

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

Rules of Procedure; Court of Judicial Discipline Doc. No. 1 JD 94

Per Curiam:

Order

And Now, this 6th day of February, 1996, the Court of Judicial Discipline hereby enters the following *Order*:

1. Pursuant to Article V, Section 18(b)(4) of the Constitution of Pennsylvania, the Court of Judicial Discipline proposes: (1) to amend C.J.D.R.P.No. 502 by adopting new subsections (D)—(F) and (2) to adopt new Rule 112, in the following form.

2. The Court of Judicial Discipline requests that interested persons submit suggestions, comments or objections not later than 30 days from the date of publication of this Order in the *Pennsylvania Bulletin* to Wanda W. Sweigart, Court Administrator, 200 North Third Street, P. O. Box 1106, Harrisburg, PA 17108-1106.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE I. PRELIMINARY PROVISIONS

Rule 112. Photocopies.

Upon the request of any resident of Pennsylvania, the Administrative Office of the Court of Judicial Discipline shall provide free of charge a copy of any Opinion or Order issued by the Court. The Administrative Office will provide photocopies of any other documents listed in the official docket at a cost of \$.50 per page.

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

Rule 502. Trial. **Stipulations of Fact. Conclusions of Law. Withdrawal of Counts.**

(A) The trial shall be held before the Court and shall be open to the public.

(B) Conduct of Trial.

(1) All testimony shall be under oath.

(2) The Board and the Judicial Officer shall be permitted to present evidence and examine and cross-examine witnesses. The Judicial Officer may, but shall not be required to, testify.

(3) At the conclusion of the trial, the Board and the Judicial Officer may, at the request of the Court, present oral argument and shall submit proposed findings of fact and conclusions of law.

(4) The trial shall be recorded verbatim. Requests and orders for transcripts shall be governed by Pa.R.J.A. 5000.5. Any party requesting notes of testimony shall bear the cost of transcription. If the notes of testimony are transcribed, it shall be the duty of the court reporter to file the original transcript with the Clerk.

(C) Any witnesses shall have the right to be represented by counsel, but the witness' counsel shall not participate in the trial except by permission of the Court.

(D) Stipulations of Fact.

(1) In lieu of a trial, the parties may submit to the Court an agreed statement of all facts necessary to a decision of the issues in the case. Said statement as submitted shall be binding upon the parties and shall be adopted by the Court as the facts of the case upon which the decision shall be rendered. When submitted, any such statement shall include a signed waiver of any right to trial granted under the Constitution and the Rules of this Court.

(2) The parties may submit stipulations as to issues of fact to which they agree, but which do not resolve all relevant issues of fact. In such case, the parties shall be bound by the stipulations as submitted and the Court shall proceed to trial on all other remaining factual issues.

(E) Conclusions of Law.

At the close of the evidence, the parties may submit suggested Conclusions of Law which the Court may consider in rendering the decision, however, said conclusions when submitted are not binding upon the Court.

(F) Withdrawal of Counts.

The Board may file a motion to withdraw counts in a Complaint which shall be supported by a change in circumstances such as the loss of evidence or the unavailability of a necessary witness, or other justifiable reason.

[Pa.B. Doc. No. 96-205. Filed for public inspection February 16, 1996, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Procedure for Trial Commissioner Courtroom B, 1801 Vine St.; Family Court Administrative Regulation No. 96-1

And Now, this 2nd day of February, 1996, in consideration of efforts to eliminate backlog of cases scheduled for hearing in Courtroom B, 1801 Vine Street, Philadelphia, Pennsylvania, Joseph McHugh is appointed Trial Commissioner for Courtroom B, 1801 Vine Street, and is to assume complete administrative operation and caseload responsibility for the courtroom; further, the Trial Commissioner is hereby authorized to assign court appointed counsel in appropriate cases, appoint child advocates, issue bench warrants subject to Court approval, grant continuance dates, accept withdrawals of prosecution without prejudice to the Commonwealth, maintain contact with police liaison to aid in the reduction of police overtime, and additional duties as defined by Administrative Judge of Family Court.

This Order is issued in accordance with Pa.R.C.P. No. 239 and shall become effective as of October 19, 1995. As

required by Pa.R.C.P. No. 239, the original Order shall be filed with the Prothonotary and copies shall be distributed as provided by said Rule, and shall also be submitted to *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

ESTHER R. SYLVESTER,
Administrative Judge

[Pa.B. Doc. No. 96-206. Filed for public inspection February 16, 1996, 9:00 a.m.]

PHILADELPHIA COUNTY

Transfer of Custody Modification Cases to Mediation Program; Family Court Administrative Regulation 96-2

And Now, this 2nd day of February, 1996, in order to enable the Court to maintain an efficient custody program, it is hereby *Ordered* and *Decreed* as follows with respect to such cases:

1. All Petitions to Modify present Custody Orders filed subsequent to this Order shall be referred to the Mediation Orientation Program;

2. All pending petitions for modification of custody shall administratively be assigned to the Mediation Orientation Program.

This Order is issued in accordance with Pa.R.C.P. No. 239 and shall become effective immediately. As required by Pa.R.C.P. No. 239, the original Order shall be filed with the Prothonotary and copies shall be distributed as provided by said Rule and shall also be submitted to *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District of Pennsylvania.

ESTHER R. SYLVESTER,
Administrative Judge

[Pa.B. Doc. No. 96-207. Filed for public inspection February 16, 1996, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 23rd day of January, 1996, Dauphin County local rules are hereby amended as follows:

Rule 1915. Actions for Custody, Partial Custody, and Visitation of Minor Children.

1915.1. Definitions.

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

1915.3. Commencement of Action. Complaint. Order.

(1) The complaint shall be filed with the Prothonotary.

(2)(a) In addition to the filing fees assessed for the filing of Complaints, an additional administrative fee in the amount of \$100.00 shall be paid to the Prothonotary simultaneously with the filing of the Complaint.

(b) An administrative fee of [\$50.00] \$100.00 shall be paid to the Prothonotary simultaneously with the filing of any subsequent petition for relief (such as, but not limited to, a petition for modification or contempt).

(3) If a custody claim is asserted in a divorce complaint, a duplicate copy of the complaint shall be filed with the Prothonotary. Thereafter, when either party desires a hearing on the custody issue, he/she may request a time and date for hearing by the filing of a simple Motion. At such time as a hearing is requested under this section the administrative fee must accompany the Motion.

Rule 1915.3a. Custody [Conciliation] Mediation Alternative Hearing Procedures.

(1) The Court shall appoint as a **Conference Officer(s)** a member(s) of our Bar or other appropriate person, as an official of the Court, to:

(a) [Conciliate] Mediate custody cases filed with the Court;

[(b) Recommend to the Court that interim or temporary orders be entered in appropriate custody cases;]

[(c)] (b) Recommend appointment of counsel for the child;

[(d)] (c) Recommend the utilization of home studies and/or expert witnesses.

(d) Prepare agreed interim or final orders for presentation to the Court.

The compensation of Custody [Conciliators] Conference Officers shall be set by order of court.

(2) All custody matters not specifically reserved to the Court shall be promptly scheduled for a conference before the [Conciliator] Conference Officer. All parties and any child age five (5) or older for whom custody or 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 temporary or permanent orders.

(3) At the conference, or as soon thereafter as possible, each party shall provide the [conciliator] Conference Officer and each other with the following information, insofar as it is then available:

(a) A list of all fact witnesses;

(b) A list of all expert witnesses;

(c) Issues for resolution;

(d) Estimated length of trial;

(e) All reports from appropriate agencies; and

(f) Report of experts intended to be called as witnesses.

Such information shall be updated, as appropriate, any time up to commencement of trial. Failure to produce the information requested hereunder prior to trial, for the

[Conciliator] Conference Officer or the Court, may be grounds for excluding the evidence or witnesses at trial.

(4) To facilitate the **[conciliation] mediation** 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 **[conciliator] Conference Officer** shall not be witness for or against any party.

(5) At the conclusion of the conference where the case remains contested the **[Conciliator] Conference Officer** shall prepare a Conference Summary Report. This report shall contain facts gathered by the **[Conciliator] Conference Officer** during the conference. This report shall become a part of the Court record and upon being submitted to the Court shall also be copied to the parties.

Rule 1915.3B. Custody [Conciliation] Mediation—Procedure.

Upon being filed with the Prothonotary, a complaint or motion for hearing relating to child custody or visitation shall be immediately turned over to the **[Conciliator] Conference Officer** who shall forthwith enter an Order setting the time, date and place for a **[Conciliation] Mediation** Conference and return said Order to the Prothonotary. The attorney for the moving party will then be advised that his/her Complaint is ready to be served.

1915.3C. Custody [Conciliation] Mediation. Post Conference Procedure.

(1) **SETTLED CASE:** if, prior to or during the Custody **[Conciliation] Mediation** Conference, the parties are able to reach an agreement, the **[Conciliator] Conference Officer** may request that either party submit a proposed order of court. In any case, the **[Conciliator] Conference Officer** shall thereafter submit to the Prothonotary the agreed-upon, proposed Order. The Prothonotary shall then transmit the file to the Court for disposition of the matter.

(2) **CONTESTED CASE:** should the parties fail to reach an agreement prior to the conclusion of the **[Conciliation] Mediation** Conference, the **[Conciliator] Conference Officer** shall submit his/her Conference Summary Report to the Court Administrator for prompt assignment to a Judge. Once the assigned Judge has set a time and date for hearing of the matter, the moving party will be so notified and shall thereafter effect service of this notice upon the other side.

1915.5. Question of Jurisdiction or Venue. No Responsive Pleading Required. Counterclaim.

(a) If a question of jurisdiction or venue is raised prior to the **[Conciliation] Mediation** Conference, such objections shall be referred by the **[Conciliator] Conference Officer** to the Court for disposition. No other pleading need be filed to a claim for custody or visitation.

