

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 200]

#### Proposed Rule 220.1-1 Governing Voir Dire; Recommendation No. 130

The Civil Procedural Rules Committee proposes the adoption of Rule of Civil Procedure 220.1-1 governing voir dire. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent no later than April 12, 1996 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

##### Rule 220.1-1. Voir Dire.

(a) Voir dire shall be conducted to provide the opportunity to obtain at a minimum a full description of the following information concerning the prospective jurors and their households:

- (1) Name;
- (2) Date and place of birth;
- (3) Residential neighborhood and zip code (not street address);
- (4) Marital status;
- (5) Nature and extent of education;
- (6) Number and ages of children;
- (7) Name, age and relationship of members of prospective juror's household;
- (8) Occupation and employment history of the prospective juror, the juror's spouse and children and members of the juror's household;
- (9) Involvement as a party or a witness in a civil lawsuit or a criminal case;
- (10) Relationship, friendship or association with a law enforcement officer, a lawyer or any person affiliated with the courts of any judicial district;
- (11) Relationship of the prospective juror or any member of the prospective juror's immediate family to the insurance industry, including employee, claims adjuster, investigator, agent, or stockholder in an insurance company;
- (12) Motor vehicle operation and licensure;

(13) Physical or mental condition affecting ability to serve on a jury;

(14) Reasons the prospective juror believes he or she cannot or should not serve as a juror;

(15) Relationship, friendship or association with the parties, the attorneys and prospective witnesses of the particular case to be heard;

(16) Such other pertinent information as may be appropriate to the particular case to achieve a competent, fair and impartial jury.

(b) The court may provide for voir dire to include the use of a written questionnaire. However, the use of a written questionnaire without the opportunity for oral examination is not a sufficient voir dire.

**Official Note:** The parties or their attorneys may conduct the examination of the prospective jurors unless the court itself conducts or otherwise directs the examination.

A written questionnaire may be used to facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.

(c) The court may permit the examination of jurors out of the presence of other jurors.

#### Explanatory Comment

Recommendation No. 130 proposes new Rule 220.1-1 governing voir dire, the examination of prospective jurors. The proposed rule furthers the goal of establishing a uniform civil practice throughout the Commonwealth with respect to the information which the parties may obtain concerning prospective jurors.

The rule has been drafted to specify the information which the parties should be able to obtain through voir dire but not require a particular manner of voir dire. Subdivision (a) is devoted to listing the information to which the parties are entitled.

The rule does not dictate the mechanics of voir dire, but leaves the method of voir dire to the local courts of common pleas. Subdivision (b) does give some guidance, however. Voir dire may include the use of a written questionnaire, but no form of questionnaire is mandated or suggested. The note observes that a written questionnaire may "facilitate and expedite" voir dire by providing basic background information. The rule provides, however, that "the use of a written questionnaire without the opportunity for oral examination is not a sufficient voir dire." The parties are entitled to both hear prospective jurors and observe their demeanor.

The rule recognizes that service upon a jury may be a new and disquieting experience to citizens called as prospective jurors. Information may be sought which a prospective juror feels uncomfortable revealing in open court. Thus, subdivision (c) provides that the "court may permit the examination of jurors out of the presence of other jurors."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-129. Filed for public inspection February 2, 1996, 9:00 a.m.]

## PART I. GENERAL

## [231 PA. CODE CH. 400]

## Amendment of Rules 401 and 404 Governing Service of Original Process; Proposed Recommendation No. 133

The Civil Procedural Rules Committee has issued Recommendation No. 133 which proposes the amendment of Rules of Civil Procedure 401 and 404 governing service of original process. The recommendation is published in full in the *Pennsylvania Bulletin*, the advance reports of *West's Atlantic* and *Pennsylvania Reporters*, the *Philadelphia Legal Intelligencer* and the *Pittsburgh Legal Journal*. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent no later than April 12, 1996 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

## Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

## PART I. GENERAL

## CHAPTER 400. SERVICE OF ORIGINAL PROCESS

## SERVICE GENERALLY

Rule 401. Time for Service. [Reissuance, Reinstatement and] Amended Original Process. [Substitution] Substituted [of] Original Process. Alternative Original Process. Copies for Service.

(a)(1) Original process shall be served [within the Commonwealth] upon a defendant within [thirty] one hundred eighty days after the issuance of the writ or the filing of the complaint first naming that defendant.

**Official Note:** The amendment of original process under subdivision (b)(2), the substitution of original process under subdivision (b)(3) or the filing of a complaint as alternative original process under subdivision (b)(5) does not extend the time for service upon a party defendant previously named.

(2) If service of original process is not made within the required one hundred eighty days, the court, upon motion filed within that period and good cause shown, may extend the time for service for an appropriate period. The court may also provide, if appropriate, for an alternative method of service as provided by Rule 440. If the time for service has been extended and if service is not made within the extended period, the court, upon motion filed within that period and good cause shown, may extend the time for service for one or more additional periods.

**Official Note:** [See Rule 404 for the time for service outside the Commonwealth.] Good cause to extend the time for service may be shown by affirmative action taken by the plaintiff to serve original process.

The plaintiff must act with reasonable diligence to see that the motion is promptly presented to the court if required by local practice.

(3) If service of original process is not made within the required one hundred eighty days under subdivision (a)(1) or an additional period of time under subdivision (a)(2) and either a motion to extend the time for service has not been filed within that time period or a motion has been denied, the process shall be deemed never to have been filed.

(b)(1) [If service within the Commonwealth is not made within the time prescribed by subdivision (a) of this rule or outside the Commonwealth within the time prescribed by Rule 404, the prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint, by writing thereon "reissued" in the case of a writ or "reinstated" in the case of a complaint.]

Rescinded.

(2) [A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint.] Prior to service upon any named defendant, original process may be amended to name a new party defendant.

(3) A substituted writ may be issued or a substituted complaint filed upon praecipe stating that the former writ or complaint has been lost or destroyed.

(4) [A reissued, reinstated or substituted writ or complaint shall be served within the applicable time prescribed by subdivision (a) of this rule or by Rule 404 after reissuance, reinstatement or substitution.] Rescinded.

(5) If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff instead of [reissuing] serving the writ may [treat] serve the complaint as alternative original process [and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint. Thereafter the writ may be reissued, or the complaint may be reinstated as the equivalent of a reissuance of the writ, and the plaintiff may use either the reissued writ or the reinstated complaint as alternative original process].

[Official Note: If the applicable time has passed after the issuance of the writ or the filing of the complaint, the writ must be reissued or the complaint reinstated to be effective as process. Filing or reinstatement or substitution of a complaint which is used as alternative process under this subdivision, has been held effective in tolling the statute of limitations as the reissuance or substitution of a writ.]

(c) The copy of the original process to be served upon the defendant shall be attested by the prothonotary or certified by the plaintiff to be a true copy.

## Rule 404. Service Outside the Commonwealth.

Original process shall be served outside the Commonwealth [within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof]:

[Official Note: For reissuance and reinstatement of original process, see Rule 401(b).]

(1) by a competent adult who is not a party in the manner provided by Rule 402(a);

(2) by any competent adult by mail in the manner provided by Rule 403;

(3) in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its courts of general jurisdiction;

(4) in the manner provided by treaty; or

**Official Note:** A treaty may provide that to effect service a plaintiff must satisfy requirements which are in addition to the procedures specified by this rule.

(5) as directed by the foreign authority in response to a letter rogatory or request.

**Official Note: See Rule 401(a) for the time in which to make service.**

Sections 5323 and 5329(2) of the Judicial Code, 42 Pa.C.S. §§ 5323, 5329(2), provide additional alternative procedures for service outside the Commonwealth.

**Explanatory Comment**

Recommendation No. 133 proposes amendment of Rules of Civil Procedure 401 and 404 to facilitate making a good faith effort to effectuate service of original process.

Rule 401. Time for Service. Amended Original Process. Substituted Original Process. Alternative Original Process. Copies for Service

The thirty-day period for service under present subdivision (a) is to be replaced with a one hundred eighty day period. The one hundred eighty day period for serving a defendant commences upon the filing of the original process naming the defendant. Upon expiration of that period, service may be made only pursuant to an order of court extending the time. The rule provides for the order to be made upon motion filed during the one hundred eighty day period and upon good cause shown. If service is not made during the extended period, the party seeking to make service may obtain further extensions of time in a manner similar to obtaining the initial extension, that is, upon motion filed during the extended period and upon good cause shown. If an extension is not sought or is sought but denied, the process is deemed to have been never filed.

In light of the revisions to subdivision (a), several amendments to subdivision (b) are proposed. Subdivision (b)(1) is to be rescinded and the practice of reissuing a writ of summons and reinstating a complaint abolished. Similarly, subdivision (b)(4) providing the time for service of a reissued writ or a reinstated complaint is also to be rescinded.

Subdivision (b)(2) will be revised to delete references to reissuance of the writ and reinstatement of the complaint. The practice of adding a new party defendant prior to service of original process upon any defendant in an action will be continued upon the filing of "amended original process." The filing of amended original process does not extend the time for service upon a party defendant previously named.

Subdivision (b)(3) providing for a substituted writ or complaint when original process is lost or destroyed will remain unchanged.

Subdivision (b)(5) providing for alternative original process will be revised by deleting reference to reissuance of the writ or reinstatement of the complaint. The filing of the complaint as alternative process does not extend the time for service under subdivision (a)(1).

Rule 404. Service Outside the Commonwealth

Rule 404 is revised by deleting references both to the ninety-day period for service outside the Commonwealth and to reissuance of the writ and reinstatement of the complaint. The time for making service of original process prescribed by Rule 401 will apply uniformly, both within and outside the Commonwealth.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-130. Filed for public inspection February 2, 1996, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CHS. 2020, 2050 and 2200]**

**Revision of Rules 2039, 2064 and 2206 Governing Minors and Incapacitated Persons as Parties; Proposed Recommendation No. 132**

The Civil Procedural Rules Committee proposes the amendment of Rules of Civil Procedure 2039, 2064 and 2206 governing minors and incapacitated persons as parties. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent no later than April 12, 1996 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 2020. MINORS AS PARTIES**

**Rule 2039. Compromise, Settlement, Discontinuance and Distribution.**

\* \* \* \* \*

(b) When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to a guardian of the estate of the minor qualified to receive the fund, if [ **he** ] **the minor** has one or one is to be appointed. **The balance of the fund payable to the guardian of the estate may include a structured settlement as described in subdivision (b)(3) of this rule.** If the minor has no such guardian and none is to be appointed, the court may order:

(1) an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor;

**Official Note: The amount payable under subparagraph (1) conforms to the amount set forth in section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.**

(2) any amount in cash of a resident or non-resident minor to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations or savings and loan associations, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, **or in one or more accounts in the name of the minor investing only in securities guaranteed by the United States government or a Federal governmental agency managed by financial institutions.** Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains [ **his** ] majority, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record[ . ];

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

(3) **an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority shall be paid into a restricted account as provided by subdivision (b)(2) of this rule.**

\* \* \* \* \*

**CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES**

**Rule 2064. Compromise, Settlement, Discontinuance and Distribution.**

\* \* \* \* \*

(b) When a compromise or settlement has been approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or the guardian ad litem or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian or the guardian ad litem for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to the guardian of the estate of the incapacitated person qualified to receive the fund, if there is one or one is to be appointed. **The balance of the fund payable to the guardian of the estate may include a structured settlement as described in subdivision (b)(3) of this rule.** If the incapacitated person has no such guardian, and none is to be appointed the court may order:

(1) an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars**

**(\$25,000.00)** to be paid to the guardian of the person or to the person or agency by whom the incapacitated person is maintained;

**Official Note: The amount payable under subparagraph (1) conforms to the amount set forth in section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into section 5505 of the Code, 20 Pa.C.S. § 5505.**

(2) any amount in cash of a resident or non-resident incapacitated person to be deposited in one or more savings accounts in the name of the incapacitated person in banks, building and loan associations or savings and loan associations, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, **or in one or more accounts in the name of the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by financial institutions.** Every such order shall contain a provision that no withdrawal can be made from any such account unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record.

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account see Rule 76.

(3) **an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during incapacity shall be paid into a restricted account as provided by subdivision (b)(2) of this rule.**

\* \* \* \* \*

**CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH**

**Rule 2206. Settlement, compromise, discontinuance and judgment.**

\* \* \* \* \*

(b)(1) When as the result of a verdict, judgment, compromise, settlement or otherwise it has been determined that a sum of money is due the plaintiff in an action for wrongful death, the court, upon petition of any party in interest, shall make an order designating the persons entitled to share in the damages recovered and the proportionate share of the net proceeds to which each is entitled. If a share shall be payable to a minor or incapacitated person, the court shall designate as the person to receive such share a guardian of the estate of the minor or incapacitated person qualified to receive the fund, if there is one or one is to be appointed. **The fund payable to the guardian of the estate may include a structured settlement as described in subdivision (b)(4)(ii) of this rule.**

(2) If the minor has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid to the guardian of the person or

to the natural guardian or to the person or agency by whom the minor is maintained or to the minor.

**Official Note: The amount payable under paragraph (2) conforms to the amount set forth in section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.**

(3) If the incapacitated person has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than **[ Ten Thousand Dollars (\$10,000.00) ] twenty-five thousand dollars (\$25,000.00)** to be paid to the guardian of the person or to the person or agency by whom the incapacitated person is maintained.

**Official Note: The amount payable under paragraph (3) conforms to the amount set forth in section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into section 5505 of the Code, 20 Pa.C.S. § 5505.**

(4) If the minor or the incapacitated person has no such guardian, and none is to be appointed, the court may order

(i) any amount in cash of a resident or nonresident minor or incapacitated person to be deposited in one or more savings accounts in the name of the minor or the incapacitated person in banks, building and loan associations or savings and loan associations, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which such accounts are thus insured, **or in one or more accounts in the name of the minor or the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by financial institutions.** Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains his majority or unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record[ . ];

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account see Rule 76.

(ii) **an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority or incapacity shall be paid into a restricted account as provided by subdivision (b)(4)(i) of this rule.**

\* \* \* \* \*

**Explanatory Comment**

Recommendation No. 132 proposes identical amendments to three rules governing compromise, settlement, discontinuance and distribution: Rule 2039 (Minors), Rule 2064 (Incapacitated Persons) and Rule 2206 (Wrongful Death Actions).

The first amendment increases from \$10,000 to \$25,000 the amount which may be paid directly to the guardian of the person, the natural guardian, the person or agency by

whom the minor or incapacitated person is maintained or to the minor. This amendment conforms the amount set forth in the rules to the amount stated in section 5101 of the Probate Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary in small estates of minors. The amount in section 5101 of the Code was similarly increased from \$10,000 to \$25,000 by Act No. 102 of 1994. This statutory provision applies also to small estates of incapacitated persons as it is incorporated by reference into section 5505 of the Code, 20 Pa.C.S. § 5505.

The second amendment is a specific authorization for the court to approve a distribution of funds which includes a structured settlement. The present rule contains no explicit statement in this regard. The rule authorizes structured settlements both where there is a guardian of the estate and where there is no such guardian.

Presently, the rules limit the investment of funds to savings accounts in banks, building and loan associations or savings and loan associations. The third amendment proposes to expand the permissible investments to include accounts "investing only in securities guaranteed by the United States government or a Federal governmental agency managed by financial institutions."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-131. Filed for public inspection February 2, 1996, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CH. 4000]**

**Revision of Rule 4009 Governing Production of Documents and Things and Entry Upon Land; Proposed Recommendation No. 131**

The Civil Procedural Rules Committee proposes the rescission of Rule of Civil Procedure 4009 governing the production of documents and things and entry upon land and the adoption of new Rule 4009.1 et seq. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent no later than April 12, 1996 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**PRODUCTION OF DOCUMENTS AND THINGS**

**Rule 4009.1. Production of Documents and Things.**

Any party may serve a request upon a party pursuant to Rule 4009.2 or a subpoena upon a person not a party pursuant to Rule 4009.3 to produce and permit the

requesting party, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, electronically created data, and other compilations of data from which information can be obtained, translated, if necessary, by the respondent party or person upon whom the request or subpoena is served through detection or recovery devices into reasonably usable form), or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of Rules 4003.1 through 4003.5 inclusive and which are in the possession, custody or control of the party or person upon whom the request or subpoena is served.

**Official Note:** These rules do not prevent a court from entering an order under its common law power preserving or protecting a document or thing.

Parties to an action and persons not parties but served with a subpoena or request pursuant to these rules have the protective and enforcement provisions of the discovery rules available to them. See Rule 4012 governing protective orders and Rule 4019 governing enforcement and sanctions for failure to make discovery.

These rules do not preclude (1) the issuance of a subpoena under Rule 234.1 et seq. for the production of documents or things at a deposition or (2) an independent action against a person not a party for production of documents or things.

**Rule 4009.2. Request Upon a Party for Production of Documents and Things.**

(a) The request may be served without leave of court upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party.

(b) The request shall set forth in numbered paragraphs the items to be produced either by individual item or by category, and describe each item or category with reasonable particularity. Each paragraph shall seek only a single item or a single category of items. The request shall be prepared in such fashion that sufficient space is provided immediately after each paragraph for insertion of the answer.

(c)(1) The party upon whom the request is served shall within thirty days after the service of the request

(i) serve an answer including objections to each numbered paragraph in the request, and

(ii) produce or make available to the party submitting the request those documents and things described in the request to which there is no objection.

(2) The answer shall be in the form of a paragraph-by-paragraph response which shall

(i) identify by number, using the system of numbering prescribed by subdivision (d), all documents or things produced or made available;

(ii) identify by number, using the system of numbering prescribed by subdivision (d), all documents or things not produced or made available because of the objection that they are not within the scope of permissible discovery under Rule 4003.2 through Rule 4003.5 inclusive and Rule 4011(c). Each document or thing not produced shall be identified with reasonable particularity together with the basis for non-production;

(iii) object to the request on the grounds set forth in Rule 4011(a), (b), and (e) or on the ground that the request does not meet the requirements of subdivision (b) of this rule;

(iv) state that after reasonable investigation, it has been determined that there are no documents responsive to the request.

(3) The answer shall be signed and verified by the person making it and signed also by the attorney making an objection if one is set forth.

(d) The party producing documents or things shall identify through a system of numbering the documents or things produced and the documents and things withheld. The party producing the documents and things and the party receiving them shall keep a current list of the documents and things produced and withheld based on the numbering system.

**Official Note:** Ordinarily, each page of a document should receive a separate number. However, a document may be assigned a number as a whole if it is bound or if it contains pages which are sequentially numbered.

(e) If a request is reasonably susceptible to one construction under which documents sought to be produced are within the scope of the request and another construction under which the documents are outside the scope of the request, the answering party shall either produce and identify the documents pursuant to subdivision (c)(2)(i) of this Rule or object to the request pursuant to subdivision (c)(2)(ii).

**Rule 4009.3. Subpoena Upon a Person Not a Party for Production of Documents and Things.**

(a)(1) A party seeking production from a person not a party to the action shall give written notice to every other party of the intent to serve a subpoena at least thirty days before the date of service. A copy of the subpoena proposed to be served shall be attached to the notice.

**Official Note:** For the form of the written notice, see subdivision (f) of this rule.

(2) The written notice shall not be given to the person named in the subpoena.

(b)(1) Any party may file of record written objections to the service of the subpoena and shall serve a copy of the objections upon every other party to the action.

**Official Note:** For the form of the objections, see subdivision (g) of this rule.

(2) If objections are filed of record or are received by the party intending to serve the subpoena on or before the thirtieth day after service of the notice of intent, the subpoena shall not be served. The court upon motion shall rule upon the objections and may enter an appropriate order.

**Official Note:** The party seeking production is under a duty to check the docket of the case in the prothonotary's office to determine if an objection has been filed.

(3) If objections are not filed or received within thirty days after service of the notice of intent, the subpoena may be served as provided by subdivision (c) subject to the right of any party or interested person to seek a protective order.

(c)(1) The party seeking production may serve on the person named in the subpoena a copy of the subpoena only if it is identical to the subpoena attached to the notice of intent to serve the subpoena and if the party seeking production has filed of record a certificate that

(i) the notice of intent to serve a subpoena was mailed or delivered to each party at least thirty days prior to the date on which the subpoena is sought to be served,

(ii) a copy of the notice of intent, including the proposed subpoena attached to the notice of intent, is attached to the certificate, and

(iii) no party has filed of record or served an objection to the service of the subpoena.

**Official Note:** For the form of the certificate, see subdivision (h) of this rule.

(2) The subpoena shall be issued as provided by Rule 234.2(a) and shall be served in the manner provided by Rule 234.2(b).

**Official Note:** Rule 234.2(a) governs the issuance by the prothonotary of a subpoena to testify. Rule 234.2(b) governs service of a subpoena to testify.

For the form of a subpoena to produce, see subdivision (i) of this rule.

(d) The person upon whom the subpoena has been served in complying with the subpoena shall execute a certification of compliance and deliver it with the documents or things produced to the party serving the subpoena within thirty days of service. A form of certification to be executed and delivered shall be served with the subpoena.

**Official Note:** For the form of the certification of compliance, see subdivision (j) of this rule.

(e) The party receiving documents and things pursuant to the subpoena shall give notice of receipt to every other party to the action and upon the payment of reasonable cost shall

(1) furnish a legible copy of each document to any other party who requests a copy and

(2) allow reasonable access to the things to any other party who requests access.

(f) The written notice of intent to issue a subpoena required by subdivision (a)(1) shall be substantially in the following form:

(CAPTION)

NOTICE OF INTENT TO OBTAIN A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.3

\_\_\_\_\_ (party) intends to serve a subpoena identical to the one that is attached to this notice. You have thirty (30) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date: \_\_\_\_\_  
Attorney for

(g) The objection to the issuance of a subpoena prescribed by subdivision (b) shall be substantially in the following form:

(CAPTION)

OBJECTIONS TO THE SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.3

\_\_\_\_\_ (party) objects to service of the proposed subpoena that is attached to these objections for the following reasons: \_\_\_\_\_

Date: \_\_\_\_\_  
Attorney for

(h) The certificate required by subdivision (b) as a prerequisite to the service of a subpoena shall be substantially in the following form:

(CAPTION)

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.3

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.3, \_\_\_\_\_ certifies that

(Plaintiff/Defendant)

(1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least thirty days prior to the date on which the subpoena is sought to be served,

(2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,

(3) no party has filed of record an objection to the service of the subpoena nor has the undersigned received an objection to the service of the subpoena, and

(4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: \_\_\_\_\_  
Attorney for

**Official Note:** The party who signs the certificate must ascertain that no objections have been filed of record. See Rule 4009.3(c).

(i) A subpoena to produce documents or things shall be substantially in the following form:

(CAPTION)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.3

TO: \_\_\_\_\_  
(Name of Person or Entity)

Within thirty (30) days after service of this subpoena, you are ordered by the court to produce the following documents or things: \_\_\_\_\_

at \_\_\_\_\_  
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within thirty (30) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

\_\_\_\_\_  
Attorney's Name

\_\_\_\_\_  
Identification Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Attorney for \_\_\_\_\_

BY THE COURT:

DATE: \_\_\_\_\_ By \_\_\_\_\_  
(Prothonotary)

Seal of the Court

(j) The certification of compliance required by subdivision (d) shall be substantially in the following form:

(CAPTION)

NOTICE

To \_\_\_\_\_ (Person Served with Subpoena):

You are required to complete the following Certificate of Compliance when producing documents or things pursuant to the Subpoena.

**CERTIFICATE OF COMPLIANCE  
WITH SUBPOENA TO PRODUCE DOCUMENTS OR  
THINGS PURSUANT TO RULE 4009.3**

\_\_\_\_\_ (person served with subpoena) certifies to the best of his or her knowledge, information and belief that all documents or things required to be produced pursuant to the subpoena issued on \_\_\_\_\_ (date of subpoena) have been produced.

Date: \_\_\_\_\_  
Person served with subpoena

**ENTRY UPON PROPERTY FOR INSPECTION AND  
OTHER ACTIVITIES**

**Rule 4009.11. Entry Upon Property for Inspection and Other Activities.**

Any party may serve a request upon a party pursuant to Rule 4009.12 or a motion upon a person not a party pursuant to Rule 4009.13 to permit entry upon designated property in the possession or control of the party or person upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rules 4003.1 through 4003.5 inclusive.

**Official Note:** These rules do not prevent a court from entering an order under its common law power preserving or protecting property.

Parties to an action and persons not parties but served with a subpoena or request pursuant to these rules have the protective and enforcement provisions of the discovery rules available to them. See Rule 4012 governing protective orders and Rule 4019 governing enforcement and sanctions for failure to make discovery.

These rules do not preclude an independent action against a person not a party for permission to enter upon property.

**Rule 4009.12. Request for Entry upon Property of a Party.**

(a) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party. The request shall describe with

reasonable particularity the property to be entered and the activities to be performed.

(b) The party upon whom the request is served shall allow the requested entry unless the request is objected to within thirty days after service of the request, in which event the reasons for objection shall be stated. If objection is made to party of a request, the part shall be specified. The party submitting the request may move for an order under Rule 4019(a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit entry as requested.

(c) A party may enter upon property one or more times to accomplish the activities set forth in the request.

**Official Note:** The remedy of a protective order is available to the party to whom the request is directed to prevent abuse.

**Rule 4009.13. Motion for Entry Upon Property of a Person Not a Party.**

(a) A motion to permit entry upon property of a person not a party shall begin with the notice prescribed by subdivision (c) and shall be served personally by a competent adult in the same manner as original process. A copy of the motion shall also be served upon all other parties to the action pursuant to Rule 440.

**Official Note:** For general provisions governing entry upon property, see Rule 4009.11.

(b) If the person served does not affirmatively consent to the entry, the motion may be presented to the court. The moving party shall give the person served not less than fifteen days notice of the presentation. Upon proof of service of the notice of the presentation, the court, as it deems appropriate, may enter an order permitting or denying the entry or set a date for a hearing. The order permitting entry shall specify a reasonable time, manner or other condition of entry and of making the inspection and performing any related acts.

(c) The notice required by subdivision (a) shall be substantially in the following form:

(CAPTION)

IMPORTANT NOTICE

YOU HAVE PROPERTY WHICH THE PARTIES TO THE ABOVE LAWSUIT WISH TO ENTER FOR INSPECTION OR OTHER ACTIVITIES. THE MOTION ATTACHED TO THIS NOTICE ASKS THE COURT FOR AN ORDER ALLOWING THE ENTRY INTO YOUR PROPERTY. IF YOU HAVE NO OBJECTION TO THIS ENTRY PLEASE FILL IN THE ATTACHED FORM. PLEASE CONTACT THE ATTORNEY LISTED BELOW:

\_\_\_\_\_  
(Attorney filing the motion)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

IF YOU DO HAVE OBJECTIONS YOU HAVE A RIGHT TO A HEARING ON THE MATTER. A DATE FOR PRESENTATION OF THE MOTION TO THE COURT WILL BE SET AND THE PARTY FILING THE MOTION WILL GIVE YOU FIFTEEN DAYS NOTICE OF THE PRESENTATION. IF YOU DO NOT APPEAR AT THE PRESENTATION OF THE MOTION, THE COURT MAY ENTER AN ORDER ALLOWING ENTRY.



YOU MAY WISH TO TAKE THIS NOTICE TO A LAWYER WHO CAN ADVISE YOU. IF YOU DO NOT HAVE A LAWYER AND WISH TO OBTAIN ONE, CONTACT THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

\_\_\_\_\_  
(Name of Office)

\_\_\_\_\_  
(Address of Office)

\_\_\_\_\_  
(Telephone Number)

**Official Note:** The office shall be that designated by the court under Rule 1018.1(c).

#### **Explanatory Comment**

Recommendation No. 131 proposes to rescind present Rule 4009 governing production of documents and things and entry upon land and to replace it with Rule 4009.1 et seq. The new section is divided into Rules 4009.1—4009.3, relating to production of documents and things and Rules 4009.11—4009.13, relating to entry upon property.

#### **PRODUCTION OF DOCUMENTS AND THINGS**

##### *Rule 4009.1 Production of Documents and Things*

Proposed Rule 4009.1 is derived from present Rule 4009(a)(1) and sets forth the parameters of production. While continuing to provide for a request for production by a party to an action, the rule also provides for a new subpoena for production by a person not a party.

##### *Rule 4009.2 Request Upon a Party for Production*

The rule provides that the request is to be in the form of numbered paragraphs, each of which should request one item or category of items described with "reasonable particularity." As in the case of written interrogatories to a party, the rule requires that sufficient space be "provided following each paragraph for insertion of the answer."

The party upon whom the request is served must serve a verified answer within thirty days after service of the request. Any objections to the request must be set forth in the answer. Subdivision (c) also provides specific guidance to the manner of answering a request. Documents or things whether produced or not produced are to be identified through a system of numbering required by subdivision (d).

If a request is subject to a reasonable interpretation that certain documents are within the scope of the request, the party from whom production is sought must respond to the request. Subdivision (e) requires that in such a circumstance the document must be produced and identified or an objection made.

##### *Rule 4009.3 Subpoena Upon a Person Not a Party for Production of Documents and Things*

The subpoena upon a person not a party for the production of documents and things is new. A party who wishes to take advantage of this procedure must give thirty days advance notice to all other parties of the intention to serve the subpoena. A copy of the subpoena proposed to be served must be attached to the notice of intent. Advance notice is not given to the person to be served with the subpoena from whom production is sought.

Any party may object to service of the subpoena and, if the objection is filed of record or received by the party who served the notice of intent within thirty days of service, "the subpoena shall not be served." A protective order is available to a party who has not timely filed or served objections.

Service of the subpoena is authorized by subdivision (c) if it is identical to the subpoena attached to the notice of intent and if the party seeking to serve it files the required certification. The rule provides several forms, including the form of subpoena and the form of certification.

Subdivision (d) provides for the party upon whom the subpoena has been served to execute a certificate of compliance. Subdivision (e) provides for the party who has received documents or things to give notice to other parties of the receipt of documents or things and, upon request and payment of reasonable costs, to provide copies of documents or reasonable access to things.

#### **ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

##### *Rule 4009.11 Entry Upon Property for Inspection and Other Activities*

Proposed Rule 4009.11 is derived from present Rule 4009(a)(2) and describes the entry upon property. In addition to providing for a request for entry upon property of a party to an action as under the present rule, the proposed rule also provides for a motion for entry upon the property of a person not a party.

##### *Rule 4009.12 Request for Entry Upon Property of a Party*

The request must "describe with reasonable particularity the property to be entered and the activities to be performed." The party served must permit the requested entry or object within thirty days after service of the request. The enforcement provisions of Rule 4019(a) are available with respect to an objection, a failure to respond or a failure to permit the requested entry.

The party requesting entry may enter "one or more times to accomplish the activities set forth in the request." A note advises that abuse may be prevented by means of a protective order.

