy-two

hours prior to hearing.] When a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When an individual is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings. As used in this rule, "judicial officer" is limited to the common pleas court judge who issued the bench warrant, or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, and the bench warrant hearing cannot be conducted promptly after the arrest, the individual shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the sheriff's office and the director of the domestic relations section that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail in the arresting county promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance of that bench warrant. The individual shall not be detained without a hearing on the bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (d)(5), the bench warrant shall expire by operation of law.

Explanatory Comment--1994

In 1988, Section 4342 of the Domestic Relations Code, 23 Pa. C.S. §4342, was amended to require establishment of procedures for expedited contempt in support. Those procedures are set forth in new Rules 1910.13-1, 1910.13-2, and 1910.21-1 through 1910.21-7.

Former Rule 1910.13 provided for the issuance of a bench warrant for failure of a person to obey a court order other than an order for support. It is replaced with new Rule 1910.13-1 which sets forth detailed procedures for the issuance of a bench warrant, and new Rule

1910.13-2 which provides the associated forms. The new rules apply only to a party who fails to appear at a support conference or hearing as directed by an order of court.

An individual arrested pursuant to a bench warrant can be incarcerated for a period not to exceed seventy-two hours prior to hearing as set forth in new Rule 1910.13-1(d). Under the old rules, if the court was unavailable at the time of arrest, the individual could not be held. Therefore, law enforcement officials were unable to execute bench warrants in the evenings or on weekends, when their efforts were most likely to be successful. By limiting the possible period of incarceration to seventy-two hours, new Rule 1910.13-1(d) balances the need to bring parties before the court with the desire to avoid lengthy pre-hearing detention. Bail can be set by the court where appropriate, providing additional protection for the respondent.

[Former Rule 1910.21 is replaced by new Rules 1910.21 through 1910.21-7. New Rule 1910.21-1 replaces the notice to appear before the court with a court order, thus eliminating the need for two essentially identical documents attached to a single petition. It also eliminates the old requirement that a copy of the support order underlying the contempt petition and an “official statement” of support arrearages be attached to the petition. Instead, the petition need only set forth the amount of the arrearages, as well as any other allegations which constitute the alleged failure to comply with the support order. As with a support complaint, an answer is permitted, but not required, unless specially ordered by the court.

Former Rule 1910.21(c) provided for service of a contempt petition only by regular mail. If the respondent failed to appear for the conference or hearing, the matter had to be continued for personal service or issuance of a bench warrant, sometimes creating lengthy delays. New Rule 1910.21-1(d) permits service of the contempt petition by first class mail. If the respondent fails to appear, the domestic relations section can request issuance of a bench warrant after certifying that the order was not returned by the post office within fifteen days, and that the postal authorities verified that the party was receiving mail at the address to which the order was sent on a date after the order was mailed. Thus, under the new rule, service can be accomplished with relative ease and little expense, but also with reasonable certainty that the respondent actually received notice of the proceedings.

New Rule 1910.21-1 addresses situations both where the payor is chronically a few dollars short, or a few days late by requiring that contempt proceedings be initiated when arrearages in any amount have existed for fifteen days.

The procedures for expedited contempt after service of the petition are set forth in new Rules 1910.21-2 through 1910.21-7. Pursuant to new Rule 1910.21-2, the respondent can be required to attend a conference, or can go directly before a judge for hearing, if the court permits. In all cases where the respondent does not go directly before a judge, there is an office conference as set forth in new Rule 1910.21-3. If an agreement is reached, the court may then enter the order without hearing on the basis of the conference officer’s recommendation. If no agreement is reached, the matter proceeds as described in new Rule 1910.21-4 or, if an individual county adopts it by local rule, as set forth in new Rule 1910.21-5.

If no agreement is reached, new Rule 1910.21-4 requires the conference officer to prepare a summary of the conference. Upon consideration of the conference summary,

the court may enter an order without hearing the parties. Either party has the right to file a written request for a de novo hearing within ten days after the order is mailed. If the court does not enter an order within five days, a de novo hearing is automatically scheduled before the court. The contempt order is stayed if either party demands a de novo hearing. The hearing de novo must be held no later than seventy-five days after the date the petition for contempt was filed. The time limitation is for the benefit of the plaintiff, and is intended to ensure speedy resumption of support payments.

New Rule 1910.21-5 provides the alternative procedure where no agreement is reached at the office conference. At the conclusion of a conference, the hearing officer must file a report containing a proposed order and the hearing officer's recommendations. If either party files exceptions within ten days, the court must either hear argument on the exceptions or hold a hearing de novo within seventy-five days. If no exceptions are filed within ten days, the court may enter an order on the basis of the hearing officer's report.

New Rule 1910.21-4 makes clear that a respondent cannot be incarcerated without a full evidentiary hearing before a judge. The court's order committing the respondent to jail must name the conditions that the respondent must fulfill in order to be released.