(b) Counterclaims or cross-claims shall, where possible, be filed prior to the **[Conciliation] Mediation** Conference.

1915.7. Consent Order.

(1) If at any time prior to the Conference the parties are able to agree upon custody or visitation, the parties

may submit a proposed consent order to the **[Conciliator] Conference Officer** for disposition in conjunction with these rules, with written consents attached thereto signed by the parties and their counsel, if any.

(2) Upon presentation of a consent order, the Court may, in its discretion, enter an order without taking testimony thereon.

(3) The parties or children need not be present unless the court so directs.

1915.8. Physical or Mental Examination of Persons.

(a) The **[Conciliator] Conference 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.

(b) Reserved.

(c) In the event that either psychological studies or home studies become necessary to a proper disposition of the cause, the cost of such studies may be assessed against the parties.

Rule 1915.12. Contempt.

All petitions for contempt and/or modification of a court order regarding custody or visitation shall be filed with the Prothonotary and directed to the **[Conciliator] Conference Officer** for review.

Rule 1915.15. Form of Complaint.

(1) In addition to the information required by Pa.R.C.P. 1915.15 each complaint shall contain the following averments;

A. Plaintiff has been advised of the requirement to attend the Seminar for Separating Parents and of the Program Description set forth in Local Rule 1930.

B. Defendant will be provided along with the Complaint a copy of the Order requiring attendance at the Seminar for Separating Parents set forth herein and Program Description set forth in Local Rule 1930.

(2) Any Affidavit of Service for applicable actions shall include a statement that the Program Description and Order scheduling his/her attendance at the Seminar were served with the applicable pleading.

(3) Counsel for the moving party, or the moving party, if unrepresented, shall provide the client with a copy of the Order requiring attendance, Program Description and advise the client to attend the Seminar with 45 days of the filing of an applicable pleading.

(4) Any party who resides more than 50 miles from Harrisburg may contact the Provider to make other arrangements to satisfy the attendance requirements.

(5) At such time as a party complete the Seminar, the Provider shall forward to the Prothonotary a Certificate of Completion, setting forth the name of the party and the docket number of the case, which Certificate shall be filed with the Court.

(6) No final custody trial shall be held or order granted where there are children under the age of 18 and **[both] all** parties attend the Seminar. This requirement will be waived **[only under exceptional circumstances]** by the Court **only upon petition filed** for good cause shown.

(7) Each custody Complaint shall contain the following second cover sheet:

- : IN THE COURT OF COMMON PLEAS
- : DAUPHIN COUNTY, PENNSYLVANIA
- :
- : CIVIL ACTION—CUSTODY
- :
- : NO.

ORDER

You, _____ are ORDERED to appear in person in the Custody [**Conciliation**] **Mediation** Office, Fourth Floor, Dauphin County Court House, Front and Market Streets, Harrisburg, Pennsylvania on _____ at _____ o'clock a.m./p.m. for a Custody [**Conciliation**] **Mediation** Conference.

[**Both parents**] **All parties** are further ORDERED to attend a seminar entitled "Seminar for Separating Parents" and bring with you to the [**Conciliation**] **Mediation** Conference the Certificate of Attendance you will receive at the Seminar. The Plaintiff is scheduled to attend on _____. The Defendant is scheduled to attend on _____. Any requests for rescheduling must be directed to the Provider and will be granted only upon cause shown. (See attached instructions and Provider brochure with registration form.)

FAILURE TO APPEAR AT THE SEMINAR AS SCHEDULED OR FAILURE TO REGISTER AND COMPLETE THE PROGRAM WILL BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN A FINDING OF CONTEMPT AND THE IMPOSITION OF SANCTIONS BY THE COURT.

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

YOU SHOULD TAKE THIS PAPER 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.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

FOR THE COURT:

Date Custody [**Conciliator**]
Conference Officer

Rule 1920. Actions in Divorce or Annulment.

1920.1. Form of Complaint.

(1) In addition to the information required by Pa.R.C.P. 1920.12, each complaint in Divorce shall contain one of the following averments:

A. Plaintiff avers that there are no children of the parties under the age of 18.

B. Plaintiff avers that there are children of the parties under the age of 18, namely: (list names and dates of birth).

(2) Any Affidavit of Service for applicable actions shall include a statement that the Order requiring attendance at the Seminar and a Seminar Description set forth in Local Rule 1930 were served with the applicable pleading.

(3) **At such time as a party completes the Seminar, the Provider shall forward to the Prothonotary a Certificate of Completion, setting forth the name of the party and the docket number of the case, which Certificate shall be filed with the Court.**

(4) Each divorce complaint shall contain the following second cover sheet:

- : IN THE COURT OF COMMON PLEAS
- : DAUPHIN COUNTY, PENNSYLVANIA
- :
- : CIVIL ACTION—DIVORCE
- :
- : NO.

ORDER

You are ORDERED to attend a seminar entitled "Seminar [of] for Separating Parents" [**and bring with you to the conference the Certificate of Attendance you will receive at the Seminar**]. The Plaintiff is scheduled to attend on _____. The Defendant is scheduled to attend on _____. Any request for rescheduling must be directed to the Provider and will be granted only upon cause shown. (See attached instructions and Provider brochure with registration form.)

FAILURE TO APPEAR AT THE SEMINAR OR FAILURE TO REGISTER AND COMPLETE THE PROGRAM WILL BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN A FINDING OF CONTEMPT AND THE IMPOSITION OF SANCTIONS.

[**If you fail to appear as provided by this Order, no**] **No** final trial shall be held or order entered or divorce decree granted where there are children under the age of 18 until [**both**] **all** parties attend the Seminar.

YOU SHOULD TAKE THIS PAPER 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.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

BY THE COURT:

Date **J.**
Rule 1920.14. Waiver of 20 Days Under Section [**201(d)**]. **3301(d)**.

The twenty-day period following the filing of the affidavit under section [**201(d)**] **3301(d)** may be waived in writing by the parties.

Rule 1030. Mandatory Seminar for Separating Families.

(1) In all divorce and custody proceedings filed on or after January 1, 1995, and in such other cases as the Court shall direct, where the interests of children under the age of 18 years are involved, the parties shall complete a four hour program entitled "Seminar". See "Program Description" following this Rule which describes the Seminar.

(2) In all custody proceedings filed on or after January 1, 1995, each complaint shall contain a second cover sheet in accordance with Local Rule 1915.15.

(3) In all divorce proceedings filed on or after January 1, 1995, where the parties have minor child(ren), each complaint shall contain a second cover sheet in accordance with Local Rule [1920.20] 1920.1.

(4) The Court Administrator will establish the dates the parties shall attend the Seminar. The Custody [**Conciliators**] **Conference Officers** will establish the date the parties shall attend their Custody [**Conciliation**] **Mediation** Conference.

(5) The moving party shall serve, with the applicable pleading, a copy of the Seminar Description and Order setting forth the date and location of the Seminar upon the responding party.

(6) Copies of this Rule and Program Description shall be available in the Office of the Prothonotary of the Court of Common Pleas of Dauphin County.

(7) In divorce actions, the moving party shall attend the Seminar within 45 days of filing an applicable action. The responding party shall attend the Seminar within 45 days of service of the pleading.

(8) In custody actions, [**both**] **all** parties must attend at least the first session of the Seminar prior to their Custody [**Conciliation**] **Mediation** Conference.

(9) Any request for an extension of time within which to complete the Seminar shall be made to the Provider.

(10) The fee for the Seminar is \$25.00 per party, which must be submitted at the time of the initial Seminar. Payment shall be made by certified check, money order or cash. NOTE: No personal checks will be accepted. Any request for waiver or reduction of the fee shall be filed with the Court along with a verified affidavit of indigency or other proof of economic hardship, in accordance with Pa.R.C.P. 240 [**and 1920.62**] at least (5) days prior to the scheduled Seminar.

(11) No custody trial shall be held or order entered or divorce decree granted until both parties have completed the Seminar, unless the requirement is waived by the Court for good cause shown.

(12) Failure to comply with the Order may result in the dismissal of the action, striking of pleadings, or other appropriate action, including sanctions for contempt.

These amendments shall be effective 30 days after publication in the Pennsylvania Bulletin.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 96-208. Filed for public inspection February 16, 1996, 9:00 a.m.]

WESTMORELAND COUNTY

Adopted New Orphans' Court Rules WO101 et seq.

Order of Court

And Now, to wit this 1st day of February, 1996, *It Is Hereby Ordered, Adjudged, and Decreed* that all Westmoreland County Orphans' Court rules are hereby rescinded. New Westmoreland County Orphans' Court Rules WO101, WO102, WO103, WO104, WO105, W106, WO107, WO108, WO109, WO110, WO111, WO112, WO113, WO114, WO115, WO116, WO117, WO118,

WO119, WO201, WO202, WO203, WO204, WO205, WO206, WO207, WO301, WO302, WO401, WO402, WO403, WO404, WO405, WO406, WO501, WO502, WO503, WO504, WO505, WO601, WO602, WO603, WO604, and WO605 are hereby adopted. The effective date of this Order is May 1, 1996.

By the Court

CHARLES E. MARKER,
President Judge

Rule WO101. Sessions of Court and Filing.

(a) All proceedings shall be numbered consecutively by the clerk in the order filed, beginning at the first of each year and numbered as of that year, with a prefix number 65 to indicate Westmoreland County in conformity with the Pennsylvania Department of Revenue numbering, viz: 65-96-

(b) All papers filed relating to a proceeding shall be filed at the number assigned to the first paper filed in such proceeding.

(c) In these rules, any reference to the "Orphans' Court" or the "court" shall mean the Orphans' Court Division of the Court of Common Pleas of Westmoreland County, unless otherwise stated.

