

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CHODE CH. 29]

Promulgation of Financial Regulation Pursuant to 42 Pa.C.S.A. § 3502(a); No. 195; Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of June, 1998, it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S.A. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulation. The fees outlined in the Financial Regulations are effective as of January 1, 1999.

To the extent that notice of proposed rulemaking may be required by Pa.R.J.A. 103, the immediate promulgation of the regulation is hereby found to be in the interests of efficient administration.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

§ 29.402. Costs under 42 Pa.C.S. § 1725.1.

(a) *Civil cases.*—In calendar year [1997] 1999, the costs to be charged by district justices in every civil case, except as otherwise provided in this section, shall be as follows:

- (1) Actions involving \$500 or less... [\$33.50] \$35.50
- (2) Actions involving more than \$500 but not more than \$2,000 [\$45.00] \$47.00
- (3) Actions involving more than \$2,000 but not more than \$4,000..... [\$56.00] \$58.50
- (4) Actions involving more than \$4,000 but not more than \$8,000..... [\$83.50] \$88.00
- (5) Landlord-tenant actions involving less than \$2,000 [\$50.50] \$53.00
- (6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 [\$61.50] \$64.50
- (7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000 [\$83.50] \$88.00
- (8) Order of execution..... [\$25.50] \$26.50
- (9) Objection to levy [\$11.50] \$12.00
- (10) Reinstatement of complaint.....\$6.00
- (11) Entering Transcript on Appeal or Certiorari ..\$3.00

(b) *Criminal cases.*—In calendar year [1997] 1999, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

- (1) Summary conviction, except motor vehicle cases [\$32.00] \$33.50
- (2) Summary conviction, motor vehicle cases, other than paragraph (3).. [\$25.50] \$26.50
- (3) Summary conviction, motor vehicle cases, hearing demanded..... [\$30.50] \$31.50
- (4) Misdemeanor [\$36.50] \$38.50
- (5) Felony..... [\$42.00] \$44.00

(c) *Unclassified costs or charges.*—In calendar year [1997] 1999, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

- (1) Entering transcript of judgment from another member of the minor judiciary.....\$6.00
- (2) Marrying each couple, making record thereof, and certificate to the parties [\$28.00] \$29.50
- (3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) [\$11.50] \$12.00
- (4) Issuing a search warrant (except as provided in subsection (d))..... [\$11.50] \$12.00
- (5) Any other issuance not otherwise provided in this subsection [\$11.50] \$12.00

§ 29.403. Fines under 42 Pa.C.S. § 3571.

* * * * *

- (2) Amounts payable to the Commonwealth:
 - (i) Summary conviction, except motor vehicle cases [\$11.24] \$11.76
 - (ii) Summary conviction, motor vehicle cases other than subparagraph (iii) [\$11.24] \$11.76
 - (iii) Summary conviction, motor vehicle cases, hearing demanded.. [\$11.24] \$11.76
 - (iv) Misdemeanor..... [\$14.60] \$15.40
 - (v) Felony [\$22.40] \$23.47
 - (vi) Assumpsit or trespass involving:
 - (A) \$500 or less [\$13.96] \$14.79
 - (B) More than \$500 but not more than \$2,000 [\$22.50] \$23.50
 - (C) More than \$2,000 but not more than \$4,000 [\$33.60] \$35.10
 - (D) More than \$4,000 but not more than \$8,000 [\$55.66] \$58.67
 - (vii) Landlord-tenant proceeding involving:
 - (A) \$2,000 or less..... [\$22.44] \$23.56
 - (B) More than \$2,000 but not more than \$4,000 [\$27.96] \$29.32
 - (C) More than \$4,000 but not more than \$8,000 [\$38.97] \$41.07
 - (viii) Objection to levy..... [\$ 5.75] \$ 6.00
 - (ix) Order of execution [\$17.00] \$17.67

- (i) Summary conviction, except motor vehicle cases [\$11.24] \$11.76
- (x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs)) [\$ 8.05] \$ 8.40

(Editor's Note: Ellipses refer to the text of 42 Pa.C.S. § 3571.)

§ 29.404. Fee schedule under 15 Pa.C.S. § 153.

(a) *General rule.* [**The**] **In calendar year 1999, the fees of the Corporation Bureau of the Department of State, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, and of county filing officers under Title 13 (relating to commercial code), shall be as follows:**

* * * * *

- (8) Uniform Commercial Code:
- (i) Financing statement—per debtor name:
 - (A) Fee charged by Department of State . . . \$12.00
 - (B) Fee charged by County [\$53.50] \$56.50
 - Amount payable to Commonwealth [\$40.10] \$42.35
 - Amount payable to County . . . [\$13.40] \$14.15
- (ii) Each ancillary transaction:
 - (A) Fee charged by Department of State . . . \$12.00
 - (B) Fee charged by County [\$53.50] \$56.50
 - Amount payable to Commonwealth [\$40.10] \$42.35
 - Amount payable to County . . . [\$13.40] \$14.15
- (iii) Search—per debtor name:
 - (A) Fee charged by Department of State . . . \$12.00
 - (B) Fee charged by County [\$53.50] \$56.50
 - Amount payable to Commonwealth [\$40.10] \$42.35
 - Amount payable to County . . . [\$13.40] \$14.15
- (iv) Additional fee for each financing statement found and for each statement of assignment reported therein:
 - (A) Fee charged by Department of State \$1.00
 - (B) Fee charged by County [\$4.50] \$5.00
 - Amount payable to Commonwealth [\$3.35] \$3.75
 - Amount payable to County . . . [\$1.15] \$1.25
- (v) For each financing statement or ancillary transaction not filed on standard forms approved by the Department of State, in addition to the fee provided above, there shall be charged a per filing fee of:
 - (A) Fee charged by Department of State . . . \$28.00
 - (B) Fee charged by County [\$125.00] \$131.00
 - Amount payable to Commonwealth [\$93.75] \$98.25
 - Amount payable to County . . . [\$31.25] \$32.75

* * * * *

(Editor's Note: Ellipses refer to the text of 15 Pa.C.S. § 153.)

[Pa.B. Doc. No. 98-1088. Filed for public inspection July 10, 1998, 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index Pursuant to 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4); No. 194; Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of June 1998, it is *Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S.A. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for the immediately preceding calendar year as required by Act 167 of 1992, 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S.A. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for the immediate preceding calendar year as required by Act 167 of 1992, 15 Pa.C.S.A. § 153(a)(8)(vii), 42 Pa.C.S.A. §§ 1725.1(f) and 3571(c)(4) (as amended). See No. 194 Judicial Administration Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 1997, was 1.7 percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 25, 1998.)

[Pa.B. Doc. No. 98-1089. Filed for public inspection July 10, 1998, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 4000]

Proposed Amendments Governing Production of Medical Records; Proposed Recommendation No. 148

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 234.1 and 4007.1 be amended to provide for the production of medical records. The proposed recommendation is being submitted to the bench

and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than September 1, 1998 to:

Harold K. Don, Jr., Esquire
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
or E-Mail to
civil.rules@supreme.court.state.pa.us

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 234.1. Subpoena to Attend and Testify.

* * * * *

(d)(1) If a subpoena is used to compel a health care provider or an employee of a health care facility to attend and to produce documents or things, the following notice shall be attached to the front of the subpoena:

Notice to Health Care Provider/
Health Care Facility

The enclosed subpoena orders you to come to a courtroom or other place at a specific date and time and to bring with you certain medical charts or records. Unless you have received a written authorization from the patient or the patient's attorney permitting the release of these medical charts or records beforehand, you may not deliver any medical charts or records described in the subpoena to any party prior to the date set forth in this subpoena.

(2) If a health care provider or an employee of a health care facility mistakenly furnishes medical charts or records to a party prior to the time and place set forth in the subpoena, the party, as soon as the mistake is discovered, shall place the records in a sealed envelope without further review and shall notify all other parties by the next business day that the records were prematurely produced.

Official Note: Subdivision (d)(2) is not intended to provide guidance as to the responsibility of an attorney who in any other setting receives documents inadvertently disclosed.

CHAPTER 400. DEPOSITIONS AND DISCOVERY

Rule 4007.1. Procedure in Deposition by Oral Examination.

* * * * *

(d)(1) If the person to be examined is a party, the notice may include a request made in compliance with Rule 4009.1 et seq. [,] for the production of documents and tangible things at the taking of the deposition.

(2) If the person to be examined is not a party, and is to be served with a subpoena duces tecum to produce designated materials, the notice shall specify the materials to be produced. The materials shall be produced at the deposition and not earlier, except upon the consent of all parties to the action.

Official Note: See Rule 234.2(d) for the form of notice to be attached to the front of the subpoena when it is used to compel the production of medical charts or records by a health care provider or facility.

Section 6152(c) of the Judicial Code provides that upon electing to proceed under Section 6151 et seq., a health care provider or facility, "upon payment of its expenses by the party causing service of the subpoena, or by any other party, shall within 30 days deliver copies of all medical charts or records specified in the subpoena." In accordance with Rule 133 and the Constitution of 1968. Section 6152(c) of the Judicial Code is suspended to the extent that it is inconsistent with Rule 4007.1(d)(2) in authorizing production of the subpoenaed documents earlier than the time specified in the subpoena.