Pursuant to new Rule 1910.21-7, motions for post trial relief are not permitted to be filed to any order entered under new Rules 1910.21-1 through 1910.21-6.]

Explanatory Comment--1999

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult." In certain circumstances, the term has been used with the restrictive language "who is not a party to the action."

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "'competent adult' means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." In view of this new definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action." These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amend by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

Explanatory Comment--2006

Beginning in 2006, bench warrants issued for failure to obey a court order to appear in a support matter will be available through the Judicial Network ("JNET") system. JNET expands the capacity of law enforcement officers throughout the commonwealth to be informed of outstanding bench warrants issued by both the criminal and civil courts. The Supreme Court of Pennsylvania has promulgated new Pa.R.Crim.P. 150, effective August 1, 2006, which sets forth the procedure related to criminal bench warrants. The amendments to Rule 1910.13-1 and 1910-13-2 track the new criminal procedural rule so that bench warrant procedures will be uniform throughout the commonwealth. For additional information see the Criminal Procedural

**Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit.
Form of Bench Warrant.**

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]

**REQUEST FOR BENCH WARRANT AND
SUPPORTING AFFIDAVIT**

1. _____ did not appear for a conference and/or hearing in the Court of Common Pleas of _____ County on the _____ day of _____, 20____, which was scheduled by an order of court compelling this person's appearance, a copy of which is attached to this request.

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

(a) The order of court (i) was served upon the party by ordinary mail with the return address of the court thereon; (ii) the mail was not returned to the court within fifteen (15) days after mailing; and (iii) at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed.

(b) The party signed a receipt indicating acceptance of the court order.

(c) An employee of the court handed a copy of the court order to the party. The employee's affidavit of service is attached.

(d) A competent adult handed a copy of the court order to the party. The adult's affidavit of service is attached.

3. This request for Bench Warrant is made within sixty days following the party's failure to appear for the conference and/or hearing; and

I have reviewed the records of the Court and the Domestic Relations Office concerning this case, and attest that the party has not appeared for any domestic

relations matter involving the same parties since the date upon which the party failed to appear in violation of the attached order of court.

4. In my capacity as hearing officer or conference officer, I request that the attached Bench Warrant be issued against the party named on account of the party's failure to appear for a scheduled conference and/or hearing in violation of an order of court.

[5. I recommend that bail in this matter be set as follows:

- No bail.**
- Bail to be set in the amount of _____.**

- Bail to be determined by the magisterial district judge.**

Note: The following information should be supplied where the magisterial district judge is given discretion in setting bail.]

The records of the Domestic Relations Section show that:

- the party owes support arrearages in the amount of \$ _____.
- the party has failed to appear for _____ hearings relating to this case.

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

DATE: _____ NAME/OFFICIAL TITLE _____

(b) The Bench Warrant entered by a court pursuant to Rule 1910.13-1 shall be in substantially the following form, and shall be attached to the Request for Bench Warrant form set forth in subdivision (a) of this rule:

[CAPTION]

BENCH WARRANT

AND NOW, this ____ day of _____, 20__, the Sheriff of _____ County, or any constable, or police officer, or other law enforcement officer is hereby ordered to take _____, residing at _____, into custody for appearance before this Court.

This bench warrant is issued because it appears that the (plaintiff) (defendant) has failed to appear, after notice, before the court for a scheduled conference and/or hearing.

We command you, the arresting officer, forthwith to convey and deliver the party into the custody of the Court of Common Pleas of _____ County, at

(address)(city)

Pennsylvania, for a hearing.

DESCRIPTIVE INFORMATION

Social Security # _____ Sex _____ D.O.B. _____ Age _____

Height _____ Weight _____ Race _____ Eyes _____ Hair _____

Distinguishing features (scars, tattoos, facial hair, disability, etc.)

Alias

Telephone # _____

You are further commanded that if the court is unavailable, the party may be held in the County Jail until the court is opened for business, at which time the party shall be promptly conveyed and delivered into the custody of the court at

(address) (city)

Pennsylvania, for hearing.

The authority in charge of the county jail shall notify the sheriff's office and the director of the domestic relations section forthwith that the party is being held pursuant to the bench warrant.

Under no circumstances may the party be held in the county jail of the county that issued this bench warrant for more than seventy-two hours **[prior to hearing]** or the close of the next business day if the 72 hours expires on a non-business day. See Pa.R.Crim.P 150(A)(5)

Bail in this matter shall be set as follows:

- No bail.
- Bail to be set in the amount of _____.

Bail to be determined by the magisterial district judge.

BY THE COURT:

JUDGE

Official Note

Standards for setting bail are set forth in Rule of Criminal Procedure 525.

Explanatory Comment--2005

Act 207-2004 amended numerous titles of the Pennsylvania Consolidated Statutes changing the title of “district justice” to “magisterial district judge.” The amendments to Rule 1910.13-2 reflect the change in title.