(d) In these rules, any reference to the "register" shall mean the Register of Wills of Westmoreland County; any reference to the "clerk" shall mean the Clerk of the Orphans' Court Division of the Court of Common Pleas of Westmoreland County.

Explanatory Comments: In Westmoreland County, the duties of the register of wills and the clerk of the orphans' court division are administered by one office. See 20 Pa. C.S.A. § 901 for the jurisdiction of the register of wills.

Rule WO102. Return Days, Motions and Audits.

(a) *Return Days.* The return day is the last day to answer or take other legal action with respect to a citation, rule to show cause, or other process, or when a matter may ordinarily next be brought before the court for action.

The return days shall be as fixed by order of court. If no date is fixed, it shall be twenty days from service.

A hearing will not be held on the return day unless specially ordered.

A hearing will be scheduled upon the request or motion of any party after the return day. The request or motion shall be accompanied by a proposed order, which shall provide for appropriate blank spaces for the scheduling of a hearing, the scheduling of a status conference, and a filing deadline for memoranda of law.

(b) *Motions.* All applications, petitions, motions and miscellaneous business should be presented to the court, at such time as the court is available.

(c) *Audit List.* The president judge shall decree and the register of wills shall publish in the Westmoreland Law Journal for three consecutive weeks commencing the second week of November a list of dates of audit, dates of confirmation nisi, and the schedule of filing periods as related to the audit dates for the following year.

The audit list will be called and accounts audited on the dates of audit scheduled by order of court, and will continue until the cases on the list have been heard or other disposition made. All accounts on the audit list filed by an attorney or firm shall be listed together on the audit list.

Cross References: A suggested form of Scheduling Order, to be used to schedule a hearing after the expiration of the return date, is included in the volume of approved forms.

Explanatory Comments: With regard to paragraph (b), specific arrangements should be made with the judge's chambers to assure the availability of the judge.

If a party fails to answer or otherwise respond to a rule or citation, the court may grant a rule absolute, without conducting a hearing.

Rule WO103. Advertisements.

At the time of issuing any letters testamentary or letters of administration, the register shall collect from the personal representative to whom such letters are issued, a sum determined by order of the orphans' court from time to time for payment of costs of publication in the *Westmoreland Law Journal* and proof of advertising; and, the register shall remit monthly to the *Westmoreland Law Journal* each sum so collected and shall retain a part of the sum as also determined by order of the orphans' court from time to time and remit the same to the Treasurer of Westmoreland County in due course.

Explanatory Comments: In Westmoreland County, the legal periodical is the *Westmoreland Law Journal*.

Rule WO104. Depository of the Court.

All moneys directed to be paid into court shall be paid to the clerk. Upon receipt, the clerk shall deposit the moneys in a federally insured, interest-bearing account with the depository designated by the court to the credit of the court, in the particular estate or proceeding to which they may respectively belong. No moneys shall be paid out of court by said depository except on the checks of the clerk, accompanied by a certified copy of the order directing the payment and attested by the seal of the court.

Rule WO105. Attorneys.

(a) *Appearance.* Every attorney employed in any proceeding shall enter an appearance. An attorney's appearance may not be withdrawn without leave of court, unless another attorney has entered or simultaneously enters an appearance, and the change of attorneys does not delay any stage of the proceeding.

(b) *Attorney as Surety.* An attorney shall not act as surety in any proceeding in this court, except by special leave of court.

Cross References: See Pa. R.C.P. No. 1012(b) regarding withdrawal of appearance and the 1985 explanatory comment thereto.

Rule WO106. Discovery.

(a) The practice relating to depositions, production of documents, perpetuation of testimony and other forms of discovery shall conform to the practice in the Civil Division of the Court of Common Pleas of Westmoreland County.

(b) Subpoenas shall be issued by the clerk upon request of a party, when a matter is at issue. In all other cases, subpoenas shall be issued only upon order of court.

Rule WO107. Pleadings.

(a) *Petitions.* All applications to the court shall be by petition of a party in interest, shall be signed by counsel, verified by the petitioner, and shall set forth:

- (1) the caption;

- (2) a heading indicating briefly the purpose of the petition;

- (3) a concise statement of the facts relied upon to give the court jurisdiction and to justify the relief desired, and any averments specifically required by any Supreme Court Orphans' Court Rule or any rule of this court. The statement shall be divided into paragraphs numbered consecutively, each containing but one material allegation, and shall cite the applicable section of any Act of Assembly relied upon;

- (4) the names of all parties interested, indicating those not sui juris. The names of fiduciaries of parties not sui juris shall be set forth with references to their appointments;

- (5) a prayer for the relief desired.

(b) *Exhibits.*

(1) There shall be attached to the petition as exhibits the originals or copies of all wills, codicils, consents, joinders, approvals, contracts and any other written instruments relied on or pertinent.

(2) If the petitioner is unable to attach any necessary exhibit, the petitioner shall so state in the petition, with the reason for such inability.

(c) *Verifications.* Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true, upon the signer's personal knowledge or information and belief, and shall be verified. The term "verified", when used in reference to a written statement of fact by the signer, means supported by affidavit or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities. The verification extends to the authenticity of all exhibits attached to the pleading.

(d) *Decrees and Orders.* In all proceedings, counsel shall prepare and submit a proposed decree or order, specifying the requested action or relief, with the pleading upon which the same is based.

(e) *Copies of Pleadings.* Copies of pleadings shall be certified by counsel to be correct.

(f) *Notice.* No decree or order of court will be made without evidence of satisfactory notice of the application therefor to all parties of record, or their attorneys of record in the proceeding, and to any party known by the petitioner or the petitioner's attorney to have an interest in the outcome or judicial disposition of the matter.

Cross References: See Supreme Court Orphans' Court Rule 3.4, which discusses the form of petitions. The requirements set forth in Rule WO107 expand upon the requirements of Rule 3.4.

See 20 Pa.C.S.A. § 911, which permits unsworn verifications, and Pa. R.C.P. Nos. 1024 and 76, which govern the use of verifications in the civil division.

No notice need be given upon presentation of a petition for citation, as described in Rule WO108. Pennsylvania Supreme Court Orphans' Court Rule 5 provides detailed procedures regarding notice.

Rule WO108. Personal Jurisdiction.

(a) *Citations.* When jurisdiction over a person is sought, it shall be obtained by citation. Upon petition of any party in interest, the court shall issue an order directing the clerk to issue a citation. The citation shall direct the party named therein to file a complete verified

answer to the averments of the petition on or before the day fixed by the court, and to show cause as the order of the court shall provide.

(b) *Service of Petition with Citation.* A copy of the petition shall be served with the citation unless service thereof is authorized and made by publication.

Cross References. See Supreme Court Orphans' Court Rule 3.5, which provides for the citation as the means for acquiring personal jurisdiction over a person.

Explanatory Comments. In some situations, the court already has jurisdiction over parties, and a citation is not necessary. For example, the court generally maintains continuing jurisdiction over personal representatives and guardians.

Rule WO109. Exceptions.

(a) Except as provided in (b) below, and except for interlocutory decrees and orders, all decrees and orders are final unless specifically captioned by the court as a decree nisi. No exceptions shall be filed to final decrees and orders, and they must be appealed directly to the Superior Court.

(b) Exceptions to any order or decree nisi must be filed with the clerk within ten days after notice of the decree. Issues not raised in the exceptions shall be deemed waived. If no exceptions are filed, the decree shall become nonappealable.

(c) Upon filing exceptions, the moving party shall present to the court a proposed order, which shall provide for appropriate blank spaces for the scheduling of the filing of briefs and argument.

(d) If not otherwise established by the court, a party filing exceptions must file a brief at least ten days before the date scheduled for oral arguments. Opposing counsel must file a responsive brief within five days of service of opposing counsel's brief. The briefs shall contain, inter alia, a concise statement of issues. A party who has not timely filed a brief may be denied oral argument. Issues not briefed shall be deemed waived.

Explanatory Comments. The general rule in Westmoreland County is that exceptions must be filed only when the court issues a decree nisi. In all other cases, appeal lies directly with the Superior Court. A common example of when the court issues a decree nisi is in involuntary termination cases.

An order or decree must meet the definition of "final order" under Pa. R.A.P. 341 before it may be appealed to the Superior Court.

A party who desires to appeal a decree nisi must first file exceptions with the clerk in order to preserve the party's right of appeal. After the court makes a final order to the exceptions, the party may then file an appeal of such final order to the Superior Court of Pennsylvania. If the party fails to file exceptions to a decree nisi, the party may lose the right to appeal to the Superior Court. With regard to subsection (b), in exceptional cases, the Court may grant a party the right to file exceptions nunc pro tunc.

Rule WO110. Bill of Costs.

(a) The following items shall be considered as record costs in a proceeding:

- (1) Fees paid for filing pleadings;
- (2) Fees paid for service of pleadings;

(3) Fees paid to court reporters for the cost of original and/or no more than one copy of depositions;

(4) Any other costs specifically permitted by statute or supreme court rules; and

(5) If the case has been tried, fees statutorily permitted to witnesses for per diem attendance and mileage.

(b) A bill of costs must be filed with the clerk, along with an affidavit of service on the opposing party or his counsel of record, within ten days of the entry of a verdict by a jury, or a final order or decree by the court. The bill of costs may include the items listed in paragraph (a) of this rule.

(c) In cases where an executor, administrator, guardian or trustee has acted in good faith defending the estate against a claim, costs and fees may be allowed out of the estate, even though the claim is allowed.

(d) Exceptions specifying those items or amounts of costs to which a party has objections must be filed within ten days of receipt of the bill of costs.

(e) The court will enter an order specifying allowable costs.

Cross References. Paragraph (c) is taken from the former Rule WO9(c). The remaining paragraphs are taken from Rule W609 of the Westmoreland County Rules of Civil Procedure.

Rule WO111. Enforcement of Decrees.