* * * * *

Explanatory Comment

Section 6152(c) of the Judicial Code relating to the subpoena of medical records provides:

(c) Delivery of records.—Following this election, the health care provider or facility shall hold the originals available, and, upon payment of its expenses by the party causing service of the subpoena, or by any other party, shall within 30 days deliver, by first class mail, certified mail, return receipt requested, or by personal delivery, legible and durable copies, certified by the health care provider or facility of all medical charts or records specified in the subpoena. However, a district attorney shall not be required to pay for copies of medical charts or records before receipt and the charts or records shall be delivered on or before the date specified on the subpoena duces tecum.

Rule of Civil Procedure 4007.1(d)(2) provides that records may not be provided to the party issuing the subpoena before the date specified in the subpoena. The Code conflicts with the rules to the extent that it authorizes the health care provider or facility to deliver the records prior to the date set forth in the subpoena. However, pursuant to the Constitution of 1968 and Rule 133, a statute which is inconsistent with a general rule is suspended to the extent of the inconsistency. Section 6152(c) is suspended to the limited extent of the inconsistency and a note to this effect is added to Rule 4007.1(d)(2).

To assure compliance with Rule 4007.1(d)(2), it is proposed that new subdivision (d) be added to Rule 234.1 governing subpoenas to attend and testify. Subdivision (d) requires that, when medical records are to be produced in connection with the subpoena to attend and testify, a special notice be attached to the front of a subpoena advising that the records are not to be produced before the date set forth in the subpoena in the absence of an authorization from the plaintiff or the plaintiff's attorney. In the event that the records are mistakenly provided in advance, proposed subdivision (d)(2) provides that the party receiving the records "as soon as the mistake is discovered, shall place the records in a sealed envelope

without further review and shall notify all other parties by the next business day that the records were prematurely produced.”

*By the Civil Procedural
Rules Committee*

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1090. Filed for public inspection July 10, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Amendments to Local Rules of Civil Procedure; No. 10912 of 1998

Order

It is ordered that Local Rule Nos. 212.1, 212.2 and 220.1, the texts of which follow hereto, are adopted. All local rules or parts thereof which are inconsistent are rescinded.

This Order shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Beaver County shall submit seven certified copies of this Order and the attachments to the Administrative Office of Pennsylvania Courts, two certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one certified copy to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court and one with the Prothonotary of Beaver County to be kept for public inspection and copying.

By the Court

ROBERT C. REED,
President Judge

Local Rule 212.1. Civil Actions.

A. All civil actions which are to be tried by a jury may be tried, at the earliest, during the term of trials next following the filing of a Certificate of Readiness for Trial.

Note

This provision is intended to constitute the Notice required by Pa.R.C.P. No. 212.1(a).

B. (1) A civil action shall be certified for trial by filing with the Prothonotary of Beaver County a Certificate of Readiness for Trial. A copy of the Certificate of Readiness for Trial shall likewise be transmitted by the moving party to the Court Administrator of Beaver County.

(2) No case may be certified for trial without having first given at least sixty (60) days written notice of intention to do so to all other parties or their counsel of record.

(3) After a case has been certified for trial, no motion for judgment on the pleadings or for summary judgment may be filed without having first secured leave of court to do so for cause shown.

(4) After a case has been certified for trial, no discovery, including an independent medical examination, may

be initiated without having first secured leave of court to do so for cause shown.

(5) Any other party may file exceptions to the certificate of readiness within ten (10) days of the filing thereof. The exceptions shall be presented to the judge assigned to receive civil motions after notice pursuant to Rule L206B has been given.

Local Rule 212.2.

A. A pre-trial conference shall be scheduled by the Court Administrator for every case certified for jury trial unless otherwise directed by the court. Pre-trial conferences shall be scheduled on those dates designated for that purpose on the court calendar and on such other dates as may from time to time be designated by the court.

(1) Prior to the pre-trial conference, a party shall provide the opposing party with a copy of all documents or records secured through an authorization of the opposing party. Any such documents or records not so provided may not be used at trial for any purpose.

(2) Pre-trial statements which comply with Pa.R.C.P. No. 212.2 shall be submitted to the judge assigned to conduct the pre-trial conference not later than five (5) business days prior thereto. In addition to the requirements of Pa.R.C.P. No. 212.2, the pre-trial statement shall contain:

(a) a statement of legal and evidentiary issues which are anticipated to arise together with a citation to authority;

(b) an itemized statement of all medical and hospital and other bills and expenses claimed;

(c) an itemized statement of lost earnings and impairment of earning power together with the basis therefore.

(d) a statement, if applicable, as to the plaintiff's selection of the limited or full tort option. If a limited tort option applies, a statement to support eligibility for recovery of non-economic damages shall be included.

Note

Although Pa.R.C.P. No. 212.2(5) requires the inclusion of an expert report or proper answer to interrogatory and the note thereto permits physician notes or records in lieu of a report, neither copies of hospital records nor illegible office notes are to be included.

All trial exhibits are to be marked for identification but need not be attached to the pre-trial statement.

(3) The pre-trial conference shall be attended by trial counsel as well as the plaintiff, a representative of the defendant's insurance carrier who has settlement authority, as well as any defendant whose personal approval of a settlement offer is required.

(4) After the pre-trial conference has concluded, no supplemental pre-trial statement may be filed without leave of court for cause shown.

Local Rule 220.1. Voir Dire of Prospective Jurors.

Voir Dire of Prospective Jurors shall include the use of a written questionnaire and oral examination. Oral examination shall be conducted by an employee of the county who shall be designated from time to time by the court. Such oral examination shall consist of the voir dire questions attached hereto.

Questions may be deleted or revised to accommodate the particular case either by agreement of counsel for the parties or by leave of court. Additional questions may be submitted by agreement of counsel for the parties or by leave of court. All deletions, revisions and additions to the

list of questions shall be submitted in writing prior to the commencement of voir dire and, unless agreed upon by counsel for all parties, shall not be propounded to prospective jurors without court approval.

VOIR DIRE QUESTIONS

The following questions shall be propounded to the entire panel of prospective jurors or to each prospective juror selected for each case:

1. The attorneys in this lawsuit and their respective law firms are:

For Plaintiff(s), _____ from _____
Attorney Law Firm

For Defendant(s) _____ from _____
Attorney Law Firm

For _____, _____ from _____
Attorney Law Firm

For _____, _____ from _____
Attorney Law Firm

Have (any of) you had any social, business or professional contact with any of these attorneys or their law firms?

2. The parties to this lawsuit include:

Plaintiff(s) _____

Defendant(s) _____

Do (any of) you know or have you had any social, business or other contact or employment with any of the parties? Are you a stockholder in (Name of Corporation/Defendant)?

3. This lawsuit concerns _____

(Brief description to be provided by counsel for the parties).

Do (any of) you know anything about the case?

4. The following individuals may be called to testify on behalf of one or more of the parties. Have you or any of your family members had any social, business or professional contact with any of the potential witnesses?

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____

5. Have you or any members of your family ever been involved in a civil lawsuit, either as a plaintiff, a defendant or as a witness? If so,

- (a) what kind of lawsuit was it?
- (b) were you a party or a witness?
- (c) Would your experience in any way affect your ability to remain fair and impartial in this case?

6. Have you or any member of your family ever been a victim of a crime or a witness in a criminal case? If so,

- (a) what criminal charges were involved?
- (b) were you a victim or witness?
- (c) Would your experience in any way affect your ability to remain fair and impartial in this case?

7. Are you a licensed operator of a motor vehicle?

8. Do you or does any member of your family or household have any kind of relationship, whether personal, professional or social, with law enforcement personnel?

If so, would that relationship prevent you from being fair and impartial in this case?

9. Do you or does any member of your family or household own any stock in an insurance company or ever work in the insurance industry?

- (a) If so, please explain.
- (b) Will that affect your judgment in this case so that you may not be able to be fair and impartial to either party?

10. Have you heard or seen information or advertising that deals with the subject of lawsuits generally or claims for money damages specifically?

(a) As a result, do you have an opinion or belief about lawsuits in general?

(b) If so, what is your opinion?

(c) Will that influence your judgment so that you may not be able to be fair and impartial to either party in this case?

11. Are there any other reasons which cause you to believe you cannot or should not serve as a juror in this case?

[Pa.B. Doc. No. 98-1091. Filed for public inspection July 10, 1998, 9:00 a.m.]