##### *Rule 4009.13 Motion for Entry Upon Property of a Person Not a Party*

The rule governs three aspects of procedure upon a motion for entry upon property of a person not a party. First, subdivision (a) requires that the motion begin with the form of "Important Notice" prescribed by subdivision (c). Second, subdivision (a) also requires service of the motion upon both the person not a party whose property is to be entered and all other parties to the action. Finally, subdivision (b) provides for notice of presentation of the motion to the court when the person does not affirmatively consent to the entry.

*By the Civil Procedural Rules Committee,*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-132. Filed for public inspection February 2, 1996, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

## PART I. GENERAL

### [234 PA. CODE CHS. 50 AND 100]

Revision of the Comments to Rules 51, 55 and 101; No. 203; Doc. No. 2

#### Order

*Per Curiam:*

Now, this 16th day of January, 1996, upon the recommendation of the Criminal Procedural Rules Committee, this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and an explanatory *Report* to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the *Comments* to Pa.Rs.Crim.P. 51, 55, and 101, as revised in the following form, are hereby approved.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective immediately.

The Criminal Procedural Rules Committee has prepared a *Report* explaining the January 16, 1996 revisions of the *Comments* to Rules of Criminal Procedure 51 (Means of Instituting Proceedings in Summary Cases), 55 (Issuance of Citation), and 101 (Means of Instituting Proceedings in Court Cases), which are the subject of the following Order. The *Report* follows the Court's Order.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

### CHAPTER 50. PROCEDURE IN SUMMARY CASES

#### PART I. INSTITUTING PROCEEDINGS

#### Rule 51. Means of Instituting Proceedings in Summary Cases.

\* \* \* \* \*

**Official Note:** Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985; effective January 1, 1986; and replaced by present Rules 3 [ (0) ], 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; **Comment revised January 16, 1996, effective immediately.**

#### Comment

[ This rule is derived from previous Rule 51A. ] This rule establishes the means of instituting criminal proceedings in summary cases. For general citation procedures, see Part II, Rules 52 and 53.

\* \* \* \* \*

Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c) [ (1983) ], or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule 3. Criminal proceedings in summary cases are

to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 3) and proceeds under Chapter 100 of the rules. Any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See Crimes Code § 110, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, [ 452 Pa. 233, ] 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U. S. 808 (1973), on remand, [ 455 Pa. 622, ] 314 A.2d 854 (Pa. 1974) [ , and *Grady v. Corbin*, 110 S. Ct. 2084 (1990) ]. But see *Commonwealth v. Beatty*, [ 500 Pa. 284, ] 455 A.2d 1194 (Pa. 1983), [ with regard to ] concerning summary violations of the Vehicle Code.

The summary case rules are not intended to prohibit or to suspend any acknowledgment of guilt procedures that may be specifically authorized by statute. See, e.g., Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, and Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925. **Furthermore, the use of a field acknowledgment of guilt pursuant to 34 Pa.C.S. § 926 or 30 Pa.C.S. § 925 should not be construed as the issuance of a citation for the purpose of instituting a summary case under these rules.** See [ also ] Rules [ 56 ] 55 and 60.

The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving juveniles to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act §§ 6302—6303, 42 Pa.C.S. §§ 6302—6303; Vehicle Code § 6303, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. § 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

See [ Section 1 of Act 9 of 1990, effective April 14, 1990, adding ] Section 1522 to the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

\* \* \* \* \*

#### Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 [ Pa. Bull. ] Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 [ Pa. Bull. ] Pa.B. 621 (February 16, 1991).

**Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).**

#### PART IIA. PROCEDURES WHEN CITATION IS ISSUED TO DEFENDANT

#### Rule 55. Issuance of Citation.

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 135, adopted January 31, 1970, effective May 1, 1970; renumbered [ as ] Rule 55 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 58. Present Rule 55 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; Comment revised February 11, 1989, effective July 1, 1989; **Comment revised January 16, 1996, effective immediately.**

**Comment**

[This rule is derived from previous Rule 51A, subparagraphs (1)(a) and (3)(a).]

A law enforcement officer may issue a citation based upon information that the defendant has committed a summary violation, which information may be received from a personal observation of the commission of the offense; a witness; another police officer; investigation; or speed-timing equipment, including radar. Contrast *Commonwealth v. Hatfield*, [307 Pa. Super. 454,] 453 A.2d 671 (Pa. Super. 1982), decided before the adoption of previous Rule 70 (Defects in Form, Content, or Procedure—Summary Cases) and the 1983 revision of the previous Comment.

It is preferable that a law enforcement officer making a stop for a traffic violation be in uniform.

The use of a [citation for a] field acknowledgment of guilt pursuant to Section 926 of [The] the Game and Wildlife Code, [( ) 34 Pa.C.S. § 926, (Supp. 1988)] and Section 925 of the Fish and Boat Code. [( ) 30 Pa.C.S. § 925, (Supp. 1988)] should not be construed as [an] the issuance of a citation for the purpose of instituting a summary case under these rules. See Rule 60.

**Committee Explanatory Reports:**

Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).

**CHAPTER 100. PROCEDURE IN COURT CASES**

**Rule 101. Means of Instituting Proceedings in Court Cases.**

\* \* \* \* \*

**Official Note:** Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; **Comment revised January 16, 1996, effective immediately.**

**Comment**

\* \* \* \* \*

There are only a few exceptions to this rule regarding the instituting of criminal proceedings in court cases. There are, for example, special proceedings involving a coroner or medical examiner. See *Commonwealth v. Lopinson*, [427 Pa. 284,] 234 A.2d 552 (Pa. 1967), and *Commonwealth v. Smouse*, [406 Pa. Super. 369,] 594 A.2d 666 (Pa. Super. 1991).

Whenever a misdemeanor or felony is charged, even if a summary offense is also charged in the same complaint, the case should proceed as a court case under Chapter

100. See *Commonwealth v. Campana*, [452 Pa. 233,] 304 A.2d 432 (Pa. 1973). [See also *Grady v. Corbin*, 495 U. S. 908 (1990).]

\* \* \* \* \*

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the August 12, 1993 Comment revisions published at 22 Pa.B. 3826 (July 25, 1992).

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1993); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

**Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).**

**REPORT**

*Revision of the Comments to Rules 51, 55, and 101*

*Field Acknowledgments of Guilt; Jurisdiction of Summary Offenses in Juvenile Cases; Grady v. Corbin*

On January 16, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comments to Rules of Criminal Procedure 51 (Means of Instituting Proceedings in Summary Cases), 55 (Issuance of Citation), and 101 (Means of Instituting Proceedings in Court Cases). These "house-keeping" revisions were submitted for the Court's approval without prepublication. The revisions update the Comments:

(1) by recognizing that the statutorily authorized field acknowledgment of guilt used by both the Pennsylvania Game Commission and the Pennsylvania Fish and Boat Commission is a separate document from the criminal citation;

2) by including in the Rule 51 Comment a citation to Section 6303(a)(5) of the Juvenile Act, 42 Pa.C.S. § 6303(a)(5), and Section 1515(a)(1) of the Judicial Code, 42 Pa.C.S. § 1515(a)(1), concerning the jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act; and

(3) by deleting from the Comments to Rules 51 and 101 the citation to *Grady v. Corbin*, 495 U. S. 908 (1990), which has been expressly overruled in *United States v. Dixon*, 509 U. S. \_\_\_\_ (1993).

These revisions are effective immediately.

This Report highlights the Committee's considerations in formulating its recommendation.<sup>1</sup>

*Discussion*

1) Field Acknowledgments of Guilt

It recently came to the Committee's attention that the Pennsylvania Game Commission and the Pennsylvania Fish and Boat Commission are no longer using the preprinted criminal citation form as the field acknowledgment of guilt. See 30 Pa.C.S. § 925 and 34 Pa.C.S. § 926 for the statutory authority to use field acknowledgments of guilt. To avoid confusion about the function of the field acknowledgment as it relates to the institution of crimi-

<sup>1</sup> Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. In addition, the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

nal proceedings by citation, the Commissions developed a separate form for the field acknowledgment of guilt. In view of this, the present Rule 55 *Comment* is outdated and misleading, and has been revised to reflect this change in the forms.

When the Committee reviewed the other summary case rules to see if any of them needed similar changes, we looked at Rule 51 (Means of Instituting Proceedings in Summary Cases). Because Rule 51 deals generally with instituting summary criminal proceedings, the Committee agreed that the Rule 51 *Comment* should be revised to make it clear that the field acknowledgment is not a citation for purposes of instituting a summary criminal proceeding under the rules.

## 2) Juvenile Cases

The Committee has been monitoring the recent legislation related to criminal practice which impacts on the Criminal Rules. On March 31, 1995, the Governor signed Act No. 1995-9 (SS1), which amends Section 1515(a)(1) of the Judicial Code, 42 Pa.C.S. § 1515(a)(1), and Section 6303(a)(5) of the Juvenile Act, 42 Pa.C.S. § 6303(a)(5), to vest jurisdiction in the Juvenile Court over proceedings in which a child is charged with a summary offense arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed under the Juvenile Act. In view of this statutory change, we agreed that the Rule 51 *Comment* provision concerning the application of the Criminal Rules to juveniles should be updated to reflect these recent amendments.

## 3) *Grady v. Corbin*

Since we were already making "housekeeping" revisions to the Rule 51 *Comment*, the Committee agreed that the citation to *Grady v. Corbin*, 495 U. S. 908 (1990), should be deleted from the paragraph discussing Section 110 of the Crimes Code, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973) because *Grady* has been expressly overruled in *United States v. Dixon*, 509 U. S. \_\_\_\_ (1993). For the same reason, we also deleted the reference to *Grady* in the Rule 101 *Comment*.

[Pa.B. Doc. No. 96-133. Filed for public inspection February 2, 1996, 9:00 a.m.]

## PART I. GENERAL

### [234 PA. CODE CH. 1100]

### Order Amending Rule 1114; No. 204; Doc. No. 2

#### Order

*Per Curiam:*

Now, this 16th day of January, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published in the *Pennsylvania Bulletin* (24 Pa.B. 1479 (March 19, 1994)) and in the *Atlantic Reporter* (Second Series Advance Sheets Vol. 637, No. 1) before adoption, and a *Final Report* to be published with this Order;

*It Is Ordered* pursuant to Article V, section 10 of the Constitution of Pennsylvania that Rule 1114 is hereby amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1996.

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the changes which are the subject to the Court's Order. The *Final Report* follows the Court's Order.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1100. TRIAL

#### Rule 1114. Material permitted in possession of the jury.

[ Upon retiring for deliberations, the jury shall not be permitted to have a transcript of any trial testimony, nor a copy of any written confession by the defendant, nor a copy of the information or indictment. Otherwise, upon retiring, the jury may take with it such exhibits as the trial judge deems proper. ]

1. Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph 2.

2. During deliberations, the jury shall not be permitted to have a transcript of any trial testimony, nor a copy of any written or otherwise recorded confession by the defendant, nor a copy of the information.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended, and second paragraph of Comment and the words "or information" added June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996.

#### Comment

[ This rule substantially changed the former law in many Pennsylvania counties by prohibiting ] **This rule prohibits** the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, [ 450 Pa. 359, 363 n.1, ] 301 A.2d 646, 650 n.1 (Pa. 1973), the Court noted that "it would be better procedure not to allow exhibits into the jury room which would require expert interpretation." See *Commonwealth v. Oleynik*, 568 A.2d 1238 (Pa. 1990), in which the Supreme Court held that it was improper to permit a jury to take written jury instructions with them for use during deliberations.

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.

**The amendment adding "or otherwise recorded" is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993).**

*Committee Explanatory Reports:*

Report explaining the August 12, 1993 Comment revision published at 22 Pa.B. 3826 (July 25, 1992).

**Final Report explaining the January 16, 1996 amendments published with the Court's Order at 26 Pa.B. 439 (February 3, 1996).**

**FINAL REPORT**

*Amendments to Rule 1114  
(Materials Permitted in Possession of Jury)  
Written or Otherwise Recorded Confessions*

**I. Introduction**

On January 16, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted amendments to Rule of Criminal Procedure 1114 (Material Permitted in Possession of the Jury) to clarify the rule's exception for confessions in light of *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993). This *Final Report* highlights the Committee's considerations in formulating its recommendation.<sup>1</sup>

**II. Discussion**

Under Rule 1114, a jury is not permitted to have a copy of a defendant's written confession. In *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993), the Superior Court declined to construe Rule 1114 as imposing a like proscription for videotaped confessions, but raised the question of whether Rule 1114 should be amended to encompass all mediums by which a criminal defendant's confession could be recorded.

Prompted by the Superior Court's suggestion in *Foster*, the Committee reviewed the history of Rule 1114. In 1974, at the Court's request, the Committee added the "written confession" exception to Rule 1114, although at the time, the Committee believed that there should be no exception and that the entire matter should be left to the judge's discretion. As we reexamined Rule 1114, there was some sentiment that the Committee's 1974 position was correct and that the rule should be completely discretionary. Ultimately, however, we decided that the exception should remain.

Because the Committee agreed with the suggestion in *Foster* that the "confession" exception should encompass all mediums by which a defendant's confession can be recorded, we reviewed examples of Pennsylvania statutory and rule language distinguishing audio and video recordings from a police officer's written "record" or report of a defendant's statement in order to determine how best to phrase a rule amendment. We rejected some terminology, such as "electronic recordings," because technological developments would soon render it obsolete. Other terminology, such as that found in the Wiretap Act, see 18 Pa.C.S. § 5714 (Recording of Intercepted Communications) and in the statutes governing videotaped depositions and closed-circuit television, see 42 Pa.C.S. §§ 5984, 5985, and 5985.1, was too narrow in scope. As a result of this review, the Committee concluded that the amendment should be broadly drafted to insure that it would encompass not only the current means for recording confessions, but also future technological developments.

Finally, to make it clear that the amendment is not intended to change what constitutes a confession under Rule 1114, we added the following paragraph to the Comment:

<sup>1</sup> Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Reports*.

The amendment adding "or otherwise recorded" is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. 1993).

[Pa.B. Doc. No. 96-134. Filed for public inspection February 2, 1996, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

**SCHUYLKILL COUNTY****Amended Rules of Procedure; S.96 1996****Order of Court**

*And Now*, this 17 day of January, 1996, at 1:10 p.m., Schuylkill County Civil Rules of Procedure, Criminal Rules of Procedure for the Court of Common Pleas and District Justice Courts and Judicial Administration are amended and/or adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Civil Procedural Rules Committee, Criminal Procedural Rules Committee and the Domestic Relations Committee.

4) Forward one (1) copy with the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

JOSEPH F. McCLOSKEY,  
*President Judge*

REVISED RULES  
of  
CIVIL PROCEDURE  
in the

Court of Common Pleas  
of Schuylkill County  
Twenty-First Judicial District  
Commonwealth of Pennsylvania

**RULES OF CIVIL PROCEDURE  
FOR COMMON PLEAS COURT**

**APPEALS FROM CERTAIN ADMINISTRATIVE  
AGENCIES**

**RULE 14: APPEALS FROM ZONING BOARD AND  
GOVERNMENTAL AGENCIES**

I. PENNSYLVANIA MUNICIPALITIES PLANNING  
CODE (nothing contained in this Local Rule shall super-

sede the requirements of the Pennsylvania Municipalities Planning Code).

A. APPEAL NOTICE. A land use appeal shall be in writing and shall contain the following:

1. A caption in substantially the following form: In Re: The Appeal of \_\_\_\_\_ (Name) \_\_\_\_\_ from the decision of the \_\_\_\_\_ (Name of local agency, such as zoning hearing board or governing body).

2. Where applicable and where available to the appellant, in separately numbered paragraphs and in the following order:

- a. name and address of the appellant.
- b. name and address of the local agency the decision of which is being appealed.
- c. the name and address of the owners, both real and equitable of any real estate which may be the subject of the application and an identification of any real estate which may be the subject matter of the application.
- d. a chronology of the case, including the following dates:
  - i. date of application.
  - ii. date of filing application with the zoning officer.
  - iii. date of action of the zoning officer or other official.
  - iv. date of appeal or request to local agency.
  - v. dates of all hearings.
  - vi. date of decision or adjudication from which the appeal has been taken.
  - vii. date decision received.
- e. the purpose for which the original application was made.
- f. all specific legal and factual grounds relied upon for the appeal.
- g. prayer for relief specifying all relief sought by the appellant.

3. A certification by the appellant that a transcript of the proceedings has been ordered, if one is not already in existence. At the time of the ordering, a party must make satisfactory arrangements with the reporter for payment of the costs of the transcript.

#### B. INTERVENTION

1. Notice of intervention under Section 1004-A of the Pennsylvania Municipalities Planning Code shall be under caption of the appeal and contain:

- i. name and address of intervenor.
  - ii. nature of interest of intervenor in the proceedings.
  - iii. statement setting forth the factual and legal circumstances under which the intervenor alleges a right to intervene.
  - iv. a brief summary of the position of intervenor and grounds therefor.
2. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

3. The petitioner seeking intervention in a land use appeal shall comply with the procedures in Sch.R.C.P. 206 to submit the matter to the Court.

#### C. CERTIORARI.

1. In making its return, the local agency shall submit its entire record, including but not limited to:

- a. all original papers filed, in chronological order, commencing with the application and all documents relating thereto, including correspondence;
- b. the transcript of testimony in existence and available to the local agency within the time it is required to make its return;
- c. the complete current zoning ordinance of the municipality, including maps, and any relevant prior ordinances or citation of, and copies of rules or regulations which affect the appeal; and
- d. the findings of fact and conclusions of law of the local agency and its decision.
- e. the names and addresses of all persons officially recognized as parties by the local agency.

2. The return on the certiorari shall be verified by the chairman or other officer designated by the local agency.

3. Notice of making the return shall be given forthwith by the Prothonotary to appellant who shall, within 4 days after receipt of the notice of making the return, give written notice of the return to the municipality, any applicant before the local agency and any property owner, whether real or equitable, whose land is the subject matter of the application, as well as all other parties to the original proceedings. The appellant shall contemporaneously file a certificate of service of such notice, setting forth the name and address of each party served and the manner of service.

4. If a transcript subsequently becomes available, a supplemental return, containing such transcript, shall be promptly filed, and notice given as required by I.C.3. above.

#### D. SUBMISSION TO COURT

1. Unless otherwise ordered by the court or by stipulation of the parties, the only issues before the court shall be those raised by the specific legal or factual grounds and prayers for relief in the appeal notice pursuant to subsection A(2)(f) and (g), and supplemental grounds filed in writing within 5 days of receipt of notice that the transcript has been filed.

2. Upon receiving notice of the return on certiorari, any party may submit the appeal to the court for disposition by praecipe pursuant to Sch.R.C.P. 206. The submitting party shall contemporaneously file a brief supporting that party's position and an affidavit of service on all other parties or their counsel. The briefs of all other parties shall be filed within 20 days of such service. If any party believes that the proper consideration of the appeal requires the presentation of additional evidence, that party shall, on or before the date when that party's brief is due, file a written motion, in compliance with Sch.R.C.P. 206, and shall be accompanied by the praecipe mandated by Sch.R.C.P. 205.3, setting forth specifically the nature of the proposed additional testimony and the reasons why such testimony is necessary for the proper consideration of the appeal.

3. In the absence of a motion to present additional testimony, the Court may render a decision based solely on the record, briefs of the parties and oral argument if requested; may direct that the parties brief and/or argue additional issues; or may remand the matter for additional hearing. If a motion for additional hearing is filed and it is shown that proper consideration of the appeal

requires the presentation of additional evidence, the Court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review if permitted by law, or may refer the case to a referee to receive additional evidence.

4. An appeal from a decision on remand shall be docketed to the original docket from which the remand was made. Only issues arising from the remand may be raised. All requirements of all parties (including, but not limited to, the local agency), as elsewhere provided in this Rule shall apply to an appeal after remand.

II. LOCAL AGENCY LAW. Except as otherwise provided in the Local Agency Law, 2 Pa.C.S.A. § 101 et seq., appeals taken under the Local Agency Law shall be governed by part I above to the extent applicable.

III. OTHER GOVERNMENT AGENCIES. Appeals taken from any governmental action for which no other procedure is provided by statute or rule shall be governed by part I above to the extent applicable.

#### **RULE 15: SUPERSEDEAS IN APPEALS**

Unless otherwise provided by law, the grant of a supersedeas or a stay of proceedings in connection with appeals shall be discretionary with the Courts and may be upon ex parte application; provided, however, that the other parties of record in the proceedings shall have the right to petition for the withdrawal of such supersedeas or stay.

#### **RULES OF CONSTRUCTION**

##### **RULE 51: TITLE AND CITATION OF RULES**

(a) All Civil procedural rules adopted by the Court of Common Pleas of Schuylkill County shall be known as the Schuylkill County Rules of Civil Procedure and shall be cited as "Sch.R.C.P. \_\_\_\_."

##### **RULE 52: EFFECTIVE DATE OF RULES**

These rules are intended to supplement and implement the Pennsylvania Rules of Civil Procedure, and they shall govern the practice and procedure in the Court of Common Pleas of Schuylkill County when appropriate. These Rules have been filed with the Administrative Office of the Pennsylvania Courts on \_\_\_\_\_, as required by Pa.R.J.A. 103(c)(1) and shall be effective from such date.

##### **RULE 76: DEFINITIONS**

(a) Unless the context clearly indicates otherwise, the words and phrases used in any rule promulgated by the Court of Common Pleas of Schuylkill County shall be given the same meanings as said words and phrases are given by Pa.R.C.P. 76, except:

(1) "Court" or "The Court" shall mean the Court of Common Pleas of Schuylkill County.

(2) "Rule" shall mean any rule of court promulgated by the Court of Common Pleas of Schuylkill County.

##### **RULE 101: PRINCIPLES OF INTERPRETATION**

(a) In the construction of any Schuylkill Rule, the principles set forth in Pa.R.C.P. 101 through 153 shall be employed whenever possible.

##### **RULE 105.1: APPROVAL OF SURETIES AND BONDSMEN, LIMITATIONS**

(a) Sureties and bondsmen required at the commencement of actions shall be approved by the Court. No attorney, sheriff's officer, officer of the court, or person

concerned in the issue or execution of process, shall become bail except by written leave of Court.

##### **(b) Individual Sureties**

When other than corporate security is offered, the party offering it shall at the same time present an affidavit of justification of the surety in the following form for approval of the Court:

#### (CAPTION) JUSTIFICATION OF SURETY

State of Pennsylvania

ss.

County of Schuylkill

\_\_\_\_\_, being duly sworn, depose(s) and says(s):

1. I (we) reside at \_\_\_\_\_ in the County of \_\_\_\_\_ and are by occupation \_\_\_\_\_.

2. I am (We are) the owner(s) of real estate in said County of \_\_\_\_\_, consisting of a piece of ground in size \_\_\_\_\_, situate at No. \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, which is improved with the following buildings:

3. The said property was obtained by me (us) by deed or will from \_\_\_\_\_ in the year \_\_\_\_\_, the title is in my (our) name(s) alone, and the deed or will is recorded in Schuylkill County in Deed (Will) Book Volume \_\_\_\_\_, page \_\_\_\_\_.

4. I am (We are) surety for the following named persons, and no others, in the following amounts:

5. I (We) do not contemplate the sale of the above described property and am (are) not now negotiating any sale of the same.

6. There are no encumbrances upon said property, except:

7. The said property has not been offered and accepted as bail or security for any other bail or bond still in force, except \_\_\_\_\_.

8. The above property is assessed by the County for taxation in the sum of \$ \_\_\_\_\_, and I (we) believe that at present said property would sell for \$ \_\_\_\_\_ County Assessment Code No. \_\_\_\_\_.

9. I (we) have read over the foregoing affidavit and swear the facts set forth therein are true and correct.

\_\_\_\_\_  
Sworn and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

##### **RULE 107: PUBLICATION**

(a) The *Schuylkill Legal Record* is designated the legal publication for the Court of Common Pleas of Schuylkill County

#### **BUSINESS OF COURTS**

##### **RULE 202: CONTINGENT FEE AGREEMENT**

(a) All moneys collected by an attorney under a contingent fee agreement shall be paid, after the deduction of fees and proper charges for costs and expenses of the case, directly to the client without other deduction unless otherwise authorized in writing by the client.

**RULE 205.1: FILING OF PAPERS**

(a) All papers relating to civil matters shall be filed in the Office of the Prothonotary, with the exception of support matters which shall be filed with the Domestic Relations Section in accordance with appropriate statutes, Pennsylvania Rules of Civil Procedure, and these rules, with a case number and year thereon and the date and hour of filing to be stamped thereon by the Prothonotary or Clerk of the Domestic Relations Section.

(b) Upon receipt by the Prothonotary of the record of a case transferred from another judicial district, the Prothonotary shall assign a case number and year to the action and shall notify all counsel of record thereof.

(c) All papers, pleadings, and documents filed with the Prothonotary and Domestic Relations Section shall be on 8 1/2 x 11 inch paper, and where signatures are required, such signatures shall be in black or blue-black ink.

(d) Prepayment of costs for filing. The Prothonotary, Clerk of Court of Common Pleas, Register of Wills, Clerk of the Orphans' Court Division, Clerk of the Domestic Relations Section, and the Recorder of Deeds shall have the right to require payment for the filing, recording, or service of a paper or pleading at the time same is filed and, if said officer is unable to determine in advance the amount so required, he shall have a right to require a reasonable sum as a deposit against the costs for filing, recording, or service of a paper or pleading at the time same is filed.

**RULE 205.2: PAPERS AND RECORDS**

(a) The record papers in the Office of the Prothonotary and Domestic Relations Section shall be in the custody of said officials who shall be responsible for their safekeeping. No person, other than the Prothonotary or the Chief of the Domestic Relations Section, or their duly authorized clerks, shall have access to the files in which such record papers are kept.

(b) Auditors, masters, and other similar officers appointed by the Court shall have authority to remove such records as may be necessary for the purposes of their appointment, and they shall return the same within three (3) months unless the Court authorizes their longer retention.

(c) None other than those named in (b) shall be permitted to remove papers from the Office of the Prothonotary or Domestic Relations Section without the written Order of Court. It shall be the duty of the Prothonotary and the Chief of the Domestic Relations to insure full compliance with this rule.

(d) The record papers may be examined and copied by any other party in interest only in the office of the Prothonotary or Domestic Relations Section. However, the rule copy of notes or testimony may not be photocopied.

(e) The Prothonotary shall keep and maintain the following dockets:

- (1) Suit Docket
- (2) Judgment Docket
- (3) Federal Tax Lien Docket
- (4) Secured Transactions Docket
- (5) Fictitious Names Docket

**RULE 205.3: PRAECIPE TO TRANSMIT**

All filings which require action by a judge or an assignment by the Court Administrator (except certificates of readiness for arbitration or trial) shall be accom-

panied by a praecipe to transmit on Prothonotary Form 205.3, and shall indicate the nature of the filing and what action is being sought to move the matter forward. The purpose of the praecipe is to advise the Court of what may be necessary for a disposition (i.e. when a hearing is required; when a matter is ripe for disposition on the record; matters that can be immediately addressed) and to expedite action on the filing. Failure to file the praecipe to transmit or to indicate what action is required from the Court may result in denial of the relief.

**RULE 206: PETITIONS**

Petition and answer practice shall comport with Pa.R.C.P. 206 and the rule provisions of Pa.R.C.P. 206.6. Each petition shall be accompanied by a praecipe pursuant to Sch.R.C.P. 205.3 indicating that the movant seeks issuance of a Rule to Show Cause. Upon filing, an Order in the form set forth herein shall be issued as of course and the parties shall thereafter proceed pursuant to the provisions of Pa.R.C.P. 206.

**206.7(a)**—In the event the respondent fails to file an answer to the rule within the time set forth in the rule, the movant may request to have the matter assigned to the court for entry of an appropriate order by praecipe pursuant to Sch.R.C.P. 205.3.

**206.7(c)**—When a contested case is at issue, and the parties have complied with the fact finding provisions of Pa.R.C.P. 206.7(c) and 206.7(d), where applicable, either party may move to have the matter assigned to the court for disposition by praecipe pursuant to Sch.R.C.P. 205.3.

In cases where an answer has been filed, each party shall file of record a brief in support of their respective position within twenty (20) days of the date of filing the praecipe to transmit the matter to the court for disposition. Unless otherwise requested, contested petitions shall be decided upon the record. Either party may request oral argument by filing a written request for oral argument with the Court Administrator of Schuylkill County.

**Form of Order:** Pursuant to this rule the petitioner shall attach to any petition seeking a rule to show cause a proposed order and the following form:

(CAPTION)

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, upon consideration of the foregoing petition, it is hereby DIRECTED that:

(1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

(2) The respondent shall file an answer to the petition within twenty (20) days of service upon the respondent;

(3) The petition shall be decided under Pa.R.C.P. No. 206.7;

(4) Depositions shall be completed within 60 days of this date unless otherwise extended by the court;

(5) Either party may request oral argument pursuant to Sch.R.C.P. 206.

\_\_\_\_\_ J.

**RULE 206A: MOTIONS**

(a) All motions or petitions for appointment, and for all miscellaneous matters, shall be governed by this rule.

(b) An original and one copy of all motions or filings pursuant to this provision, together with a praecipe to transmit as set forth in Sch.R.C.P. 205.3, shall be filed



with the Prothonotary, which office shall promptly transmit the pleadings to the court administrator for assignment to a Judge for disposition. The praecipe must indicate the nature of the action which is required by the Court to move the matter forward.

(c) All motions shall state with particularity the grounds on which they are based, and each shall be accompanied by a form of order which, if approved by the Court, would grant the relief sought by the motion. Every response in opposition to a motion shall be accompanied by a form of order, which, if approved by the Court, will deny or amend the relief sought by the motion.

(d) Every uncontested motion shall be accompanied by a certificate of counsel that such motion is uncontested, substantially in the form provided in subsection (h) of this rule.

Motions for final judgment on quiet title actions, where service was made by publication, shall contain a certificate of publication indicating the dates and sources of such publication.

(e) Every motion not certified as uncontested shall be accompanied by a memorandum containing a concise statement of the legal contentions and authorities relied upon in support of the motion and an affidavit of service upon the party against whom relief is sought, or to his attorney. Any party opposing the motion shall file and serve such answer or other response that may be appropriate, a memorandum in opposition, and an affidavit of service upon the other party within fifteen (15) days after service of the originating motion and supporting brief. In the absence of timely response, the motion may be treated as uncontested. The Court may require or permit further briefing, if appropriate.

(f) Any interested party may make a written request for oral argument on a motion. The Court may require oral argument, whether or not requested by a party.

(g) This rule does not apply to motions made during the actual trial of a case; nor to motions for post-trial relief under Pa.R.C.P. 227.1; nor to an application for special or preliminary injunction to the extent the Court may dispense with notice pursuant to Pa.R.C.P. 1531(a); nor to applications for continuance of a hearing before a master or permanent hearing officer; nor to petitions for special relief under the divorce code (See Sch.R.C.P. 1920;43); nor to allowable appeals from decisions or actions of state or local agencies where no such prior notice is required by the law or ordinance allowing the appeal.