Decrees of the orphans' court may be enforced through further proceedings in the orphans' court, or, where appropriate, through the office of the prothonotary.

Cross References. See 20 Pa.C.S.A. § 781 for methods of enforcement of orders and decrees of the orphans' court.

Explanatory Comments. Judgments for money damages are often enforced through the office of the prothonotary.

Rule WO112. Appeals and Transfers to the Orphans' Court.

(a) *Petition and Appeal from Register.*

(1) An appeal to the court from any judicial act, proceeding or decree of the register shall be effected by filing a notice of appeal with the clerk. The notice of appeal shall contain the caption, name of the appellant, and a reference to the judicial act, proceeding or decree appealed from, and shall be signed by the appellant or counsel. A copy of the notice of appeal shall be mailed to or personally delivered to all parties appearing before the register or their counsel, and a proof of notice shall be filed with the clerk within five days.

(2) Within thirty days after filing the notice of appeal, the appellant shall present to the court a petition complying with Rule WO107, including a reference to the notice of appeal, and whether bond was required or filed.

Upon filing of the petition, the court will award a citation to all interested parties, including the register, to show cause why the appeal should not be sustained and the decision complained of set aside and, in cases where a jury trial has been requested, why the disputed issue of fact should not be submitted to a jury.

(3) This section shall not apply to appeals for inheritance tax purposes nor to appeals specially regulated by law.

(b) *Certified Cases.* When a certification of a dispute has been made by the register to the court under Section 907 of the PEF Code, the court will determine whether pleadings will be required.

Cross References: The time period for filing appeals from decrees of the register is a matter of statutory law, under 20 Pa.C.S.A. § 908.

Explanatory Comments: An appeal from a decree of the register is a two-step process. The first step involves the filing of a notice of appeal. The second step is the filing of a petition within thirty days after filing the notice of appeal. Both steps are required for the perfection of an appeal from a decree of the register.

Rule WO113. Fiduciaries to be Appointed.

When a petition discloses that minors, unborn or unascertained persons, incapacitated persons, absentees, or presumed decedents or others not sui juris having interests are necessary parties and are without fiduciaries, an order will be made directing that the petition be filed, provided that the petition contains the names and ages of any minor children, the names and addresses of their parents, parent or persons with whom they reside, and all other facts required by Supreme Court Orphans' Court Rules Section 12, Rule 4. If it appears that a fiduciary should be appointed to represent any such person, the court will direct the petitioner to notify minors over fourteen years of age, the next of kin or next friends of minors under fourteen years of age, and the next of kin of incapacitated persons, that unless a fiduciary is appointed for them within ten days after service of the notice, the court, on petition of proper parties or on its own motion, may appoint a guardian or a trustee ad litem to represent their interests.

Rule WO114. Temporary Fiduciaries.

When a fiduciary of an estate under the jurisdiction of the court is in military service, in other government service, in a position of conflicting interest or in any situation where, for a temporary period, it may not be in the best interests of the estate for the fiduciary to act, a co-fiduciary or co-fiduciaries, if any, may be authorized to exercise all the powers of such fiduciary or the court may appoint a substitute fiduciary pro tem.

Cross References: See Sections 4301-4306 of the PEF Code.

Rule WO115. Records.

(a) *Withdrawal of Records.* No original wills shall be withdrawn from the office of the clerk or from the court without a written order of the court. No other record shall be withdrawn from the office of the clerk without a written order of the clerk or assistant clerk, which order shall limit the time for its return. The clerk shall report to the court any failure to return the same after the time limit so fixed has expired.

(b) *Record Books—Clerk of the Orphans' Court.* The clerk shall keep the following books:

(1) a book called the Orphans' Court Docket in which shall be set forth all proceedings of this court;

(2) a book called the Accounts Docket in which all accounts (excepting exhibits) of executors, administrators, guardians and trustees shall be transcribed in summary form;

(3) a book called the Distribution Docket in which shall be copied at length all distributions made by the court and all auditor's distributions when finally confirmed;

(4) a book called the Marriage License Docket in which shall be kept a memorandum of all marriage licenses granted, the return thereto, showing the number of the license, the date thereof, the date of marriage, by whom married, etc.;

(5) a book called the Minute Book in which shall be entered the sittings of the court and a brief memorandum of all matters brought before it, with the action of the court thereon, which entries shall be made at the time of each sitting of the court;

(6) a book called Delayed Registration of Birth Records in which shall be set forth all applications for delayed registration of birth records and the decrees of the court thereon;

(7) a book called the Adoption Docket in which shall be set forth all reports of intent to adopt, adoptions, voluntary and involuntary relinquishments and the decrees of the court thereon, and the Adoption Docket shall be impounded along with all other adoption matters.

(c) *Record Books—Register of Wills.* The register of wills and ex-officio clerk of the orphans' court shall keep the following books:

(1) a book known as the Memorandum Book in which shall be entered the names of decedent's and minor's estates and all other matters requiring the designation of a new number and term, together with a brief note of the subject matter of the entry;

(2) a book called the Administration Docket in which shall be noted the issuing of letters of administration, and accounts, and elections to take under or against wills;

(3) a book called the Inventory and Appraisalment Docket in which shall be set out the total amount of the personal property set out in the inventory, together with a brief reference to each tract of real estate and valuation thereof, as set out in all inventories filed in the register of wills office or the clerk of courts office, except those noted or set out in other dockets or books in either of those offices;

(4) a book called the Will Book in which shall be transcribed at length all wills probated, together with the date of death and the name of such executors as have qualified;

(5) a book called Transfer Inheritance Tax Docket in which shall be set forth a description in full of the real estate of decedent and totals of personal property and list of debts, together with notations as to assessment and payment of tax.

(d) *Indexes.* The clerk or register of wills shall keep a proper index for each docket whenever the same may be required, together with a general index.

(e) *Endorsement of Filing Date.* The clerk or register of wills shall endorse upon all papers filed the date of filing, which date shall be conclusive upon all parties, unless changed by order of court because of error or other cause showing the same to be incorrect.

Cross References: This Rule is taken from prior Rule W018.

Explanatory Comments: The books required in this rule may be kept electronically.

Rule WO116. Format of Pleadings and Documents.

(a) All originals of pleadings and forms of decrees shall be typed.

(b) Pleadings or documents submitted for filing must be clear and unblurred.

(c) When submitted to the court or the clerk, documents which are handwritten or not readily legible shall be accompanied by a typed copy.

(d) All documents in a foreign language shall be translated into English. The translation shall be typed and a certification of accurate translation shall be attached.

(e) "Typed" means typewritten or machine printed in black type on white paper and double spaced. Unconventional fonts shall be avoided.

(f) "Documents" shall include all written material, including but not limited to wills, trusts, powers of attorney, contracts and leases.

Explanatory Comments: If a holographic will is presented for probate, there must be offered with it a typewritten copy of the original will. This is known as a "copy fair".

Unconventional fonts include script or cursive style fonts.

Rule WO117. Accounts.

(a) Accounts shall conform with the Uniform Fiduciary Accounting Principles and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts. Accounts shall be stated on 8-1/2 x 11 paper, fastened at the top and the pages shall be numbered consecutively.

Cross References: See Supreme Court Orphans' Court Rule 6.1.

(b) *Transcribing.* The clerk, when transcribing into account books such accounts as are required by law to be transcribed, shall omit from the record all schedules attached to accounts, description of unconverted real estate, testimony and documents accompanying the same and auditor's reports, unless otherwise directed by special order of the court, provided that accounts of guardians and trustees which are not final shall be transcribed in full.

(c) *Notice to Co-Fiduciaries.* When there are co-fiduciaries, actual notice of filing of an account and of audit must be given to those who do not join in the accounting.

(d) *Signing—Verification.* All accounts shall be signed and verified by the fiduciaries. In the first account filed in a decedent's estate, the verification shall include a statement that four months have elapsed from the date of the first complete advertisement of the original grant of letters (except where a personal representative has been directed by the court to file an account prior to that time). All fiduciaries must verify that the disbursements claimed have been made or will be made to the proper parties, and that the account as stated is true and correct. The verification must be attached after the last schedule.

(e) *Filing Time.* To be placed on the audit list, accounts shall be filed in the office of the clerk no later than the last day scheduled by the court for the filing of accounts in any given month.

(f) *Confirmation Nisi.* All accounts will be confirmed nisi when presented at the stated meetings of the court, not less than thirty days after the time of filing.

Rule WO118. Change of Address.

A personal representative of a decedent's estate or a guardian of the estate of a minor or an incapacitated person shall file with the Register of Wills of Westmoreland County any change of address. Notice or service to the last recorded address shall be deemed notice or service to the said personal representative or guardian.

Rule WO119. Approved Forms.

The court shall periodically file a decree listing approved forms which may be utilized in practice before the court. A complete set of these approved forms shall be kept in the clerk's office.

Cross References: The Westmoreland Bar Association is publishing a volume of approved forms as a companion volume to these Rules.

Rule WO201. Application for Judicial Authorization of an Abortion.

(a) Whenever the term "Application" is used in the Abortion sections of these rules, it shall refer to an Application for Judicial Authorization of an Abortion as set forth in (c) below.

(b) An Application may be submitted by a minor, by a guardian on behalf of an incapacitated person, or by a proposed guardian on behalf of an alleged incapacitated person.

(c) An Application and supporting documents shall be substantially in the form available from the judge of the orphans' court, and the form of verification to be signed by the applicant shall be substantially in the form set forth in Supreme Court Orphans' Court Rule No. 16.12.

(d) The Application and supporting documents shall be available from the judge of the orphans' court.

(e) The Application shall be submitted to, and filed directly with, the judge of the orphans' court for scheduling.

(f) The Verification of Medical Provider required by the Abortion Control Act shall be attached to the Application or shall be delivered to the court no later than 24 hours before hearing scheduled upon the Application.