BLAIR COUNTY

Custody Education Program; No. 668 MS, 1998

Administrative Order

Now, this 17th day of June, 1998, pursuant to the provisions of Pennsylvania Rule of Civil Procedure No. 239, the Court Administrator of Blair County shall take the following actions for accomplishment of implementation of the Rules of this Court relating to custody educational programming as set forth in this Court's Order of June 17, 1998, in order that said Order might take effect Thirty (30) days following the date of its publication in the *Pennsylvania Bulletin*:

1. file in the Administrative Office of Pennsylvania Courts seven (7) certified copies of the Order of June 17, 1998;

2. distribute two (2) certified copies of the Order of June 17, 1998, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and,

3. file one (1) certified copy of the Order of June 17, 1998, with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

Order

Now, this 17th day of June, 1998, this Court recognizing that it is both necessary and appropriate to the best interests and welfare of the children who are the subjects of custody proceedings in the Court that the litigants and the minor children in all such proceedings be exposed to a program of education regarding such proceedings and the impact of same upon all who are involved—especially the children—and this Court having given careful study to the design of such an educational program which is now ready for use in all custody proceedings filed on or after the effective date of this Order now provides the following:

It Is Hereby Ordered, Directed and Decreed that the Rules For Custody Educational Programming (following hereto and made part hereof) are adopted and shall be applicable to all custody proceedings filed in this Court after the thirtieth (30) day after the publication of said Rules in the *Pennsylvania Bulletin* as required by the Supreme Court of Pennsylvania.

By the Court

THOMAS G. PEOPLES, Jr.,
President Judge

Custody Education Program Rules

Preamble

It has become evident that the traditional American system of resolving disputes through litigation is an ineffective methodology for achieving permanent resolution of the complex interpersonal difficulties which manifest themselves in custody actions.

Courts throughout Pennsylvania and in many other states have come to recognize that what is needed is a system of dispute resolution that recognizes that children are entitled to a quality relationship with their parents and grandparents and makes possible such resolution with the least stress for the child/children.

It is the intent of this Court to provide to the parties in custody litigation information regarding the availability of alternative dispute resolution methods.

It is the hope of this Court that the parties will take advantage of opportunities for the avoidance of the trauma of litigation and the achievement of a custody arrangement which best serves the children.

Rule 1915.1(a). Scope.

1. These Rules shall be applicable to all actions for custody, partial custody and visitation whether filed as an independent cause of action or as a count in a related proceeding.

2. Any individuals with standing to pursue an action for visitation, partial custody or custody ("Parties") with children from birth to age seventeen (17) shall complete the custody education program for adults known as "Children First" presented by the Altoona Hospital Drug and Alcohol Services (hereinafter called Provider).

3. All subject children of a custody action ages six (6) to seventeen (17) shall participate in an interactive group program for children known as "Sandcastles" and conducted by the Provider.

4. Notwithstanding any provision of these Rules, petitions for special relief remain available in accordance with existing custody procedures.

5. Copies of these Rules and program descriptions for any of the Programs shall be available to the Bar and general public at the Office of the District Court Administrator and the Blair County Custody Office.

Rule 1915.3(a). Filing/Scheduling Procedure.

The following procedure shall be utilized to obtain Court orders setting forth mandatory dates for Parties' and Childrens' participation in the programs:

1. at the filing of a divorce complaint containing a count for custody or any complaint for custody, partial custody or visitation, or any other court paper seeking to initiate any proceeding to compel, modify, terminate or otherwise affect contact between Children and Parties (collectively "Custody Action"), the moving party shall attach a copy of the custody notice/scheduling order, accompanied by the program description in form to be published by this Court through the office of the District Court Administrator;

2. the moving party shall serve to all other parties to the action true and correct copies of the court papers initiating the custody action, the Scheduling Order and

the program descriptions in form heretofore mentioned within five (5) days after the date of the Scheduling Order.

In general, the Provider shall schedule separate sessions for the parties participating in the "Children First" program.

Notwithstanding any other portion of this Rule, no party shall be compelled to attend any portion of the Programs with the opposing party in cases where either party or child of either party is or has been a subject of domestic violence or child abuse at any time within the past twenty-four (24) months.

3. the moving party shall be solely responsible for filing with this Court's Prothonotary a proof of service indicating the date, time and manner of service of the aforementioned pleadings and documents upon all other parties.

Rule 1915.3(b). Payment of Fees.

1. The fee for "Children First" is Forty Dollars (\$40.00) for each participant. Each participant shall pay his/her own fee prior to admittance to the program.

2. The fee for "Sandcastles" is Five Dollars (\$5.00) for each child. Each party shall pay an equal portion of the total fee. Such fee shall be paid prior to admittance to the program.

3. The fees for "Children First" and "Sandcastles" shall be paid directly to the Provider by cash, cashiers' check or money order made payable to the "Altoona Hospital". Payment by credit card may be accepted for telephone registrations. No personal checks will be accepted. Such fees shall be non-refundable.

4. Under extreme circumstances, the Court may consider waiver or reduction of fees for those unable to pay. Any such request must be presented to the District Court Administrator's Office using the IFP (In Forma Pauperis) form available at the District Court Administrator's Office or at the Prothonotary's Office. Such request must be presented to the District Court Administrator's Office at least ten (10) days prior to the date set for the applicable program. The Court will rule on all such requests.

Rule 1915.3(c). Failure to Appear/Pay Fees.

1. Should the moving party fail to pay fees as specified herein; fail to appear for "Children First"; or fail to insure that any child within that party's physical custody appears for "Sandcastles", the Custody action may be dismissed without prejudice and any filing or program fees paid by such party shall be forfeited.

2. Should a non-moving party fail to pay fees as specified herein; fail to appear for "Children First"; or fail to insure that any child within his/her physical custody appears for "Sandcastles", an immediate rule to show cause why such party should not be held in contempt shall issue from this Court. Such rule will be returnable on a date certain within seven (7) days after the date of issue. Such Party shall then be required to appear in court to show cause why they should not be held in contempt and suffer sanctions for failure to pay or appear. Any party failing to appear in court in accordance with the rule to show cause may have a bench warrant for his

or her arrest issued and may be arrested by the Blair County Sheriff's Office and brought before this Court.

[Pa.B. Doc. No. 98-1092. Filed for public inspection July 10, 1998, 9:00 a.m.]

CARBON COUNTY

Adoption of Procedure Under Pa.R.C.P. 1910.21-5 Alternative Procedure for Record Hearing and Report and Exceptions for Contempt Proceedings; No. 4M98

Administrative Order No. 11-1998

And Now, this 25th day of June, 1998 in order to provide procedures for processing expedited contempts, it is hereby

Ordered and Decreed that the Carbon County Court of Common Pleas hereby *Adopts* the Alternative Procedure for Record Hearing and Report and Exceptions for Contempt Proceedings as governed by Pa.R.C.P. 1910.21-5 effective August 1, 1998.

It is furthered *Ordered and Decreed* that seven (7) certified copies of this Administrative Order shall be filed with the Administrative Office of Pennsylvania Courts; two (2) certified copies shall be distributed to Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy shall be filed with the Pennsylvania Domestic Relations Committee.

By the Court

JOHN P. LAVELLE,
President Judge

[Pa.B. Doc. No. 98-1093. Filed for public inspection July 10, 1998, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 52 Miscellaneous 1998

Adopting Order

Now, this 25 day of June, 1998, it is hereby *Ordered*:

1. The following designated Somerset County Orphans' Court Rules (Som. O.C.R.) following hereto, are hereby adopted as Rules of this Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Som. O.C.R. 1.2.1	Som. O.C.R. 6.4.1
Som. O.C.R. 1.2.3	Som. O.C.R. 6.6.1
Som. O.C.R. 1.2.5	Som. O.C.R. 6.9.1
Som. O.C.R. 1.2.6	Som. O.C.R. 6.10.1
Som. O.C.R. 1.2.9	Som. O.C.R. 6.10.2
Som. O.C.R. 2.3.1	Som. O.C.R. 6.10.3
Som. O.C.R. 3.2.1	Som. O.C.R. 6.10.5
Som. O.C.R. 3.2.2	Som. O.C.R. 6.11.1
Som. O.C.R. 3.4.1	Som. O.C.R. 6.11.2
Som. O.C.R. 3.4.2	Som. O.C.R. 6.11.3
Som. O.C.R. 5.1.1	Som. O.C.R. 7.1.1
Som. O.C.R. 5.2.1	Som. O.C.R. 7.1.2
Som. O.C.R. 5.4.1	Som. O.C.R. 7.1.3
Som. O.C.R. 6.1.1	Som. O.C.R. 8.1.1

- Som. O.C.R. 8.1.2
- Som. O.C.R. 8.5.1
- Som. O.C.R. 8.6.1
- Som. O.C.R. 8.7.1
- Som. O.C.R. 8.8.1
- Som. O.C.R. 9.1.1
- Som. O.C.R. 9.1.2
- Som. O.C.R. 10.1.1
- Som. O.C.R. 10.2.1
- Som. O.C.R. 12.1.1
- Som. O.C.R. 12.1.2
- Som. O.C.R. 12.1.3
- Som. O.C.R. 12.2.1
- Som. O.C.R. 12.3.1
- Som. O.C.R. 12.5.1
- Som. O.C.R. 12.5.2
- Som. O.C.R. 12.5.4
- Som. O.C.R. 12.9.1
- Som. O.C.R. 12.9.2
- Som. O.C.R. 12.9.3
- Som. O.C.R. 12.9.4
- Som. O.C.R. 12.10.1
- Som. O.C.R. 12.10.2
- Som. O.C.R. 12.10.4
- Som. O.C.R. 12.11.1
- Som. O.C.R. 12.11.2
- Som. O.C.R. 12.12.1
- Som. O.C.R. 12.12.3
- Som. O.C.R. 12.12.4
- Som. O.C.R. 15.1
- Som. O.C.R. 15.1.1
- Som. O.C.R. 15.1.2
- Som. O.C.R. 15.2.1
- Som. O.C.R. 15.3.1
- Som. O.C.R. 15.3.2
- Som. O.C.R. 15.4.1
- Som. O.C.R. 15.8.1

2. The following old Local Rules are rescinded effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

- Chapter 7
- Chapter 16
- Chapter 16A
- Chapter 21
- Chapter 27
- Chapter 29
- Chapter 37
- Chapter 46
- Chapter 49
- Chapter 54

3. The Somerset County Court Administrator is directed to:

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

B. Distribute two (2) certified copies of this Order and the following Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. File one (1) certified copy of this Order and the following Rules with the Pennsylvania Orphans' Court Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

EUGENE E. FIKE, II,
President Judge

RULES OF COURT

SOMERSET COUNTY ORPHANS' COURT RULES

JUDGES AND LOCAL RULES

Som. O.C.R. 1.2.1. Citation of Rules.