**(h) CERTIFICATION**

\_\_\_\_\_ hereby certifies that a copy of the attached petition/motion was served upon the party listed below, in the manner and date as set forth, and that the undersigned has received an affirmative response from that party indicating that the petition/motion is not opposed.

Date served: \_\_\_\_\_ Served upon: \_\_\_\_\_  
(name)

Manner of Service: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(signature)

**RULE 210: FORM OF BRIEFS**

The brief of the moving party shall contain a history of the case, a statement of the issues involved, and argu-

ment. The brief of any responding party shall contain an argument and may contain a counter history of the case and a counterstatement of the issues involved.

**RULE 211: ARGUMENT/ORAL ARGUMENT**

Unless otherwise requested by counsel in writing all matters will be decided based upon the written arguments set forth in the briefs of the litigants. Requests for oral argument shall be submitted in writing to the assigned judge, or when there has not been a specific assignment to the Court Administrator, and shall be submitted not later than the date that the last brief is due to be filed. Failure to request oral argument in writing, including matters in which argument is required by rule (e.g. Pa.R.C.P. 1910.12(g)), will be deemed by the court to constitute an agreement by the parties to waive oral argument, and allow disposition on the record.

**RULE 212.1: PRE-TRIAL LIST**

(a) When a case is at issue, counsel shall proceed to complete discovery where desired and shall hold settlement meetings at which serious attempts shall be made by counsel to resolve the issues raised by the pleadings.

Thereafter, any party may list the case for pre-trial by filing a certificate of readiness on Prothonotary form 212. The Prothonotary shall then promptly forward the certificate to the Court Administrator. Failure to complete each item of Prothonotary Form 212 shall be cause for striking the case from the pre-trial list. Misrepresentations in the completion of this form which would delay the court process may be subject to the contempt powers of the Court.

(b) A copy of Prothonotary Form 212 shall be served on all counsel contemporaneously with the filing thereof. Within 10 days after filing of the form, opposing counsel may file with the Prothonotary written objections thereto stating the reasons, and shall serve a copy thereof upon the Court Administrator and other counsel. The Court Administrator shall promptly deliver the certificate and objections to the President Judge who shall promptly dispose of said objections.

(c) Each case on the pre-trial list shall be assigned by the President Judge to one of the Judges for pre-trial and trial proceedings. Thereupon, the Judge to whom a case is assigned shall summon the parties to a pre-trial conference.

(d) This rule shall be applicable to paternity cases where trial is demanded on the issue of paternity.

**RULE 212.2: PRE-TRIAL CONFERENCE**

(a) Pre-trial conferences shall be mandatory in all contested civil actions listed for trial by jury, and shall be held in the chambers of the Judge for the purposes set forth in Pa.R.C.P. 212.

(b) At least 1 week prior to the pre-trial conference, each of the parties shall submit a memorandum to the Court, with a copy to opposing counsel, containing:

1) A narrative statement of the facts which will be offered into evidence on behalf of that party.

2) The names and addresses of all witnesses the party expects to call, classifying them as witness to liability, non-liability, damages, diminution of damages, or expert.

3) A statement of the legal theory upon which the cause of action or defense is predicated, together with a complete citation of authorities relied on.

4) A complete list of photographs, contracts, maps, models, records or other documents or things intended to be used for evidence at the time of trial.

5) A written statement setting forth an itemized list of damages that any party intends to claim and prove at the time of trial.

6) A written detailed statement of items of claim for which a defense is believed available and the method to be used for proving such defense items.

7) A list of stipulations which opposing counsel reasonably can be expected to agree for purposes of avoiding need for proof.

8) A history of negotiations to date.

9) Where appropriate, a rough sketch illustrating the incident giving rise to the cause of action.

10) Copies of reports received from expert listed as a witness.

11) Such other matters as may be required by the Conference Judge.

(c) The attorneys who will actively try the case shall attend the pre-trial conference. At the time of the pre-trial conference, the parties or their authorized representatives shall be present or immediately available by telephone at the time of the conference. If a party, by contract or otherwise, has relinquished the right to settle and to control the conduct of the case, the person with such authority must be present or immediately available by telephone at the time of the conference. Any failure to comply with the foregoing may result in the imposition of sanctions.

(d) Failure to fully disclose in the pre-trial memorandum or the pre-trial conference the substance of the evidence as to liability, defenses, witnesses, exhibits, damages proposed to be offered at the trial, etc., may result in the exclusion of that evidence at the trial.

(e) The Judge may, at his discretion:

1) Require any party to file a supplemental memorandum, communicate to his client the recommendations of the Court or conduct additional negotiations.

2) Require the parties to submit points for charge on or before a designated date.

3) Schedule an additional pre-trial settlement conference.

4) Certify the case as ready for trial.

(f) Failure to file a pre-trial memorandum in accordance with these rules and/or failure to promptly attend the pre-trial conference may be deemed contempt of court and subject to such sanctions as the Court may impose.

#### **RULE 212.3: CASES CERTIFIED FOR TRIAL**

(a) All cases certified by the pre-trial Judge for trial shall be consolidated by the Court Administrator in a trial list according to the record age of the cases, giving priority to those cases as required by law or special Order of Court.

(b) At least 2 weeks before the first day of the next civil jury trials, the Court Administrator shall post the trial list in his office and in the office of the Prothonotary and shall also mail a copy of the trial list to each counsel, whose names appear on the certificate of readiness, for the cases listed.

(c) There shall be no call of the civil jury trial list. In the event of a settlement or discontinuance, counsel for

plaintiff shall promptly notify the assigned judge. Continuances shall be granted only by the assigned judge and only for good cause shown.

(d) Paternity cases will be called for trial at the discretion of the Judge to whom such cases are assigned.

(e) Any attorney who appears as trial counsel in more than 2 cases on any civil trial list shall within 5 days after the list is posted identify to the Court Administrator which 2 trials he/she will try and the name and address of the associate counsel who will try the remaining cases. Trial counsel shall contemporaneously also notify opposing counsel. Upon failure of counsel to timely designate associate counsel as required, the Court Administrator shall strike from the trial list all of that trial counsel's cases except those 2 commenced earlier than the others.

#### **RULE 213: CONSOLIDATION AND SEVERANCE OF ACTIONS AND ISSUES**

It shall be the duty of counsel at the pre-trial conference to advise the Court of any pending case that arises out of the same facts or circumstances as the case on the trial list. The Court, either by application or on its own motion, may order such cases consolidated for trial and, if need be, continue the case on the trial list until the other case or cases are at issue for the purpose of consolidating them for trial.

#### **RULE 216: APPLICATION FOR CONTINUANCE**

Applications for continuance of any court scheduled proceedings shall be made to the scheduling judge in writing on the general continuance form available through the office of the Court Administrator. The movant shall comply with Pa.R.C.P. 216, indicate whether the request is opposed and specify the reasons for the request. If the request is due to a prior attachment of counsel, a copy of the scheduling notice or attachment order shall accompany the continuance application. Each request for continuance shall include a certification by counsel that his/her client has been informed about and agrees with the request for continuance.

#### **RULE 216.1: MEDICAL WITNESSES**

Medical witnesses shall be served with a subpoena to appear. All reasonable effort will be made to schedule the testimony of medical witnesses at times consistent with the schedule of such witness, provided that the progress of the proceedings are not unduly interfered with or delayed.

#### **RULE 216.2: CONFLICT OF COUNSEL**

(a) No case shall be continued because of a pending engagement of an attorney in any court, other than the Supreme Court of the United States, the Supreme, Superior or Commonwealth Courts of Pennsylvania, or a Federal Appeals Court. When it is known subsequent to the listing of the trial, that counsel will be engaged, counsel shall forthwith notify opposing counsel and the Court of such engagement.

#### **RULE 217: COSTS ON CONTINUANCE**

When an application for the continuance of any proceeding scheduled by the Court, or by a master appointed by the Court or by an officer of the Domestic Relations Section, is presented so close to the scheduled time for the proceeding as to cause undue inconvenience to opposing parties and/or their counsel, the Court may impose on the party making the application, or that party's counsel, the reasonable costs and expenses actually incurred by the opposing party which would not have been incurred if the application had been made more promptly. When

determining the appropriateness of imposing costs and expenses, the Court shall consider the extent of notice to the parties when the proceeding was scheduled, the time when the applicant or counsel knew or should have known of the need for a continuance, how soon in advance of the scheduled proceeding the application for continuance was made and the inconvenience and expenses of opposing parties and their counsel.

**RULE 223: CONDUCT OF THE JURY TRIAL**

(a) The following rules shall apply to all civil jury trials.

(i) The attorney for a party who begins the examination or cross-examination of a witness must alone conduct it through all its stages unless otherwise permitted by the Court.

(ii) The mechanical or electronic recording of proceedings in the courtroom, without first obtaining leave of the Presiding Judge to do so, is forbidden.

(iii) The conduct of all trials shall be under the control and supervision of the Trial Judge, who shall be free to alter or change the usual procedure if the ends of justice so require.

**RULE 225: OPENING AND CLOSING ARGUMENTS**

(a) The defendant's attorney may make his opening speech immediately following the opening speech of the plaintiff's attorney or at the opening of the defendant's case. After the evidence is closed, only 1 attorney for each party or group of parties may address the jury. Closing addresses shall be limited to one for each party or group of parties and shall be made in the reverse order of presentation of testimony, so that the last defendant to present testimony will make the first closing and the first plaintiff to present testimony will make the final closing address.

**RULE 226: POINTS FOR CHARGE**

(a)(1) Points for charge shall be submitted to the Trial Judge as directed by pre-trial order of that Judge.

(2) The points for charges shall be in writing and shall be signed by counsel, and shall include a citation of authority justifying each point submitted.

(3) Unless otherwise directed by the Trial Judge, only those points for charge submitted in compliance with subsections (1) and (2) hereof will be considered by the trial Judge at the time of trial.

**RULE 227.1: POST-TRIAL MOTIONS**

(a) All motions for post-trial relief shall be filed in the Prothonotary's office and copies shall be served promptly upon the Trial Judge and all opposing counsel.

(b) A motion for post-trial relief which alleges after discovered evidence, misconduct of a party or the jury or any matter of fact which was not brought out at the trial, must be supported by affidavit stating the after discovery, the names of the witnesses in support of the motion, the substance of their expected testimony, and the party's belief of its sufficiency to change the verdict; otherwise such reasons will be disregarded.

(c) Upon receipt of a Motion for Post-trial Relief, the Trial Judge may promptly schedule a conference of counsel to resolve any dispute between the parties as to the portion of the trial record required for the disposition of the motion. If parties cannot agree, the Trial Judge shall enter an order designating the portions to be transcribed and assigning the costs of transcription. The Judge shall also at that time establish a briefing schedule. In the

event a party fails to pay the estimated or final costs of transcription in accordance with Rule 5000.6 of the Schuylkill County Rules of Judicial Administration within 10 days after receipt of the stenographer's statement, the transcription of the record shall be deemed unnecessary to the disposition of the motions.

**RULE 227.2: COURT EN BANC**

(a) Should the Trial Judge, on the Judge's own motion, or on motion of a party, determine matters raised in the post-trial motion should be heard by a court en banc, the President Judge shall designate the members of the court who shall compose the panel.

**RULE 262: CHANGE OF NAME—ADVERTISING**

In all proceedings for a change of name, the notice required shall be published in the Schuylkill Legal Record and in a newspaper of general circulation in Schuylkill County, the last day of publication to appear at least seven (7) days before the date set for the hearing thereon.

**RULE 301: BOARDS OF VIEWERS**

(a) COMPOSITION AND APPOINTMENT OF BOARDS OF VIEWERS PURSUANT TO 42 Pa.C.S. § 214

The Board of Viewers shall consist of not less than nine (9) members, all of whom shall be adult residents of Schuylkill County. At least one-third (1/3) of its members shall be attorneys. Board members shall be appointed for a term of three (3) years by the Court of Common Pleas. Sitting board members may be reappointed for an additional term or terms of three (3) years upon expiration of their terms. Vacancies in an unexpired term of a board member shall be filled by the President Judge. The Court shall have the power to remove a board member at will.

(b) PETITIONS FOR APPOINTMENT OF A BOARD OF VIEWERS

Petitions for appointment of a Board of Viewers shall be accompanied by a praecipe to transmit pursuant to Sch.R.C.P. 205.3 and shall comply with Sch.R.C.P. 206A. In case of a vacancy in the Viewers appointed in a specific case before the panel files its report, the President Judge shall fill such vacancy by appointing another member of the Board of Viewers.

(c) APPEALS FROM DECISION OF VIEWERS

Any party who appeals to the court from the decision of the Viewers and sets forth in the appeal objections to the Viewers' Report other than to the amount of the award shall comply with Sch.R.C.P. 14.

(d) STENOGRAPHIC NOTES

Whenever, in the opinion of the Board of Viewers, it shall be desirable, accurate stenographic notes of the hearing shall be taken and copies of such notes shall be furnished to the parties interested, when desired, upon payment of such sum as shall be fixed from time to time by the Court. The stenographer in any particular case shall be appointed from the list of the court-appointed stenographers by the Chairman of the Board of Viewers appointed to the case.

(e) COMPENSATION OF VIEWERS

(i) Compensation of Viewers shall be on a case by case basis in an amount fixed by the Court. A Petition for compensation shall be made at the time of filing of the Report of the Board of Viewers by a Petition for Compensation directed to the President Judge. A copy of the Petition for Compensation shall be served upon all par-

ties, or their attorneys of record, at the time the Board transmits a copy of its report to them pursuant to 26 Pa.C.S. § 1-512.

(ii) Compensation approved by the President Judge pursuant to a Petition for Compensation shall be paid to the Viewers by Schuylkill County, taxed as costs against the condemnor and recoverable as such by Schuylkill County at any time after the date of approval by the President Judge.

(iii) Prior to the view, the Chairman of a Board of Viewers shall have the authority to require that the condemnor escrow an amount reasonably likely to cover the fees and costs of the Board. Such escrow shall be held by counsel for the condemnor or by the Prothonotary as the Chairman shall direct. Failure to deposit said funds may result in imposition of sanctions as the Court deems appropriate.

(f) RULES ALSO APPLY TO PROCEEDINGS NOT CONTROLLED BY THE EMINENT DOMAIN CODE

In addition to proceedings under the Eminent Domain Code, except as otherwise provided by statute, these rules shall also apply to actions to vacate public roadways, actions to open private roadways and actions under the Public Utility Code.

**RULE 410.1: SERVICE BY PUBLICATION—EJECTMENT ACTIONS**

Service by publication when appropriate shall be made by publishing the appropriate notice one (1) time in the Schuylkill Legal Record and a newspaper of general circulation in Schuylkill County. No further action can be taken until twenty (20) days after the date of publication. Proof of publication shall be filed in the Prothonotary's Office.

**RULE 410.2: SERVICE—ACTION TO QUIET TITLE**

Service by publication when appropriate, shall be made by publishing the appropriate notice one (1) time in the Schuylkill Legal Record and in a newspaper of general circulation in Schuylkill County. Said notice shall be in substantially the following form:

(CAPTION OF CASE)

To \_\_\_\_\_  
(Name(s) of Defendant(s))

You are notified that the Plaintiff(s) has/have commenced an action against you to quiet the title to the following land:

(Description)

If you wish to defend this action, you must enter a written appearance personally or by an attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

(Note: For the office designated by the Court, See Sch.R.C.P. 1018.1)

(2) Service shall be complete upon appearance of the publication. Proofs of publication shall be filed before judgment or any other action is taken by plaintiff.

**RULE 410.3: SERVICE BY PUBLICATION OF ACTIONS FOR THE EXECUTION AND ENFORCEMENT OF JUDGMENTS AS REQUIRED BY 41 P.S. § 407**

(b)(2) Service upon a defendant by publication of actions commenced in accordance with the requirements of the Act of January 30, 1974, P.L. 13, No. 6, § 407 as amended, (41 P.S. Section 407), when authorized by Pa.R.C.P. 400 et seq., shall be made by the Sheriff publishing once in the Schuylkill Legal Record and in one daily newspaper of general circulation within Schuylkill County a notice which shall be substantially in the following form:

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF SCHUYLKILL

(CAPTION)

TO \_\_\_\_\_  
(Name of Defendant)

You are notified that \_\_\_\_\_  
(Name of Plaintiff)

has commenced an action to execute on residential real property pursuant to a judgment entered by confession in the Court of Common Pleas of Schuylkill County, which judgment is entered to docket number \_\_\_\_\_, \_\_\_\_\_ (date) 19\_\_\_. You are required to defend this action, which seeks to obtain possession of real estate which you own or in which you reside, which real estate is located at

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City and State)

and described as follows:

**\*\*NOTE:** This published notice shall also include a Notice to Defend substantially in the form set forth at Pa.R.C.P. 430(b).

**RULE 440: SERVICE OF PAPERS**

(a) Unless otherwise provided by an Act of Assembly or Rule of Court, a copy of each paper filed in any case, other than the writ or complaint by which an action is commenced or other original process, shall be served by the party filing it upon all other parties to the litigation or their attorneys of record in Schuylkill County within forty-eight (48) hours after filing.

(b) Whenever any person, having been served with a petition, rule, notice, pleading or process, original or interlocutory, fails to appear in response thereto, proof of service of the same must be filed in the case before the Court will act thereon.

(c) All notices shall be in writing.

(d) Except as otherwise provided by Acts of Assembly, rule or special Order of Court, service by publication shall be made once in the Schuylkill Legal Record and in one (1) daily or weekly newspaper of general circulation within Schuylkill County.

### **ACTIONS AT LAW PLEADINGS**

#### **RULE 1018.1: NOTICE TO DEFEND**

(c)(1) Schuylkill County Legal Services, 514 North Center Street, Pottsville, PA, 17901, (717) 628-3270, is designated as the organization or agency to be named in the notice to defend from which legal help can be obtained.

#### **RULE 1019: CONTENTS OF PLEADINGS, GENERAL AND SPECIFIC AVERMENTS**

Whenever any right, claim or defense is asserted to be founded upon a specific statute of this or another jurisdiction or upon an ordinance, governmental regulation, or Rule of Court, the first pleading in which such right, claim or defense is asserted shall cite, for the information of the Court, the statute, ordinance, regulation or rule so relied upon.

#### **RULE 1021: CLAIM FOR RELIEF**

Whenever a party claims relief in the form of liquidated money damages, he shall, at the conclusion of his pleading, state the precise amount of damages claimed and, if entitled to interest, the date or dates from which interest thereon, or any part thereof, is claimed.

#### **RULE 1028: PRELIMINARY OBJECTIONS**

(a) All preliminary objections will be disposed of by one Judge on behalf of the Court, unless such objections are certified by the Judge to be of sufficient importance to require disposition by the Court en banc.

(b) Preliminary objections shall be accompanied by a memorandum of law in support of the objections. A certification of service thereof upon opposing counsel shall be filed within 10 days after the filing of the preliminary objections.

(c) Respondent's memorandum of law contra the preliminary objections shall be filed within 20 days after service of the brief of the moving party, and shall contain a certification of service upon the moving party.

(d) When the date for the filing of respondent's memorandum has passed, the Prothonotary shall deliver the preliminary objections, memorandum of law, and other file papers to the Court Administrator. The Judge to whom the preliminary objections are assigned may, if requested, set the matter for oral argument, or may dispose of the objections on the briefs submitted.

(e) Preliminary objections filed in domestic relations and paternity cases shall not be cause for delay in hearings or interviews scheduled by the Domestic Relations Office. Such objections will be determined by the Court when and if hearings before a Judge and/or a jury are required for adjudication of the issues involved in the petition or complaint. Defendant's brief will be filed with the objections and plaintiff's brief shall be filed 3 days before any scheduled hearing.

(f) In the event disposition of a preliminary objection requires fact finding, the filing party shall accompany the preliminary objections with a praecipe to transmit pursuant to Sch.R.C.P. 205.3, specifying that a hearing is required and the reasons the hearing is necessary.

#### **RULE 1029: DENIALS. DEMANDS OF PROOF. EFFECT OF FAILURE TO DENY OR DEMAND PROOF**

(a) In actions in which book accounts may be offered in evidence, if a copy thereof is attached to any pleading, it shall not be necessary to produce the books at the trial, unless a responsive pleading shall allege that the account or copy is incorrect, stating particulars, or that the books are not books or original entry, and shall demand the production of the books at the trial; otherwise, the copy shall be admitted as evidence without further proof.

#### **RULE 1033: AMENDMENT**

Pleadings amended before trial shall be executed, verified and filed in their complete amended form. Amendments to pleadings allowed at the trial need not be executed, verified and filed.

#### **RULE 1034: MOTION FOR JUDGMENT ON THE PLEADINGS**

A motion for judgment on the pleadings shall be accompanied by a praecipe for transmittal pursuant to Sch.R.C.P. 205.3 indicating that the matter can be disposed of on the record and shall further be accompanied by the brief of the moving party. The answer and brief of any opposing party shall be filed within twenty (20) days from the date of service of the original motion.

#### **RULE 1035: MOTION FOR SUMMARY JUDGMENT**

A motion for summary judgment shall be accompanied by a praecipe to transmit pursuant to Sch.R.C.P. 205.3 indicating that the matter can be disposed of on the record and shall further be accompanied by the brief of the moving party. The answer and brief of any opposing party shall be filed within twenty (20) days after service of the original motion.

#### *ACTION TO QUIET TITLE*

#### **RULE 1066: FORM OF JUDGMENT OR ORDER**

(a) When judgment is given for a plaintiff in any action brought under Pa.R.C.P. 1061(b)(4), the Court will enter an Order directing a writ of possession to issue.

#### **COMPULSORY ARBITRATION**

#### **RULE 1301: SCOPE OF PROCEDURE**

(a) All civil cases, where the amount in controversy (exclusive of interest and costs) is less than the compulsory arbitration amount for fourth class counties as set forth in the Judicial Code, including claims or mechanics liens and all appeals from a civil judgment of a District Justice, excepting those involving title to real property and those involving equitable or other than monetary relief, shall be submitted to compulsory arbitration.

(b) In addition, cases, whether or not at issue and without regard to the amount in controversy, may be referred to a Board of Arbitrators by an agreement of reference signed by all of the parties and their counsel. The agreement of reference may contain stipulations as to facts agreed upon or defenses waived. In such cases, the agreement of reference shall take the place of the pleadings and shall be filed of record.

(c) The Court, on its own motion or on the motion of either party at pre-trial settlement conference, after depositions, after hearing or otherwise, may determine that the amount actually in controversy does not exceed the compulsory arbitration amount as set forth at 42 Pa.C.S.A. § 7361(b) and may enter an order of reference to a Board of Arbitration.

**RULE 1302: LIST OF ARBITRATORS, APPOINTMENT OF BOARD, OATH**

(a) A list of available arbitrators shall be prepared annually by the Court Administrator, consisting of members of the bar actively engaged in the practice of law in the 21st Judicial District and who have not notified the Court Administrator in writing of his or her desire not to participate as an arbitrator.

(b) The Court Administrator shall appoint from said list three members to each Board of Arbitrators, at least one of whom shall have been admitted to the practice of law before the Supreme Court of Pennsylvania for more than five years prior to his or her appointment.

(c) Each Board shall be chaired by the member senior in years admitted to the practice of law in the 21st Judicial District.

(d) Not more than one member or associate of any firm or association of attorneys shall be appointed to the same Board.

(e) A member of a Board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as an arbitrator. Any request for recusal of an appointed Board member shall be submitted to the Office of the Court Administrator within seven days of the appointment of the arbitrator setting forth specifically the reasons the Board member should not act an arbitrator. The Court Administrator shall immediately contact that member of the Board with regard to the request for recusal, and the Board members shall advise the Court Administrator as to whether or not voluntary withdrawal as an arbitrator will take place. In the event that the arbitrator does not voluntarily withdraw, the request for recusal shall be transmitted to the Court for appropriate action.

(f) Members of the Board of Arbitration will generally be assigned to a panel for a period of two consecutive days. Each associate member of the panel shall receive as compensation the sum of \$175.00 per day for each day, or part thereof, served, and the chairperson shall receive the sum of \$200.00 per day for each day, or part thereof, served on the arbitration panel. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

**RULE 1303: HEARING, NOTICE AND CONTINUANCES**

(a) The scheduled dates for arbitration, which will generally consist of two consecutive days, shall be set forth on the annual court calendar as compiled by the Court Administrator, as well as such other dates as may be ordered by the President Judge as caseloads warrant. The Court Administrator shall designate the place, time, and specific date for hearings, and give at least 30 days written notice thereof to the arbitrators, the parties, or their attorneys of record.

(b) When a case is at issue, the case may be ordered upon the next available arbitration list by filing with the Prothonotary an arbitration certificate of readiness on or before 45 days preceding the next arbitration schedule. The Prothonotary shall promptly serve the certificate upon the Court Administrator. The certificate shall be on forms provided by the Prothonotary and shall contain the following:

1. the caption of the case;
2. name, address and phone number of trial counsel for all parties;

3. certification that all outstanding motions are resolved;

4. certification that discovery has been completed and disclosure made to the other parties of any and all reports to be utilized at the arbitration hearing.

5. a complete list of all witnesses who are to be called at the time of the arbitration hearing and an estimate of the time that will be required to present that parties portion of the case.

(c) Within 10 days of the notice of the arbitration hearing, any opposing party or opposing counsel shall submit a written report to the Court Administrator listing the names of their witnesses who will be used at the hearing and an estimate of the time required to present their case.

**ONLY THOSE WITNESSES LISTED BY THE PARTIES, AND REPORTED AS REQUIRED IN THIS RULE, WILL BE PERMITTED TO TESTIFY AT THE ARBITRATION HEARING, UNLESS THE COURT DIRECTS OTHERWISE.**

(d) Not less than 10 days prior to each arbitration hearing the parties shall file with the Office of the Prothonotary a memorandum, and serve a copy upon the opposing party or opposing counsel, which sets forth a narrative statement of the facts which will be offered into evidence by that party, a statement of the legal theory upon which the cause of action or defense is predicted, a statement setting forth an itemized list of the damages that a party intends to claim and prove, a rough sketch illustrating the incident given rise to the cause of action (where appropriate), and a statement of any unusual or intricate legal issues or claims together with citation of authorities relied upon.

(e) Arbitrators may not grant continuances. Applications for continuances of any scheduled arbitration hearing shall be made in writing and on the form provided by the Court Administrator, to the Court Administrator at least 20 days before such hearing and after reasonable notice of such application being given to the opposing party or opposing counsel. The application shall indicate the number of continuances previously requested, and whether or not the continuance is opposed.

Whenever any case has been continued twice after assignment of a board of arbitration, the case shall be certified by the Court Administrator to the President Judge or his designee, to rule upon the request for continuance. In the interest of expediting disposition of the case the judge may order a conference or enter an appropriate order including but not limited to an order for non pros or an order directing the board to proceed with hearing whether or not the defendant appears and defends.

Continuances within 20 days of an arbitration hearing shall not be granted without approval of the President Judge or his designees and only upon exigent circumstances. In the event of an emergency continuance, the Court may assess actual expenses against the moving party or counsel which may have been incurred by the Court or the opposing party. The actual costs which may include added arbitration fees, actual work loss, travel expenses, expert fees, etc., shall be certified to the Court by the party incurring such fees for appropriate consideration. Added arbitration fees may likewise be assessed where a late continuance results in the need for additional payment to a Board of Arbitration.

**RULE 1305: CONDUCT OF HEARING/EVIDENCE**

The chairman of the board of arbitration shall be responsible for the conduct of the hearing. The chairman shall make preliminary rulings on objections and evidentiary matters, which shall be binding unless overridden by a majority of the board of arbitration.

**RULE 1306: AWARD, DAMAGES FOR DELAY**

(a) Arbitrators shall not consider the subject of damages for delay until an award has been made on the merits of the case, including the determination of the amount of damages, if any, to be awarded.

(b) After the determination and announcement of the award on the merits and damages, the arbitrators shall make a determination as to any delay by:

1) Accepting a stipulation from the parties which contains the following:

- a) whether an offer was made in writing;
- b) the amount of the offer;
- c) the date of the offer, or

2) If no stipulation is reached, the panel shall take evidence regarding damages for delay from counsel following the original deliberation and announcement of the award.

(c) The arbitrators shall separately enumerate the delay damages as to each party on the appropriate form, and then add this amount to the principal sum awarded in order to reach a total amount of award. Only the total amount shall be shown on the Report and Award but the computation form must be appended when the Award is filed.

**RULE 1308: APPEAL COMPENSATION**

(a) In filing an appeal, the appellant shall make payment to the Prothonotary for the compensation of the arbitrators. The compensation shall be determined by the Prothonotary of Schuylkill County by multiplying one-half of the total daily arbitration fee times the total number of half days, or parts thereof, necessary to conclude an arbitration hearing. The arbitrators shall note on the award the total number of half days or parts thereof, expended on each separate proceeding. The parties thereafter shall proceed as set forth in Sch.R.C.P. No. 212.1.

**ACTIONS IN EQUITY****RULE 1511: JUDGMENT UPON DEFAULT OR ADMISSION**

(a) If a judgment is entered upon default or admission, the plaintiff shall submit to the Court a proposed decree for the Court's consideration when entering the appropriate decree.

**RULE 1513: TRIAL ADVISORY VERDICT BY JURY**

(a) When any equity action is at issue, either party may submit the case to the Court for disposition on Prothonotary Form 205.3, unless the Court, on its own motion or on motion of a party, has entered an Order directing that all or some of the issues of fact be submitted to a jury in accordance with Pa.R.C.P. 1513.

(b) At any time prior to the date fixed for hearing or trial, the Court, on its own motion or on motion of either party, may schedule a conference to attempt to resolve the matter or simplify the issues.

**RULE 1531: INJUNCTIONS**

An application for an injunction shall be immediately transmitted by counsel to the Court Administrator for assignment to a judge for disposition.

**RULE 1534: ACCOUNTING BY FIDUCIARIES**

(a) Fiduciaries filing accounts with the Prothonotary shall comply with Pa.R.C.P. 1534 if applicable, and insofar as practicable, shall follow the procedure provided by the Orphans' Court Rules of the Supreme Court of Pennsylvania and of the Orphans' Court Division of the Court of Common Pleas of Schuylkill County, except as hereinafter provided in subsections (b) and (c). All duties imposed by said rules on the Register of Wills or Clerk of the Orphans' Court, as applicable for the particular account, shall be performed by the Prothonotary.

(b) If at the expiration of 30 days after the filing of said account, provided that notice shall have been given as required and proof hereof filed, no exceptions are filed to the account or to the proposed distribution, the account shall be confirmed absolutely as of course and the accountant shall make the distribution proposed and file in the Prothonotary's Office a release or satisfaction of award from the distributees.