(g) The date of filing of the Application for purposes of compliance with the Abortion Control Act shall be deemed to be the date when the Application is first presented to the judge of the orphans' court for scheduling.

Cross References: The Abortion Control Act is set forth at 18 Pa. C.S.A. § 3200, et seq. See Supreme Court Orphans' Court Rule No. 16.10 and No. 16.11. See Pennsylvania Orphans' Court Rule No. 16.12.

See Forms Abortion-1 and Abortion-2 for suggested forms of Application and Verification of Medical Provider.

Rule WO202. Confidentiality.

(a) All proceedings relating to an Application shall be confidential.

(b) Upon the initial filing of the Application, the court shall review the Application and note any information identifying the pregnant woman (such as name and address and social security number) and shall then seal the Application in an envelope, denoting on the face thereof a caption using the initials of the pregnant woman and writing an order on the face of the envelope, which shall indicate the contents of the envelope (for example, Application for Judicial Authorization of an Abortion, Verification of Applicant, Verification of Medical Provider, etc.). The court shall direct that the record (Application, pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material to be maintained, which shall include its own findings and conclusions) be sealed. The order shall specifically state that the envelope shall remain sealed and confidential.

(c) The clerk of the orphans' court shall docket the case by using a docket number only. Neither the name nor the

initials of the pregnant woman shall appear anywhere upon the docket. All subsequent pleadings and exhibits shall be similarly sealed and maintained. A final decree in the matter, using only the initials of the pregnant woman, may appear on the face of a sealed envelope, but the Findings of Fact and Memorandum Opinion of the court shall be sealed.

(d) The identity of the pregnant woman shall not be disclosed in any report or decision of the proceeding.

(e) All persons shall be excluded from hearings upon the Application except the pregnant woman, her attorney, her guardian ad litem, her proposed guardian (if she is alleged to be incapacitated), the proposed guardian's attorney, and witnesses of the applicant or of the applicant's attorney and guardian ad litem, or other individuals as directed by the court.

(f) The judge hearing the Application shall direct all persons present at any hearing or proceeding upon the Application not to disclose any information regarding the case.

Cross References: See Supreme Court Orphans' Court Rule No. 16.2, Rule No. 16.6 and the Explanatory Comment accompanying Rule No. 16.1.

Rule WO203. Consent to an Abortion on Behalf of an Incapacitated Person.

(a) Whenever a person seeks judicial consent to an abortion on behalf of an alleged incapacitated person, a Petition for Guardianship of the pregnant woman shall be filed either before an Application is filed or simultaneously therewith.

(b) A Petition for Guardianship or consolidated Petition for Guardianship and Application, filed on behalf of an incapacitated pregnant woman, by a petitioner seeking authority to consent to an abortion on behalf of the pregnant woman, shall maintain the anonymity of the pregnant woman, and confidentiality shall be maintained as set forth in Rule WO202. If a Petition for Guardianship alleges that the alleged incapacitated person is in need of a guardian for the purpose of authorizing the guardian to consent to an abortion that would be in the best interests of the incapacitated person, the Petition for Guardianship shall contain all of the information required by Chapter 55 of the Probate, Estates & Fiduciaries Code and by the abortion sections of these rules.

(c) The court will conduct proceedings to determine the capacity of the pregnant woman in the same manner as provided for in Chapter 55 of the Probate, Estates & Fiduciaries Code, and will render a decision on the incapacity of the pregnant woman before proceeding to rule on the Application.

(d) The standard for granting authority to a guardian to consent to an abortion shall be whether or not the procedure would be in the best interests of the incapacitated person.

(e) The statutory requirement that a decision by the court upon an Application shall be rendered within three business days of filing of the Application shall apply to filing of the Application and not to a prerequisite Petition for Guardianship, unless the two petitions are consolidated.

Cross References: See Supreme Court Orphans' Court Rule No. 16.1.

Pursuant to the Abortion Control Act, 18 Pa.C.S.A. § 3206(f)(4), decision upon an Application must be rendered within three business days of the filing of the Application.

In regard to paragraph (d), the rule is in accordance with the Abortion Control Act, 18 Pa.C.S.A. § 3206(d).

Rule WO204. Guardian Ad Litem.

(a) The court shall advise the pregnant minor filing an Application at the time when she files the Application that she has a right to court-appointed counsel or the right to retain private counsel at her own expense, and that she has a right to appointment of a guardian ad litem, and the court shall appoint such counsel or guardian ad litem upon request of the applicant or at its discretion.

(b) The orphans' court shall maintain a list of qualified attorneys within the jurisdiction of the court who shall serve by court appointment as counsel for the applicant or as guardian ad litem whenever required by the Abortion Control Act or by these Rules.

(c) A guardian ad litem will be appointed by the court in all cases where it is necessary to obtain records pertaining to an adult applicant's mental capacity to request or to consent to an abortion. The guardian ad litem may act on behalf of the minor or incapacitated pregnant woman to sign authorizations to release medical records to the court.

Cross References: See 18 Pa.C.S.A. § 3206(e) and Supreme Court Orphans' Court Rule No. 16.1, note.

Explanatory Comments: Records essential to the court's decision on an Application on behalf of a mentally incapacitated woman should be obtained through written consent of her guardian ad litem. This rule is of particular importance in cases where a medical practitioner or family member seeks authority to consent to an abortion as the guardian of the pregnant woman. Section 106 of the Mental Health Procedures Act, 50 P.S. § 7106, provides that medical records related to proceedings under the Mental Health Procedures Act may not be released without the signed authorization of the patient and that, in no case, may confidential communications between the patient and doctor, resulting from any proceedings under the Mental Health Procedures Act, be released.

Rule WO205. Medical Testimony.

(a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in all proceedings conducted in accordance with these rules and pursuant to 18 Pa.C.S.A. § 3206(c), unless objections are filed at least ten days before the hearing.

(b) Telephone testimony shall be limited to medical, psychological and other medical personnel who can provide information relevant to the emotional development, maturity, intellect and understanding of the applicant; the fact and duration of the applicant's pregnancy; the nature, possible consequences, and alternatives to abortion; and any other relevant evidence which the court may find useful in making a determination about the applicant's ability to give informed consent pursuant to 18 Pa.C.S.A. § 3205 or an allegation that the abortion is in the best interests of the applicant.

(c) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

Rule WO206. Testimony of Applicant's Parents.

The parents of a minor seeking judicial authorization of an abortion may be given an opportunity to be heard, within the discretion of the court, provided said opportunity to be heard does not delay the hearing on the

Application beyond the time period described by statute, unless the applicant objects to disclosure of her pregnancy to her parents.

Rule WO207. Transcript of Testimony.

A record of all proceedings before the court upon an Application shall be made as a matter of course, and shall be transcribed, insofar as is practicable and necessary to meet the requirements for a prompt appeal, on the same day as the proceeding is conducted.

Explanatory Comments: An applicant for judicial consent to an abortion is entitled to an appeal directly to the Pennsylvania Superior Court after an adverse decision rendered by the Court of Common Pleas. The appeal must be heard within five days. Other time constraints related to gestational age of the fetus may make it imperative that a transcript be prepared expeditiously.

The Pennsylvania Rules of Appellate Procedure, Rule No. 3804, requires that the court reporter, without charge to the applicant, transcribe the notes of testimony and deliver them to the clerk by 5:00 o'clock P.M. on the business day following receipt of the notice of appeal to the Superior Court.

Cross References: See 18 Pa.C.S.A. § 2306(f)(4).

Rule WO301. Termination of Parental Rights—Unknown Father.

(a) Court Proceedings—Voluntary Termination of Natural Mother's Parental Rights.

(1) When the natural mother of a child petitions the court to voluntarily terminate her parental rights and alleges in her petition that the identity and/or domicile of the birth father is unknown, she shall testify, under oath, as to the circumstances of the conception including, but not limited to, a physical description of the alleged natural father, his name, nickname or alias, his occupation or alleged occupation, his home or region of origin, and any subsequent contact with him.

(2) If the natural mother does not identify the father of her child by name in her petition to voluntarily terminate her parental rights or in her consent to adoption, the court shall require her presence, even if a petitioner files the appropriate pleading under 23 Pa.C.S.A. § 2304.

(b) Notice. The notice to "Unknown Father" pursuant to 23 Pa. C.S.A. § 2513 shall include the child's name, the child's date of birth, the natural mother's name and the place of birth when the Notice is published pursuant to Pa. O.C. Rule 5.1(c). It shall be published in the county and state where, by petition, the notice is most likely to effectively notify the "Unknown Father".

(c) When the proposed adoptee has been born outside the Commonwealth of Pennsylvania, any Petition for Adoption filed with the court shall include as exhibits thereto certified copies of all orders of court or decrees issued by a court of competent jurisdiction, which orders or decrees:

(1) terminate the parental rights of the birth parents of the child proposed to be adopted;

(2) establish rights of guardianship or custody of the child proposed to be adopted in any other person or entity other than the birth parents; and/or

(3) establish or set forth any special conditions and/or considerations concerning placement, custody or guardianship and adoption of the proposed adoptee.

Rule WO302. Medical Testimony.

(a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in termination of parental rights cases unless objections are filed at least ten days before the hearing.

(b) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

Rule WO401. Family Exemption.

As soon as practicable after the grant of letters, the personal representative shall notify the person or persons entitled to the family exemption.

(a) Procedure For Personal Property Without Petition.

(1) The person claiming the exemption shall file with the personal representative a claim in writing containing the caption of the case, the name of the claimant, the relationship, a brief description of the property claimed, the date of the claim and the signature of the claimant.

(A) If the claimant is a minor, the guardian of the minor's estate shall file the claim; or if there is no such guardian, the personal representative without request made shall select for the use and benefit of the minor personal property to the full value to which the minor is entitled.

(B) If the claimant is an incapacitated person, the guardian of the estate of the incapacitated person shall select for the use and benefit of the incapacitated person personal property to the full value to which the incapacitated person is entitled.