These rules shall be known as Somerset County Orphans' Court Rules adopted pursuant to Pa.O.C.R. 1.2 and shall be cited as "Som. O.C.R."

Som. O.C.R. 1.2.3. Petitions and Motions.

(a) Every original petition or motion filed shall set forth in its first paragraph the citation of any statute, rule of court, or other authority relied upon to justify the relief requested.

(b) A copy of any notice required to be given shall be attached to the petition or motion.

Som. O.C.R. 1.2.5. Briefs.

Briefs will be prepared and filed in accordance with the provisions of Som. R.C.P. 210 and 211, unless otherwise ordered by the Court.

Som. O.C.R. 1.2.6. Attorneys.

The name and Supreme Court identification number of any attorney employed by any party in any proceeding pending in this Court shall be marked on the initial pleading or paper filed in the office of the Clerk. Any attorney who has properly entered an appearance will receive notice of all hearings, conferences, and orders.

Som. O.C.R. 1.2.9. Depository of the Court.

(a) *Deposit of Money or Securities in Court.* All monies paid or securities delivered into Court shall be deposited immediately in a non-interest bearing account in such bank or trust company as the Clerk may designate, to the credit of the court, in the particular estate or proceeding to which the money or securities may belong; and such depository shall keep a separate account of each payment and delivery, designating the same by name of the estate or proceeding.

(b) *Withdrawals.* No money shall be paid out of Court by the depository, or securities delivered, except on checks or orders of the Clerk accompanied by a certified copy of the Order of Court authorizing such withdrawal or delivery.

(c) *Docket to be maintained.* The Clerk shall maintain a Money in Court Docket in which shall be entered concisely under the name of the respective estates, the Orders of Court directing money to be paid into Court, as well as an accurate account of the money paid in and paid out, so that the record will fully explain itself.

CONSTRUCTION AND APPLICATION OF RULES

Som. O.C.R. 2.3.1. Definitions.

As used in these rules "P.E.F. Code" shall mean a reference to the Probate, Estates and Fiduciary Code, June 30, 1972, P. L. 508, 20 Pa.C.S.A. § 101, et seq., as amended.

PLEADINGS AND PRACTICE

Som. O.C.R. 3.2.1. Pleadings, Signature and Verification.

(a) All answers to petitions shall be properly filed pursuant to Som. R.C.P. 206.

(b) A copy of every pleading, including exceptions, shall be promptly served upon counsel of record for all parties in interest, and upon any party who is not represented.

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pending in this Court shall be marked on the initial pleading or paper filed in the office of the Clerk. Any attorney who has properly entered an appearance will receive notice of all hearings, conferences, and orders.

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(a) *Deposit of Money or Securities in Court.* All monies paid or securities delivered into Court shall be deposited immediately in a non-interest bearing account in such bank or trust company as the Clerk may designate, to the credit of the court, in the particular estate or proceeding to which the money or securities may belong; and such depository shall keep a separate account of each payment and delivery, designating the same by name of the estate or proceeding.

(b) *Withdrawals.* No money shall be paid out of Court by the depository, or securities delivered, except on checks or orders of the Clerk accompanied by a certified copy of the Order of Court authorizing such withdrawal or delivery.

(c) *Docket to be maintained.* The Clerk shall maintain a Money in Court Docket in which shall be entered concisely under the name of the respective estates, the Orders of Court directing money to be paid into Court, as well as an accurate account of the money paid in and paid out, so that the record will fully explain itself.

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Som. O.C.R. 3.2.2. Pleadings, Disposition, Issues of Fact or Law.

(a) Except in those cases where no responsive pleading is required, if the respondent fails to answer a petition to which an answer is required under the Somerset County Rules of Civil Procedure or the Pennsylvania Orphans' Court Rules or the Pennsylvania Rules of Civil Procedure, within twenty (20) days of service, all material averments of fact in the petition shall be taken as admitted and the Court may, at any time after the return day and upon proof of service of the Citation upon the respondent at least ten (10) days prior to the return date, upon motion, enter a decree granting the prayer of the petition or such other relief deemed appropriate by the Court.

(b) When an issue of fact is raised by the pleadings any party may move for a hearing by filing a scheduling praecipe pursuant to Som. R.C.P. 211.

(c) When the pleadings are closed, any party in interest may move the Court for disposition of a question of law, upon briefs and/or oral argument, as needed, by filing a scheduling praecipe pursuant to Som. R.C.P. 211.

Som. O.C.R. 3.4.1. Form. Exhibits.

(a) *Endorsements.* Every pleading shall be endorsed with the name of counsel, if counsel has appeared for a party.

(b) The signature of an attorney to a petition shall constitute a certification by that attorney that all copies of written or printed instruments, records, or documents which are not certified or authenticated, are true and correct copies of the original.

Som. O.C.R. 3.4.2. Consents. Joinders. Form.

(a) All petitions shall aver that all parties in interest are petitioners, or that consents or joinders of all necessary parties are attached or, if the petitioner is unable to attach a necessary consent or joinder, this fact shall be stated in the petition together with the reason.

(b) Whenever a party other than a petitioner desires to consent to or join in the prayer of a petition, there shall be appended to the petition a written "Consent" or "Joinder" signed by the party in the following form:

I, _____, having read and considered the contents of the foregoing petition, do herewith waive the benefit of all requirements of notice of the presentation, or service upon me, of said petition, do authorize the Court to note my general appearance in said proceeding as though I had appeared personally or by counsel, do herewith waive all objections to the Court's jurisdiction over my person, and do herewith consent to or join in [add specifics of prayer for relief]

All "Consents" and "Joiinders" shall be signed by at least one (1) witness.

NOTICE

Som. O.C.R. 5.1.1. Notice. Legal Publication.

The *Somerset Legal Journal* shall be the legal periodical for the publication of notice whenever publication in a legal periodical is required by Act of Assembly, by Rule, or by Order of Court.

SOMERSET COUNTY ORPHANS' COURT RULES

Som. O.C.R. 5.2.1. Method. Person under Incapacity. No Guardian or Trustee.

Whenever notice is given to a person who is not sui juris and for whom there is no guardian or trustee, notice shall be given by serving it upon the person, if over fourteen years of age, and in all cases, upon:

- (a) The person's spouse, if sui juris, or
- (b) The person's next of kin, if sui juris, or
- (c) The person with whom he or she resides or by whom he or she is maintained; or
- (d) The superintendent or other official of the institution having custody of the person; or
- (e) In such manner as the Court, by special order, may direct.

SOMERSET COUNTY ORPHANS' COURT RULES

Som. O.C.R. 5.4.1. Notice. Additional Requirements.

(a) (1) *Personal Service.* Return of personal service shall set forth the date, time, place and manner of such service, and that a true and correct copy of the petition and notice were handed to the person served.

(2) *Registered or Certified Mail.* Return of notice by registered or certified mail shall set forth the date and place of mailing the petition and notice and shall include the return receipt or a copy thereof.

(3) *Publication.* Return of notice by publication shall set forth the date(s) and newspaper and/or legal periodicals of publication and shall include proofs of publication or copies thereof.

(b) Except as may otherwise be provided, by statute, rule or special order, a return of notice shall be filed with the Clerk prior to the date set for the occurrence of the event of which notice has been given.

ACCOUNTS AND DISTRIBUTIONS

Som. O.C.R. 6.1.1. Accounts. Form. Additional Requirements.

(a) (1) All accounts shall be in the form approved by the Pennsylvania Supreme Court and as explained by the Uniform Fiduciary Accounting Principles, pursuant to Pa.O.C. Rule 6.1(g). Should the account filed fail to comply with said accounting standards, the Clerk shall notify the Accountant to immediately comply prior to ten (10) days before the date set for confirmation. The corrected account shall be delivered to all parties in interest. A failure to correct the account shall result in the account being stricken.

(2) Accounts shall be stated on 8 1/2" by 11" paper, fastened together at the top and numbered consecutively at the bottom.