(c) If exceptions are filed to the account or to the proposed distribution, the account shall be listed by the Prothonotary for audit before the Court following the expiration of 30 days from the date of filing the account, and the Court shall make such adjudication and order such distribution as shall be proper under the circumstances.

**PARTITION OF REAL PROPERTY****RULE 1568: PUBLIC SALE: NOTICE**

(a) Except as therein provided by Act of Assembly or special Order of Court, notice of the time and place of sale of real estate at public auction by a master in partition shall be advertised by the master once a week for three successive weeks in the Schuylkill County Legal Record and in a newspaper of general circulation in the County. The first advertisement to be not less than twenty-one days before the date of sale. The master shall also post handbills of such advertisement, one on the real estate to be sold and not less than six additional handbills in as many other public places in the county. Whenever a property or properties so to be sold lie in different counties, publication of notice of sale shall be in such manner as the Court by special order may direct.

**CLASS ACTIONS****RULE 1703: COMMENCEMENT OF CLASS ACTION: ASSIGNMENT OF JUDGE**

(a) Counsel for the plaintiff(s) shall immediately notify the Court Administrator that a class action complaint has been filed and shall forward a copy of the Complaint to the Court Administrator for assignment of the action to a judge.

**RULE 1707: DISCOVERY PERTAINING TO CLASS ACTION ISSUES**

(a) Whenever discovery is permitted with respect to the class action issues, the Order granting such limited discovery shall also indicate the period of time during which discovery shall be permitted. All parties are required to complete such discovery within that time period.

**RULE 1710: DETERMINATION OF CLASS ACTION CERTIFICATION**

(a) The presiding Judge may require the parties to submit proposed Findings of Fact and Conclusions of Law pertaining to whether or not the case should be certified as a class action.

**RULE 1712: ORDER AND NOTICE OF CERTIFICATION AS CLASS ACTION**

(a) After the entry of an order of certification of a class action, the presiding Judge shall conduct a Class Action Notice Conference at which all parties shall be represented for the purpose of considering the matters set forth in Pa.R.C.P. 1712.

(b) If at the time of the Class Action Notice Conference, the Court determines that individual notice is to be given, a uniform statement shall be drafted by which each individual who is to receive notice may opt for exclusion from the class.

(c) The proposed form of notice required by Pa.R.C.P. 1712(c) to be submitted for approval by the plaintiff to the Court and to all named defendants, must be submitted no later than fifteen (15) days prior to the Class Action Notice Conference.

**RULE 1713: PRE-TRIAL OF CLASS ACTIONS**

(a) In addition to the normal matters to be considered at pre-trial conferences, as set forth within these rules, a pre-trial conference conducted in a class action case shall consider the matters set forth in Pa.R.C.P. 1713.

**PROTECTION FROM ABUSE****RULE 1905: NOTIFICATION UPON RELEASE**

(a) Notification upon release. The Warden of Schuylkill County shall notify the victim by contacting Schuylkill Women In Crisis sufficiently in advance of the release of the offender from any incarceration imposed under a Protection from Abuse action and/or contempt, and any criminal act between family or household members, sexual or intimate partners or persons who share biological parenthood.

Notification shall be required for work release, furlough, medical leave, community service, discharge, escape and recapture. Notification shall include the terms and conditions imposed on any temporary release from custody.

(b) The Warden of Schuylkill County shall immediately notify the Schuylkill Women In Crisis 24-hour hotline sufficiently in advance of the release of any defendant sentenced in accordance with subsection (a). Notification shall include transmitting the message by telephone and also faxing the release form which shall include the terms and conditions imposed on any temporary release from custody.

(c) The plaintiff must keep the Schuylkill Women In Crisis advised of contact information; failure to do so will constitute waiver of any right to notification under this section.

(d) It shall be the responsibility of Schuylkill Women In Crisis to promptly notify the victim of the release.

**RULE 1906: CONTEMPT OF ABUSE ORDER**

The procedure governing the enforcement of Protection from Abuse Orders is set forth at Sch.R.Crim.P.D.J. 130.1.

**ACTIONS FOR SUPPORT****RULE 1910.4: COMMENCEMENT OF ACTION**

(c) If a claim for spousal support or child support is properly raised pursuant to Pa.R.C.P. 1920.31 and the Divorce Code, then:

(1) One (1) certified copy and two (2) photocopies of the pleading in which child or spousal support is claimed shall be filed by the party seeking such relief with the Domestic Relations Section within forty-eight (48) hours of its first filing in the Prothonotary's office.

(2) The Domestic Relations Section shall assign a support docket number (S.D. # \_\_\_\_\_) to the action, and thereafter all pleadings in the case shall contain both the civil number and the support docket number.

(3) Thereafter, the claim for child support or spousal support shall proceed as if initiated as an original action under Pa.R.C.P. 1910.5.

**RULE 1910.10: ALTERNATIVE HEARING PROCEDURE**

(a) The action shall proceed as prescribed by Pa.R.C.P. 1910.11 unless the Court has appointed a Hearing Officer in which case the action shall proceed as provided by Sch.R.C.P. 1910.12.

**RULE 1910.11: OFFICE CONFERENCE. REQUEST FOR CONTINUANCE.**

(a)(3) A request for continuance of a support conference shall be made in writing to the Domestic Relations Director on a form established by the Court. The request shall include a statement of the reasons for the request, whether the request is opposed or unopposed, and the number of times the case has been previously continued. The Domestic Relations Director shall have authority to approve only one continuance request from each party. If the Domestic Relations Director denies a request for a continuance, he shall state the reasons for the denial on the written request.

(4) A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the Court Administrator/President Judge.

**RULE 1910.12: OFFICE CONFERENCE. HEARING. RECORD. EXCEPTIONS. ORDER.**

(b) (1) If an agreement has not been reached by the parties, the court shall enter an interim order calculated in accordance with the guidelines and substantially in the form set forth in Pa.R.C.P. 1910.26(e). Within ten (10) days after the date of the order, either party may demand a hearing before a hearing officer. If a demand for hearing is filed, the matter shall be assigned to the Hearing Officer for hearing and further proceedings in accordance with Pa. R.C.P. 1910.12.(b)-(g) and these rules. If no hearing is requested, the order shall become final.

(b)(1)(i) A request for continuance of a support hearing shall be made in writing to the Hearing Officer on a form established by the Court. The request shall include a statement of the reasons for the request, whether the other party is opposed or unopposed, and the number of times the case has been previously continued. The Hearing Officer shall have authority to approve only one continuance request from each party. If the Hearing Officer denies a request for a continuance, he shall state the reasons for the denial on the written request.

(b) (1) (ii) A party may appeal the denial of a request for continuance to the President Judge by submission of



the denied continuance request to the Court Administrator/President Judge.

(c) (3) The order may also specify the time within which such discovery must be completed.

(d) Within five (5) business days following the taking of testimony, the Hearing Officer shall file with the court a report containing a recommendation with respect to the entry of an order of support.

(f)(1) Within five (5) days of filing Exceptions to the Report of the Hearing Officer, pursuant to Pa.R.C.P. 1910.12(f), the party raising exceptions shall request a transcript of all of the testimony, pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the court reporter for the cost of said transcript pursuant to Pa.R.J.A. 5000.6.

(2) If both parties file Exceptions to the Report of the Hearing Officer, they shall equally bear the cost of the transcript of the testimony.

(3) In the event of the failure of an excepting party within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law, the exceptions may be deemed to have been withdrawn and may be dismissed by the Court.

(4) Upon filing of the transcript of testimony, the file shall be delivered to the Court for disposition pursuant to Pa.R.C.P. 1910.12(h). Within ten (10) days of receiving notice of such filing with the Court, the moving party shall file a memorandum of law related to the issues raised in the exceptions, and shall within three (3) days serve a copy of such memorandum upon counsel or upon the opposing party, if not represented by counsel. The opposing party may within ten (10) days file an opposing memorandum.

**RULE 1910.19: SUPPORT ORDER. MODIFICATION. REVIEW. TERMINATION.**

(a)(1) A petition for modification or termination of an existing support order shall not request any relief other than modification or termination. The original and two (2) copies of the petition shall be filed with the Domestic Relations Section.

(2) Where the order which the petitioner seeks to modify was entered less than three (3) years prior to the filing of the petition, the petition shall specifically aver the reasons for the relief sought.

(3) Where a petition is filed pursuant to 23 Pa.C.S.A. § 4352(a), the petition shall allege the date of the entry of the order of support which the petitioner seeks to have reviewed and shall not request any relief other than review of the previous order. No specific change of circumstance need be alleged.

(4) The Domestic Relations Officer shall promptly schedule a conference pursuant to Pa.R.C.P. 1910.12, and shall serve a copy of the petition upon the responding party or such party's attorney of record.

(5) No answer to such petitions need be filed.

(6) After review of the information and evidence, the Conference Officer or the Hearing Officer will recommend to the Court that the current order be modified, or that the petition be dismissed in the event there is not a significant change in circumstances. The recommendation may result in any appropriate increase, decrease, modification or rescission of the prior order, as well as modification of other terms as authorized by law.

**RULE 1910.21: CIVIL CONTEMPT**

(a)(1) The Office of the Public Defender, 206 North Second Street, Pottsville, Pennsylvania, 17901, (717) 628-2420, is designated as the office to be named in the notice to plead.

**RULE 1910.26: DESIGNATED OFFICE**

(b)(1) For the office to be named in the Order of Court, refer to "Sch.R.C.P. 1018.1."

*CUSTODY PROCEDURE*

**RULE 1915.1(b): DEFINITIONS**

These rules shall govern all actions for custody, partial custody, and visitation, including original actions, petitions to modify decrees, registration of foreign decrees and contempts. The rules shall be interpreted as supplementing the Rules of Civil Procedures governing custody actions Pa.R.C.P. 1915.1 et seq.

**RULE 1915.3: COMPLAINT OF ACTION. COMPLAINT. ORDER.**

(a)(1) The moving party shall file all pleadings, including petitions for modifications, special relief, contempt and preliminary objections, with the office of the Prothonotary and shall immediately transmit the original and two (2) copies to the Court Administrator, Custody Conciliation Section, Schuylkill County Courthouse for appropriate assignment. The moving party shall be responsible for service upon the adverse party pursuant to Pa.R.C.P. 412.

(b) If the custody claim is asserted in the divorce complaint, the moving party shall, after filing the divorce with the Prothonotary, provide three (3) copies, with the appropriate order attached as per Sch.R.C.P. 1915.15, to the Court Administrator, Custody Conciliation Section, Schuylkill County Courthouse for appropriate assignment. The moving party shall be responsible for service upon the adverse party pursuant to Pa.R.C.P. 412.

**RULE 1915.3A: CUSTODY CONCILIATION**

(1) The court shall appoint a member(s) of the Schuylkill County Bar Association, or other appropriate person, as an official of the Court to:

(a) conciliate custody cases filed with the Court;

(b) recommend to the Court interim Orders in appropriate custody cases which shall be in the best interest of the child;

(c) recommend appointment of counsel for the child;

(d) recommend the ordering of home studies, psychologicals, or other evaluations by expert witnesses.

(2) All custody matters, not specifically reserved to the Court, shall be promptly scheduled for a conference before the Custody Conciliation Officer. All parties, and any child eleven (11) years or older for whom custody and visitation is sought, shall be present at the location of such conference. Failure of a party to appear at the conference may provide grounds for the entry of an Interim Order.

(3) To facilitate the conciliation process, and encourage frank, open, and meaningful exchanges between the parties and their respective counsel, statements made by the parties, or their witnesses shall not be admissible as evidence in Court. The Custody Conciliation Officer may not be a witness for any party.

(4) More than one (1) conciliation conference may be scheduled by the Custody Conciliation Officer, as that Officer deems necessary to conciliate the matter.

(5) If at the conclusion of the conciliation process the case remains contested, the Custody Conciliation Officer shall transfer the case to the Court for assignment to a Judge. As part of that transfer, the Custody Conciliation Officer shall file a report to the Court, with copies to the parties. The report may contain the following:

- (a) procedural history;
- (b) undisputed facts;
- (c) disputed facts;
- (d) summary of the conference(s);
- (e) copies of expert opinions or other relevant documents;
- (f) pertinent case law; and
- (g) a recommendation for resolution.

The report will be filed with the Prothonotary, with the exception that copies of expert opinions or other documents shall only be provided to the Court and shall not be made part of the record.

(6) If the matter is transferred to the Court, the following information shall be provided to the Custody Conciliator by way of Pre-Trial Memorandum, within twenty (20) days of the last conciliation conference:

- (a) a list of all fact witnesses;
- (b) a list of all expert witnesses;
- (c) issues for resolution;
- (d) estimated length of trial;
- (e) documentary reports from appropriate agencies;
- (f) reports of experts intended to be called as witnesses which the Custody Conciliation Officer did not previously have in Officer's possession; and
- (g) the manner to be utilized in presentation of expert witnesses or expert reports (i.e. stipulation of parties or presentation of testimony).

Failure to provide the information requested prior to trial, for the Conciliator or the Court, may be grounds for excluding the evidence or witnesses at trial.

**RULE 1915.3B: CUSTODY CONCILIATION. POST-CONFERENCE PROCEDURE.**

(1) If prior to or during the conciliation conference, the parties are able to reach an agreement, the conciliator will prepare a custody stipulation which shall be submitted to all parties for their signature. Upon the parties' execution of the stipulation, the Custody Conciliation Officer shall also sign the stipulation and prepare a proposed Order of Court and transmit the stipulation and order to the Court for disposition of the matter.

(2) Should the parties fail to reach an agreement at the conclusion of the conciliation process, the Custody Conciliation Officer shall submit the summary report to the Court for prompt assignment to a Judge, along with any other documents available. Once the assigned Judge has set a time and date for hearing of the matter, the parties will be so notified. The Court may schedule a pre-trial conference or immediately set a date for hearing.

**RULE 1915.5: QUESTION OF JURISDICTION OR VENUE. NO RESPONSIVE PLEADING REQUIRED. COUNTERCLAIM.**

(b) Only the issues set forth in Pa.R.C.P. 1915.5(a) may be raised by way of preliminary objections. Filing of preliminary objections shall be as set forth in Sch.R.C.P. 1915.3, and thereafter shall be governed by Sch.R.C.P. 1028.

(c) If a question of jurisdiction or venue is raised prior to the conciliation conference, such objections shall be referred by the Custody Conciliation Officer to the Court for disposition. Upon filing of preliminary objections with the Prothonotary, three (3) copies must be provided to the Court Administrator, Custody Conciliation Section, Schuylkill County Courthouse for assignment to the Court.

(d) Counterclaims, crossclaims or answers shall be filed with the Prothonotary prior to the conciliation conference, and a copy provided to the Custody Conciliation Officer.

**RULE 1915.7: CONSENT ORDER.**

(a) Consent Orders shall be filed with the Custody Conciliation Officer and shall be substantially in the form of the custody stipulation utilized by the Custody Conciliation Officer, which are available at the office of the Court Administrator, Custody Conciliation Section, Schuylkill County Courthouse.

(b) Consent Orders should not be filed with the Prothonotary but given directly to the Custody Conciliation Officer who shall review the consent orders and refer them to the Court, in conjunction with the Rules, for further disposition.

(c) Upon presentation of a consent order from the Custody Conciliation Officer, the court may, in its discretion, enter an Order without taking testimony.

**RULE 1915.8: PHYSICAL OR MENTAL EXAMINATION OF PERSONS.**

(e) The Custody Conciliation Officer shall maintain and, on request, provide counsel and the parties with a list of psychiatrists, psychologists, social workers, counselors, and the like, who are available for consultation, evaluation, and testimony in custody matters.

(f) In the event that ether psychological studies or home studies, or other evaluations, become necessary to a proper disposition of the matter, the cost of such studies may be assessed against the parties in a manner recommended to the Court to the Custody Conciliation Officer following the conciliation conference to the Court. Such a recommendation to the Court for assessment will be based on what the Custody Conciliation Officer believes to be in the best interest of the child and also what will facilitate the timely resolution of the matter, taking into consideration the parties' ability to pay. Upon a recommendation for evaluations from the custody Conciliation Officer, the Court will issue an Order requiring the evaluations and providing for the assessment.

**RULE 1915.12: CIVIL COMPLAINT.**

(a) Petitions for contempt of Custody Orders shall follow the procedure and form set forth in Pa.R.C.P. 1915.12. The petitioner shall complete a praecipe to transmit indicating that the matter is a contempt petition, shall list witnesses and time necessary for hearing and list the Judge who entered the Order to be enforced. Filing and transmittal shall follow Sch.R.C.P. 1915.3.

Upon receipt of service of a petition for contempt and the praecipe for transmittal the responding party shall,

within five (5) days, submit a written report to the Court Administrator estimating the time required for presentation of respondent's case and a list of witnesses to be called.

**RULE 1915.15: FORM OF COMPLAINT.**

(b) In addition to the information required by Pa.R.C.P. 1915.15(a), each complaint or petition relating to child custody or visitation shall incorporate additional information and shall substantially be in the following format.

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY  
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

vs.

:  
: CIVIL ACTION—LAW  
:  
:

*ORDER OF COURT*

You have been sued in Court to obtain custody, partial custody or visitation of the child(ren) named in the Complaint.

You are ordered to appear in person at Custody Office, Schuylkill County Courthouse, \_\_\_\_\_ at \_\_\_\_\_ o'clock .m. for a conference.

You are/are not further ordered to bring with you the child(ren) named in the Complaint.

If you fail to appear as provided by this Order, an order of custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

**YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Schuylkill County Legal Services  
514 North Centre Street  
Pottsville, PA 17901  
Telephone: (717) 628-3270

BY THE COURT

\_\_\_\_\_ J.

(a) In addition, to the Order of Court the Complaint must also contain a Notice of Custody Conference sheet substantially in the following format.

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY  
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Plaintiff :  
: CIVIL ACTION—LAW  
:  
:  
Defendant : CUSTODY

vs.

*NOTICE OF CUSTODY CONFERENCE*

TO:

Please be advised that a Custody Conference has been ordered for \_\_\_\_\_ at \_\_\_\_\_ o'clock .m. on the above-captioned matter; and, counsel, and

interested parties are to report to Custody Office, Schuylkill County Courthouse in Pottsville, Pennsylvania, to appear before the Custody Conciliation Officer.

Enclosed is a copy of the Order of Court. Copies of it and the supporting pleading are to be served on all interested parties immediately. Promptly thereafter, an Affidavit of Service is to be filed with the Prothonotary. The original Order and the pleading have been filed.

All requests for a continuance of a CUSTODY CONFERENCE must be made on the *APPLICATION FOR CONTINUANCE* form, shall be filed with the Court Administrator; and a continuance will be granted only upon good cause shown. Forms are available from the Court Administrator's Office and Prothonotary Office of the Schuylkill County Courthouse.

Dated:

\_\_\_\_\_  
CUSTODY CONCILIATION OFFICER  
SCHUYLKILL COUNTY COURTHOUSE  
POTTSVILLE, PA 17901  
717-628-1330

**RULE 1915.17: CUSTODY CONFERENCE REQUEST FOR CONTINUANCE.**

(1) A request for a continuance of a custody conference shall be made in writing to the Custody Conciliation Officer on a form established by the Court and available from the Court Administrator, Custody Conciliation Section, Schuylkill County Courthouse and from the Prothonotary. The request shall include a statement of the reasons for the request, whether the request is opposed or unopposed, and the number of times the case has been previously continued.

(2) All requests for continuances of custody conferences shall be made at least four (4) working days prior to the scheduled custody conferences, unless unusual circumstances do not allow such a request. The unusual circumstances must be explained in writing.

(3) The Custody Conciliation Officer shall have the authority to approve only one continuance request from each party. If the Custody Conciliation Officer denies the request for a continuance for any reason, the Officer shall state the reasons for the denial on the written request.

(4) A party may appeal the denial of a request for continuance to the President Judge by submission of the denied continuance request to the President Judge. It is that party's responsibility to advise the Custody Conciliation Officer of the appeal and of the President Judge's decision.

**ACTIONS OF DIVORCE OR ANNULMENT OF MARRIAGE**

**RULE 1920.1: DEFINITIONS**

(a)(1) As used in this chapter:

"additional issues" shall mean any claim beyond the claim for divorce, or annulment, as follows:

- (i) distribution of property,
- (ii) alimony,
- (iii) child support,
- (iv) alimony pendente lite,
- (v) counsel fees, costs and expenses, and
- (vi) child custody or visitation;

"Associate Domestic Relations Master" means those attorneys, who are members of the Bar of Schuylkill County, appointed by the Court to act as the Domestic Relations Master where the standing Domestic Relations Master shall have a conflict of interest or when the caseload prevents the standing Master from attending to all cases promptly;

"Domestic Relations Master" shall mean that attorney(s), a member of the Bar of Schuylkill County who has actively practiced law for more than five (5) years and who during such practice has regularly represented clients in custody, support, and divorce actions, who has been appointed by the Court as Permanent Divorce Master and as the Permanent Hearing Officer of the Domestic Relations Section to hear support actions;

"moving party" shall be that party who initially presents a motion for appointment of Master, notwithstanding that the opposing party may subsequently move for the Master to hear additional issues beyond the initial appointment; and

"qualified professionals" shall consist of those persons or organizations, as defined by Section 104 of the Divorce Code, which have filed an application with the Court Administrator and which have been approved by the President Judge for listing in the Prothonotary's office.

#### **RULE 1920.3: COMMENCEMENT OF ACTION**

(a) If an action for divorce is filed separately during the pendency of an action for custody, partial custody or visitation between the parties, then the complaint shall be docketed to the same term and number as such custody matter.

(b) Any party filing a pleading with the Prothonotary which raises a claim for child support, spousal support, or alimony pendente lite in a divorce action shall, within forty-eight (48) hours thereof, file a certified copy and two (2) photocopies of same with the Domestic Relations Section, where it shall proceed in accordance with the practice and procedure of the Domestic Relations Section after being assigned a support docket number (S.D. # \_\_\_\_\_).

(c) Any party filing an action for divorce with the Prothonotary, where there is also an action for child support or spousal support pending between the parties, shall include the support docket number (S.D. # \_\_\_\_\_) in the caption. If any divorce pleading includes claims for child support, spousal support, or alimony pendente lite beyond the scope of the active support matter (based on change in circumstances or as a new issue), then a copy of the pleading shall, within forty-eight (48) hours, be filed with the Domestic Relations Section where it shall proceed in accordance with the practice and procedure of the Domestic Relations Section.

#### **RULE 1920.4: SERVICE**

(f) A true and correct copy of every pleading or other filing shall be sent by ordinary mail to the opposing counsel of record, or to a party where there is no counsel of record.

#### **RULE 1920.11: PLEADING ALLOWED**

(a) All actions for divorce or annulment shall be deemed at issue twenty (20) days after service of the Complaint.

#### **RULE 1920.13: PLEADING MORE THAN ONE CAUSE OF ACTION, ALTERNATIVE PLEADING**

(d) A claim for child support, spousal support, or alimony pendente lite, whether filed as a separate peti-

tion or as a count in the divorce complaint, shall conform to the requirements of Pa.R.C.P. 1910.26.

(e) A claim for custody, whether filed as a separate complaint or petition, or as a count in the divorce complaint, shall conform to the requirements of Pa.R.C.P. 1915.15.

(f) Once a divorce action has been commenced, a Complaint for Alimony Pendente Lite should be filed with the Domestic Relations Section. A fee of \$15.00 shall be charged for this filing.

(g) The contents of the Alimony Pendente Lite complaints should conform to the Rules for the contents of a Support Complaint and should also provide the date and docket number of the previously filed divorce action.

(h) Upon filing of a Complaint for Alimony Pendente Lite in the Domestic Relations Section, a Praecipe shall be filed in the Prothonotary's office requesting the Prothonotary to note on its docket that an Alimony Pendente Lite claim has been filed with the Domestic Relations Section and docketed to S.D. No. \_\_\_\_\_.

(i) Thereafter, the Alimony Pendente Lite claim shall proceed in the same manner as a Support Complaint, that is, first to a conference, then either by Agreement or Recommended Order, or Exceptions to a Hearing Officer.

(j) Enforcement and Modification of an Alimony Pendente Lite Order shall follow the same procedure as enforcement or modification of a Support Order.

(k) No award of Alimony Pendente Lite or of spousal support shall automatically continue after the entry of a divorce decree, whether the divorce action has been bifurcated or not. A recipient of Alimony Pendente Lite seeking to have the same continue after the entry of a divorce decree or a recipient of a spousal support seeking to convert it to Alimony Pendente Lite after the entry of a divorce decree shall file a complaint for Alimony Pendente Lite in the Domestic Relations Section of the Court.

#### **RULE 1920.15: COUNTERCLAIM. SUBSEQUENT PETITION**

(c) A claim for child support, spousal support, or alimony pendente lite, whether filed as a separate petition or as a counterclaim, shall conform to the requirements of Pa.R.C.P. 1910.26.

(d) A claim for custody, whether filed as a separate petition or as a counterclaim, shall conform to the requirements of Pa.R.C.P. 1915.15.

#### **RULE 1920.16: SEVERANCE OF ACTIONS AND CLAIMS**

(a) Where one or more additional issues are pending, a decree of divorce or annulment may be entered if the parties stipulate. A bifurcation stipulation shall include the following:

I understand that having a divorce entered prior to the disposition of additional issues poses substantial risks and may result in additional litigation. These risks have been thoroughly discussed with my attorney and I am willing to have the divorce decree entered prior to the disposition of any outstanding additional issues. I shall pursue any additional issues and claims without unreasonable delay.

(b) A bifurcation stipulation shall be signed by the parties and their respective counsel. A stipulation entered between unrepresented parties shall be approved only upon petition and hearing.

(c) Where the action is ready for the entry of a decree of divorce or annulment but bifurcation is opposed, the court may upon application and after hearing enter a bifurcation order if (1) neither party would be substantially economically prejudiced and (2) the opposing party is unreasonably delaying the entire action by failing to file required pleadings or failing to initiate other appropriate action.

**RULE 1920.21: BILL OF PARTICULARS IN DIVORCE OR ANNULMENT. NON PROS**

(a)(1) A Request for a Bill of Particulars shall be filed within twenty (20) days of the service of the Complaint.

**RULE 1920.31: JOINDER OF RELATED ISSUES. CHILD SUPPORT. ALIMONY. ALIMONY PENDENTE LITE. COUNSEL FEES. EXPENSES. MODIFICATION OF ALIMONY. MODIFICATION OF ALIMONY PENDENTE LITE.**

(d)(1) A request for counsel fees, costs and expenses, or modification of alimony, shall be made by petition. The petition shall include:

- (i) petitioner's income and expense statement as prescribed by the rules of court;
- (ii) a copy of petitioner's most recent federal income tax return;
- (iii) a verification by the petitioner's employer of petitioner's wages for the past six (6) months;
- (iv) petitioner's inventory and appraisal of property as prescribed by the rules of court; and
- (v) a certification by counsel setting forth services rendered to date, including time expended and the services and time estimated to be rendered and the fee requested therefore, and a list of all expenses for which reimbursement is sought.

(2) A Respondent's answer to the petition shall include information similar to that required of the petitioner together with a concise statement of respondent's position in regard to the amounts claimed by petitioner and reasons why an award should not be entered as requested.

(3) After the petition is at issue, the petitioner or respondent shall move for the appointment of a Domestic Relations Master. The Master shall proceed as provided for in Pa.R.C.P. 1920.51 et seq. and these Rules.

(e) All payments in response to an Order of Court for child support, alimony, or alimony pendente lite shall be made through the Domestic Relations Office unless otherwise ordered by the Court.

(f) A petition for alimony pendente lite, and modification of alimony pendente shall be made through the Domestic Relations Office.

**RULE 1920.34: JOINDER OF PARTIES**

(a) No order staying the proceedings under this section or any other section of these rules shall be granted ex parte unless the Court deems it necessary.

**RULE 1920.42: AFFIDAVIT AND DECREE UNDER SECTION 201(c) OR 201(d)(1)(i) OF THE DIVORCE CODE**

(c) A praecipe presented under Pa.R.C.P. 1920.42(a) shall contain a certification by the presenting party or their counsel that advance notice of the presentation of the praecipe was delivered to the opposing party or to his attorney at least two (2) business days prior to filing, or was mailed to such party or to his attorney at least four

(4) business days before filing. Where no appearance has been entered on behalf of the defendant, notice shall be served on the defendant in like manner as a complaint [see Pa.R.C.P. 1920.4. Service].

(d) There shall be attached to a praecipe presented under Pa.R.C.P. 1920.42(a) a proposed form for the final decree substantially in the form provided for in Pa.R.C.P. 1920.76.

**RULE 1920.43: PETITION FOR SPECIAL RELIEF UNDER DIVORCE CODE**

(a) All petitions for special relief under the Divorce Code shall be presented only to the Judge assigned to hear such petitions at the time of filing.

(b) The original and one copy of all such petitions shall be time stamped by the Prothonotary prior to presentation of said petition, and a copy of each such petition shall be provided to the Court Administrator contemporaneously with the presentation of the petition to the assigned Judge.

(c) No application for injunction or other special relief will be considered by the Court unless the factual reasons are set forth specifically and in detail in the pleadings and affidavits. The pleading or averring of conclusions will not be sufficient. Upon consideration of the pleadings and attached affidavits, the court may order that a hearing be held or grant such other relief as the Court may deem appropriate and necessary.

**RULE 1920.45: COUNSELING**

(e) If there is a request for counseling pursuant to the Divorce Code, and the parties cannot agree upon a Counselor, a qualified professional from the list maintained in the Prothonotary's office shall be appointed by either the Court where the matter has not yet been assigned to a Master, or by the Master, without leave of Court, where the matter has been referred to the Master.

**RULE 1920.51: APPOINTMENT OF MASTER**

(f) A motion for appointment of a Master shall contain a certificate by the moving party that all parties have complied with the filing requirements of Pa.R.C.P. 1920.31(a)(1), 1920.33(a) and 1920.46. Where no appearance has been entered on behalf of the defendant, service of advance notice shall be by first-class mail to the defendant's last known address.

(1) If Pa.R.C.P. 1920.31(a)(1) or 1920.33(a) are inapplicable, the moving party shall so certify in his motion. A Master shall not be appointed until the parties have either complied with Pa.R.C.P. 1920.31(a)(1), 1920.33(a) and 1920.46 or the Court has made an Order under Pa.R.C.P. 4019.

(g)(1) Before presenting a motion for appointment of a Master, the moving party shall deposit with the Prothonotary the applicable Master's fees for the issues raised in the amount as set by Order of Court. The Prothonotary shall endorse the fact of such payment upon the proposed "Order Appointing Master" before same is submitted to the Court.

(2) No Master's fee shall be refunded after a pre-hearing conference has been held or continued under "Sch.R.C.P. 1920.51(j)(2)."