(2) The original claim shall be filed with the clerk.

(3) Under this section, credit for the family exemption will be allowed upon confirmation of the account, or upon order of court issued pursuant to a petition filed under the provisions relating to the settlement of small estates. Where the property claimed is other than cash, the court may require evidence of value prior to approval.

Explanatory Comments: Usually the procedure set forth in Section (a) will be followed. One purpose of the family exemption is to provide immediate funds to a member of the household of the decedent.

(b) Procedure By Petition.

(1) The procedure for awarding the family exemption shall be by petition in the following cases:

(A) When it is desired to distribute the family exemption in advance of the audit to a minor who has no guardian of his estate.

(B) When there is a dispute over the valuation of the property retained or claimed.

(C) When a claim for property is refused by a personal representative.

(D) When the claim is in full or in part out of real estate, or

(E) In all other cases where an order of court is required or desired to effect a transfer of the property retained or claimed.

(2) The petition shall set forth:

(A) The name and current address of the petitioner, and relationship if petitioner is not the claimant.

(B) The name, date of death, domicile of the decedent, whether he died intestate or testate, whether letters have been granted and if so, the name and address of the person to whom granted.

(C) The name, address at the time of decease of the decedent, and relationship of, the claimant.

(D) If the claimant is not the surviving spouse, the names, addresses and legal representatives if any of other possible claimants, and other relevant facts to establish that there are no members of any prior class, and no other members of the claimant's class who have maintained the family relationship and are entitled to make a claim.

(E) A description of the property claimed and the gross value thereof. If real estate is claimed, it shall be sufficiently described to identify it accurately, and a list shall be provided of all liens against it.

(F) Whether the property claimed was specifically devised or bequeathed by the decedent or otherwise specifically disposed of by him, and if so, a statement that there are no other assets available for the exemption.

(G) Whether there is any objection to the claim and if so, by whom.

(H) Whether allowance of the claim prior to the audit or confirmation of the account is requested.

(3) If the claim is in whole or in part out of real estate, the petition shall be accompanied by a valuation of two appraisers not related to any of the parties, setting forth the fair market value of the property claimed. The appraisers shall state their profession and shall certify that by virtue of their profession they are familiar with values of real estate in the vicinity of the subject property.

(4) The petition shall conclude with a prayer for the exemption. When necessary the court shall provide for notice or appraisal of the property or both and shall fix a return day. The following exhibits shall be attached:

(A) A copy of the inventory or other evidence of the value of the property claimed.

(B) When an automobile is claimed, the certificate of a reputable dealer showing its market value as of the date of death.

(C) Proof that notice was given at least ten days prior to presentation of the petition to any person with an adverse interest who does not consent to the prayer of the petition.

(5) If no exceptions are filed within ten days to a decree awarding property for the family exemption, absolute confirmation of the decree shall be as of course, whereupon the property claimed shall be transferred and delivered. Where the transferee does not request early distribution, the property may be awarded at the audit of the estate.

(6) If exceptions are timely filed to a petition to an appraisal or to a decree awarding property as the family exemption, the court shall hold a hearing to determine the issues and provide for an appropriate decree.

(7) When real estate set apart is appraised in an amount in excess of that claimed and the claimant refuses to accept it within the period allowed for exceptions or fails to make payment of the surplus within the time established by law, the court shall order the sale or other appropriate disposition of the property.

Rule WO402. Allowance to Surviving Spouse of Intestate Out of Real Estate.

Proceedings regarding allowance to the surviving spouse of an intestate out of real estate shall follow the local rules for awarding the family exemption when the claim is in full or in part out of real estate.

Explanatory Comments: This rule exists solely for satisfying the requirements of Supreme Court Orphans' Court Rule 12.2.

Rule WO403. Specific Performance.

(a) *Preliminary Order.* Upon presentation of a petition for specific performance, the court shall award a citation directed to the party failing or refusing to perform the contract; and further, in the case of real estate, the court will make an order directing the clerk to forward to the Prothonotary of the Court of Common Pleas wherein the real estate lies, a certificate showing the proceeding as required by 20 Pa.C.S.A. § 3390(c), that the same may be entered in the appropriate docket.

(b) *Notice.* Notice of the filing of the petition shall be given immediately upon filing the same to all parties interested as heirs, devisees or legatees of the decedent or to such persons as the court may direct. Such notice may be given personally or by certified mail.

(c) *Default of Answer - Decree.* After service of the citation and notice, if no answer is filed and it appears that the facts are sufficient in equity, the court will decree specific performance of the contract.

(d) *Bond.* When it appears that the bond entered is not sufficient to cover the transaction, the court may require additional bond.

Rule WO404. Distribution in Kind.

Personal Property

(a) When distribution in kind of personal property is to be made by court order, and the parties having an interest in the particular property or its proceeds agree as to which of them shall have the property at its inventory or other agreed valuation, the personal representative shall state these facts in the petition for distribution.

(b) In cases where the personal property has a readily ascertainable market value and no arrangement for another distribution is set forth in the petition for distribution, the court will distribute such property to all those in the proportionate shares as their interest appears, unless the property cannot be divided into proper shares. In the latter case, the court may award undivided interests in the property to the persons as their interests may appear, or the court may direct the personal representative to sell so much thereof as cannot be so divided.

(c) In cases where the personal property does not have a readily ascertainable market value, the petition shall have attached thereto an election to take in kind, consented to by the other parties interested in the fund for distribution.

(d) When the personal property to be distributed in kind has no readily ascertainable value and the parties in interest do not agree to a distribution, the court may direct an auction thereof upon ten days notice, personally or by mail, to parties in interest, at such a time and place as the court may direct. The court may restrict the bidding to parties in interest or direct a public auction as equity may require.

Rule WO405. Partition.

(a) A petition for partition shall include:

(1) The name, residence and date of death of the decedent;

(2) Whether the decedent died testate or intestate, in whole or in part, and a copy of the will, if any;

(3) A description, giving the size and location, of the property to be partitioned;

(4) The estimated value of the property

(5) Liens and charges to which the property is subject and rents due from tenants thereof;

(6) Whether the property has previously been partitioned or valued for partition;

(7) The names, addresses and relationship of those interested in the land to be partitioned, and the extent of the interest of each of such persons;

(8) If the interest of any party is created by a recorded deed or will, a reference to such record;

(9) A reference to the number and term of appointment of any fiduciaries representing any of the parties;

(10) Whether any of the parties are absentees or presumed decedents, and if so, their representatives;

(11) Whether there is a need to appoint guardians or trustees for interests not represented;

(12) The names of any co-tenants who have collected rents or owe rent for any of the premises, and the amounts thereof, if known;

(13) Signed consents or joinders, if any;

(14) A request for a citation upon the parties in interest who have not joined as petitioners to show cause why an inquest in partition should not be granted;

(15) A proposed preliminary order.

(b) Where it appears from the petition that the address of any party is unknown to the petitioner, the citation shall be served by publication for three successive weeks in the *Westmoreland Law Journal* and in a newspaper of general circulation published at or near the location of the last known residence of the party whose present address is unknown. If the name of a party is unknown, or if there is no last known address, the newspaper where publication is made shall include a newspaper of general circulation published at or near the location of the property to be partitioned. The court may direct such additional means, if any, as the court deems reasonably necessary to effect notice to such parties.

(c) If the court determines that there shall be a partition because of a default or admission, or after a hearing on the petition, the court shall enter an order directing partition which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property. Further proceedings shall generally be in conformity with the Pa. R.C.P. No. 1558, et seq. All required court filings shall be with the clerk.

(d) If rents are determined to be due from or to any co-tenants, equitable adjustment thereof shall be included in the partition proceedings.

(e) Costs, compensation of appraisers, compensation of experts authorized by the court, any master's fee, and counsel fees shall be allocated in such amount and manner as the court shall deem equitable.

Explanatory Comments: See Supreme Court Orphans' Court Rules Rules 5.1(c) and 12.8.

Rule WO406. Small Estates.

(a) Personalty.

(1) When any person domiciled in Westmoreland County, Pennsylvania, dies owning property (exclusive of real estate and of wages, salary or any accrued vacation benefits or pension payable under 20 Pa.C.S.A. § 3101, but including personal property claimed as the family exemption) of a gross value not exceeding \$25,000.00, any party in interest may present a petition for the distribution of the property. The petition shall set forth:

(A) the name, date of death and domicile of the decedent, whether testate or intestate, and whether letters have been granted.

(B) if letters have been granted, to whom, the date of grant of letters, the date of the first complete advertisement of letters, if applicable, and the amount of bond, if any.

(C) the names and relationships of all beneficiaries under the will, if any;

(D) the names of the surviving spouse and next of kin if decedent died intestate as to any personalty;

(E) the names of any persons entitled to distribution who are not sui juris, with the names of their trustees or guardians and a reference to their appointment;

(F) when a family exemption is claimed out of personalty and has not previously been claimed:

(i) by whom the exemption is claimed;

(ii) the name of the surviving spouse, if any, whether the family relationship was maintained, and whether spousal rights have been forfeited;

(iii) if the spouse is not the claimant, the names of such children as were members of the same household as the decedent at his death, indicating any who are not sui juris, or if there are no such children, the names of the parent or parents of the decedent who were members of the same household as the decedent at his death;

(iv) the names of any other children, heirs or beneficiaries not previously identified and the legal representatives, if any, of all not sui juris;

(v) a description of the property claimed and the gross value thereof;

(vi) whether there is any objection to the claim, and if so, by whom;

(G) an itemized list of the personal property owned by the decedent at date of death, and the total value thereof (the itemized list may be attached as an exhibit, with only the total listed here);

(H) an itemized statement of all disbursements made prior to filing the petition, specifying the date, amount, payee and purpose of each disbursement, and the total of all disbursements (the itemized list may be attached as an exhibit, with only the total listed here);

(I) an itemized statement of all unpaid administrative expenses, preferred and other debts, and taxes, including those due the Commonwealth of Pennsylvania, together with the total thereof (the itemized list may be attached as an exhibit, with only the total listed here);

(J) an itemized list of all claims not admitted, and the total thereof (the itemized list may be attached as an exhibit, with only the total listed here);

(K) the names of all unpaid creditors whose claims are admitted, and of all heirs or beneficiaries not joining in or consenting to the petition.