(3) Every account filed with the Clerk shall be signed by each accountant and shall be verified by at least one accountant.

Som. O.C.R. 6.3.1. Notice To Parties In Interest.

(a) Notice of the filing and of the date and time for confirmation as required by law and Rule of Court shall be given by certified or registered mail, return receipt requested, at least ten days prior to the confirmation date. In lieu of such notice, a written waiver of notice may be filed for any party. The notice shall state that any party may file objections in writing with the Clerk of the Orphans' Court at any time prior to the date and time fixed for confirmation, and that if no objection is filed, the Account and Statement of Proposed Distribution will be confirmed absolutely.

(b) In addition to notices otherwise required by law or statute, the surety on the bond of any fiduciary seeking discharge shall be given written notice of the filing of the petition and of the date and time for presentation for Final Decree, by certified or registered mail, return receipt requested, at least ten days prior to the date scheduled for discharge. In lieu of such notice, a written waiver of notice may be filed. The notice shall state that the surety may file objections in writing with the Clerk of the Orphans' Court at any time prior to the time fixed for Final Decree, and that if no objection is filed, a Final Decree shall be made as of course.

(c) Prior to the date for the call of the account for confirmation, the accountant, or counsel, shall file with the Court a return of notice as prescribed in Rule 5.4.1. hereof, in form approved by the Court.

(d) If it shall appear that timely and proper notice has not been given to all parties entitled to notice or that the requisite affidavit of notice has not been filed, or that all costs have not been paid, no order of confirmation or discharge will then be made and in lieu thereof the procedure shall be as follows:

(1) If the irregularity is remedied within twenty (20) days, the Clerk shall represent the matter to the Motions Judge in Chambers for confirmation or discharge order, provided at least ten (10) days have elapsed after notice

was given to any party and provided that no objection, exception or answer has been filed meanwhile. If any such objection, exception or answer has been filed, the provisions of Rule 6.4.1.(b) shall apply.

(2) If the irregularity has not been so remedied within twenty (20) days, the time for confirmation or for discharge order shall be as of course extended until the next regular scheduled session for confirmation and discharge, and re-advertisement and re-notification of all parties shall be required, unless the fiduciary makes written application to the Court and obtains special relief for cause shown.

(3) In any case now pending or hereafter arising in which an account, statement of proposed distribution, or discharge petition has been filed but remains unconfirmed for unremedied procedural defect, the Clerk may file a petition with the Court stating the essential facts and requesting issuance of a rule to show cause why an order denying confirmation or dismissing the discharge petition should not be made. A copy of such petition shall be furnished by mail to the fiduciary and his or her counsel, and to each party entitled to receive notice and the case shall be placed on the argument schedule for hearing and argument *sec reg.*

(e) The Clerk shall give notice of all accounts filed and of the time and place of the call of the Confirmation List. The notice shall be published once a week during two (2) consecutive weeks immediately before the day on which the Accounts, with accompanying Statement of Proposed Distribution, shall be presented for confirmation in the legal publication designated by these rules and in one daily newspaper of general circulation published within Somerset County, and the Clerk shall also post copies of the Confirmation List in his/her office.

(f) The form of advertisement of Accounts and Statements of Proposed Distribution that have been filed for confirmation by the Court shall be as follows:

*NOTICE OF CONFIRMATION OF FIDUCIARIES
ACCOUNTS*

To all claimants, beneficiaries, heirs, next-of-kin, and all other parties in interest:

NOTICE is hereby given that the following named fiduciaries of the respective estates designated below have filed their Accounts and Statements of Proposed Distribution in the office of the Register of Wills in and for the County of Somerset, Pennsylvania, and the same will be presented to the Orphans' Court Division, Courtroom No. _____, Somerset County Courthouse, Somerset, Pennsylvania, on _____, the _____ day of _____, 19 ____ at ____ .m. for confirmation. All objections must be filed in writing in the office of the Clerk of Orphans' Court Division, Court of Common Pleas, Somerset, Pennsylvania, prior to the foregoing stated date and time:

ESTATE	FIDUCIARY	ATTORNEY
X	X	X

Clerk of the Orphans' Court

Som. O.C.R. 6.4.1. Accounts. Time for Filing.

(a) The court will regularly convene for confirmation of Accounts and Statements of Proposed Distribution, and for Final Decrees on Petitions for Discharge of Fiduciaries, at 9:30 a.m. on the second Monday of each second or even-numbered month. If such regular session is contin-

ued or falls upon a holiday, presentation shall be made on the next court day. (See, also, Som. R.J.A. 1070).

(b) The Register of Wills/Clerk of Orphans' Court shall fix a filing deadline for each regular session and shall give notice thereof at least two (2) weeks prior to the deadline. The time interval between the deadline and the session shall be sufficient to enable the Register/Clerk to make publication as provided by law and Rules of Court. (See, also, Som. R.J.A. 1070).

(c) The Register of Wills/Clerk of Orphans' Court shall schedule for the next regular session all matters filed before the deadline for that session and shall make the required publication. The notices shall contain a statement that all objections must be filed in writing before the time fixed for confirmation, or final decree of discharge, as the case may be.

(See, also, Som. R.J.A. 1070).

Som. O.C.R. 6.6.1. Filing Fees and Costs.

All Accounts, Statements of Proposed Distribution and Petitions for Discharge presented for filing shall be accompanied by the requisite fees and advertising costs.

Som. O.C.R. 6.9.1. Accounts. Papers to be Submitted.

(a) *All Accounts.* Counsel for all fiduciaries shall submit:

(1) Copies of all agreements with respect to settlements and compromises;

(2) Accurate description of all real property to be awarded in kind described by metes and bounds in the manner appearing in the last deed of record, together with recital of title into the decedent; and

(3) a Statement of Proposed Distribution.

(b) *Accounts of Trustees.* Counsel for Trustees shall also submit:

(1) a waiver of an income accounting executed by all of the income beneficiaries, if the account does not contain a complete income accounting; and

(2) a Statement of Proposed Distribution.

(c) *Accounts of Guardians of the Estates of Minors.* Counsel for a Guardian of the estate of a minor shall also submit:

(1) where the former minor has attained the age of eighteen (18) years, his/her written stipulation setting forth that he/she attained the age of eighteen (18) years on a certain designated date; that he/she has examined the account and has found it correct; and that he/she has received the balance or balances shown in the account and requests that the guardian be discharged;

(2) where the former minor has attained the age of eighteen (18) years but has not executed the stipulation referred to in paragraph (c)(1) of this Rule, then in place thereof a Statement of Proposed Distribution shall be filed;

(3) where the minor is deceased, or has been adjudged an incapacitated person under the P.E.F. Code, or is an absentee or presumed decedent, or the guardian has resigned or has been removed, a Statement of Proposed Distribution shall be filed.

(d) *Accounts of Guardians of Estates of Incompetents/Incapacitated Persons.* Counsel for a Guardian of the Estate of an Incompetent/Incapacitated Person shall also submit a Statement of Proposed Distribution.

Som. O.C.R. 6.10.1. Objections. Form and Content.

(a) Objections to an account, inventory, and statement of proposed distribution shall be in writing; shall be numbered consecutively; shall be signed by the objector or his or her attorney; and where they contain allegations of fact, shall be properly verified in the same manner as a petition.

(b) Each objection shall be specific as to description and amount, shall raise but one issue of law or fact, and shall set forth briefly the reason or reasons in support thereof.

Som. O.C.R. 6.10.2. Objections. Time for Filing.

(a) Written objections to an account, inventory, a statement of proposed distribution may be filed as of course with the Clerk at any time prior to, or at, the call of the account for confirmation.

(b) No objections shall be made or filed except as provided in subparagraph (a) unless leave of Court is first obtained.

Som. O.C.R. 6.10.3. Objections. Service. Return.

A copy of objections to an account, inventory, or statement of proposed distribution shall be served upon the accountant and all other parties in interest or their attorney of record, immediately after the objections have been filed with the Clerk. Proof of such service shall be filed forthwith with the Clerk. Any unreasonable delay in serving objections shall constitute grounds for dismissal of the same by the Court.

Som. O.C.R. 6.10.5. Objections. Failure to Make, Effect.

Any question which can be and is not raised by objections conforming to these rules shall not thereafter be the subject of an exception to an order confirming an account or decreeing distribution.

Som. O.C.R. 6.11.1. Accounts. Confirmation.

All accounts on the advertised Confirmation List will be called for Confirmation on the day set for calling the List; but, in cases requiring the taking of considerable testimony or the hearing of argument on legal questions or in which objections have been filed, a special day for hearing will be fixed, only upon the filing of a scheduling praecipe pursuant to Som. R.C.P. 211.

Som. O.C.R. 6.11.2. Distribution Under Section 3534 Of P.E.F. Code.