(h) The Court, upon motion for appointment of Master, shall refer the matter to the Domestic Relations Master, designate the issues to be considered, and serve the Order of Appointment on the Master.

(i) Within ten (10) days of being served by the Court with the order of Master's appointment, the Domestic Relations Master may move the Court to have an Associate Domestic Relations Master appointed in his place for cause shown. The Court in its discretion, based on the averments of the motion, may deny the motion or may enter a modified order replacing the Domestic Relations Master with an Associate Domestic Relations Master. Where an Associate Domestic Relations Master is appointed, he shall proceed as provided for below.

(j)(1) The Master, within ten (10) days of being served with the order of Master's appointment, may give notice of the time and place for a pre-hearing conference, by first-class mail at least five (5) business days prior to the pre-hearing conference.

(2) A pre-hearing conference may be continued only for cause shown and upon approval of an "Application for Continuance" by the Court Administrator or Master.

(k)(1) Within twenty (20) days after the appointment of a Master by the Court, but no later than the pre-hearing conference, each party shall file a memorandum substantially in the form required by Sch.R.C.P. 212.2(b) prior to a pre-trial conference.

(2) Either party may include in their memorandum copies of documents, reports, bills, statements, or appraisals certified by competent expert witnesses, officials, or from governmental records which are to be offered into evidence. Unless objected to at the pre-hearing conference, same may be entered into evidence without further proof. If there are objections, then the evidentiary rules must be strictly complied with. However, should the documentary evidence objected to be substantiated at the time of hearing and it appears that the objections to the documentary evidence were in bad faith, the cost of producing the witnesses to substantiate such evidence may be assessed against the objecting party.

(l) At the pre-hearing conference the Master will review the following with counsel for the parties or, where a party has appeared without counsel, with the party:

(1) the respective positions of the parties on each claim, including those where settlement has been reached;

(2) discovery which has been completed, including the income and expense statements (see Pa.R.C.P. 1920.33);

(3) any documentary evidence to be presented at hearing under Sch.R.C.P. 1920.51(k);

(4) the witnesses each party proposes to call at hearing;

(5) all matters which may be stipulated by the parties at hearing; and

(6) such other relevant matters as should be raised by either of the parties or the Master.

(m) Following the pre-hearing conference, the Master shall:

(1) prepare a summary of the discussions and action taken at the pre-hearing conference;

(2) serve a copy of the summary on counsel for the parties, or where a party has appeared without counsel, on the party;

(3) include notice with the summary served that either party shall have ten (10) days to serve each other party and the Master with a countersummary addressed to such points as that party views differently than was noted in the summary by the Master and that at the expiration of said ten (10) days the Master's summary

and any countersummaries properly served will be included as part of the record; and

(4) where it appears that discovery has not been completed, including specifically filing of income and expense statements, inventory and appraisal, and pre-hearing memoranda, the Master may proceed and deem the right to file waived, direct parties to complete discovery prior to the time set for hearing, direct that the discovery be completed and a second pre-hearing conference be scheduled, or move the court to vacate the Master's appointment with forfeiture of Master's fees paid.

(n)(1) In complex contested matters which require the hearing to be continued in progress, the Master may assess additional Master's fees of \$100.00 per each additional hearing day. Each additional conference, beyond the first, shall be considered for these purposes as a hearing.

(2) Where additional Master's fees are assessed, the moving party shall deposit the fee with the Prothonotary and concurrently file a Praecipe substantially in the following form:

(CAPTION)

PRAECIPE FOR DEPOSIT OF  
ADDITIONAL MASTER'S FEE

To the Prothonotary:

As directed by the Master in the above-captioned case, deposit the sum of \$ \_\_\_\_ .00 for \_\_\_\_\_ additional Master's Hearing days in compliance with Sch.R.C.P. 1920.51(n).

\_\_\_\_\_  
Attorney for (Plaintiff/Defendant)

RECEIVED this day the sum of \$ \_\_\_\_ .00, additional Master's fee in the above-captioned case.

\_\_\_\_\_  
Prothonotary

**RULE 1920.52: HEARING BY COURT. DECISION. DECREE**

(e) Hearings by the Court shall be conducted as in actions at law tried by a judge without a jury in accordance with these Rules.

(f) A petition for the allowance of a jury shall be filed within ten (10) days after the action is at issue, unless the Court, upon a rule to show cause, shall extend the time.

**RULE 1920.53: HEARING BY MASTER. REPORT**

(d) The Master shall direct the examination of witnesses and the general course of the proceedings before him. Subpoenas for the attendance of witnesses before the Master shall be issued by the Prothonotary under the seal of Court. The Master shall cause a record to be kept of all proceedings before him. If objection is made to the admission of evidence, an offer and statement of purpose of said evidence, as well as the objection and its grounds, and the Master's ruling shall be noted in the record.

(e) The Master shall hold a hearing within sixty (60) days after the pre-hearing conference provided for in Sch.R.C.P. 1920.51(j); or, when he finds that counseling is required under Pa.R.C.P. 1920.45, within sixty (60) days after the expiration of the time for the completion of counseling under that Rule.

(f) The Master or Court Administrator may grant only one continuance of a hearing to a day certain to each

party. However, the Master may continue any hearing in progress. Should it appear that the Master's hearing ought to be continued beyond the scope of this Rule, the Master, or either party, may move the Court for such continuance, after having given four (4) business days notice to the other parties and the Master.

The motion for continuance shall be made in writing to the President Judge on a form established by the Court by filing the form with the Court Administrator. The motion shall state the reason for the request, whether the other party or the Master is opposed or unopposed, and the number of times the case has previously been continued. If the Master is opposed to the motion, he shall state his reasons for opposition on the written form. However, the Master may continue any hearing in progress. Should it appear that the Master's hearing ought to be continued beyond the scope of this Rule, the Master, or either party, may move the Court for such continuance, after having given four (4) business days notice to the other parties and the Master.

(g)(1) In a contested case the testimony given at a Master's hearing shall be taken by an Official Court Reporter. The Court Reporter shall bill the moving party and shall serve a copy of the bill upon the Master.

Upon satisfaction of all fees by the moving party, the Court Reporter shall certify the transcript thereof and serve same upon the Master.

(2) Unless the Master shall raise objections within ten (10) days after the Court Reporter has served the transcript on him, the transcript shall be deemed certified by him.

(3) The Master shall file his report within thirty (30) days after the testimony has been served on him, or, if briefs are filed, within thirty (30) days after the final reply brief is due, unless upon cause shown, the Court shall extend the time therefore. However, the Master shall not be deemed served with the transcript until all Master's fees and Court Reporter fees have been satisfied by the moving party.

(h)(1) The testimony in an uncontested case shall be transcribed in question and answer form, shall be read by the witness, and shall be sworn to and signed by the witness in the presence of the Master. Before the Master shall certify such testimony he may examine the witness as to any answers given in such testimony and may demand that the testimony be supplemented, in writing, by answers to other specific questions, or under oath before an Official Court Reporter.

(2) The Master shall file his report within twenty (20) days after hearing or service upon him of the transcript by an Official Court Reporter after all fees have been satisfied.

(i) Should the Master fail to file his final report within the time specified in Sch.R.C.P. 1920.53(g) or 1920.53(h), there being no rule or other matter not disposed of, a party shall have the right to obtain a rule upon the Master to show cause why the final report should not be filed promptly. If no good cause is shown, and if no report is filed, the Court shall take appropriate action promptly. No action taken hereunder by a party shall adversely influence the Master against that party, and the willful violation of this admonition shall result in the removal of the Master from consideration for appointment as a Master thereafter, any other disciplinary and remedial action that the Court may feel appropriate under the circumstances, or both.

(j) The Master shall enclose the papers in the case in a strong paper backer arranged in the following order:

(1) Recommendation as to the form and content of the final decree as to the divorce or annulment and for the disposal of related claims;

(2) In an uncontested case, the Master's report in the form required by Pa.R.C.P. 1920.53(c) and in a contested matter, in the form required by Pa.R.C.P. 1920.53(b);

(3) Testimony; except that in a contested matter, the transcript by the court reporter may be separate from the other papers as long as it is filed at the same time;

(4) Exhibits, if any, which are not included with the transcript;

(5) Docket entries;

(6) Record papers in the case; and

(7) A certificate of service of the Notice required by "Sch.R.C.P. 1920.55."

**RULE 1920.55: MASTER'S REPORT. NOTICE. EXCEPTIONS. FINAL DECREE**

(d) In all cases, whether contested or uncontested, the Master shall serve written notice upon counsel of record for the parties, or by first class mail to the last known address of any party not represented by an attorney of record, of the Master's intent to file his report with the Prothonotary on a date certain and that all exceptions to the report shall be filed within ten (10) days from the date of filing of the Master's report. This notice shall be substantially in the form provided for in Sch.R.C.P. 1920.55(e) and shall have attached thereto a copy of the Master's report and the proposed decree.

(e) Notice of filing Master's Report shall be substantially in the following form:

(CAPTION)

*NOTICE OF PROPOSED FILING OF MASTER'S  
REPORT AND THE TIME IN WHICH TO FILE  
EXCEPTIONS*

Dear Counselor (or party pro se):

The report of the Master in the above entitled case will be filed in the office of the Prothonotary on \_\_\_\_\_, 19 \_\_\_\_.

The Master recommends in his report, which is enclosed, that a final decree in divorce (or annulment) be entered on the grounds of \_\_\_\_\_ (or that the complaint be dismissed). (and that the related issues be disposed of according to the proposed "Order of Court" enclosed herewith).

You are hereby notified that written exceptions to the report of the Master must be filed with the Prothonotary within ten (10) days from the date of filing of the report or a final decree may be entered by the Court without further notice.

(signature)

\_\_\_\_\_  
MASTER

(f) As a final item in the report, the Master shall certify that the notice, with proposed decree and report enclosed, required by this Rule have been served on the parties or their counsel at least four (4) business days prior to the filing of the report.

(g) After the Master's report has been on file ten (10) days in the office of the Prothonotary and no exceptions filed, the Prothonotary shall transmit the Master's report to the Court for review.

(h) A party filing exceptions to the Master's Report shall contemporaneously file a praecipe for transmittal pursuant to Sch.R.C.P. 205.3 indicating that the matter can be disposed of on the record. The moving party shall, within twenty (20) days of filing the exceptions, file a brief in support of said exceptions. The answer and brief of any opposing party shall be filed within twenty (20) days after service of the brief of the moving party.

(i) If both parties file exceptions to the Master's Report, the exceptions shall be consolidated for consideration by the Court without the necessity of filing a second praecipe. The briefing requirements of Sch.R.C.P. 1920.55(h) shall also apply to this section. For purposes of complying with the briefing schedule, each party shall be considered the moving party with respect to the exceptions filed by that party and the responding party to the exceptions filed by the opposing party.

(j) In all cases where the related claims include one or more issues from alimony, alimony pendente lite, and child support, it shall be the responsibility of the recipient to notify the Domestic Relations Section of such Order.

**RULE 1920.62: PROCEEDINGS BY INDIGENT PARTIES**

(d) The Court may hear testimony, or upon its own motion or the motion of either party, may appoint the Domestic Relations Master to hear testimony and return the record and the transcript of the testimony to the Court, together with a report and recommendation upon petition as provided for in Pa.R.C.P. 1920.62(a).

(e) Upon being served with an order for appointment as a Master on a petition by a party averring inability to pay all or part of the costs of the action, the Master shall, within ten (10) days, give notice of the time and place for hearing on the petition to the parties. Such hearing shall be held not less than ten (10) days nor more than thirty (30) days after notice is served on the parties by the Master.

(f) The Master shall file a transcript of the testimony together with his report and recommendation within thirty (30) days after receipt of the transcript. Upon filing, the Master shall immediately send notice, substantially in the form required by "Sch.R.C.P. 1920.55(c)," of the filing of the report to each party and accompany the notice with a copy of the report and recommendation.

(g) After the filing of the Master's Report, the procedure provided for in "Sch.R.C.P. 1920.55(g)" et seq. shall be followed.

**RULE 1920.71: FORM OF NOTICE**

(a) The following shall appear at the beginning of the Notice to Defend and Claim Rights as provided for in Pa.R.C.P. 1920.71:

(CAPTION)

You have been sued in Court for:

- Divorce
- Distribution of Property
- Child Support
- Custody/Visitation
- Annulment
- Alimony
- Alimony pendente lite
- Counsel fees, costs, and expenses

(b) For the office to be named in the notice to defend and claim rights, refer to Sch.R.C.P. 1018.1.

**RULE 1920.74: FORM OF MOTION FOR APPOINTMENT OF MASTER. ORDER**

(b)(1) The order appointing a Master shall be substantially in the following form:

(CAPTION)

AND NOW, \_\_\_\_\_, 19 \_\_, \_\_\_\_\_, Esquire, is appointed Master with respect to the following claims:

- Divorce
- Distribution of Property
- Child Support
- Custody/Visitation
- Annulment
- Alimony
- Alimony pendente lite
- Counsel fees, costs, and expenses

BY THE COURT:

\_\_\_\_\_ J.

**MINORS AS PARTIES**

**RULE 2032: FILING AFFIDAVIT AS TO AGE**

(a) A party, required to file the affidavit under Pa.R.C.P. 2032, shall do so within twenty (20) days from the date of service of the Rule.

**RULE 2039: COMPROMISE, SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION**

(a) No settlement of an action of a minor for personal injuries will be authorized or approved without the appearance of the minor in court, medical evidence as to the extent of the minor's injuries, and such further information as the Court shall deem necessary, provided, however, that if the petition of the guardian for the compromise of a minor's action is accompanied by (a) a written report of a physician; (b) a statement under oath by the guardian certifying (i) the present physical or mental condition of the minor, and (ii) approval of the proposed settlement and distribution thereof; (iii) a statement by counsel of his professional opinion of the probabilities of proof of defendant's negligence by plaintiff and the minor's negligence, if any, by defendant; and (iv) in the event that the minor is sixteen (16) years of age or over, his or her written approval of the proposed settlement and distribution thereof; the Court may approve the petition without requiring the appearance of the minor, his guardian or his doctor, in the event that the Court concludes that the information contained in the petition is sufficient to satisfy it that the proposed settlement adequately compensates the minor and his guardian for the injuries sustained and expenses incurred.

(b) If the case has already been assigned to a trial judge, the petition shall be submitted to that judge. All other petitions under the rule will be filed with the Prothonotary and shall be accompanied by a praecipe to transmit pursuant to Sch.R.C.P. 205.3.

**INCAPACITATED PERSONS AS PARTIES**

**RULE 2059: NOTICE TO INCAPACITATED PERSONS OF APPLICATION FOR GUARDIAN AD LITEM**

(a) In every case in which a petition is filed for the appointment or removal of a guardian ad litem for an incapacitated person, a copy of the petition and stay order issued thereon shall be served personally on the incapacitated person immediately upon the filing of the petition.



**RULE 2064: COMPROMISE, SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION IN ACTION INVOLVING AN INCAPACITATED PERSON**

(a) The praecipe upon the presentation of a petition pursuant to Pa.R.C.P. 2064 shall be the same as that prescribed under Sch.R.C.P. 2039.

**ACTIONS FOR WRONGFUL DEATH****RULE 2205: NOTICE TO PERSONS ENTITLED TO DAMAGES**

(a) The notice prescribed in Pa.R.C.P. 2205 shall name the decedent, the court, file number of the action, and state that, if the person to whom it is addressed objects to the authority of the plaintiff to maintain the action, such person may petition the Court to remove the plaintiff and to substitute as a new plaintiff any person entitled by law to recover damages in the action or a personal representative of the decedent.

(b) An affidavit of service of such notice shall be filed in the Prothonotary's Office within five (5) days after service or as soon thereafter as the registered return receipt, signed by the person to whom it is addressed is returned to the plaintiff.

**JOINDER OF PARTIES****RULE 2232: DEFECTIVE JOINDER. CHANGE OF PARTIES**

(a)(1) Where notice of the pendency of an action to recover damages for an injury, not resulting in death, inflicted upon the person of a wife or a minor is given by the defendant under Pa.R.C.P. 2232(a), it shall be given within twenty (20) days after service upon him of the complaint, unless the Court, on petition, permits the giving of notice on a later date.

(2) The notice shall state the court, and docket number of the action, the parties thereto and its nature, and that the person to whom it is addressed is required to join therein within twenty (20) days after receipt of such notice, or his cause of action will be barred and the action will proceed without him.

(b)(1) Application under Pa.R.C.P. 2232(b), to drop from the record a party who has been misjoined or against whom no claim for relief is asserted in the action, shall be by motion and served on all other parties.

(c)(1) Application under Pa.R.C.P. 2232(c), to join as a party any other person who could have joined or could have been joined as such in this action, shall be by motion and served on all other parties.

**RULE 2959: OPENING JUDGMENTS**

(a) A petition for a rule to show cause why a judgment by default for want of an answer should not be opened, must have attached to it a copy of the proposed answer to the complaint if an answer is required under the Pennsylvania Rules of Civil Procedure.

(b) The petition to strike off or open a judgment shall be accompanied by a praecipe to transmit pursuant to Sch.R.C.P. 205.3 requesting the issuance of a rule to show cause. If a rule to show cause is issued the parties shall immediately proceed to develop any necessary factual evidence by deposition. When the matter is ripe for disposition either party may transmit the case to the Court by filing a praecipe for transmittal pursuant to Sch.R.C.P. 205.3, indicating that the issue may be disposed of on the record.

**RULE 3104: LIS PENDENS**

(a) The Prothonotary shall index on the judgment index in his office all proceedings, (1) for specific performance of an agreement to purchase or sell real estate, (2) in lunacy or habitual drunkenness, (3) to revive and continue the lien of debts against a decedent's real estate, (4) to declare void any agreement, deed, or other paper conveying or vesting title to real estate, or (5) any proceeding by which purchasers of real estate would be deemed to have had constructive notice. In each case all owners of the land as indicated by the pleading filed shall be indexed as defendants.

**RULE 3112: SERVICE BY PUBLICATION FOR THE ENFORCEMENT OF JUDGMENTS FOR PAYMENT OF MONEY**

(a) When service by publication may be had under Pa.R.C.P. 3112(c), the plaintiff may cause service to be made by publication once in the Schuylkill Legal Record and in one (1) newspaper of daily circulation in Schuylkill County of a notice which shall be in substantially the following form:

NOTICE IF HEREBY GIVEN TO \_\_\_\_\_ that on \_\_\_\_\_ a writ of execution issued against real property of \_\_\_\_\_ held in your name and described as follows:

Said writ issued on JUDGMENT No. \_\_\_\_\_, 19\_\_ . You are directed to notify \_\_\_\_\_ that the plaintiff issued an attachment execution against you which \_\_\_\_\_ is/are require to defend.

**RULE 3130: NOTICE OF SALE OF SECURITIES**

(a) When notice to a defendant of the sale of securities is required by Pa.R.C.P. 3130, such notice may be given by the Sheriff by ordinary mail, first class postage prepaid, addressed to the defendant at his or her last known residence and by the posting of handbills in the Sheriff's Office, which mailing and which handbills shall contain a description of the securities to be sold, the name and place of the business of the broker through whom sale will be made, and the date when the securities will be offered for sale.

**DEPOSITIONS AND DISCOVERY****RULE 4007.1: EXAMINATION BY ORAL DEPOSITION**

(a) In every civil action filed in Schuylkill county, unless otherwise ordered by the Court, all discovery by deposition on oral examination of fact witnesses shall be conducted within Schuylkill County.

**RULE 4007.2: WHEN LEAVE OF COURT REQUIRED/COMPLETION OF DISCOVERY**

(b) After a case has been certified as ready for arbitration or trial pursuant to these rules there shall be no discovery proceeding whatsoever except upon order of court, or by agreement of counsel which does not result in delay of the case.

**RULE 4009: PRODUCTION OF DOCUMENTS**

(a) Unless otherwise ordered by the Court, a "place", in order to be deemed reasonable for purposes of Pa.R.C.P. 4009(b)(1), shall be located within Schuylkill County.

**RULE 4011: LIMITATIONS OF SCOPE OF DISCOVERY AND INSPECTION**

(a) A party who has given a signed or electronically recorded statement to another party shall not be required to submit to deposition for discovery by such other party with respect to the subject matter of such statement unless he has been furnished with a copy of such statement not less than forty-eight (48) hours prior to the deposition.

(b) The term "party" as used herein means (1) a party to the litigation; (2) any officer, director or managing agent of a party; and (3) any agent or employee of a party where the conduct of such agent or employee is within the subject matter of the issues set forth in the pleadings.

(c) A "statement" within the meaning of this rule shall include a signed statement, a recorded interview or transcript of any such recorded interview.

**RULE 4015: PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN**

(a) Letters rogatory, substantially in the following form, may be issued on the application of either party:

COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY, PENNSYLVANIA

To the Appropriate Judicial Authority in \_\_\_\_\_

Whereas a certain suit is pending before us, in which A.B. is plaintiff and C.D. is defendant, and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot completely be done between the said parties; we, therefore, request that you, in furtherance of justice, will by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties, or either of them, to appear before you or some competent person by you for that purpose to be appointed and authorized, at a time and place by you to be fixed, and there to answer on their oaths or affirmations, to the several interrogatories hereunto annexed; and that you will cause their testimony to be committed to writing, and returned to us under cover duly closed and sealed, together with these presents; and we shall be ready and willing to do the same for you in similar case when required.

Witness, etc.

**RULE 4017.1: OBJECTIONS DURING VIDEOTAPE DEPOSITION**

(a) Objections made during videotape depositions shall be made only upon the stenographic record and not on the video/audio tape portion of the record.

(b) Upon objection made during videotape deposition, the tape operator shall announce on camera that the tape is being turned off; the operator shall then pause the tape during argument on the objection; upon completion of the argument, the tape operator shall resume taping and announce on camera that taping has resumed.

REVISED RULES  
of  
CRIMINAL PROCEDURE  
in the  
Court of Common Pleas  
of Schuylkill County  
Twenty-First Judicial District  
Commonwealth of Pennsylvania

**RULES OF CRIMINAL PROCEDURE FOR COMMON PLEAS****RULE 4: CITATION OF RULES**

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure. They may be cited as "Sch.R.Crim.P. No. \_\_\_\_\_".

**RULE 141: PRELIMINARY HEARING: TRANSCRIPTS**

(a) Whenever a court stenographer prepares a transcript of the testimony of witnesses at a preliminary hearing, said stenographer shall furnish a copy of the transcript to the District Attorney.

**RULE 176: MOTION FOR A.R.D. DISPOSITION**

(a) In all cases in which a defendant charged with violation of 75 Pa.C.S.A. § 3731 (Driving Under the Influence) seeks a special handling by way of A.R.D., the District Attorney shall arrange with (1) the Drug and Alcohol Clinic at the Good Samaritan Hospital for examination and evaluation, and (2) the Adult Probation Department for an investigation of prior criminal history.

Reports prepared by the Drug and Alcohol Clinic and the Adult Probation Department shall be delivered to the District Attorney and shall be subject to inspection by the District Attorney and defense counsel. Such reports shall become part of the defendant's probation department file. All such reports shall be submitted along with the necessary A.R.D. forms to the Criminal Court Administrator on the cutoff date for submission of paperwork for negotiated pleas as established by the published Court Calendar.

(b) The A.R.D. motions for defendants who have been recommended by the District Attorney for the Fast Track A.R.D. Program shall be heard on the dates published for Fast Track A.R.D. in the Court Calendar.

**RULE 185: PROCEDURE FOR OBTAINING ORDER UPON SUCCESSFUL COMPLETION OF A.R.D. PROGRAM**

(a) Whenever a defendant is placed under the Accelerated Rehabilitation Disposition Program and he shall have satisfactorily completed the program provided for him and complied with its conditions, the Probation Office of Schuylkill County, upon filing of an affidavit by the defendant, shall file a report with the Court Administrator and a copy with the District Attorney, the latter of whom shall within thirty (30) days if he has objection to the dismissal of the charges, file such objection with the Clerk of Courts, serving a copy thereof on the defendant and his attorney. If such objections are filed, the Court shall proceed to hear the case under Pa.R.Crim.P. No. 184.

If no objections are filed within the thirty (30) day period, the Clerk of Courts shall endorse upon the report of the Probation Office as follows: "No objection having been filed within thirty (30) days by the District Attorney, the charges contained in the information filed against the defendant, as a result of which he was placed under the A.R.D. Program on \_\_\_\_\_, are hereby dismissed". The Clerk shall present said report with its endorsement to the sentencing Judge for signature.

(b) The Clerk of Courts shall furnish the Probation Department with a list of the cases under A.R.D. where the probationary period has heretofore expired and where petitions to dismiss have not been filed. The Probation Office shall review its files and make the required reports

as set forth under subsection (a) of this Rule, so that appropriate cases may be dismissed.

**RULE 225: INFORMATION: FILING, CONTENTS, FUNCTIONS**

(e) Promptly after receipt of transcripts in court cases, the Clerk of Courts shall forward copies of the same to the District Attorney. The District Attorney shall make such investigation as he deems appropriate and shall then prepare the information for filing against the defendants. The District Attorney shall file with the Clerk of Courts on the second and last Mondays of each month the informations he has prepared by said dates.

**RULE 301: CONTINUANCES**

(a) Motion by Defendant

Motions for Continuance by the defendant shall be in writing, upon forms approved by the Court, executed by the defendant and his attorney. At least twenty-four (24) hours advance notice of the presentation of said motions shall be given to the District Attorney. The motion shall be filed with the Clerk of Courts and contemporaneously a copy shall be served on the District Attorney by the defendant. The defendant will be obliged to appear in Court, with counsel, to waive the time requirements under Rule 1100. The Clerk of Courts shall forward all motions for continuance to the Court Administrator, who shall list the motion for hearing on the date when continuance requests shall be heard in accordance with the published Court Calendar.

**RULE 302: DUTIES OF COUNSEL**

Every counsel of record in a criminal case shall be timely present for each hearing, conference or other court proceeding involving his or her client as scheduled pursuant to the provision of these rules, or as the Court may otherwise direct. It shall further be the duty of counsel to promptly notify the client of the date, time, place and duty to be present at each proceeding involving the client's case until such time as the case has been disposed of by verdict, plea or Order of Court. Counsel who fail to comply with this rule may be held in Contempt of Court.

**RULE 303: ARRAIGNMENT**

(a) Every defendant who shall be held for Court by the District Justice, at the conclusion of the preliminary hearing or at the time he waives his preliminary hearing, shall be furnished with a notice of arraignment form by the District Justice. The form shall advise defendant of the time periods wherein he may commence discovery and file an omnibus pre-trial motion in Court. He shall further be given notice that he has the right to waive appearing for formal arraignment in the District Attorney's Office.

In the event he desires to waive formal arraignment, he and his attorney, if any, shall execute the form provided for that purpose by the District Justice, and said form shall be returned to Court with the transcript of the case by the District Justice. The date of arraignment will begin the running of the time for the exercise of defendant's pre-trial rights.

In the event the defendant does not waive his arraignment, the District Attorney, upon filing the information, shall give the defendant notice of arraignment by first class mail, addressed to defendant's last known address of record, arraignment to be held at the District Attorney's Office the following Monday morning at 9:30 a.m.

At the time the District Attorney mails the arraignment notices, he shall give the Public Defender a list of those

defendants who are scheduled for arraignment. The Public Defender shall assign one of his attorneys to meet with the District Attorney on the day of arraignment to represent those defendants who are not represented by counsel. Such representation shall be solely for the purpose of arraignment and shall not constitute an entry of appearance.

If a defendant fails to appear for arraignment, the Court, upon motion of the District Attorney, may issue a bench warrant for the defendant.

**RULE 305: PRE-TRIAL DISCOVERY AND INSPECTION**

Defense counsel desiring pre-trial discovery and inspection under Pa.R.Crim.P. No. 305 shall make an appointment and hold an informal conference with the District Attorney's Office within fourteen (14) days after arraignment for that purpose. The District Attorney's Office shall make available all information not in dispute to the defendant. Should the defendant request copies of any items of information, same shall be at the expense of the defendant. At that conference, in addition to discussing discovery sought, the parties may discuss possible plea negotiations.

**RULE 306: CONTENTS OF OMNIBUS PRE-TRIAL MOTIONS**

(a) All omnibus pre-trial motions shall state specifically and with particularity the following:

- (1) type of relief requested;
- (2) grounds for relief requested;
- (3) facts and events in support thereof; and
- (4) citations or law in support thereof.

All motions for pre-trial disclosure or discovery shall set forth the fact that an informal conference to discuss the requested material has taken place and proved unsuccessful.

**RULE 307: TIME FOR OMNIBUS PRE-TRIAL MOTIONS**

All omnibus pre-trial motions shall be filed within thirty (30) days after arraignment in accordance with Pa.R.Crim.P. No. 307. The defendant shall file the original with the Clerk of Courts and contemporaneously serve a copy on the District Attorney. The Clerk of Courts shall forward all motions to the Court Administrator for assignment to a judge. In those cases where the defendant acquires new counsel, either through appointment or through the resignation of his original counsel, the new counsel shall have no more than thirty (30) days from his appointment or employment to file such omnibus pre-trial motion as he may deem necessary. Only one extension of time shall be permitted.

**RULE 319.1: PLEAS AND PLEA AGREEMENTS**

(a) The District Attorney shall prepare the sentencing guideline forms provided by the Court as soon as practicable after the informations are lodged, setting forth the sentences required by the guidelines if a plea of guilty is entered by the defendant, and shall forward this material to defense counsel. Counsel for defendants who wish to engage in plea negotiations shall promptly thereafter schedule a meeting with the District Attorney.

(b) In those cases where no plea agreement has been made, a plea negotiation conference shall be held. At said conference, the District Attorney assigned to the case and prosecuting officer or an officer from his department with authority to resolve the case shall meet with the defen-

dant and defense counsel with the end in view to determine whether they can arrive at a plea agreement. The victim shall be notified and given an opportunity to attend and participate in the negotiations.

(c) If the parties arrive at a plea agreement, the defense counsel or defendant shall complete the form for entry of a written guilty plea available at the office of the District Attorney and promptly return it to that office. The District Attorney shall promptly forward the written guilty plea together with a copy of the information against the defendant, a report of the defendant's prior criminal record, and a list of maximum penalties and sentence guidelines for each charge to the Criminal Court Administrator. When the charge is D.U.I., a copy of the CRN shall also be provided to the Court.

Each written guilty plea shall be accompanied by a "Guilty Plea Certification" completed and signed by the District Attorney and defense counsel, certifying to the Court that the defendant's guilty plea has not previously been presented to the Court, or specifying the date when the plea was presented and identifying the judge who rejected the plea. Counsel who fail to comply with this rule may be held in contempt of Court.