(2) Exhibits shall be attached in the following order:

(A) the consent or joinder of all heirs, beneficiaries, creditors, sureties on any administrator's bond, and any others interested in the decedent's estate, who consent to the granting of the petition;

(B) a copy of the will, if any;

(C) proof of advertising of letters, if applicable;

(D) a receipt or statement from the Agent of the Commonwealth showing that the Pennsylvania Inheritance Tax has been paid in full, or consent to the granting of the petition;

(E) when an automobile is claimed as part or all of the family exemption, the certificate of a dealer or dealer's employee showing its market value as of the date of death;

(F) Itemized lists, if not included in the body of the petition.

(3) The petition shall be accompanied by a proposed decree, which specifically sets forth the proposed distribution.

(4) Upon presentation of the petition, the court may enter a decree without notice or with such notice or citation as the court shall direct.

Cross References: 20 Pa.C.S.A. § 3102.

(b) Personalty and realty.

(1) When any person domiciled in Westmoreland County, Pennsylvania, dies owning real and personal property of a gross value not exceeding \$25,000.00, the personal representative, after the expiration of one year from the date of the first complete advertisement of the grant of letters, may present a petition to the court seeking approval of the representative's administration of the estate, requesting distribution of the estate assets, and further requesting discharge of the representative.

(2) The petition shall set forth the information required in WO406(a). In addition, the petition shall include in the appropriate paragraph:

(A) the items of real property owned by decedent and their value at the date of death;

(B) whether the decedent died intestate as to any real property;

(C) as an exhibit, an account showing the administration and any distribution theretofore made of the estate;

(3) Upon presentation of the petition, the court shall direct ten days' written notice to be given to all known parties in interest who have not consented thereto that unless exceptions are filed to said petition and the account annexed, within thirty days of the date of the filing thereof, the court will confirm said account, make distribution as requested, and may discharge the petitioner and any surety from future liability.

(4) Any final order shall provide that it will not become absolute for ten days.

Cross References: See 20 Pa.C.S.A. § 3531. When a family exemption is claimed out of real estate, a petition must be presented under 20 Pa.C.S.A. § 3123, and WO401, unless all parties in interest agree in writing to the valuation at which such real estate is to be awarded. See Supreme Court Orphans' Court Rule 12.

Rule WO051. Medical Testimony.

(a) It is presumed that the testimony of physicians, psychologists and other medical professionals may be taken in the courtroom by speaker telephone in all guardianship cases, unless objections are filed at least ten days before the hearing.

(b) When an emergency guardianship petition is presented, the testimony of a physician or psychologist shall be taken in the courtroom by speaker telephone unless otherwise directed by order of court.

(c) All documents in a foreign language shall be translated into English. The translation shall be typed and a certificate of accurate translation shall be attached.

Cross References: See 20 Pa.C.S.A. § 5518 for provisions regarding testimony by qualified professionals. See 20 Pa.C.S.A. § 5513 regarding emergency guardianships

Rule WO502. Petition.

(a) In addition to the allegations required by statute or Supreme Court Rule, all petitions for appointment of guardian shall set forth:

(1) Whether or not the alleged incapacitated person is a fiduciary in any capacity.

(2) Whether the alleged incapacitated person was ever a member of the Armed Services of the United States, or is receiving any benefits from the United States Veterans Administration, or its successor.

(3) Whether any other court has ever assumed jurisdiction in any proceeding to determine the incapacity of the alleged incapacitated person.

(b) The notice of the petition and hearing shall be attached as a cover sheet to a citation and petition when served upon the alleged incapacitated person, and shall be in the form included with the forms suggested for use in the orphans' court or in such form as may be adopted by the Supreme Court of Pennsylvania.

(c) Unless the court directs otherwise, a copy of the notice and petition shall be given to those persons entitled to notice under 20 Pa.C.S.A. § 5511(a) by certified mail, return receipt requested. Proof of service shall be filed with the court at the hearing.

Cross References: See 20 Pa.C.S.A. § 5511(e) for current required allegations for petitions. Subparagraph (1) is taken from prior Rule WO19(a)(1). Subparagraph (2) is taken from Supreme Court Orphans' Court Rule 14.2(a)(5). Subparagraph (3) is taken from Supreme Court Orphans' Court Rule 14.2(a)(9).

See 20 Pa.C.S.A. § 5511(a) regarding the requirement of notice. See Form Guardianship-1 for the form of notice.

Rule WO503. Petition to Invade Principal Assets.

A Petition to Invade Principal Assets shall be presented to the court in all situations where the guardian intends to invade the principal assets of an incapacitated person or minor. Such Petition to Invade Principal Assets shall contain, at minimum, the following averments of fact:

(a) In the case of incapacitated persons:

(1) Name, age and residence of the incapacitated person.

(2) A reference to the original date of the guardian's appointment.

(3) Whether the guardian is bonded and, if so, for what amount.

(4) An itemized listing of the assets of the incapacitated person.

(5) An itemized listing of the income and expenses of the incapacitated person.

(6) A listing of the names and addresses of all creditors, and the amount due each.

(7) The purpose for the proposed invasion of principal.

(8) Whether any prior Petitions to Invade Principal Assets have been presented.

(9) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition to Invade Principal Assets.

(10) The maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary (e.g., \$500.00 per month for the period January 1, 1995 through December 31, 1996).

(b) In the case of minors with court-appointed guardians:

(1) Name, age and residence of the minor and the person with whom the minor resides.

(2) A reference to the original date of the guardian's appointment.

(3) Whether the guardian is bonded and, if so, for what amount.

(4) Names and residences of the living parents and their incomes, and whether their incomes are sufficient to support the minor properly.

(5) An itemized listing of the assets of the minor.

(6) An itemized listing of the income of the minor.

(7) Whether there are other funds (e.g., current beneficiary of a trust or estate) available for the care, maintenance, education or funeral expenses of the minor or other persons for whom an invasion of principal is requested.

(8) A listing of the names and addresses of all creditors, and the amount due each.

(9) The purpose for the proposed invasion of principal.

(10) Whether any prior Petitions to Invade Principal Assets have been presented.

(11) That the next-of-kin of the minor have been notified of the presentation of the Petition for Allowance, if directed by the court.

(12) The maximum amount estimated to be needed per month or per year, and the time period during which such invasion will be necessary (e.g., \$500.00 per month for the period January 1, 1995 through December 31, 1996).

Cross References: See 20 Pa.C.S.A. § 5536(a), which permits the expenditure of income for the care and maintenance of an incapacitated person without the necessity of court approval, but which requires court authorization for the expenditure of principal.

See 20 Pa.C.S.A. § 5164, which permits the expenditure of income for the care, maintenance and education of a minor without the necessity of court approval, but which requires court authorization for the expenditure of principal.

Explanatory Comments: The time period for which an invasion of principal may be requested may generally not exceed one (1) year.

Under 20 Pa.C.S.A. §§ 5164 and 5536(a), court approval is required to use income for anyone other than the minor or incapacitated person. In such cases, a petition in essentially the same form as provided by this rule should be filed.

Rule WO504. Petition for Sale of Assets.

A Petition for Sale of Assets shall be presented to the court in all situations where the guardian intends to sell real or tangible personal property of an incapacitated person. Such Petition for Sale of Assets shall contain, at minimum, the following averments of fact:

(a) A reference to the original date of the guardian's appointment.

(b) Whether the guardian is bonded and, if so, for what amount.

(c) An itemized listing of the assets of the incapacitated person.

(d) An itemized listing of the income and expenses of the incapacitated person.

(e) The reason for the proposed sale and the proposed distribution of proceeds. If the property is real estate, (i) whether the property is expensive to maintain; (ii) whether the property is occupied and/or generating income; (iii) whether the guardian needs the proceeds for the care of the incapacitated person.

(f) If the purpose for the proposed sale is the payment of debts, a listing of the names of all creditors, and the amount due each.

(g) If the property is tangible personal property, one appraisal shall be attached. If the property is real estate, the petition shall be accompanied by a valuation of two appraisers not related to any of the parties, setting forth the fair market value of the property claimed. The appraisers shall state their profession and shall certify that by virtue of their profession, they are familiar with values of real estate in the vicinity of the subject property.

(h) If the property is the incapacitated person's residence,

(1) That the incapacitated person will not be returning to the property to live. (Indicate where the incapacitated person is currently living, i.e., nursing home, personal care home, etc.)

(2) If a private sale, that the price is greater than could be obtained at a public sale. If not, or if the price is less than the appraisal, indicate whether a commission is being charged.

(i) Notice of the presentation of the Petition for Sale of Assets shall be given to all next of kin of the incapacitated person, whose written consents to the sale are not attached.

(j) The proposed decree shall contain a provision regarding the posting of bond.

Cross References: See Rule 12.10 of the Supreme Court Orphans' Court Rules regarding sales of property.

See the 1949 Official Comment to 20 Pa.C.S.A. § 5521, which discusses 20 Pa.C.S.A. §§ 5151 and 5155 and the concerns regarding the sale of property.

Rule WO505. Petition for Compromise of Claim.

A Petition for Compromise of Claim shall be presented to the court in all situations where the guardian proposes to compromise a claim by or against an incapacitated

person. Such Petition for Compromise of Claim shall contain, at minimum, the following averments of fact:

(a) A reference to the original date of the guardian's appointment.