(a) Where at the time of distribution of the estate the personal representative or a distributee requests the Court to divide, partition, and allot the real estate or to direct a sale thereof, an interlocutory decree shall be entered fixing a day certain, not less than twenty (20) days from the date of the interlocutory decree, for hearing; the interlocutory decree to be entered shall be in the form of a notice to all parties in interest that on the day so fixed for hearing the Court will hear the contentions of the parties in interest with respect to:

(1) whether the real estate can be divided among less than all of the parties in interest without prejudice to or spoiling the whole and if so, how; and

(2) whether the Court should direct the personal representative to sell at a sale confined to the distributees or at a private or public sale not so confined.

(b) A copy of the interlocutory decree, duly certified, shall be served by certified or registered mail, by the personal representative, upon all parties in interest, not

less than ten (10) days before the return day fixed in the decree; proof of service of notice, in the form of return receipts, to be filed upon the return day.

Som. O.C.R. 6.11.3. Settlement of Small Estates. Contents of Petition.

(a) *Contents of Petition.* A petition for the settlement of small estates under Section 3102 of the P.E.F. Code shall set forth:

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

(2) the petitioner's name and address and his/her relationship to the decedent;

(3) if the petitioner is the surviving spouse, the date and place of marriage to the decedent;

(4) whether the decedent died testate or intestate;

(5) the names, relationship, and interest of all persons entitled to share in the decedent's estate under the Will, if any and the names, relationship and interest, if any, intestate heirs, stating who are minors, incapacitated persons, or decedents, with the names of their fiduciaries, if any, and whether any of them received or retained any property of the decedent by payment of wages, salary or any accrued pension under Section 3101 of the P.E.F. Code or otherwise;

(6) where a claim for family exemption is included, a statement that claimant formed a part of the decedent's household at the date of death and, if the claimant is the surviving spouse, that he or she has not forfeited the right to claim the family exemption;

(7) an itemized statement of the gross personal estate to be distributed and the fair value of each item other than cash, such value to be that given in the inventory filed, and if one was filed, then the fair value, if not readily ascertainable, shall be fixed by two appraisers whose affidavits of value shall be attached to the petition;

(8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;

(9) the names of all unpaid claimants of whom the petitioner has notice, the nature and amount of each claim, and whether such claims are admitted;

(10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register of Wills, the amount of any inheritance tax assessed, and the date of payment thereof; or the reasons why no such schedule was filed; and

(11) a statement that ten (10) days written notice of intention to present the petition has been given to every beneficiary, heir, or unpaid claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown.

(b) *Exhibits.* The following exhibits shall be attached to the petition:

(1) a copy of the decedent's Will;

(2) the consents of unpaid beneficiaries, heirs, and claimants; and

(3) the inheritance tax voucher, or in lieu thereof a statement from the inheritance tax department that no tax is due.

EXCEPTIONS

Som. O.C.R. 7.1.1. Exceptions. Form and Contents.

(a) No exceptions shall be filed to orders or decrees entered in proceedings unless the right to except thereto is expressly conferred by Act of Assembly, by general rule, or by special order; and all decrees other than those to which exceptions are so allowed to be taken are FINAL.

(b) Exceptions to findings of fact and conclusions of law contained in adjudications, orders and decrees shall be in writing, shall be numbered consecutively, and shall be signed by the exceptant or his attorney.

(c) Each exception shall be specific, shall raise but one question and shall set forth briefly the reason or reasons in support thereof.

(d) Questions which were the proper subject of objections to accounts, inventory, or statements of proposed distribution and were not raised when the account was called for confirmation, or questions which might properly have been raised by an answer to or during a hearing on a petition, shall not be subject of exceptions, and if so made shall be subject to dismissal.

Som. O.C.R. 7.1.2. Exceptions. Time for Filing.

Except as otherwise provided, exceptions shall be filed as of course with the Clerk within ten (10) days from service of a copy of the adjudication, order, or decree complained of, and a true and correct copy of the exceptions served upon all parties in interest, or their counsel of record, who shall have ten (10) days to respond. Proof of service as aforesaid shall be filed with the Clerk prior to any disposition of the exceptions.

Som. O.C.R. 7.1.3. Exceptions. Partial Distribution.

When the matters which are the subject of an adjudication, schedule of distribution, or the report of an auditor or master, are so separate and distinct that an exception to any one or more, whether sustained or dismissed, cannot affect the remainder, and the accountant will not be prejudiced by the distribution of such remainder, confirmation of the adjudication, schedule of distribution, or report, shall not be suspended, except as to those matters to which exceptions have been filed; distribution may proceed as to the remainder, and any party from whom such distribution has been withheld may petition the Court to order distribution.

AUDITORS AND MASTERS

Som. O.C.R. 8.1.1. Appointment.

(a) The Court, on its own motion, or upon petition of the accountant, or of any other party in interest, may appoint an Auditor or Master to assist the Court in the audit of an account or the disposition of an issue of fact in a matter.

(b) Each party in interest shall deposit into the Office of the Clerk an advance payment on account of fees and costs in an amount to be fixed by the Court.

Som. O.C.R. 8.1.2. Notice of Hearing. Hearings.

(a) The Clerk shall give written notice of an Auditor's or Master's appointment to all counsel of record and all interested parties not represented by counsel known to the Clerk.

(b) Notice of the hearings shall be given by the Auditor or Master.

(c) The hearing shall be held in an appropriate room at the Somerset County Courthouse at a time and place indicated and not later than forty-five (45) days after the

Auditor's or Master's appointment and shall be extended only upon application to the Court for good cause shown.

Som. O.C.R. 8.5.1. Transcript of Testimony.

(a) Testimony given at an Auditor's or Master's hearing shall be stenographically recorded, unless otherwise ordered by the Court upon application by a party, or the Auditor or Master.

(b) The transcript of testimony taken before an Auditor or Master shall be filed with the report.

(c) Fees may be taxed as costs and the Auditor or Master shall recommend to the Court that the stenographer's fees follow the award as costs in appropriate cases.

Som. O.C.R. 8.6.1. Notice of Intention to File. Proof of Notice.

(a) An Auditor or Master shall give ten (10) days notice in writing to all parties in interest or their counsel of record of intention to file the report with the Clerk on a day certain and shall file proof of the giving of notice with the Clerk. A copy of said report together with the proposed Decree of Confirmation Nisi shall accompany the notice to each party in interest or counsel of record. A copy thereof together with the transcript of testimony shall be made available in the office of the Clerk for inspection during the notice period.

(b) The Auditor or Master shall file the original Report and proposed Decree with the Clerk upon expiration of the ten (10) day notice period.

Som. O.C.R. 8.7.1. Report of Auditor or Master. Disposition. Procedure.

(a) Subject to the provisions of Som. O.C.R. 8.8.1.(b), the report of an Auditor or Master shall be transmitted to the Court for Confirmation Nisi upon filing with the Clerk and shall become FINAL unless written exceptions thereto are filed within ten (10) days after the date of filing the report.

(b) *Exceptions.* Any party in interest shall have the right to file exceptions to the report of an Auditor or Master within ten (10) days after the filing and Confirmation Nisi thereof.

Som. O.C.R. 8.8.1. Compensation and Security.

(a) Any Auditor or Master appointed by the Court under these rules shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the Auditor or Master shall recommend and the Court shall direct.

(b) A motion to the Court to require additional security for payment of fees and expenses may be filed with the Clerk at any time by the Auditor or Master, Accountant or any party in interest. The report shall not be filed with the Clerk until all fees and expenses have been paid.

OFFICIAL EXAMINERS

Som. O.C.R. 9.1.1. Official Examiners.

Whenever an examination of assets is ordered in connection with an accounting, the special order of appointment will be included in the adjudication of the account, and the examiner shall make the examination after the schedule of distribution has been filed and approved so that the assets distributable to fiduciaries, which are the assets to be examined, will have been determined.

Som. O.C.R. 9.1.2. Official Examiners. Compensation.

Each estate shall be liable for the compensation of the examiner and the amount of such compensation shall be fixed by special Order of the Court.

REGISTER OF WILLS

Som. O.C.R. 10.1.1. Form of Appeal from Register of Wills' Decision.

When an appeal is taken from a judicial act or proceeding before the Register of Wills, the appellant shall do so by petition which sets forth:

(1) the nature of the proceedings before the Register of Wills;

(2) the reasons for the appeal;

(3) the names and addresses of all parties in interest, including those who have not been made parties to the record and their counsel; and

(4) A request that a Citation be issued directed to all parties in interest including those not represented on the record to show cause why the Appeal should not be sustained and the judicial act or proceeding complained of be set aside and reversed.

Upon the issuance of the Citation, the Register of Wills shall certify the record.

Som. O.C.R. 10.2.1. Inheritance Tax Appeals.

Practice and procedure in inheritance tax appeals shall be in accordance with the Inheritance and Estate Tax Act, 71 P. S. § 9101 et seq.

SPECIAL PETITIONS

Som. O.C.R. 12.1.1. Family Exemption. Appraisal.

(a) Where the exemption is claimed from personal property included in the inventory filed, the value of each item so claimed shall be that given in the inventory filed.

(b) Where the exemption is claimed from personal property forming part of a Small Estate and no inventory has been filed, the value of each item claimed shall be the fair value thereof.