Only those negotiated pleas and motions for A.R.D. for which the required documents are received by the District Attorney before 4:00 p.m. on the "plea paperwork cutoff" date as published in the Court Calendar for a particular term of Court will be considered by the Court during that term of Court. A defendant whose paperwork is not received by the cutoff may proceed to trial, request a continuance to the next term of Court, or enter a general plea of guilty without agreement as to sentence.

The District Attorney must forward all paperwork for negotiated pleas and motions for A.R.D. to the Criminal Court Administrator on the date established for transmittal as published in the Court Calendar.

The Criminal Court Administrator shall assign all guilty pleas and motions for A.R.D. among the judges who will hear those cases. Except for a plea of guilty entered after commencement of trial, the Court shall accept no guilty plea or A.R.D. motion unless scheduled and assigned by the Criminal Court Administrator.

(d) All guilty pleas and motions for A.R.D. for which the paperwork has been timely submitted to the Criminal Court Administrator shall be heard on the date scheduled for guilty pleas in the published Court Calendar.

(1) The pleas of all defendants who are incarcerated at that time shall be heard on the published prisoner plea date at 9:30 a.m.

(2) The pleas of all defendants who are not incarcerated and are represented by the Public Defender or have no counsel shall be heard on the published guilty plea date at 9:30 a.m.

(3) The pleas of all defendants who are not incarcerated and have retained private counsel shall be heard on the published guilty plea date at 1:30 p.m.

(e) General pleas of guilty entered after the dates in subsection (d) shall be scheduled by the Criminal Court Administrator at the direction of the President Judge.

#### **RULE 1100.1: REPORT OF CASES READY FOR TRIAL**

By 4:00 p.m. on the day after the District Attorney must transmit the plea paperwork to the Criminal Court Administrator, as published on the Court Calendar, the District Attorney shall prepare and submit to the Crimi-

nal Court Administrator a report listing all cases in which the District Attorney is prepared to go to trial during that term of Court (including those in which the defendant has indicated an intent to request a continuance). This list shall constitute the trial list for that term of Court. Thereafter no case may be removed from or added to the trial list without leave of Court.

Pretrial conferences with a member of the Court shall be conducted at 9:30 a.m. on the pretrial conference date as published in the Court Calendar for all cases remaining on the trial list by that date. The conference shall be attended by the assigned assistant district attorney and defense counsel. Pro se defendants must also attend. A victim may be present, if the victim desires to attend.

It shall be the duty of each party, *prior to the pretrial conference*, to verify the availability of all necessary witnesses for trial. The Court may decline to consider scheduling problems and requests which are not brought to the Court's attention at the pretrial conference.

#### **RULE 1123: POST-SENTENCE MOTIONS**

(a) Post-sentence motions shall be filed and served promptly on the Trial Judge and opposing counsel. The Trial Judge may schedule a conference to review the record and fix a briefing schedule.

(b) All motions requesting the appointment of a panel sitting as a court en banc shall be presented to the President Judge.

##### **(1) Transcript of Court Trial**

When directed by the Court, the transcript of the testimony of the trial of a criminal case shall be filed with the Clerk of Courts. The clerk shall make said transcript available to defense counsel and to the District Attorney, respectively, for a two (2) week period of time for preparation of briefs.

#### **RULE 1124: JUDGMENT OF ACQUITTAL MOTION**

(a) Any motion for judgment of acquittal shall follow the procedure set forth at Sch.R.Crim.P. 1405.

#### **RULE 1405: PROCEDURE AT SENTENCING**

(a) Motions for extraordinary relief.--Any defendant seeking to present an oral motion for extraordinary relief pursuant to Pa.R.Crim.P. 1405(B) shall file of record and serve upon the Commonwealth a written request briefly setting forth the rationale for the relief including an explanation as to why immediate relief is essential. Only upon a prima facie showing that alleged errors are so manifest that immediate relief is essential will leave be granted to present the oral motion for judgment of acquittal/arrest of judgment/new trial. The application to the Court shall be captioned "Application for Leave to Argue Oral Motion for Extraordinary Relief" and shall ask for leave to present and argue the merits set forth in the application.

#### **RULE 1407: FINES OR COSTS OR RESTITUTION**

(a) If at the time of sentencing the Court determines the defendant is without the financial means to pay the fines or costs or restitution immediately or in a single remittance, the Court may provide for payment of said monies in such installments and over such period of time as is deemed just and practicable by the Adult Probation Office and/or Schuylkill Collection Bureau, taking into account the financial resources of the defendant and nature of the burden its payments will impose.

(b) In any case in which the court has ordered payment of a fine or cost or restitution in installments, the

defendant may request a re-hearing on his payment schedule as established by the Adult Probation Office and/or Schuylkill Collection Bureau, or when he is in default of a payment, or when such default is imminent.

**RULE 1408.1: APPLICATIONS FOR PAROLE**

(a) Upon serving the minimum sentence as ordered by the Court, a defendant may be considered for parole.

(b) The Warden, District Attorney and Adult Probation Department shall indicate on the application any objection to the defendant's parole.

(c) The Court may in its discretion, or in the event any of the above said parties object to the application schedule a hearing on the application for parole.

**RULE 4006: TYPES OF BAIL: PERCENTAGE CASH BAIL**

(a) Provided a bond in the form set forth by the Court Administrator of Pennsylvania pursuant to Pa.R.Crim.P. No. 5 is executed, a defendant charged with a crime may furnish as bail with the District Justice or with the Clerk of Courts, a sum of U.S. currency equal to ten percent (10%) of the bail fixed in his or her case, but the sum of money furnished shall in no event be less than Fifty Dollars (\$50.00).

(b) The sum of money furnished shall be receipted for, deposited, accounted for, forfeited, or returned in accordance with Pa.R.Crim.P. No. 4015.

(c) After the final disposition of the case, and provided there has been no forfeiture, the money constituting percentage cash bail shall be returned to the defendant, less a retention fee for administering the percentage cash bail program of ten (10%) percent of the money entered as bail, and in no event shall the retention fee be less than Ten Dollars (\$10.00). The retention fee withheld shall be for the use of the County and shall be received and accounted for by the Clerk of Courts.

(d) When a defendant or a third party surety has deposited a sum of money under the percentage cash bail program, then upon full and final disposition of the case, the deposit less the retention fee for administrative costs, shall be returned to the person who originally posted the deposit. Notice of the full and final disposition shall be sent by the Clerk of Courts to the person who originally posted money at his address of record. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Schuylkill.

**RULES FOR CRIMINAL PROCEDURE  
FOR DISTRICT JUSTICE COURTS**

**RULE 4: CITATION OF RULES**

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure for District Justice Courts. They may be cited as "Sch.R.Crim.P.D.J. No. \_\_\_\_".

**RULE 106: PRIVATE COMPLAINTS**

(c) Private complaints shall be instituted in the manner set forth in Pa.R.Crim.P. No. 133. The affiant shall appear in the office of the District Attorney, who shall determine whether there is a probable cause and either approve or disapprove the complaint without unreasonable delay. If the complaint is approved, it shall be transmitted to the appropriate District Justice who shall act as the issuing authority.

**RULE 124: FUGITIVES—COURT CASES**

(c) In any court case in which a warrant of arrest has been issued, either upon the filing of the complaint or after the defendant fails to respond to a summons, if the officer to whom the warrant was issued is unable to serve such warrant after good faith effort within thirty (30) days, the said officer shall make a return of "NOT FOUND" to the District Justice.

**RULE 130: ARREST WITHOUT A WARRANT IN CERTAIN CASES**

(e) Pursuant to the authority granted by Pa.R.Crim.P. No. 130, police officers are hereby authorized, when making an arrest in Schuylkill County and when they deem it appropriate, to promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority when the following conditions have been met:

- (1) the most serious offense charged is a misdemeanor of the second degree;
- 2) the defendant is a resident of the Commonwealth;
- (3) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- (4) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- (5) the defendant does not demand to be taken before an issuing authority.

When a defendant is released pursuant to this Rule, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued.

**RULE 130.1: CONTEMPT PROCEDURE IN PROTECTION FROM ABUSE CASES**

(a)(1) Upon information received on a violation of a protection order, the defendant may be arrested without a warrant, provided that the information is sufficient to constitute probable cause.

(2) Upon arrest, defendant shall be taken before either the district justice who has jurisdiction or the district justice on call; the arresting officer shall file a criminal complaint charging the defendant with indirect criminal contempt per 35 P.S. § 10190; defendant shall at that time be arraigned and bail shall be set; defendant shall either be released on bail or taken to Schuylkill County Prison if bail cannot be posted.

(3) The District Justice shall immediately (next working day) provide the Court Administrator with the following information:

- (a) name of defendant
- (b) name of judge whose order was violated

(4) Court Administrator shall arrange with judge who issued original protection order for a hearing to be scheduled within ten (10) days.

**RULE 142: CONTINUANCES OF PRELIMINARY HEARINGS**

(a) Every request for continuance of a preliminary hearing shall be submitted in writing on a form obtained from the District Justice or Criminal Court Administrator and shall be signed by the defendant and his/her counsel if any. The form may be submitted to the District Justice by fax directly (or via the Criminal Court Administrator if the District Justice office does not have fax capability).

(b) Each party may be granted one continuance by the District Justice upon cause shown. Any such continuance shall not be for more than seven (7) days. Any subsequent continuance by either party may be granted only by the President Judge, or his designee, upon completion and with just cause shown on the approved aforementioned continuance request form. This request for continuance form must be completed and signed by the defendant and his/her counsel if any. Upon refusal or approval of said request for continuance form, the Criminal Court Administrator shall file the signed form with the Clerk of Court's Office and shall notify the District Justice who in turn shall notify the parties.

(1) Pre-Preliminary Hearing Line-Up

Defendants desiring a pre-preliminary hearing line-up shall make such request known to the District Attorney and the District Justice at least forty-eight (48) hours in advance of the scheduled preliminary hearing.

In the event the District Attorney opposes defendant's request for a line-up prior to his preliminary hearing, the District Attorney shall advise defendant of such opposition at least twenty-four (24) hours in advance of the scheduled preliminary hearing. Defendant may then request a line-up by filing an original petition with the Clerk of Courts. The Court Administrator shall then assign the matter to a criminal list Judge for disposition. Defendant shall give notice of such filing to the District Attorney and the District Justice.

When a District Justice has been notified of the filing of such petition, he shall continue the case for at least two (2) weeks to allow for the disposition of the petition.

(2) Scheduling of Preliminary Hearings

Unless there are compelling reasons, no preliminary hearing shall be scheduled for a court case by any District Justice during the first two days of jury selection or the first week of criminal court trials in Schuylkill County. If a preliminary hearing is required to be held within that week by the Pa.R.Crim.P., this local Rule of Court shall be cited by the District Justice as a reason for re-scheduling the case for as soon thereafter as possible.

**RULE 146: TRANSCRIPT OF DISTRICT JUSTICE**

(c) In addition to the requirements under the Pa.R.Crim.P., the District Justice shall also list the defendant's date of birth in brackets following his name on the transcript, and shall list the names, addresses, and telephone numbers of all witnesses who testified at the preliminary hearing or who the parties request to be listed on the transcript.

(d) The District Justice shall prepare a transcript of the proceedings before him and return the same together with the documents required by Pa.R.Crim.P. No. 146 to the Office of the Clerk of Courts by first class mail or by hand delivery. In appeals from summary convictions, the District Justice shall return the transcript filed with the Office of the Clerk of Courts together with the documents required by Pa.R.Crim.P. No. 67 by certified mail, return receipt requested, together with a letter of transmittal. The copy of the transmittal letter and return receipt card shall be retained by the District Justice in the event the defendant files a rule for judgment of non pros under Pa.R.Crim.P. No. 67(e) and proof of filing becomes material.

**RULES OF JUDICIAL ADMINISTRATION**

**RULE 1901: TERMINATION OF INACTIVE CASES**

(b)(1)(a) The Prothonotary shall prepare for call, on the first Monday of October of each year or on such other date as the Court by special order may direct, a list containing all civil matters in which no steps or proceedings have been taken for two years or more prior thereto and shall give notice thereof to counsel of record and to those parties for whom no appearance has been entered as required by Pa.R.J.A. No. 1901(c). If no good cause for continuing a matter is shown at the call of the list, the Court shall enter an order dismissing such matter.

**RULE 5000.6: TRANSCRIPT FEES—DEPOSIT**

(a) In all cases where a notice of appeal or post trial motion is filed, and a transcript is required, the moving party, except where the State or County Government is liable for the cost, shall be required to pay one-half of the estimated cost for the transcript to the Court Stenographer. Upon request, the stenographer shall provide the parties with a written estimate of the costs of the transcript and provide a copy thereof to the Court Administrator. The stenographer shall give a uniform receipt to the parties, and to the Court Administrator, and shall keep a copy for the stenographer's personal files.

When the transcript is completed, the stenographer shall immediately notify the parties and shall bill the moving party for the balance of the cost of the transcript. Upon receipt of the balance of the transcript fee, the stenographer shall file the transcript of record. The transcript fee shall be a legal cost assessed by the Court.

[Pa.B. Doc. No. 96-135. Filed for public inspection February 2, 1996, 9:00 a.m.]

**SCHUYLKILL COUNTY**

**Amendments to Orphans' Court Rules**

**Order of Court**

*And Now*, this 17 day of January, 1996, at 12:30 p.m., the Schuylkill County Orphans' Court Rules are amended as follows:

1. Rule 15.4D is amended to read as follows.
2. Rule 14.1B is promulgated to read as follows.

These rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.
- 3) File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rules.

JOSEPH F. MCCLOSKEY,  
*President Judge*

**Rule 15.4D. Contested Involuntary Termination of Parental Rights. Appointment of Counsel for Minor Child. Costs.**

(a) Whenever a proceeding for involuntary termination of parental rights is contested, an Answer shall be filed and the Court shall appoint counsel for the minor child or children in accordance with Section 2313 of the Adoption Act.

(b) In every contested involuntary termination proceeding, Petitioner and Respondent shall each deposit into the Clerk of the Orphans' Court a payment on account for the transcript fees and for fees and costs of counsel for the minor in an amount to be fixed by the Court. Additional fees may be assessed, and said fees may be taxed as costs and may be ultimately charged against the parties in interest as the Court deems appropriate.

(1) Respondent shall deposit said payment upon the filing of the Answer and Petitioner shall deposit said payment within ten (10) days after service of the Answer. Failure to deposit said funds may result in civil contempt of court or imposition of sanctions as the Court deems appropriate.

(c) All parties shall file a list of witnesses and the expected time required for hearing within ten (10) days after service of court order appointing counsel for the minor.

**Rule 14.1B. Reports of Guardian. Notice.**

(a)(1) *Guardian of the Person.* At least once within the first twelve months of the appointment and annually thereafter, the guardian of the person, whether plenary or limited, shall file a report with the Court outlining the guardian's performance. The form of the report shall be substantially the same as the Clerk of the Orphans' Court Form No. 53. A final report shall be filed within sixty (60) days after the death of the incapacitated person.

(2) *Guardian of the Estate.* In addition to the filing of an inventory which must be filed within ninety (90) days of appointment, the guardian of the estate, whether plenary or limited, shall file a report with the Court at least once within the first twelve months of the appointment and annually thereafter as to the administration of the ward's estate. The Court, in its discretion, may require that the report be filed more frequently. The form of the report shall be substantially the same as the Clerk of the Orphans' Court Form No. 54. A final report shall be filed within sixty (60) days after the death of the ward.

(b) *Notice.* The guardian shall serve written notice of the filing of the report upon each care provider, next-of-kin, and all parties in interest by first-class mail within ten (10) days of filing the report in substantially the following form:

COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION  
ANNUAL REPORT OF GUARDIAN

In the matter of the Estate of \_\_\_\_\_,  
an Incapacitated Person. To the care providers, next-of-kin, and all parties in interest in said affairs:

Notice is hereby given that \_\_\_\_\_,  
(guardian of the estate—guardian of the person) has filed

in the office of the Clerk of the said Court the annual report concerning the affairs of the ward. A copy of the report is available for inspection in the office of the Clerk of the Orphans' Court, Schuylkill County Courthouse, 401 North Second Street, Pottsville, Pennsylvania.

**Order of Court**

*And Now*, this 10 day of April, 1995, at 10:11 a.m., the Court hereby amends Schuylkill County Orphans' Court Rule 12.5F and hereby approves and adopts Schuylkill County Orphans' Court Rules 12.5G for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). These rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that said rules as they existed prior to the amendment are hereby repealed and annulled on the effective date of said rules as amended, but no right acquired thereunder shall be disturbed.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.

4) Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rules.

JOSEPH F. MCCLOSKEY,  
*President Judge*

**Rule 12.5F. Minor's Estate. Allowances. Approval of Court.**

(a)(1) *In General. Responsibility of Guardian.* Expenditures from income for the benefit of the minor, or for counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.

(2) *Mandatory Approval by the Court.* Except as provided in subparagraph (a)(1) of this rule, no payments shall be made by the guardian of the estate, unless approval by the Court is first obtained, when payment is to be made from principal, or, when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

(b) *Contents of Petition.* Allowances for Maintenance, Support, or Education. A petition for an allowance from a minor's estate, for the maintenance, support, or education of the minor, his spouse or children, shall be presented by the guardian of the estate and shall set forth:

(1) the manner of the guardian's appointment and the date thereof; and, where appropriate, the terms of the instrument creating the estate;

(2) the age and residence of the minor; whether his parents are living; the name of the person with whom he resides; and, if married, the name and age of his spouse and children;

(3) the value of the minor's estate, real and personal, and the net annual income;

(4) the circumstances of the minor, whether employed or attending school; if the minor's parents are living, the reason why the parents cannot support and educate the minor without resorting to the minor's estate;

(5) the date and amount of any previous allowances by the Court;

(6) a recommendation to the Court of the amount of the allowance the petitioner believes should be decreed; and

(7) if the petition is presented by someone other than the guardian of the estate, that demand was made upon the guardian to act, and the reason, if any, given by him for his failure to do so.

(c) *Contents of Petition. Joinder.* Attached to the petition shall be the joinder of the minor, if over fourteen years of age, and of the parents or surviving parent; or, if both parents are deceased, the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor.

(d) *Allowance for More than One Minor.* A single petition may be used for an order of allowance for care, maintenance and education of more than one minor or for funeral expenses of a deceased child, spouse, or indigent parent where the minors are members of the same family, have the same guardian, and substantially the same reasons in support of the petition apply to all of the minors.

(e) Whenever a sequestered deposit has been created for the benefit of a minor, whether or not a guardian has been named, allowances therefrom may be upon petition of anyone interested in the welfare of the minor. Such a petition shall conform as nearly as may be to the requirements of these rules and shall, in addition, set forth the interest of the petitioner in the matter.

**Rule 12.5G. Minor's Estate. Funeral Expenses.**

A petition for allowance for reasonable funeral expenses of a minor's spouse, child, or indigent parent shall set forth the facts, so far as appropriate, required to be set forth in a petition for allowance for maintenance, support, and education and such other facts as may aid the Court in determining the necessity for an affirmative decree.

**Order of Court**

*And Now*, this 13 day of March, 1995, at 2:46 p.m., the Court hereby approves and adopts Schuylkill County Orphans' Court Rules 14.1A and 12.5E and hereby amends Schuylkill County Orphans' Court Rule 8.1A for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). These rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that said rules as they existed prior to the amendment are hereby repealed and annulled on the effective date of said rules as amended, but no right acquired thereunder shall be disturbed.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

1) File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.

4) Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rules.

JOSEPH F. MCCLOSKEY,  
*President Judge*

**Rule 14.1A. Counsel. Incapacitated Persons.**

(a) Upon the filing of a petition alleging incapacity and seeking appointment of a guardian, the Court shall appoint separate counsel for the alleged incapacitated person.

(b) Counsel, as guardian ad litem, for the alleged incapacitated person shall immediately investigate the matter; shall file pleadings and defend the petition, *if contested*; or shall report and recommend to the Court at the hearing on the petition as to those matters which affect the rights of the alleged incapacitated person.

**Rule 12.5E. Compromise, Settlement, Discontinuance and Distribution. Minors.**

(a) *General rule.* Except as provided in subsection (b), no settlement of an action of a minor for personal injuries will be authorized or approved without the appearance of the minor in court, medical evidence as to the extent of the minor's injuries and whether such injuries have fully resolved, and such further information as the Court shall deem necessary.

(b) The Court may approve the petition without requiring the appearance of the minor, his guardian, or his doctor, provided the Court concludes that the information contained in the petition is sufficient to satisfy that the proposed settlement adequately compensates the minor and his guardian for the injuries sustained and expenses incurred and if the petition is accompanied by:

(1) a written report of a physician as to the extent of the minor's injuries and whether such injuries have fully resolved;

(2) a statement under oath by the guardian certifying (i) the present physical or mental condition of the minor, and

(ii) approval of the proposed settlement and distribution thereof;

(3) a statement by counsel certifying

(i) the fee charged, detailing any fee in excess of 25%, and

(ii) stating counsel's professional opinion of the probabilities of proof of the case and the reason why the Settlement is proper and in the best interest of the minor;

(4) a statement under oath by a minor age sixteen (16) years or over, certifying his or her approval of the proposed settlement and distribution; and

(5) the written consent and joinder of each interested party.

(c) Every petition filed under this rule shall include an Order setting forth a proposed distribution and shall state whether such distribution is to be made to the Guardian of the Estate or to a restricted account until such time as the minor reaches majority.

**Rule 8.1A. Appointment. Fees and Costs.**

(c) Each party in interest shall deposit into the Clerk of the Orphans' Court a payment on account of fees and costs in an amount to be fixed by the Court. Failure to



deposit said funds as ordered may result in a dismissal of the issues or imposition of appropriate sanctions.

#### Order of Court

*And Now*, this 1st day of April, 1993, at 1:45 p.m., the Court hereby approves and adopts the following Schuylkill County Orphans' Court Rules for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). These rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*. It is further *Ordered* and *Decreed* that all former Schuylkill County Orphans' Court Rules are hereby Rescinded as of said date.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.
- 3) File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill County Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rules.

JOSEPH F. MCCLOSKEY,  
*President Judge*

### RULE 1: JUDGES AND LOCAL RULES

#### Rule 1.2A. Local Rules. Rules Committee.

The Court shall, as often as needed, appoint a committee and shall designate the Chairperson to serve with an assigned Judge on the Orphans' Court Rules Committee. Each member of the committee shall be an active, practicing member of the bar of this Court and knowledgeable and experienced in substantive and procedural matters within the jurisdiction of the Court. It shall be the duty of said committee to meet with the Court for the purpose of recommending amendment, supplementation and/or repeal of these Rules so that said Rules shall at all times constitute a modern and efficient code for the conduct of the affairs of this Court.

#### Rule 1.2B. Filing, Indexing and Transmittal.

The original of all motions, petitions, and other pleadings shall be filed in the office of the Clerk. The Clerk shall assign a file number to each new proceeding, which number shall be included in all subsequent pleadings filed. The Clerk shall promptly transmit the pleadings to the Deputy Court Administrator—Orphans' Court for assignment to a Judge for disposition.

#### Rule 1.2C. Petitions and Motions.

(a) Every original petition or motion filed shall set forth in its first paragraph the citation of any statute, rule of court, or other authority relied upon to justify the relief requested.

(b) Every petition or motion filed shall state with particularity the grounds on which it is based and shall be accompanied by a proposed order which, if approved by the Court, would grant the relief sought by the pleading. Every response in opposition to a motion or petition shall be accompanied by a proposed order which, if approved by the Court, would deny or amend the relief sought by the pleading.

(c) The Court may direct that a Rule or Citation be issued, or may schedule a hearing or conference as the issues in the case may dictate.

(d) A copy of the notice required to be given shall be attached to the petition or motion.

#### Rule 1.2D. Briefs and Argument.

(a) The Court after conference or hearing or in lieu thereof, and whether requested by an interested party or on its own motion, may direct disposition of the issues upon briefs.

(b) Any party or his attorney may request oral argument upon a motion or issue involved in any controverted proceeding and the Court shall have the right to require oral argument.

(c) Unless oral argument is requested or specifically directed, the Court will decide the issues on briefs as submitted per briefing schedule set by the Court.

#### Rule 1.2E. Procedure Where Briefs are Filed. Contents of Briefs.

When a matter is directed for disposition on briefs, the attorney for the moving party, following a briefing schedule set by the Court, shall furnish the Court with a typewritten brief containing:

(a)(1) an index; (2) a history of the case; (3) a statement of the questions involved; (4) a statement of the facts of the case; (5) a copy of the exceptions, if any; (6) in cases begun by petition, copies of the pertinent docket entries and of the pleadings; (7) a copy of the will and codicils or trust instrument and any other documents the construction of which is involved; (8) a brief of argument; and (9) a certificate of service per (c) of this rule.

(b) The brief of the respondent may contain a counter-statement of the questions involved, a counter-statement of the facts of the case, and shall contain a brief of argument.

(c) Copies of briefs shall be delivered to counsel of record for opposing parties at the same time a copy is delivered to the Court.

#### Rule 1.2F. Witnesses.

Unless the exigencies of the case require it, an attachment will not be issued to compel the appearance of a witness unless the witness shall have been served with a subpoena at least three days before the day fixed for hearing.

#### Rule 1.2G. Attorneys.

(a) *Agreements*. The Pennsylvania Supreme Court Rules of Civil Procedure relating to the Business of the Courts shall govern in agreements of attorneys relating to the business of the Court and to contingent fees, and to the regulation of fees for services and promises to pay for services.

(b) *As witnesses*. Members of the Bar should not appear as sole counsel in matters in which they expect to be called as witnesses.

(c) *Attorney of Record*. Every attorney, when employed by any party in any proceeding pending in this Court, shall have his name and Supreme Court identification number marked on the initial pleading or paper filed in the office of the Clerk. So long as the name of the attorney remains in the record, he shall be considered as the attorney for the party for whom his appearance is entered and shall be served with all required notices and pleadings. Any attorney whose client has an interest in

the proceeding may, by praecipe, enter an appearance as of record. Any attorney who has properly entered an appearance will receive notice of all hearings, conferences, and orders.

**Rule 1.2H. Record Papers. Reproduction of Papers.**

(a)(1) *Record Papers.* The record papers in the office of the Clerk shall be in the custody of said official, who shall be responsible for their safekeeping. No person, other than the Clerk, or his duly authorized clerks shall have access to the files in which such record papers are kept.

(2) No one is authorized to remove records from the office of the Clerk. It is the duty of the Clerk to insure full compliance with this rule.

(3) The record papers in any proceeding may be examined and copied by any party in interest in the office of the Clerk. While the record papers in any case may be photocopied, the file copy of testimony may not be photocopied.

**Rule 1.2I. Costs.**

When not otherwise regulated by law, the Court will allocate costs in such manner as it deems equitable.

**Rule 1.2J. Depository of the Court.**

(a) *Deposit of Money or Securities in Court.* All monies paid or securities delivered into Court shall be deposited immediately in such bank or trust company as the Clerk may designate, to the credit of the court, in the particular estate or proceeding to which the money or securities may belong; and such depository shall keep a separate account of each payment and delivery, designating the same by name of the estate or proceeding.

(b) *Withdrawals.* No money shall be paid out of Court by the depository, or securities delivered, except on checks or orders of the Clerk accompanied by a certified copy of the Order of Court authorizing such withdrawal or delivery.

(c) *Docket to be maintained.* The Clerk shall maintain in his office a Money in Court Docket in which shall be entered concisely under the name of the respective estates, the Orders of Court directing money to be paid into Court, as well as an accurate account of the money paid in and paid out, so that the record will fully explain itself.

**Rule 1.2K. Decrees. Satisfaction and Enforcement.**

(a) *Satisfaction. Release.* Acknowledgment of receipt of sums of money or property ordered to be paid or delivered by any award or decree of the Court may be made by appropriate release filed of record and noted in the docket entries.

(b) *Order to Enforce Decree or Adjudication.* Any party in interest may petition the Court for an Order to enforce compliance with the provisions of a decree or an adjudication.

**Rule 1.2L. Bonds and Sureties.**

(a) *Corporate Fiduciaries.* When the fiduciary is a corporation having fiduciary powers and authorized to do business in the Commonwealth, a bond will not be required unless the Court, upon cause shown, deems it advisable that a bond be filed.

(b) *Corporate Sureties.* Every application for the approval of a corporation to act as surety shall be accompanied by a statement, sworn to by the president, secretary or authorized agent of the corporation, that it is duly authorized by certificate issued to it by the Insurance Department of this Commonwealth to become surety on

all bonds and obligations, that it has filed such certificate together with a copy of its financial statement with the Prothonotary of Schuylkill County in accordance with the rules of the Court of Common Pleas of Schuylkill County and that the certificate is still in full force and effect.

(c) *Individuals as Sureties.* All bonds presented for approval, except those having proper corporate surety, shall be accompanied by an affidavit of each person offered as surety, setting forth: (1) his name and residence, and (2) that he is the owner in his individual right in fee simple of real estate located in Schuylkill County having a fair net value, after deducting all liens and encumbrances, in excess of the face amount of the bond upon which he is a surety.

(d) *Bond Without Surety.* The Court in its discretion may permit a party in interest to execute his individual bond, without surety. When a party in interest is authorized to execute his individual bond, the Court may direct that the bond to be executed contain a warrant of attorney to confess judgment, with or without default, and that judgment thereon be entered of record in the office of the Prothonotary.

**Rule 1.2M. Individual Fiduciaries. Assets and Investments.**

(a) *Segregation.* Assets held by individual fiduciaries subject to the jurisdiction of the Court shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such.

(b) *Deposit of Uninvested Funds.* All funds held uninvested shall be deposited in a bank or banks, or trust company or trust companies, the deposits of which are insured by the Federal Deposit Insurance Corporation.

**RULE 2: CONSTRUCTION AND APPLICATION OF RULES**

**Rule 2.3A. Definitions.**

(a) As used in these rules "P.E.F. Code" shall mean a reference to the Probate, Estates and Fiduciary Code, June 30, 1972, P. L. 508, 20 Pa.C.S.A. § 101, et seq.

(b) As used in these rules "Clerk" shall mean a reference to the Clerk of the Orphans' Court—Register of Wills.

**Rule 2.4A. The Business of the Court.**

(a) *Calendar.* Prior to the close of each calendar year, the Court shall prepare, publish, and make available for distribution, a calendar setting forth the days upon which various matters will be regularly heard during the ensuing year. In the event of a variance or conflict between the contents of such a published calendar and the provisions of these rules, the former shall supersede the latter.

**Rule 2.4B. Audits and Continued Audits.**

(a) New accounts shall be called for audit on the second Wednesday of each month, at the time and place advertised pursuant to Sch.Co.O.C. Rule 6.6A.

(b) Continued audits shall be heard on such days and at such times as the Court shall set.

**Rule 2.4C. Return Days.**

Return days, i.e. the days to which citations, rules or other processes are returnable, shall, subject to the provision of § 764 of the P.E.F. Code and except as otherwise provided, be as fixed by local rule or special order of Court. No hearing shall be held on the return

day of a citation or rule unless specially ordered by the Court. (See Pa.O.C. Rule 3.2.)