(b) Whether the guardian is bonded and, if so, for what amount.

(c) An itemized listing of the assets of the incapacitated person.

(d) An itemized listing of the income of the incapacitated person.

(e) A listing of the names and addresses of all creditors, and the amount due each.

(f) A concise description of the claim which is proposed to be compromised.

(g) Whether any prior Petitions for Compromise of Claim have been presented.

(h) That the next-of-kin of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.

(i) In those cases where the guardianship estate is expected to be insolvent, that the creditors of the incapacitated person have been notified of the presentation of the Petition for Compromise of Claim.

Cross References: See 20 Pa.C.S.A. § 5521(b), relating to the guardian's powers, duties and liabilities.

See Pa. R.C.P. No. 2051, et seq., for the settlement procedures applicable to actions commenced in the civil division.

Rule WO601. Jurisdiction.

(a) The following petitions for approval of settlement shall be brought before the orphans' court when suit has not been commenced in the civil division:

(1) Petition to Compromise and Settle Minor's Action;

(2) Petition to Compromise and Settle an Incapacitated Person's Action; and

(3) Petition to Compromise and Settle Wrongful Death and Survival Action.

(b) Upon receipt of a petition, the court may, at its discretion, grant the petition as presented, request additional information from any party, or order testimony to be taken on the petition.

Cross References: With regard to wrongful death and survival actions, See 42 Pa.C.S.A. § 8301(b) and 20 Pa.C.S.A. §§ 2101-2104.

Rule WO602. Petition to Compromise and Settle Minor's Claim.

A Petition to Compromise/Settle a Minor's Claim shall contain, at minimum, the following averments of fact:

(a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the minor at the time of the accident/injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.

(b) Type of injury suffered. Medical documentation (e.g. hospital records or a physician's report) should be attached to the Petition in order to advise the court of the extent and effect of the injuries. If the medical documentation indicates there are residual effects, the Petition should refer to the specific portions of the medical documentation which contain such opinions.

(c) Medical expenses incurred. If any portion of the medical expenses is to be deducted from the minor's share of the settlement, the Petition should contain an affirmation that the parents/guardians will not be reimbursed for such expenses from any other source.

(d) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the parent/guardian of the minor).

(e) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.

(f) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)

(g) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.

(h) A list of any other expenses which will be deducted from the minor's share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).

(i) The exact portion the minor is to receive.

(j) The proposed order should provide in detail the proposed distribution of funds. The proposed distribution shall conform to the distribution procedures used in the civil division, under the Pennsylvania Rules of Civil Procedure.

Cross References: All petitions must meet the basic requirements established by WO107.

Under Pa. R.C.P. Nos. 2039 and 2206, the following distribution procedures are used in the civil division.

1. Pursuant to Pa. R.C.P. No. 2039(b), the court shall order the proceeds paid to the guardian of the estate of the minor.

2. If there is no court-appointed guardian of the estate and the amount is not more than \$10,000, Pa. R.C.P. No. 2039(b)(1) provides that the court may (but is not obligated to) release the proceeds directly 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".

3. If there is no court-appointed guardian of the estate and the amount is more than \$10,000, Pa. R.C.P. No. 2039(b)(2) requires that the proceeds be deposited in a federally insured savings account - in the minor's name - with a stipulation that no withdrawals can be made until the child reaches the age of eighteen (18) except upon prior order of court.

4. The order must include a provision that proof of the sequestered account shall be promptly filed of record.

Explanatory Comments: Despite the discretionary language contained Pa. R.C.P. No. 2039(b)(1), the court generally does not release the proceeds directly to the minor or guardian. Except in cases involving extremely small damages or unique circumstances, the court routinely requires that the funds be deposited in a federally insured savings account in the minor's name with a

stipulation that no withdrawals can be made until the child reaches the age of eighteen (18) except upon prior order of court.

Rule WO603. Petition to Compromise and Settle Incapacitated Person's Claim.

A Petition to Compromise/Settle an Incapacitated Person's Claim shall contain, at minimum, the following averments of fact:

(a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the incapacitated person at the time of the accident/injury, and identification of the defendant. If the case involves an automobile accident, the accident report should be attached.

(b) Type of injury suffered. Medical documentation (e.g. hospital records or a physician's report) should be attached to the Petition in order to advise the court of the extent and effect of the injuries. If the medical documentation indicates there are residual effects, the Petition should refer to the specific portions of the medical documentation which contain such opinions.

(c) Medical expenses incurred. If any portion of the medical expenses is to be deducted from the incapacitated person's share of the settlement, the Petition should contain an affirmation that the guardian will not be reimbursed for such expenses from any other source.

(d) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the guardian of the incapacitated person).

(e) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.

(f) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)

(g) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.

(h) A list of any other expenses which will be deducted from the incapacitated person's share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).

(i) The exact portion the incapacitated person is to receive.

(j) The proposed order should provide in detail the proposed distribution of funds. The proposed distribution shall conform to the distribution procedures used in the civil division, under the Pennsylvania Rules of Civil Procedure.

Rule WO604. Petition to Compromise and Settle Wrongful Death and Survival Action.

A Petition to Compromise/Settle a Wrongful Death and Survival Action shall contain, at minimum, the following averments of fact:

(a) Description of the factual circumstances of the case. These should include the date of the accident/injury, how the accident/injury occurred, the age of the decedent at the time of the accident/injury, and identification of the

defendant. If the case involves an automobile accident, the accident report should be attached.

(b) Amount and terms of the proposed settlement. The Petition should clearly identify whom the attorney bringing the Petition represents (i.e., the insurance company or the heirs/beneficiaries of the decedent).

(c) Statement regarding the efforts made to secure the best settlement. Where appropriate, the Petition should inform the court whether there is a question of liability and should briefly address any legal/factual issues which may impede successful litigation.

(d) An affirmation by petitioner's counsel that the settlement is the best settlement that could be obtained. (Note: This could also be in the form of an attached affidavit.)

(e) The attorney fee arrangement. A copy of the written fee agreement must be attached. In structured settlements, the fee must be based on the present value of the annuity.

(f) A list of any other expenses which will be deducted from the heirs/beneficiaries' share of the settlement (e.g. costs advanced for medical reports, hospital records, filing fees, etc.).

(g) A statement as to whether the plaintiff's decedent died intestate or with a will, and if a will was in existence, the effect of the will upon the proposed monetary distribution between wrongful death and survival actions. If a will exists, a copy must be attached as an exhibit to the Petition.

(h) The exact amount of the wrongful death portion of the settlement each of the wrongful death beneficiaries is to receive.

(i) Dependency. Whether the parties proposed to receive funds from the wrongful death portion of the settlement were dependents of the decedent.

(j) Survival. How long the decedent survived after the accident.

(k) Notice. That notice of the presentation of the Petition has been given to all of the beneficiaries named under the decedent's will, if the decedent died testate, and to the decedent's intestate heirs, whether the decedent died testate or intestate.

(l) The proposed order should provide in detail the proposed distribution of funds.

Rule WO605. Petitions for Allowance.

(a) All withdrawals from a minor's account require a Petition for Allowance.

(b) Petitions for Allowance shall contain, at minimum, the following averments of fact:

(1) The facts and circumstances surrounding the origination of the minor's fund.

(2) A chronological statement of all prior petitions for allowance, including the reasons therefor, the amounts thereof, and the disposition.

(3) The age of the minor at the time the fund was created and the minor's present age.

(4) The original amount of the minor's funds and the present balance of same.

(5) The circumstances and reasons supporting the petition for allowance.

(c) All Petitions for Allowance shall be accompanied by:

- (1) A proposed Order.
- (2) A copy of the original Petition for Compromise and the Order of Distribution.
- (3) Copies of all prior petitions for allowance and the orders with respect to same.
- (4) Substantiating documentation to support the petition for allowance.
- (5) A consent filed by the petitioner.

Explanatory Comments: The court recognizes the parents' legal obligation to support and care for their child. Accordingly, when withdrawal from a minor's account is requested, the court will generally not permit the minor's funds to be used for routine parental obligations.

[Pa.B. Doc. No. 96-209. Filed for public inspection February 16, 1996, 9:00 a.m.]

WESTMORELAND COUNTY

Adopted Rule of Civil Procedure W200.8; Rescinded Rules of Civil Procedure W200.8 and W200.9

Order of Court

And Now, to wit this 1st day of February, 1996, It Is Hereby Ordered, Adjudged, and Decreed that Westmoreland County Rules of Civil Procedure W200.8 and W200.9 are hereby rescinded. New Rule of Civil Procedure W200.8 is adopted. This rule is effective thirty (30) days after publication in the Pennsylvania Bulletin.

By the Court

CHARLES E. MARKER,
President Judge

Rule W200.8. Settlement Conference.

(a) Upon receipt of a praecipe to place the case on the trial list, the court administrator will schedule a settlement conference and notify counsel of record of the date and time of such conference.

(b) All plaintiffs, persons, and entities having the authority to settle the case and their counsel will be available in court.

(c) If the case is not settled, counsel will call to the attention of the court any matter which should be addressed to assure an expeditious trial.

(d) The following procedures will be followed in medical malpractice cases:

(1) All trial counsel and clients (including doctors) will be present during the conference,

(2) Insurance and CAT representatives shall be available by telephone to answer questions and to respond to settlement proposals, and

(3) All parties shall exchange expert reports at least 15 days prior to the settlement conference.

[Pa.B. Doc. No. 96-210. Filed for public inspection February 16, 1996, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that James J. Gembarosky has been disbarred from the practice of law in the State of New York. The Supreme Court of Pennsylvania issued an Order dated February 5, 1996, disbaring James J. Gembarosky from the practice of law in this Commonwealth, to be effective March 6, 1996.

ELAINE M. BIXLER,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 96-211. Filed for public inspection February 16, 1996, 9:00 a.m.]