(c) Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed;

(1) in money;

(2) from personal property and the gross value of the estate does not exceed the amount of the exemption;

(3) in real or personal property at valuations agreed upon by all parties in interest.

Som. O.C.R. 12.1.2. Family Exemption. Allowance.

(a) *Personal Property.* If the petitioner requests the exemption prior to confirmation, the petitioner shall file a petition with the Clerk and thereupon shall give ten (10) days written notice of intention to request the exemption on a stated Citation Returnable date to the personal representative, if any, and to all persons adversely affected thereby who do not join the prayer of the petition. In the absence of any objection, on presentation of a verified return of notice on the stated citation returnable date, an appropriate decree may be entered. Where all parties adversely affected have joined in the prayer of the petition and ten days prior notice of the filing of the petition has been given to the personal representative, if any, the petitioner may present the petition to the Court on a citation returnable date, whereupon, in the absence

of objections and on presentation of a verified return of notice upon the personal representation, an appropriate decree may be entered.

(b) *Real Property.* If the Petitioner requests the exemption prior to the Confirmation, the appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed, and written notice of such filing shall be given to the personal representative and to the next of kin, or, if there be neither personal representative nor next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that confirmation of the appraisal and the setting apart of the real estate to the petitioner will be requested and may be allowed by the Court at a stated Citation Returnable date, of which not less than ten (10) days notice is given therein, unless objections are filed. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court may direct.

Som. O.C.R. 12.1.3. Family Exemption. Risk Distribution Prior to Confirmation.

When the personal representative at his or her own risk delivers assets of the estate in satisfaction of the exemption he shall set forth the same as a disbursement in the account under the subheading "Family Exemption." Such delivery may be the subject of objection by any claimant or party in interest.

Som. O.C.R. 12.2.1. Allowance to Surviving Spouse of Intestate. Appraisal.

If an appraisal of property is needed, the manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be by special order in each case.

Som. O.C.R. 12.3.1. Election of Surviving Spouse. Filing of Petition for Extension of Time.

(a) A petition for the extension of time in which the surviving spouse may file an Election to Take Against the Will shall include the requirements for a petition under Pa.O.C. Rule 12.3(a) and the facts relied upon to justify an extension of time in which to file the election.

(b) The petitioner shall file the petition with the Clerk and thereafter give ten (10) days written notice of intention to request the extension at a stated citation returnable day to all persons adversely affected thereby who do not join the prayer of the petition.

(c) In the absence of objection, on the presentation of an appropriate motion and verified return of notice at the citation returnable day designated in the petition, an appropriate decree may be entered.

Som. O.C.R. 12.5.1. Appointment of Guardian for Minor. Consents Required.

(a) *Consent of Parents or Person in Loco Parentis.* Written consent of the parents or surviving parent of the minor to the appointment of a guardian of the estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or of the superintendent or other official in charge of the institution having custody of the minor. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the petition as the Court may direct.

(b) *Consent of Guardian. Individual.* When the proposed guardian is an individual, written consent to act as such shall contain the following:

- (1) the individual's business, and domicile;
- (2) a statement that the individual is a citizen of the United States, able to speak, read, and write the English language; and
- (3) a statement that the individual is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a fiduciary; and
- (4) a statement that the individual has no interest adverse to the minor.

(c) *Consent of Guardian. Corporate.* When the proposed guardian is a corporation authorized to act as fiduciary, its written consent to act as such shall contain a statement that it is not the fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary and that it has no interest adverse to the minor.

NOTE: The foregoing rules relating to the appointment of a guardian of a minor's estate are subject to the powers given to persons to appoint a guardian by Will, by inter vivos trust agreement, etc. (See Section 2519 of the P.E.F. Code.)

Som. O.C.R. 12.5.2. Guardians. Minors. Bond. Restricted Account.

(a) If funds are placed in a restricted account in accordance with the Probate, Estates and Fiduciaries Code, the decree of the Court may contain a further provision that if no withdrawals are made from the account prior to the minor reaching his majority, the institution may pay over the funds when the minor attains age eighteen (18) years, upon the joint requests of the guardian and the former minor without further Order of the Court.

(b) A guardian who has received assets in addition to the deposit or investment made in accordance with this rule, shall account as if the restricted account did not form part of the estate.

Som. O.C.R. 12.5.4. Minor's Estate. Allowances. Approval of Court.

(a) *Mandatory Approval by the Court.* No payments shall be made by the guardian of the estate, unless approval by the Court is first obtained, when payment is to be made from principal, or, when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

(b) *Contents of Petition. Allowances for Maintenance, Support, or Education.* A petition for an allowance from a minor's estate, for the maintenance, support, or education of the minor, the minor's spouse or children, shall be presented by the guardian of the estate and shall set forth:

- (1) the manner of the guardian's appointment and the date thereof; and, where appropriate, the terms of the instrument creating the estate;
- (2) the age and residence of the minor; whether his or her parents are living; the name of the person with whom he or she resides; and, if married, the name and age of his or her spouse and children;
- (3) the value of the minor's estate, real and personal, and the net annual income;
- (4) the circumstances of the minor, whether employed or attending school; if the minor's parents are living, the reason why the parents cannot support and educate the minor without resorting to the minor's estate;

(5) the date and amount of any previous allowances by the Court;

(6) a recommendation to the Court of the amount of the allowance the petitioner believes should be decreed; and

(7) if the petition is presented by someone other than the guardian of the estate, that demand was made upon the guardian to act, and the reason, if any, given for failure to do so.

(c) *Contents of Petition. Joinder.* Attached to the petition shall be the joinder of the minor, if over fourteen years of age, and of the parents or surviving parent; or, if both parents are deceased, the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor.

(d) *Allowance for More than One Minor.* A single petition may be used for an order of allowance for care, maintenance and education of more than one minor or for funeral expenses of a deceased child, spouse, or indigent parent where the minors are members of the same family, have the same guardian, and substantially the same reasons in support of the petition apply to all of the minors.

(e) *Allowance From Sequestered Account.* Whenever a sequestered deposit has been created for the benefit of a minor, whether or not a guardian has been named, allowances therefrom may be upon petition of anyone interested in the welfare of the minor. Such a petition shall conform as nearly as may be to the requirements of these rules and shall, in addition, set forth the interest of the petitioner in the matter.

Som. O.C.R. 12.9.1. Public Sale of Real Property. Contents of Petition.

(a) *Personal Representative.* A petition by a personal representative to sell real property at public sale, under the P.E.F. Code, shall set forth in separate paragraphs:

(1) name, residence, and date of death of the decedent; whether he or she died testate or intestate, and the date of grant of letters;

(2) that the personal representative is not otherwise authorized to sell by the P.E.F. Code, or that the personal representative is not authorized or is denied the power to do so by the Will; or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(3) the total value of the personal estate and all of the real property, respectively, as shown in the inventory filed, including the value at which the real property to be sold was included therein;

(4) a full description of the real property to be sold, improvements thereon, by whom it is occupied;

(5) if the personal representative entered bond with the Clerk, the amount of such bond and the name of the surety;

(6) the names of all parties in interest, as heirs, devisees, legatees, or lienholders, who will be affected by the granting of the petition and the interest of each; whether any of them are minors, incompetents/incapacitated persons, or deceased, and if so, the names and the record of the appointment of their fiduciaries;

(7) the liens and charges, if any, of record against the property to be sold;

(8) the terms of the proposed sale; and

(9) any additional facts which may aid the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) *Trustee.* A petition by a trustee to sell real property at public sale under the P.E.F. Code shall set forth in separate paragraphs:

(1) a statement, in substance, of the provisions of the instrument creating the trust, particularly the powers, if any, therein given to the trustee in respect of real property;

(2) a copy of the instrument creating the trust, in the form of an exhibit, or if too lengthy, the relevant portions;

(3) the total value of the personal property and the real property, respectively, forming the corpus of the trust;

(4) the amount of the bond, if any, filed;

(5) the names of all parties interested as beneficiaries, including life tenants and remaindermen, who will be affected by the granting of the petition, whether any of them are minors, incompetents/incapacitated persons, or deceased, and if so, the names and the record of appointment of their fiduciaries;

(6) a full description of the real property proposed to be sold, the improvements thereon, by whom it is occupied;

(7) the reason the sale of the real property involved is necessary or desirable for the proper administration of the trust estate;

(8) the liens and charges, if any of record against the real property to be sold;

(9) that the trustee is not otherwise authorized to sell by the P.E.F. Code, or is denied the power by the trust instrument; or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and

(10) the terms of the proposed sale.

(c) *Guardian. Incapacitated Person's Estate.* A petition by a guardian of an incapacitated person's estate to sell real property at public sale under the P.E.F. Code shall set forth in separate paragraphs:

(1) the name, age, marital status and domicile of the incapacitated person; the date of appointment of the guardian and by what Court; and the amount of bond filed;

(2) the total value of the personal estate and all of the real property, respectively, as shown in the inventory filed;

(3) a full description of the real property proposed to be sold, the improvements thereon, by whom occupied;

(4) the names of the parties in interest as heirs and/or next of kin;

(5) why the sale of the real property involved is necessary or desirable for the administration of the incapacitated person's estate;

(6) the liens and charges, if any, of record against the property to be sold; and

(7) the terms of the proposed sale.