### **RULE 3: PLEADINGS AND PRACTICE**

#### **Rule 3.2A. Pleadings, Signature and Verification.**

(a) The pleadings in matters before the Court shall be limited to a petition, an answer, new matter, a reply to new matter, preliminary objections, and an answer to preliminary objections.

(1) *New Matter.* Any defense which is not a denial of the averments of fact shall be set forth under the heading "New Matter".

(2) *Reply to New Matter.* A reply shall be required when new matter is set forth in the answer.

(b) All pleadings, including every petition, motion, answer, and reply, containing an allegation or allegations of fact, shall be signed by the petitioner or petitioners and their attorney and attested either by an affidavit or by a verified statement setting forth that it is subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsifications to authorities) by one or more of the petitioners. When it is impractical to comply with the foregoing, the pleading may be signed and attested by someone familiar with the facts, in which case the reason for the failure of petitioner or petitioners to sign shall be set forth in the attestation.

(c) A copy of every pleading, including exceptions, shall be promptly served upon counsel of record for all parties in interest.

#### **Rule 3.2B. Pleadings. Disposition. Issues of Fact or Law.**

(a)(1) *Failure to Answer.* If the respondent fails to answer a petition as required by the Citation, all material averments of fact in the petition shall be taken as admitted and the Court may, at any time after the return day and upon proof of service of the Citation upon the respondent at least ten (10) days prior to the return date, upon motion, enter a decree granting the prayer of the petition or such other relief deemed appropriate by the Court.

(2) *Failure to Reply to New Matter.* If the petitioner fails to reply to new matter contained in an answer, the averments of fact set forth as new matter shall be deemed admitted and the case will be at issue.

(b)(1) When an issue of fact is raised by the pleadings, including preliminary objections to jurisdiction, any party may move for a hearing, and the Court, in its discretion, will hear the matter, or refer the same to a master.

(2) When the pleadings are closed, any party in interest may move the Court for disposition of a question of law, upon briefs and oral argument, as needed.

#### **Rule 3.4A. Form. Exhibits.**

(a) *Typing and Endorsements.* Every pleading shall be endorsed with the name of counsel and where practical typewritten and double spaced.

(b)(1) There shall be attached to all petitions as exhibits the originals or copies of all wills, codicils, agreements, and other written instruments relied upon. If the petitioner is unable to attach a necessary exhibit, he shall so state in his petition together with the reason.

(2) The signature of an attorney to a petition shall constitute a certification by that attorney that all copies

of written or printed instruments, records, or documents which are not certified or authenticated, are true and correct copies of the original.

#### **Rule 3.4B. Consents. Joinders. Form.**

(a) All petitions shall aver that all parties in interest are petitioners, or that consents or joinders of all necessary parties are attached. If the petitioner is unable to attach a necessary consent or joinder, he shall so state in his petition together with the reason.

(b) Whenever a party other than a petitioner desires to consent to or join in the prayer of a petition, there shall be appended to the petition a written "Consent" or "Joinder" signed by the party in the following form:

I, \_\_\_\_\_, having read and considered the contents of the foregoing petition, do herewith waive the benefit of all requirements of notice of the presentation, or service upon me, of said petition, do authorize the Court to note my general appearance in said proceeding as though I had appeared personally or by counsel, do herewith waive all objections to the Court's jurisdiction over my person, and do herewith consent to or join in [add specifics of prayer for relief]

All "Consents" and "Joiinders" shall be signed by at least two (2) witnesses.

#### **Rule 3.5A. Citation. Proof of Service.**

(a)(1) *Personal Service.* Proof of personal service of a citation shall conform to the provisions of § 766 of the P.E.F. Code. The return shall set forth the date, time, place and manner of service and that true copies of the citation, petition, and preliminary order awarding the citation were handed to the respondent.

(2) *Service by Registered or Certified Mail.* Proof of service of a citation by registered or certified mail shall be by affidavit of the person making service, which shall set forth that true and correct copies of the citation, petition, and preliminary order awarding the citation were mailed to the respondent postage prepaid, return receipt requested, the date of mailing, the address to which notice was mailed and that attached to the return is the signed return receipt card which accompanied the letter.

(3) *Service by Publication.* Proof of service of a citation by publication shall consist of proofs of publication together with affidavits by the publisher.

(b) Except as otherwise provided, a return of notice shall be filed with the Clerk on or before the date set for the occurrence of the event of which notice has been given.

#### **Rule 3.6A. Guardians or Trustees ad Litem. Appointment.**

Guardians or trustees ad litem may be appointed to represent the interests of any prospective parties in interest who are not sui juris or who are absentees and for whom no guardian or trustee has previously been appointed. Such appointments may be made upon the presentation of the petition to the Court or at any time during the course of the proceeding when the Court deems such action necessary.

#### **Rule 3.7. Pre-hearing Conference.**

In any action the Court, on its own motion or upon the motion of any party, may direct the attorneys for the parties to appear for a conference to consider simplification of the issues, possibility of obtaining admissions of

facts and documents, and such other matters as may aid in the disposition of the action.

#### RULE 5: NOTICE

##### Rule 5.1A. Notice. Legal Publication.

The *Schuylkill Legal Record* shall be the legal periodical for the publication of notices whenever publication in a legal periodical is required by Act of Assembly, by Rule, or by Order of Court.

##### Rule 5.1B. Service on Attorneys.

Written notice served personally on an attorney of record or on a partner or employee of his office, or by mail addressed to his office, shall be notice to the party whom he represents, except where personal service on the party is specifically required.

##### Rule 5.2A. Method. Person under Incapacity. No Guardian or Trustee.

Whenever notice is given to a person who is not sui juris and for whom there is no guardian or trustee, notice shall be given by serving it upon him, if he is over fourteen years of age, and, in all cases, upon:

- (a) His spouse, if sui juris, or
- (b) His next of kin, if sui juris, or
- (c) The person with whom he resides or by whom he is maintained; or
- (d) The superintendent or other official of the institution having custody of him; or
- (e) In such manner as the Court, by special order, may direct.

##### Rule 5.4A. Notice. Additional Requirements.

(a)(1) *Personal Service.* Return of personal service shall set forth the date, time, place and manner of such service, and that a true and correct copy of the petition and notice were handed to the person served.

(2) *Registered or Certified Mail.* Return of notice by registered or certified mail shall set forth the date and place of mailing the petition and notice and shall include the return receipt or a copy thereof.

(3) *Publication.* Return of notice by publication shall set forth the date(s) and newspapers and/or legal periodicals of publication and shall include proofs of publication or copies thereof.

(b) Except as otherwise provided, a return of notice shall be filed with the Clerk on or before the date set for the occurrence of the event of which notice has been given.

#### RULE 6: ACCOUNTS AND DISTRIBUTION

##### Rule 6.1A. Accounts. Form. Additional Requirements.

(a)(1) All accounts shall be in the form approved by the Pennsylvania Supreme Court and known as Uniform Fiduciary Accounting Standards. Should the account filed fail to comply with said accounting standards, the Clerk shall notify the Accountant to immediately comply prior to ten (10) days before Audit Day. The corrected account shall be given to all parties in interest. A failure to correct the account shall result in the account being stricken.

(2) Accounts shall be stated on 8 1/2" by 11" paper, fastened together at the top and numbered consecutively at the bottom.

(3) Every account filed with the Clerk shall be signed by each accountant and shall be verified by at least one accountant.

##### Rule 6.3A. Notice. Return. Failure to Give. Penalty.

(a) (1) An accountant shall serve written notice of the filing of an account upon each claimant and party in interest by first-class mail, at least twenty (20) days prior to Audit, in substantially the following form:

COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY  
ORPHANS' COURT DIVISION  
IN THE MATTER OF \_\_\_\_\_ ESTATE  
FIRST ACCOUNT OF \_\_\_\_\_ (EXECUTOR)  
UNDER THE WILL OF \_\_\_\_\_

NUMBER \_\_\_\_\_

*NOTICE TO PARTIES IN INTEREST*

Notice is hereby given that the (\_\_\_\_\_) of the above-captioned Estate has filed (\_\_\_\_\_) Account and Statement of Proposed Distribution with the Clerk of the Orphans' Court of Schuylkill County, Pennsylvania, and the Audit thereon shall be before the Court on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_ .M., in Courtroom No. 2, Schuylkill County Courthouse, Pottsville, Pennsylvania.

If you have any objection to any transaction or matter involving the Estate, you must file with the Clerk of the Orphans' Court objections thereto in writing prior to Audit, or appear in person or by legal counsel and present your objections to the Court at Audit.

If you fail to present objections, the Court may assume you have no objection to the Account and Statement of Proposed Distribution. You are not required to appear if you have no objections.

A copy of the Account and Statement of Proposed Distribution is attached hereto; and if not attached, it is available for your examination at the Register of Wills office, Schuylkill County Courthouse.

(2) For the purposes of this Rule, a "Party in Interest" is defined as follows:

- (i) when decedent dies intestate, as all intestate heirs;
- (ii) when decedent dies testate, as all residuary legatees.

(3)(i) a statement that the Account and Statement of Proposed Distribution are available for examination at the Register of Wills office shall be attached to any notice to a Claimant.

(ii) a copy of the Account and Statement of Proposed Distribution shall be attached to any notice to a party in interest.

(4) Every notice to a claimant shall contain the date; time and place of the Audit of the account; whether the claim, interest, or obligation of the person notified is admitted or denied; if admitted, whether it will be paid in full or in part; and, if denied, that an objection to such denied claim must be filed with the Clerk prior to Audit or by appearance in person or by counsel at the Audit to present such objection.

(b) On or before the date for the call of the account for audit, the accountant, or his counsel, shall file with the Court a return of notice as prescribed in Rule 5.4 hereof.

(c) Failure by the accountant or his counsel to give all required notices and to file returns thereof in accordance

with this rule shall result in the Court continuing the audit of the account until all of the provisions of all of the aforementioned rules have been satisfied.

**Rule 6.4A. Accounts. Time for Filing. Audit Days.**

(a) Accounts to appear on a particular Audit List must be filed not later than 4 p.m. of the third Wednesday immediately preceding the Wednesday on which it is desired the account shall be called for Audit.

(b) All accounts on the advertised Audit List will be called for Audit on the day set for calling the List; but, in cases requiring the taking of considerable testimony or the hearing or argument on legal questions or in which objections have been filed, a special day for conference or hearing may be fixed.

**Rule 6.6A. Advertisements of Accounts. Form of Advertisements.**

(a)(1) *Advertisement of Account.* The Clerk shall give notice of all accounts filed and of the time and place of the call of the Audit List. The notice shall be published once a week during two (2) consecutive weeks immediately before the day on which the Accounts, with accompanying Statement of Proposed Distribution, shall be presented for Audit and confirmation in the legal publication designated by these rules and in one daily newspaper of general circulation published within Schuylkill County, and the Clerk shall also post copies of the Audit List in his office.

(2) *Form of Advertisement.* The form of advertisement of Accounts and Statements of Proposed Distribution that have been filed for Audit and adjudication by the Court shall be as follows:

Notice of Audit of Fiduciaries Accounts.

To all claimants, beneficiaries, heirs, next-of-kin, and all other parties in interest:

NOTICE is hereby given that the following named fiduciaries of the respective estates designated below have filed their Accounts and Statements of Proposed Distribution in the office of the Register of Wills in and for the County of Schuylkill, Pennsylvania, and the same will be presented to the Orphans' Court Division, Courtroom No. 2, Schuylkill County Courthouse, Pottsville, Pennsylvania, on Wednesday, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ .M., for audit and confirmation at which time and place all persons interested shall attend, if they desire, and present their claims or forever thereafter be barred from coming in upon said respective estates so accounted for; namely:

Estate	Fiduciary	Attorney
X	X	X

\_\_\_\_\_  
Clerk of the Orphans' Court

**Rule 6.9A. Accounts. Statements of Proposed Distribution.**

(a)(1) A Statement of Proposed Distribution, signed by each accountant and verified by at least one of them, shall be filed with each Account at the same time the Account is filed, except in Accounts of Guardians of the Estates of Minors and Settlement of Small Estates (See Sch.Co.O.C. Rule 6.9C).

(2) Except by special leave of Court, printed forms of the Statement of Proposed Distribution provided by the Clerk shall be used.

**Rule 6.9B. Accounts. Order of Procedure on Audit Day.**

The order of procedure at the Audit of Accounts shall be as follows:

- (a) appearances;
- (b) report of additional receipts and/or disbursements;
- (c) objections;
- (d) claims; and
- (e) other matters.

**Rule 6.9C. Accounts. Papers to be Submitted.**

(a) *All Accounts.* Counsel for all fiduciaries shall submit:

- (1) Orphans' Court Account Checklist executed by counsel of record;
- (2) Copies of all agreements with respect to settlements and compromises;
- (3) Accurate description of all real property to be awarded in kind described by metes and bounds in the manner appearing in the last deed of record, together with recital of title into the decedent.

(b) *Accounts of Personal Representatives.* Counsel for personal representatives shall also attach:

- (1) the original proofs of advertisement of grant of letters;
- (2) a copy of letters, inventory, and inheritance tax appraisalment;
- (3) a copy of the Will and codicils;
- (4) the official receipt for any inheritance tax paid;
- (5) the official receipt for any federal estate tax paid; and
- (6) a Statement of Proposed Distribution.

(c) *Accounts of Trustees.* Counsel for Trustees shall also submit:

- (1) a copy of the letters, and of the will and codicils, if any, creating the testamentary trust, or a copy of the trust instrument and any amendments thereto, creating the inter vivos trust;
- (2) a waiver of an income accounting executed by all of the income beneficiaries, if the account does not contain a complete income accounting;
- (3) the official receipt for any inheritance tax paid during the period of the accounting;
- (4) the official receipt for any federal estate tax paid during the period of the accounting; and
- (5) a Statement of Proposed Distribution.

(d) *Accounts of Guardians of the Estates of Minors.* Counsel for a Guardian of the estate of a minor shall also submit:

- (1) a copy of the appointment of the guardian or of the Will or other instrument by which the guardian was appointed;
- (2) where the former minor has attained the age of eighteen (18) years, his written stipulation setting forth that he attained the age of eighteen (18) years on a certain designated date; that he has examined the account and has found it correct; and that he has received the balance or balances shown in the account and requests that the guardian be discharged;

(3) where the former minor has attained the age of eighteen (18) years but has not executed the stipulation referred to in paragraph (d)(2) of this Rule, then in place thereof a Statement of Proposed Distribution shall be filed;

(4) where the minor is deceased, or has been adjudged an incompetent/incapacitated person under the P.E.F. Code, or is an absentee or presumed decedent, or the guardian has resigned or has been removed, a Statement of Proposed Distribution shall be filed.

(e) *Accounts of Guardians of Estates of Incompetents/Incapacitated Persons.* Counsel for a Guardian of the Estate of an Incompetent/Incapacitated Person shall also submit:

- (1) a copy of the appointment of the guardian;
- (2) a copy of the original inventory filed; and
- (3) a Statement of Proposed Distribution.

**Rule 6.10A. Objections. Form and Content.**

(a) Objections to an account, inventory, and statement of proposed distribution shall be in writing; shall be numbered consecutively; shall be signed by the objector or his attorney; and where they contain allegations of fact, shall be properly verified in the same manner as a petition.

(b) Each objection shall be specific as to description and amount, shall raise but one issue of law or fact, and shall set forth briefly the reason or reasons in support thereof.

**Rule 6.10B. Objections. Time for Filing.**

(a) Written objections to an account, inventory, and statement of proposed distribution may be filed as of course with the Clerk at any time prior to, or at, the call of the account for audit.

(b) Objections may be made orally when an account is first called for audit, in which event they shall be reduced to writing and filed in conformance with these Rules within five (5) days thereafter.

(c) No objections shall be made or filed except as provided in (a) and (b) hereof unless leave of Court is first obtained.

**Rule 6.10C. Objections. Service. Return.**

A copy of objections to an account, inventory, or statement of proposed distribution shall be served upon the accountant and all other parties in interest or their attorney of record, immediately after the objections have been filed with the Clerk. Proof of such service shall be filed forthwith with the Clerk. Any unreasonable delay in serving objections shall constitute grounds for dismissal of the same by the Court.

**Rule 6.10D. Objections. Continued Audit.**

When objections to an account, inventory, or statement of proposed distribution have been filed prior to or at audit or presented orally, as herein provided, the audit of the account shall be continued to a day fixed by the Court for disposition of the objections and auditing of the account.

**Rule 6.10E. Objections. Failure to Make, Effect.**

Any question which can be and is not raised by objections conforming to these rules shall not thereafter be the subject of an exception to an order confirming an account or decreeing distribution.

**Rule 6.11A. Adjudication and Decree of Distribution. Service. Method. Proof.**

(a)(1) *In General.* Decrees of distribution shall be entered and filed with the adjudication of an account except where the facts warrant the filing of the decree separately and on a later date. Unless written exceptions are filed within ten (10) days from the date of mailing set forth in the Clerk's Affidavit of Service, the decree of distribution shall become FINAL.

(b) The Clerk shall immediately serve, or cause to be served, by first class United States mail, a true copy of the adjudication and order upon—

- (1) Each attorney of record;
- (2) Each claimant, whether claiming as a creditor or as an heir, or legatee, who appeared at the audit in personam and without counsel and whose claim has been denied in full or in part; and
- (3) Such other parties as the Court may direct.

(c) Immediately upon effecting service of the Court's adjudication and order as provided in (b) hereof, the Clerk shall file of record proof of such service and shall provide a copy of the same to Accountant and his counsel.

**Rule 6.11B. Decree of Distribution P.E.F. § 3534.**

*Real property.* Distribution under Section 3534 of the P.E.F. Code, where at the time of distribution of the estate the personal representative or a distributee requests the Court to divide, partition, and allot the real estate or to direct a sale thereof, an interlocutory decree shall be entered fixing a day certain, not less than twenty (20) days from the date of the interlocutory decree, for hearing; the interlocutory decree to be entered shall be in the form of a notice to all parties in interest that on the day so fixed for hearing the Court will hear the contentions of the parties in interest with respect to:

(a) whether the real estate can be divided among less than all of the parties in interest without prejudice to or spoiling the whole and if so, how; and

(b) whether the Court should direct the personal representative to sell at a sale confined to the distributees or at a private or public sale not so confined.

A copy of the interlocutory decree, duly certified, shall be served by certified or registered mail, by the personal representative, upon all parties in interest, not less than ten (10) days before the return day fixed in the decree; proof of service of notice, in the form of return receipts, to be filed upon the return day.

**Rule 6.11C. Settlement of Small Estates. Contents of Petition.**

(a) *Contents of Petition.* A petition for the settlement of small estates under section 3102 of the P.E.F. Code shall set forth:

- (1) the name, date of death, and residence of the decedent;
- (2) the name and address of the petitioner and his relationship to the decedent;
- (3) if the petitioner is the surviving spouse, the date and place of marriage to the decedent;
- (4) whether the decedent died testate or intestate;
- (5) the names, relationship, and interest of all persons entitled to share in the decedent's estate under the Will or intestate laws, stating who are minors, incompetents/incapacitated persons, or decedents, with the names of

their fiduciaries, if any, and whether any of them received or retained any property of the decedent by payment of wages, salary or any accrued pension under Section 3101 of the P.E.F. Code or otherwise;

(6) where a claim for family exemption is included, a statement that claimant formed a part of the decedent's household at the date of his death and, if the claimant is the surviving spouse, that he has not forfeited his right to the family exemption;

(7) an itemized statement of the gross personal estate to be distributed and the fair value of each item other than cash, such value to be that given in the inventory filed, and if none was filed, then the fair value, if not readily ascertainable, shall be fixed by two appraisers whose affidavits of value shall be attached to the petition;

(8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;

(9) the names of all unpaid claimants of whom the petitioner has notice, the nature and amount of each claim, and whether such claims are admitted;

(10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register of Wills; the amount of any inheritance tax assessed, and the date of payment thereof;

(11) a statement that ten (10) days written notice of intention to present the petition has been given to every unpaid beneficiary, heir, or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown; and

(12) a statement of distribution of the property, setting forth the persons entitled and their distributive shares and requesting the discharge of the personal representative if letters have been granted.

(b) *Exhibits.* The following exhibits shall be attached to the petition:

- (1) a copy of the decedent's Will;
- (2) the consents of unpaid beneficiaries, heirs, and claimants;
- (3) a copy of the inventory, if one was filed;
- (4) a copy of the notice given; and
- (5) the inheritance tax voucher, or in lieu thereof a statement from the inheritance tax department that no tax is due.

#### **RULE 7: EXCEPTIONS**

##### **Rule 7.1A. Exceptions. Form and Contents.**

(a) No exceptions shall be filed to orders or decrees entered in proceedings unless the right to except thereto is expressly conferred by Act of Assembly, by general rule, or by special order; and all decrees other than those to which exceptions are so allowed to be taken are FINAL.

(b)(1) Exceptions to findings of fact and conclusions of law contained in adjudications, orders and decrees shall be in writing, shall be numbered consecutively, and shall be signed by the exceptant or his attorney.

(2) Each exception shall be specific, shall raise but one question and shall set forth briefly the reason or reasons in support thereof.

(3) Questions which were the proper subject of objections to accounts, inventory, or statements of proposed distribution and were not raised when the account was called for audit, or questions which might properly have

been raised by an answer to or during a hearing on a petition, shall not be subject of exceptions, and if so made shall be subject to dismissal.

(4) Exceptions shall not contain averments of fact.

##### **Rule 7.1B. Exceptions. Time for Filing. Brief.**

Except as otherwise provided, exceptions, with a brief in support thereof, shall be filed as of course with the Clerk within ten (10) days from service of a copy of the adjudication, order, or decree complained of, and a true and correct copy of the exceptions and brief served upon all parties in interest, or their counsel of record, who shall have ten (10) days to respond. Proof of service as aforesaid shall be filed with the Clerk prior to any disposition of the exceptions.

##### **Rule 7.1C. Exceptions. Partial Distribution.**

When the matters which are the subject of an adjudication, schedule of distribution, or the report of an auditor or master, are so separate and distinct that an exception to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the adjudication, schedule of distribution, or report, shall not be suspended, except as to those matters to which exceptions have been filed; distribution may proceed as to the remainder, and any party from whom such distribution has been withheld may petition the Court to order distribution.

#### **RULE 8: AUDITORS AND MASTERS**

##### **Rule 8.1A. Appointment.**

(a) The Court, on its own motion, or upon petition of the accountant, or of any other party in interest, may appoint an Auditor or Master to assist the Court in the audit of an account or the disposition of an issue of fact in a matter.

(b) The Court may, at or after a conference on the issues or in lieu thereof, direct that each counsel of record and any party in interest not represented by counsel shall file with the Clerk a praecipe listing Witnesses and the anticipated length of the Master's or Auditor's hearing.

(c) Each party in interest shall deposit into the Clerk of the Orphans' Court a payment on account of fees and costs in an amount to be fixed by the Court.

##### **Rule 8.1B. Notice of Hearing. Hearings.**

(a) The Clerk shall give written notice of an Auditor's or Master's appointment and give ten (10) days prior written notice of the time and place of the first hearing to all counsel of record and all interested parties not represented by counsel known to the Clerk.

(b) Notice of succeeding hearings, if any, given by the Auditor or Master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

(c) The hearing shall be held at a time and place indicated and not later than forty-five (45) days after the Auditor's or Master's appointment and shall be extended only upon application to the Court for good cause shown.

##### **Rule 8.2A. Filing of Report. Place. Time.**

(a) The report of an Auditor or Master who has been appointed to assist the Court in the audit of an account or the disposition of an issue of fact in a matter shall be filed with the Clerk.

(b) The report of the Auditor or Master shall be filed within ninety (90) days after his appointment and shall be extended only upon application to the Court for good cause shown.

**Rule 8.5A. Transcript of Testimony.**

(a) Testimony given at an Auditor's or Master's hearing shall be stenographically recorded.

(b) The transcript of testimony taken before an Auditor or Master shall be filed with his report.

(c) The Auditor or Master shall, in the first instance, pass on questions of evidence. If he is of the opinion that the testimony is clearly frivolous and irrelevant, or that the witness is clearly incompetent, he need not take the testimony, but the Record shall show the offer and the purpose of it, the objection and the ground of it, as well as the decision of the Auditor or Master, so that if objection be taken to the Report of the Auditor or Master on this ground his decision may be properly reviewed by the Court. However, if the Auditor or Master is in doubt, the testimony shall be taken subject to exception and the question may be raised upon exception to his Report.

(d) Fees may be taxed as costs and the Auditor or Master shall have authority to recommend to the Court that the stenographer's fees follow the award as costs in appropriate cases.

**Rule 8.6A. Notice of Intention to File. Proof of Notice.**

(a) An Auditor or Master shall give ten (10) days notice in writing to all parties in interest or their counsel of record of his intention to file his report with the Clerk on a day certain and shall file proof of the giving of notice with the Clerk. A copy of said report together with the proposed Decree of Confirmation Nisi shall accompany the notice to each party in interest or their counsel of record. A copy thereof together with the transcript of testimony shall be made available in the office of the Clerk for inspection during the notice period.

(b) The Auditor or Master shall file his original Report and proposed Decree with the Clerk upon expiration of the ten (10) day notice period.

**Rule 8.7A. Report of Auditor or Master. Disposition. Procedure.**

(a) The report of an Auditor or Master shall be transmitted to the Court for Confirmation Nisi upon filing with the Clerk and shall become FINAL unless written exceptions thereto are filed within ten (10) days after the date of filing the report.

(b) *Exceptions.* Any party in interest shall have the right to file exceptions to the report of an Auditor or Master within ten (10) days after the filing and confirmation Nisi thereof. Exceptions shall conform to the pertinent provisions of Chapter 7 of these rules.

(c) *Re-Examination by Auditor or Master.* In the event that exceptions are filed, the Auditor or Master shall have a period of twenty (20) days to re-examine the subject of the exceptions and shall file a supplemental report disposing of the exceptions seriatim, setting forth his reason or reasons for sustaining or dismissing each exception.

(d) Written notice of the filing of the supplemental report shall be given by the Auditor or Master to all parties in interest or their counsel and proof of such notice shall be filed with the Clerk.

(e) The supplemental report shall become absolute upon filing with the Clerk, unless written exceptions

thereto are filed within ten (10) days after the date of filing the supplemental report. Such exceptions shall be disposed of as are exceptions to an adjudication of the Court.

**Rule 8.8A. Compensation and Security.**

(a) Any Auditor or Master appointed by the Court under these rules shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the Auditor or Master shall recommend and the Court shall direct.

(b) Fees may be taxed as costs and the Auditor or Master shall have authority to recommend to the Court that the Auditor's or Master's fees follow the award as costs in appropriate cases.

(c) A motion to the Court to require security for payment of fees and expenses may be filed with the Clerk at any time by the Auditor or Master, Accountant, or any party in interest.

**RULE 9: OFFICIAL EXAMINERS**

**Rule 9.1A. Official Examiners.**

Whenever an examination of assets is ordered in connection with an accounting, the special order of appointment will be included in the adjudication of the account, and the examiner shall make his examination after the schedule of distribution has been filed and approved so that the assets distributable to fiduciaries, which are the assets to be examined, will have been determined.

**Rule 9.1B. Official Examiners. Compensation.**

Each estate shall be liable for the compensation of the examiner and the amount of such compensation shall be fixed by special Order of the Court.

**RULE 10: REGISTER OF WILLS**

**Rule 10.1A. Form of Appeal from Register of Wills' Decision.**

When an appeal is taken from a judicial act or proceeding before the Register of Wills, the appellant shall do so by petition which sets forth:

- (1) the nature of the proceedings before the Register of Wills;
- (2) the reasons for the appeal;
- (3) the names and addresses of all parties in interest, including those who have not been made parties to the record; and
- (4) a request that a Citation be issued directed to all parties in interest including those not represented on the record to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside and reversed.

Upon the issuance of the Citation, the Register of Wills shall certify the record.

**Rule 10.2A. Inheritance Tax Appeals.**

Practice and procedure in inheritance tax appeals shall be in accordance with the Inheritance and Estate Tax Act, 71 P. S. § 9101 et seq.

**RULE 12: SPECIAL PETITIONS**

**Rule 12.1A. Family Exemption. Appraisal.**

(a) Where the exemption is claimed from personal property included in the inventory filed, the value of each item so claimed shall be that given in the inventory filed.



(b) Where the exemption is claimed from personal property forming part of a Small Estate and no inventory has been filed, the value of each item claimed shall be the fair value thereof.

(c) Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed;

(1) in money;

(2) from personal property and the gross value of the estate does not exceed the amount of the exemption;

(3) in real or personal property at valuations agreed upon by all parties in interest.

**Rule 12.1B. Family Exemption. Allowance.**

(a) *Prior to Audit.*

(1) *Personal Property.* If the petitioner requests the exemption prior to Audit, the petitioner shall file a petition with the Clerk and thereupon shall give ten (10) days written notice of intention to request the exemption on a stated Citation Returnable date to the personal representative, if any, and to all persons adversely affected thereby who do not join in the prayer of the petition. In the absence of any objection, on presentation of a verified return of notice on the stated citation returnable date, an appropriate decree may be entered. Where all parties adversely affected have joined in the prayer of the petition and ten days prior notice of the filing of the petition has been given to the personal representative, if any, the petitioner may present the petition to the Court on a citation returnable date, whereupon, in the absence of objections and on presentation of a verified return of notice upon the personal representative, an appropriate decree may be entered.

(2) *Real Property.* If the Petitioner requests the exemption prior to the Audit, the appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed, and written notice of such filing shall be given to the personal representative and to the next of kin, or, if there be neither personal representative nor next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that confirmation of the appraisal and the setting apart of the real estate to the petitioner will be requested and may be allowed by the Court at a stated Citation Returnable date, of which not less than ten (10) days notice is given therein, unless objections are filed. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court may direct.

(b) *At Audit.* The petition for Family Exemption may be filed with the Clerk at any time prior to the Audit in order that the demand may be a matter of record or the request may be presented at the audit. The auditing Judge may require that the property claimed be appraised or that notice be given in such manner as he shall direct.

**Rule 12.1C. Family Exemption. Risk Distribution Prior to Audit.**

When the personal representative at his own risk delivers assets of the estate in satisfaction of the exemption he shall set forth the same as a disbursement in his account under the subheading "Family Exemption". Such delivery may be the subject of objection by any claimant or party in interest.

**Rule 12.2A. Allowance to Surviving Spouse of Intestate. Appraisal.**

If an appraisal of property is needed, the manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be by special order in each case.

**Rule 12.3A. Election of Surviving Spouse. Filing of Petition for Extension of Time.**

(a)(1) A petition for the extension of time in which the surviving spouse may file an Election to Take Against the Will shall include the requirements for a petition under Pa.O.C. Rule 12.3(a) and the facts relied upon to justify an extension of time in which to file the election.

(2) The petitioner shall file the petition with the Clerk and thereafter give ten (10) days written notice of intention to request the extension at a stated citation returnable day to all persons adversely affected thereby who do not join the prayer of the petition.

(3) In the absence of objection, on the presentation of an appropriate motion and verified return of notice at the citation returnable day designated in the petition, an appropriate decree may be entered.

**Rule 12.5A. Appointment of Guardian for Minor. Consents Required.**

(a) *Consent of Parents or Person in Loco Parentis.* Written consent of the parents or surviving parent of the minor to the appointment of a guardian for his estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or of the superintendent or other official in charge of the institution having custody of the minor. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the petition as the Court may direct.

(b)(i) *Consent of Guardian. Individual.* When the proposed guardian is an individual, his written consent to act as such shall contain the following:

(1) his business, and domicile;

(2) a statement that he is a citizen of the United States, able to speak, read, and write the English language; and

(3) a statement that he is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a fiduciary; and

(4) a statement that he has no interest adverse to the minor.

(b)(ii) *Consent of Guardian. Corporate.* When the proposed guardian is a corporation authorized to act as fiduciary, its written consent to act as such shall contain a statement that it is not the fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary and that it has no interest adverse to the minor.

(c) *Consent of Minor.* If the minor is fourteen and over, he shall make his selection of a Guardian by Consent and Joinder conforming to Rule 3.4B.

Note: the foregoing rules relating to the appointment of a guardian of a minor's estate are subject to the powers given to persons to appoint a guardian by Will, by inter vivos trust agreement, etc. (See section 2519 of the P.E.F. Code.)

**Rule 12.5B. Guardians. Minors. Bond. Restricted Account.**

(a) *Individuals as Guardians.* Except in special circumstances, the Court will not appoint an individual as a guardian of the estate of a minor without setting bond, as the Court in its discretion deems appropriate. (Exceptions may include situations where a corporate guardian cannot be secured or the only asset of the minor is a regular benefit payment such as pension, Social Security, Veterans' Administration, Public Assistance, Railroad Retirement payments.)

(b)(1) In lieu of the entry of security, an individual guardian may be authorized to

(i) deposit the funds comprising the minor's estate in an insured interest-bearing account; or

(ii) invest in a building and loan association or Federal savings and loan association

subject to the express restriction, to be noted on the records of the institution, NOT TO BE WITHDRAWN UNTIL SAID MINOR REACHES THE AGE OF EIGHTEEN (18), OR UPON FURTHER ORDER OF THIS COURT, and with a further requirement that counsel shall file of record proof of the deposit of funds into the restricted account with the Clerk within thirty (30) days of the order.

(2) Whenever an individual guardian has been appointed, the Court will, except in special circumstances, require a bond with corporate surety authorized to do business in Pennsylvania and approved by the Court to act as surety on bonds. All such bonds shall be approved by the Court before filing.

(c) *Minor reaching majority. No prior withdrawals.* The decree of the Court may contain a further provision that if no withdrawals are made from the account prior to the minor reaching his majority, the institution may pay over the funds when the minor attains age eighteen (18) years, upon the joint requests of the guardian and the former minor without further Order of the Court.

(d) *Minor reaching majority. Prior withdrawals.* If, upon subsequent Order of Court, withdrawals have been made from the account, the guardian shall file a petition for his discharge upon the minor's attaining age eighteen (18). There shall be attached to the petition:

(1) a statement in the nature of an account which shall conform to the requirements of Sch.Co.O.C. Rule 6.9C(1) and (4); and

(2) an affidavit by the guardian setting forth that he has received no additional assets belonging to the minor, and that all claims of which he has notice have been paid.

(e) *Additional Assets.* When the guardian has received assets in addition to the deposit or investment made in accordance with this rule, he shall account as if the restricted account did not form part of his estate.

**Rule 12.5D. Minor's Estate Not Exceeding Statutory Limitation.**

(a) *Disposition.* If the value of the real and personal estate of a minor does not exceed the statutory limitation as defined in Section 5101 of the P.E.F. Code, the Court may:

(1) authorize payment or delivery to the minor, or the parent or other person maintaining the minor;

(2) direct the deposit of the money in a restricted account, in the name of the natural guardian of the minor, or of the minor himself; or

(3) make such provision for the retention or deposit of securities or other assets, as the Court shall deem in the best interests of the minor.

(b) *Mortgage or Sale of Real Property.* If the entire estate of a minor does not exceed the statutory limitation as defined in Section 3531 of the P.E.F. Code, the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate without the appointment of a guardian or the entry of security. The petition shall be in compliance with Sch.Co.O.C. Rule 12.9A(5) and 12.11A governing the sale or mortgage of real property by a guardian. The Order of Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

**Rule 12.5E. Minor's Estate. Allowances. Approval of Court.**

(a)(1) *In General. Responsibility of Guardian.* Expenditures from income for the benefit of the minor, or for counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.

(2) *Mandatory Approval by the Court.* Except as provided in subparagraph (a)(1) of this rule, no payments shall be made by the guardian of the estate, unless approval by the Court is first obtained, when payment is to be made from principal, or, when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

(b) *Contents of Petition.* Allowances for Maintenance, Support, or Education. A petition for an allowance from a minor's estate, for the maintenance, support, or education of the minor, his spouse or children, shall be presented by the guardian of the estate and shall set forth:

(1) the manner of the guardian's appointment and the date thereof; and, where appropriate, the terms of the instrument creating the estate;

(2) the age and residence of the minor; whether his parents are living; the name of the person with whom he resides; and, if married, the name and age of his spouse and children;

(3) the value of the minor's estate, real and personal, and the net annual income;

(4) the circumstances of the minor, whether employed or attending school; if the minor's parents are living, the reason why the parents cannot support and educate the minor without resorting to the minor's estate;

(5) the date and amount of any previous allowances by the Court;

(6) a recommendation to the Court of the amount of the allowance the petitioner believes should be decreed; and

(7) if the petition is presented by someone other than the guardian of the estate, that demand was made upon the guardian to act, and the reason, if any, given by him for his failure to do so.

(c) *Contents of Petition. Joinder.* Attached to the petition shall be the joinder of the minor, if over fourteen years of age, and of the parents or surviving parent; or, if both parents are deceased, the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor.

(d) *Allowance for More than One Minor.* A single petition may be used for an order of allowance for care, maintenance and education of more than one minor or for funeral expenses of a deceased child, spouse, or indigent parent where the minors are members of the same family, have the same guardian, and substantially the same reasons in support of the petition apply to all of the minors.

(e) Whenever a sequestered deposit has been created for the benefit of a minor, whether or not a guardian has been named, allowances therefrom may be upon petition of anyone interested in the welfare of the minor. Such a petition shall conform as nearly as may be to the requirements of these rules and shall, in addition, set forth the interest of the petitioner in the matter.

**Rule 12.5F. Minor's Estate. Funeral Expenses.**

A petition for allowance for reasonable funeral expenses of a minor's spouse, child, or indigent parent shall set forth the facts, so far as practicable to the requirements of a petition for allowance for maintenance, support, and education and such other facts as may aid the Court in determining the necessity for an affirmative decree.

**Rule 12.6A. Appointment of Trustee. Exhibit.**

A copy of the trust instrument shall be attached to the petition.

**Rule 12.7A. Discharge of Fiduciary.**

A petition with account annexed for the discharge of a personal representative under Pa.O.C. Rule 12.7(b) shall also conform as far as practicable to the requirements of a petition under Sch.Co.O.C. Rule 6.11C for the settlement of a small estate under the provisions of Section 3102 of the P.E.F. Code.

**Rule 12.7B. Discharge of Guardian Prior to Ward Attaining Age 18.**

Where a guardian asks to be discharged prior to ward attaining age eighteen (18), he shall file an account in the office of the Clerk, accompanied by a petition setting forth the grounds for the application, and asking for the appointment of a suitable person to act as guardian of the ward, and also accompanied by a proposed order to place the account upon the Audit List; provided, however, where the net estate does not exceed the statutory limitation as defined in Section 5101 of the P.E.F. Code, the Court, in its discretion, may dispense with an order to place the account upon the Audit List and may award the balance for which the guardian may be found accountable to the minor or to the parent or other person maintaining the minor without requiring the appointment of another guardian or the entry of security.

**Rule 12.9A. Public Sale of Real Property. Contents of Petition.**

(a)(1) *Personal Representative.* A petition by a personal representative to sell real property at public sale, under the P.E.F. Code, shall set forth in separate paragraphs:

(i) name, residence, and date of death of the decedent; whether he died testate or intestate; and the date of grant of letters;

(ii) that the personal representative is not otherwise authorized to sell by the P.E.F. Code, or that the personal representative is not authorized or is denied the power to do so by the Will; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(iii) the total value of the personal estate and all of the real property, respectively, as shown in the inventory filed, including the value at which the real property to be sold was included therein;

(iv) a full description of the real property to be sold, improvements thereon, by whom it is occupied and its rental value;

(v) if the personal representative entered bond with the Clerk, the amount of such bond and the name of the surety;

(vi) the names of all parties in interest, as heirs, devisees, legatees, or lienholders, who will be affected by the granting of the petition and the interest of each; whether any of them are minors, incompetents/incapacitated persons, or deceased, and if so, the names and the record of the appointment of their fiduciaries;

(vii) the liens and charges, if any, of record against the property to be sold;

(viii) the terms of the proposed sale; and

(ix) any additional facts which may aid the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(2) *Personal Representative. Payment of Debts.* A petition by a personal representative to sell real property at public sale for the payment of debts under the P.E.F. Code, shall set forth in separate paragraphs:

(i) the information required to be set forth under subparagraph (a)(1) of this rule, so far as appropriate;

(ii) a statement that the personal estate and the rents of real property are insufficient for payments of debts;

(iii) a statement of all real property owned by decedent, wherever situated, which has come to the petitioner's knowledge; and

(iv) a just and true account of all debts of decedent which have come to petitioner's knowledge; and which, if any, of the debts not of record have had their liens preserved.

(b) *Trustee.* A petition by a trustee to sell real property at public sale under the P.E.F. Code shall set forth, in separate paragraphs:

(1) a statement, in substance, of the provisions of the instrument creating the trust, particularly the powers, if any, therein given to the trustee in respect of real property;

(2) a copy of the instrument creating the trust, in the form of an exhibit;

(3) the total value of the personal property and the real property, respectively, forming the corpus of the trust;

(4) the amount of the bond, if any, filed;

(5) the names of all parties interested as beneficiaries, including life tenants and remaindermen, who will be affected by the granting of the petition, whether any of them are minors, incompetents/incapacitated persons, or deceased, and if so, the names and the record of appointment of their fiduciaries;

(6) a full description of the real property proposed to be sold, the improvements thereon, by whom it is occupied, and the rental value thereof;

(7) the reason the sale of the real property involved is necessary or desirable for the proper administration of the trust estate;

(8) the liens and charges, if any, of record against the real property to be sold;

(9) that the trustee is not otherwise authorized to sell by the P.E.F. Code, or is denied the power by the trust

instrument; or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and

(10) the terms of the proposed sale.

(c) *Guardian. Incompetent's/Incapacitated Person's Estate.* A petition by a guardian of an incompetent's/incapacitated person's estate to sell real property at public sale under the P.E.F. Code shall set forth in separate paragraphs:

(1) the name, age, marital status and domicile of the incompetent/incapacitated person; the date of appointment of the guardian and by what Court; and the amount of bond filed;

(2) the total value of the personal estate and all of the real property, respectively, as shown in the inventory filed;

(3) a full description of the real property proposed to be sold, the improvements thereon, by whom occupied, and the rental value thereof;

(4) the names of the parties in interest as next of kin;

(5) why the sale of the real property involved is necessary or desirable for the administration of the incompetent's/incapacitated person's estate;

(6) the liens and charges, if any, of record against the property to be sold; and

(7) the terms of the proposed sale.

(d) *Guardian. Minor's Estate.* A petition by a guardian of a minor's estate to sell real property at public sale under the P.E.F. Code shall set forth in separate paragraphs:

(1) the name, age, and domicile of the minor; the date of appointment of the guardian and the amount of the bond filed;

(2) the total value of the personal estate and all of the real property, respectively, as shown in the inventory, if filed, otherwise the value of each as received by the guardian and how and from whom received;

(3) a full description of the real property proposed to be sold, the improvements thereon, by whom occupied, the rental value thereof and how title was acquired by the minor;

(4) the name and relationship of the person with whom the minor lives;

(5) where the proposed sale is of an undivided interest, whether the owners of the other undivided interests join in the proposed sale;

(6) why the sale of the real property involved is necessary or desirable for the administration or distribution of the minor's estate and whether the proposed sale is for the best interest of the minor's estate;

(7) the liens and charges, if any, of record against the real property to be sold; and

(8) the terms of the proposed sale.

**Rule 12.9B. Notice of Public Sale of Real Property.**

(a) Public notice of any proposed sale under Order of Court shall be given by advertisement one (1) time in at least one newspaper of general circulation published in the County of Schuylkill and in the legal publication designated by these rules, and shall be placed under a general heading as follows:

COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY  
ORPHANS' COURT DIVISION  
PUBLIC SALE OF REAL ESTATE

In pursuance of an Order of the Orphans' Court Division aforesaid, the real estate indicated below will be offered for sale at the time and place stated. The terms and conditions of sale are of record in the office of the Clerk of the Orphans' Court at the Schuylkill County Courthouse, Pottsville, Pennsylvania, where they may be examined by the parties interested.

(b) The advertisement shall give the name of the decedent, trust beneficiary, minor, or incompetent/incapacitated person, the municipality in which he resided, the place in which lies the real estate to be offered for sale, an abridged description of the real estate (including, where possible, the street and house number, and block and lot number), the improvements thereon erected, the place, date, and time of sale, the name and title of the personal representative directed to make the sale, and the name of the attorney representing the fiduciary.

(c) At least ten (10) days written notice shall be given to all non-joining parties interested (1) as heirs, devisees, legatees, or lien holders, where the property to be sold is that of a decedent's estate; or (2) as the next of kin, where the property to be sold is that of an incompetent/incapacitated person; or (3) as beneficiaries, including life tenant and remaindermen, of the trust estate where the sale is to be by a trustee; or (4) as the parents or other person maintaining the minor where the property to be sold is that of a minor.

The written notice herein provided for shall be by personal service or by registered mail to the last known address of the person to be notified.

**Rule 12.9C. Public Sale of Real Property. Return of Sale.**

All returns of sale of real estate sold at public sale shall be in writing and sworn to and shall include:

(a) proofs of publication of the notice required by Sch.Co.O.C. Rule 12.9B(a);

(b) when and to whom written notice was given under Sch.Co.O.C. Rule 12.9B(c); and

(c) the name of the purchaser and the purchase price.

**Rule 12.9D. Public Sale of Real Property. Decree.**

Upon return of sale under Sch.Co.O.C. Rule 12.9C, the Court may enter a Decree of Confirmation Nisi and fix the amount of security or additional security which the personal representative, trustee, or guardian shall be required to enter or the Court may excuse the fiduciary from entering additional security; and the Decree of Confirmation Nisi so entered is FINAL unless exceptions are filed within ten (10) days of the date signed.

**Rule 12.10A. Private Sale of Real Property.**

A petition of a fiduciary to sell real property at private sale shall also conform as closely as practicable to the requirements of Sch.Co.O.C. Rule 12.9 with regard to a petition to sell real property at public sale by the same fiduciary and shall also be supported by the affidavits required under Pa.O.C. Rule 12.10(b).

**Rule 12.10B. Private Sale of Real Property. Public Notice of Sale. Form of Notice.**

Public notice of any proposed private sale under Order of Court shall be given by advertisement one (1) time in

at least one newspaper of general circulation published in the Court of Schuylkill and in the legal publication designated by these rules; unless excused by Order of Court, notice shall also be given by personal service or registered mail to the last known address of all non-joining interested parties as specified in Sch.Co.O.C. Rule 12.9B(c); and shall be in the following form:

COURT OF COMMON PLEAS OF  
SCHUYLKILL COUNTY  
ORPHANS' COURT DIVISION  
PRIVATE SALE OF REAL ESTATE

In the matter of the Estate of (deceased—a minor—an incompetent/incapacitated person). To the heirs, legatees, devisees, next of kin, and all other persons interested in said estate:

Notice is hereby given that \_\_\_\_\_ (personal representative—trustee—guardian) has filed in the office of the Clerk of the said Court his petition praying for an order of sale of the real estate of said (decendent—minor—incompetent/incapacitated person) situate \_\_\_\_\_ at private sale to \_\_\_\_\_ for the sum of \$ \_\_\_\_\_ for the purposes in the petition set forth. If no exceptions are filed thereto or objections are made to granting the same, the Court will be asked to take action upon the petition on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, at \_\_\_\_ a.m., at the Schuylkill County Courthouse, Pottsville, Pennsylvania.

\_\_\_\_\_  
Attorney for Petitioner

**Rule 12.10C. Private Sale of Real Property. Higher Offer.**

Any person desiring to make a substantially higher offer for real property offered at private sale may do so at the time the petition is presented for confirmation of the proposed sale, whereupon the Court will make such order as it deems advisable under the circumstances.

**Rule 12.10D. Confirmation of Sale.**

If no exceptions are filed, objections made, or substantially higher offer presented, the Court may enter a decree:

- (1) fixing the amount of security or additional security which the personal representative, trustee, or guardian shall be required to enter or excusing the fiduciary from entering additional security; and
- (2) confirming the sale absolutely effective immediately or as of the time the required security or additional security, if any, is approved and filed.

**Rule 12.10E. Sale By Fiduciary Without Court Order.**

In a sale, whether public or private, of real property by a fiduciary without benefit of an Order of Court directing or authorizing such sale, where he was required to give bond as such fiduciary, he shall present his petition to the Court before the proceeds of the sale are paid to him by the purchaser setting forth:

- (a) the date of death of the decedent;
- (b) the date of grant of letters to the petitioner;
- (c) the amount of the bond filed by him and the date of such filing;
- (d) the date of filing of the inventory and the total valuation of the personal estate and the real estate, respectively;

(e) a short description of the real property sold, the name of the purchaser, and the amount of the consideration to be paid; and

(f) a prayer for an order fixing the amount of additional security to be entered or for an order excusing him from filing additional security, as the case may be, and authorizing the fiduciary to receive the proceeds of sale.

**Rule 12.11A. Mortgage of Real Property.**

*Contents of Petition.* A petition to mortgage real property by a personal representative, trustee, or guardian shall conform as closely as practicable to the requirements of Sch.Co.O.C. Rule 12.9A with regard to a petition to sell real property at public sale by the same fiduciary.

**Rule 12.11B. Pledge, Lease, or Exchange of Real Property.**

The practice and procedure governing petitions by a personal representative, trustee, or guardian to pledge, lease, or exchange, or to grant an option for the pledge, lease, or exchange of property under the P.E.F. Code, shall be governed by Sch.Co.O.C. Rule 12.10 governing the private sale of mortgage by such fiduciary.

**Rule 12.12A. Inalienable Property. Public Sale.**

(a) *Trustee.* A petition to sell real property at public sale, under Chapter 83 of the P.E.F. Code, shall set forth in separate paragraphs:

- (1) how title was acquired, stating the date and place of probate of the will or recording of the deed;
- (2) a full description of the real property, its improvements, by whom it is occupied, its rental value, and the liens and charges to which it is subject;
- (3) the interest of the petitioner, if a fiduciary, how and when he was appointed; if other than a fiduciary, the name of the fiduciary, if any, and how and when such fiduciary was appointed;
- (4) a recital of the history of the trust, and of the relevant provisions of the Will or Deed pertaining to the real property to be sold; the names of all parties and the nature and extent of their interests, stating which, if any, are minors or incompetents/incapacitated persons, and giving the names and record of appointment of their guardians, if any; and the names of the next of kin and the age of any minors;

(5) that the purpose of the proceeding is to obtain a decree stating that the title transferred to the purchaser shall be indefeasible by any person ascertained or unascertained, or by any class of persons mentioned in the petition or decree having a present or expectant interest in the premises, and unprejudiced by any error in the proceedings of the Court;

(6) sufficient facts to enable the Court to determine whether the proposed sale will be to the interest and advantage of the parties, and whether the proposed sale may be made without prejudice to any trust, charity, or purpose for which the real property is held, and without violation of any laws which may confer an immunity or exemption from sale or alienation; and

(7) the names of any parties who do not voluntarily appear.

(b) *Guardian of a Minor.* A petition by a guardian to sell real property at public sale, under Chapter 83 of the P.E.F. Code, shall set forth in separate paragraphs:

- (1) that the petitioner was appointed guardian of the estate of the minor, stating the method, date, and record

of his appointment; or, if the estate of the minor consists of an interest in real property to the value prescribed by statute, that the petitioner is the natural guardian, or the person by whom the minor is maintained, stating the relationship of the petitioner to the minor;

(2) the interest of the minor and full description of the real property proposed to be sold; its improvements; by whom occupied; its rental value; and the liens and charges to which it is subject;

(3) whether title was acquired by Will, descent, or deed; the date of decedent's death; the date and place of probate of the Will or recording of deed with respect to the real property proposed to be sold; and if the interest of the minor is partial, the names of the other parties; the nature of their interest; that they desire the sale to be made and are willing to join in the deed;

(4) the age of the minor; the names of his next of kin; and the notice given them of the presentation of the petition; and

(5) sufficient facts to enable the Court to determine that it would be in the interest of such minor that the real property be sold.

**Rule 12.12B. Inalienable Property. Public Sale. Exhibits.**

(a) *Exhibits.* Consents to the sale signed by those parties in interest who consent thereto, and the notice which has been given to those parties who do not consent or voluntarily appear as petitioners or respondents; if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted, directed to all parties who have not appeared, as provided by the P.E.F. Code.

(b) The practice and procedure with respect to the notice, confirmation and the entry of security shall conform to the appropriate provisions of Sch.Co.O.C. Rules 12.9B, 12.9C and 12.9D.

**Rule 12.12C. Inalienable Property. Private Sale.**

(a)(1) *Trustee.* A petition by a trustee to sell real property at private sale, under Chapter 83 of the P.E.F. Code, shall set forth in separate paragraphs:

(i) the information required under Sch.Co.O.C. Rules 12.12A and 12.12B;

(ii) the name and address of the proposed purchaser, the price to be paid; the terms of the proposed sale; and that the price offered is better than can be obtained at a public sale; and

(iii) when the proposed sale is of an undivided interest, that the other parties in interest desire the sale to be made and are willing to join in the deed.

(2) *Guardian of a Minor.* A petition by a guardian to sell real property at private sale, under Chapter 83 of the P.E.F. Code, shall set forth in separate paragraphs:

(i) the information required in Rules 12.12A and 12.12B; and

(ii) the name and address of the proposed purchaser, the price to be paid, the terms of the proposed sale, and that the price offered is better than can be obtained at a public sale.

(b) *Exhibits.* The following exhibits shall be attached to a petition by a fiduciary to sell real property at private sale, under Chapter 83 of the P.E.F. Code:

(1) affidavits of two real estate appraisers setting forth the information required by Pa.O.C. Rule 12.10(b); and

(2) consents to the sale signed by those parties in interest who consent thereto and the notice which has been given to those parties who do not consent or voluntarily appear as petitioners or respondents; if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted directed to all parties who have not appeared as provided by the P.E.F. Code.

(c) The Court, in the decree approving or confirming the sale, will fix the amount of security which the fiduciary shall be required to enter.

**Rule 12.12D. Inalienable Property. Mortgage.**

(a) (1) *Contents of Petition.* A petition by a fiduciary to mortgage real property, under Chapter 83 of the P.E.F. Code, shall conform as closely as practicable to the requirements of Sch.Co.O.C. Rule 12.9 with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed loan; and shall provide sufficient facts to enable the Court to determine whether the proposed loan should be approved.

(2) *Exhibits. Security.* The exhibits required by Sch.Co.O.C. Rule 12.12C(b) shall be attached to the petition, with the proviso regarding consents, that if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted directed to all parties who have not appeared, as provided by the P.E.F. Code. Security shall be fixed as provided by Rule 12.12C(c).

**RULE 14: ESTATES OF INCAPACITATED PERSONS/INCOMPETENTS**

**Rule 14.2A. Guardians. Bond.**

(a) *Individuals as Guardians.* Except in special circumstances, the Court will not appoint an individual as a guardian of the estate of an incompetent/incapacitated person without setting bond, as the Court in its discretion, deems appropriate. (Exceptions may include situations where a corporate guardian cannot be secured or the only asset of the incompetent/incapacitated person is a regular benefit payment such as pension, Social Security, Veterans' Administration, public assistance, railroad retirement payments.)

**Rule 14.2B. Small Estates.**

If at hearing the incompetency/incapacity is established, and it appears that the gross estate does not exceed the statutory limitation as defined in § 5505 of the P.E.F. Code, the Court may award the entire estate to the person or institution maintaining the incapacitated person/incompetent, or make such order as may be appropriate under the circumstances.

**Rule 14.2C. Notice.**

Proof of service of notice shall be presented at the hearing. The affidavit of service shall, in all cases, relate that the petition and citation were read to the alleged incapacitated person/incompetent in the terms that person is most likely to understand.

**Rule 14.2D. Allowance for Maintenance and Support.**

(a) *Petition for Maintenance and Support.* A petition for an allowance for maintenance and support of an incapacitated person/incompetent during incapacity or incompetency shall set forth:

(1) the name of the guardian and the date of his appointment; if the petitioner is not the guardian, his

relationship to the incapacitated person/incompetent, and if not related, the nature of his interest;

(2) a summary of the inventory, the date it was filed, and the nature and present value of the estate;

(3) the address and occupation, if any, of the incapacitated person/incompetent;

(4) the names and addresses of the incapacitated person's/incompetent's dependents, if any;

(5) a statement of all claims of the incapacitated person's/incompetent's creditors known to petitioner;

(6) a statement of the requested allowance and the reason therefor; a statement of all previous allowances made by the Court; and

(7) if any portion of the incapacitated person's/incompetent's estate is received from the United States Veterans' Administration or its successor, that notice of the request for allowance has been given to that agency.

(b) *Accounts and Distribution.* The practice and procedure with respect to the filing and audit of accounts, as well as the distribution of the assets of the estate, shall conform with Sch.Co.O.C. Rule 6.9C(e).

#### **RULE 15: ADOPTIONS**

##### **Rule 15.1A. Petition to Confirm Consent of Natural Parent. Notice. Copy of Consent to Natural Parent.**

(a) A petition to confirm the consent of a natural parent to the adoption of a child under Section 2504 of the Adoption Act, where the natural parent executed the consent outside this Commonwealth, must include a certification by petitioner's attorney that the consent is in accordance with the laws of the jurisdiction where it was executed.

(b) A copy of the notice of the hearing prescribed by Section 2513(b) of the Adoption Act shall be a part of each petition. Service of the notice of hearing shall be as prescribed by Section 2504 of the Adoption Act and Pa.O.C. Rule 15.6.

(c) Petitioner's attorney shall certify at hearing that the natural parent has received a copy of the consent of adoption which he/she signed.

##### **Rule 15.4A. Involuntary Termination of Parental Rights. Notice.**

A copy of the notice of the hearing prescribed by section 2513(b) of the Adoption Act shall be a part of each petition. Service of the notice of hearing shall be as prescribed by Pa.O.C. Rule 15.6.

##### **Rule 15.4B. Involuntary Termination of Parental Rights. Service.**

(a) Where service is attempted by registered mail at the natural parent's last known address pursuant to Pa.O.C. Rule 15.6 and the post office's return indicates that service was not made, petitioner may petition the Court to order service by publication.

(b) A petition for publication must outline efforts made by petitioner through postal authorities, relatives, mutual friends, or other means to locate the present address of the natural parents.

(c) Where the Court orders service by publication, it shall be made in a newspaper of general circulation one (1) time in the area of the natural parent's last known address. Proof of publication must be submitted at the hearing on the petition for involuntary termination.

(d) Where service of the hearing has been made by publication, the Decree Nisi shall be immediately published in the same newspaper of general circulation referred to in subparagraph (c) of this rule.

##### **Rule 15.4C. Involuntary Termination of Parental Rights. Incarcerated Parent.**

Where the natural parent is incarcerated, a petition for involuntary termination of that parent's parental rights must include a statement in the proposed Preliminary Order submitted with the petition setting the hearing date that if the natural parent desires to attend the hearing for the purpose of contesting the petition, he may do so by requesting the issuance of a Writ of Habeas Corpus ad testificandum and/or by requesting Schuylkill Legal Services to represent him.

##### **Rule 15.4D. Contested Involuntary Termination of Parental Rights. Appointment of Counsel for Minor Child.**

When the attorney for petitioners has reason to believe the petition for involuntary termination will be contested, the attorney for petitioners, at the time of presentation of the petition or as soon thereafter as there is reason to believe the petition will be contested, shall request the Court to appoint counsel for the minor child or children in accordance with Section 2313 of the Adoption Act.

##### **Rule 15.5A. Adoptions.**

(a)(1) When a Report of Intention to Adopt has been filed, a Petition for Adoption must include in all cases a statement that petitioner's attorney has made arrangements for a public child care agency or a consenting private child care agency or appropriate person designated by the Court to perform a Home Investigation on the adopting parent(s).

(i) If a public or private child care agency is to be used to perform the study, counsel for petitioners must provide that agency with a copy of the Report of Intent to Adopt, or other similar information and take whatever steps are necessary to cause the required Home Investigation to be sent directly to the Orphans' Court Division.

(ii) If an appropriate person is to be designated by the Court to perform the study, counsel for petitioners shall seek such appointment by presenting a motion and proposed order along with the petition for adoption. Subsequent thereto, counsel shall supply information and take whatever steps are necessary to cause the required Home Investigation to be sent directly to the Orphans' Court Division.

(2) A Home Investigation should contain in all cases:

(i) A report from the agency/designated person outlining the investigation made into the adopting parents' background and character;

(ii) A report of criminal history from the Pennsylvania State Police; and

(iii) A certification from the Pennsylvania Department of Public Welfare certifying that the proposed adopting

parent(s) are not registered as the perpetrator(s) of a founded or indicated report of child abuse.

(3) Where the Petition for Adoption contains the consent of the natural parent whose parental rights have not previously been terminated, petitioner's attorney shall certify at the hearing that the natural parent has received a copy of the consent of adoption which he/she signed.

**RULE 17: SHORT TITLE****Rule 17.1A. Short Title.**

These rules shall be known as Rules of the Court of Common Pleas of Schuylkill County, Orphans' Court Division, and shall be cited as Sch.Co.O.C. Rules.

[Pa.B. Doc. No. 96-136. Filed for public inspection February 2, 1996, 9:00 a.m.]

---