(d) *Guardian. Minor's Estate.* A petition by a guardian of a minor's estate to sell real property at public sale under the P.E.F. Code shall set forth in separate paragraphs:

(1) the name, age, and domicile of the minor; the date of appointment of the guardian and the amount of the bond filed;

(2) the total value of the personal estate and all of the real property, respectively, as shown in the inventory, if filed, otherwise the value of each as received by the guardian and how and from whom received;

(3) a full description of the real property proposed to be sold, the improvements thereon, by whom occupied, and how title was acquired by the minor;

(4) the name and relationship of the person with whom the minor lives;

(5) where the proposed sale is of an undivided interest, whether the owners of the other undivided interests join in the proposed sale;

(6) why the sale of the real property involved is necessary or desirable for the administration or distribution of the minor's estate and whether the proposed sale is for the best interest of the minor's estate;

(7) the lien and charges, if any, of record against the real property to be sold; and

(8) the terms of the proposed sale.

Som. O.C.R. 12.9.2. Notice of Public Sale of Real Property.

(a) Public notice of any proposed sale under Order of Court shall be given by advertisement one (1) time in at least one newspaper of general circulation published in the County of Somerset and in the legal publication designated by these rules, and shall be placed under a general heading as follows:

COURT OF COMMON PLEAS OF SOMERSET COUNTY
ORPHANS' COURT DIVISION
PUBLIC SALE OF REAL ESTATE

IN PURSUANCE OF AN ORDER OF THE ORPHANS' COURT DIVISION, THE REAL ESTATE INDICATED BELOW WILL BE OFFERED FOR SALE AT THE TIME AND PLACE STATED. THE TERMS AND CONDITIONS OF SALE ARE OF RECORD IN THE OFFICE OF THE CLERK OF THE ORPHANS' COURT AT THE SOMERSET COUNTY COURTHOUSE, SOMERSET, PENNSYLVANIA, WHERE THEY MAY BE EXAMINED BY THE PARTIES INTERESTED.

(b) the advertisement shall give the name of the decedent, trust beneficiary, minor, or incapacitated person, the municipality in which he or she resided, the place in which lies the real estate to be offered for sale, an abridged description of the real estate (including, where possible, the street and house number, and block and lot number), the improvements thereon erected, the place, date, and time of sale, the name and title of the personal representative directed to make the sale, and the name of the attorney representing the fiduciary.

(c) At least ten (10) days written notice shall be given to all non-joining parties interested (1) as heirs, devisees, legatees, or lien holders, where the property to be sold is that of a decedent's estate; or (2) as heirs and/or the next of kin, where the property to be sold is that of an incapacitated person; or (3) as beneficiaries, including life tenant and remaindermen, of the trust estate where the sale is to be by a trustee; or (4) as the parents or other person maintaining the minor where the property to be sold is that of a minor; or (5) as claimants.

The written notice herein provided for shall be by personal service or by any form of mail requiring a receipt signed by the person to be notified, mailed to the last known address of the person to be notified.

Som. O.C.R. 12.9.3. Public Sale of Real Property. Return of Sale.

All returns of sale of real estate sold at public sale shall be in writing and sworn to and shall include:

(a) proofs of publication of the notice required by Som. O.C.R. 12.9.2.(a);

(b) when and to whom written notice was given under Som. O.C.R. 12.9.2.(c); and

(c) the name of the purchaser and the purchase price.

Som. O.C.R. 12.9.4. Public Sale of Real Property. Decree.

Upon return of sale under Som. O.C.R. 12.9.3, the Court may enter a Decree of Confirmation Nisi and fix the amount of security or additional security which the personal representative, trustee, or guardian shall be required to enter or the Court may excuse the fiduciary from entering additional security; and the Decree of Confirmation Nisi so entered is FINAL unless exceptions are filed within ten (10) days of the date signed.

Som. O.C.R. 12.10.1. Private Sale of Real Property.

A petition of a fiduciary to sell real property at private sale shall also conform as closely as practicable to the requirements of Som. O.C.R. 12.9 with regard to a petition to sell real property at public sale by the same fiduciary and shall also be supported by the affidavits required under Pa.O.C. Rule 12.10(b).

Som. O.C.R. 12.10.2. Private Sale of Real Property. Public Notice of Sale. Form of Notice.

Public notice of any proposed private sale under Order of Court shall be given by advertisement one (1) time in at least one newspaper of general circulation published in the County of Somerset and in the legal publication designated by these rules; unless excused by Order of Court, notice shall also be given by personal service or registered mail to the last known address of all non-joining interested parties as specified in Som. O.C.R. 12.9.2(c); and shall be in the following form:

COURT OF COMMON PLEAS OF SOMERSET COUNTY
ORPHANS' COURT DIVISION
PRIVATE SALE OF REAL ESTATE

In the matter of the Estate of (deceased—a minor—incapacitated person). To the heirs, legatees, devisees, next of kin, and all other persons interested in said estate:

Notice is hereby given that _____

(personal representative—trustee—guardian) has filed in the office of the Clerk of the said Court a petition praying for an order of sale of the real estate of said (decedent—minor—incapacitated person) situate _____

_____ at private sale to _____ for the sum of \$ _____ for the purposes in the petition set forth. If no exceptions are filed thereto or objections are made to granting the same, the Court will be asked to take action upon the petition on the _____ day of _____, 19____, at _____ a.m., at the Somerset County Courthouse, Somerset, Pennsylvania.

Attorney for Petitioner

Som. O.C.R. 12.10.4. Confirmation of Sale.

If no exceptions are filed, objections made, the Court may enter a decree:

(1) fixing the amount of security or additional security which the personal representative, trustee, or guardian shall be required to enter or excusing the fiduciary from entering additional security; and

(2) confirming the sale absolutely effective immediately or as of the time the required security or additional security, if any, is approved and filed.

Som. O.C.R. 12.11.1. Mortgage of Real Property.

A petition to mortgage real property by a personal representative, trustee, or guardian shall conform as closely as practicable to the requirements of Som. O.C.R. 12.10.1 with regard to a petition to sell real property at private sale by the same fiduciary.

Som. O.C.R. 12.11.2. Pledge, Lease, or Exchange of Real Property.

The practice and procedure governing petitions by a personal representative, trustee, or guardian to pledge, lease, or exchange, or to grant an option for the pledge, lease, or exchange of property under the P.E.F. Code, shall be governed by Som. O.C.R. 12.10.1, governing the private sale of real property by such fiduciary.

Som. O.C.R. 12.12.1. Inalienable Property. Public Sale.

(a) A petition to sell real property at public sale under Chapter 83 of the P.E.F. Code shall, in addition to other requirements of the statute and Supreme Court Orphans' Code Rules, set forth in separate paragraphs:

(1) How title was acquired, stating the date and place of probate of the Will or recording of the deed, as applicable;

(2) If presented by a guardian, the method, date and record of appointment, if any, or if none, identity of the petitioner stating the relationship of the petitioner to the person owning the property;

(3) A full description of the real property, its improvements, by whom it is occupied, its rental income, if any, and the liens and charges to which it is subject;

(4) The interest of the petitioner, if any;

(5) A recital and history of the trust, if any; the relevant provisions of the Will or deed pertaining to the real property to be sold; the interest of a minor, if any; and the names of other parties interested in the real estate and the nature of their interest;

(6) If for the benefit of a minor, the age of the minor, the names of the minor's next of kin and that notice has been given to them of the presentation of the petition;

(7) The names of all parties in interest, their addresses, the nature and extent of their interests, stating which, if any, are minors or incapacitated persons, and giving the names and record of appointment of their guardians, if any,

(8) That the purpose of the proceeding is to obtain a decree stating that the title transferred to the purchaser will be indefeasible by any person ascertained or unascertained, or by any class of persons mentioned in the petition or decree having a present or expectant interest in the premises, and unprejudiced by any error in the proceedings of the court;

(9) Sufficient facts to enable the court to determine whether the proposed sale will be to the interest and advantage of the parties, and whether the proposed sale may be made without prejudice to any trust, charity, or purpose for which the real property is held, and without violation of any laws which may confer an immunity or exemption from sale or alienation; and

(10) The names of any parties who do not voluntarily appear.

(b) The petitioner shall attach as exhibits the consents to the sale signed by those parties in interest who consent, and the notice which was given to those parties who do not consent or voluntarily appear.

(c) If all parties having an interest do not voluntarily appear as petitioners or respondents, petitioner shall request issuance of a citation directed to all parties who have not appeared.

(d) The practice and procedure with respect to notice, confirmation and entry of security shall conform to the appropriate provisions of the P.E.F. Code and Som. O.C.R. 12.9.2, 12.9.3 and 12.9.4.

Som. O.C.R. 12.12.3. Inalienable Property. Private Sale.

(a) A petition to sell real property at private sale under Chapter 83 of the P.E.F. Code, shall set forth in separate paragraphs:

(1) The information required under Som. O.C.R. 12.12.1.(a) and (b), to the extent applicable;

(2) The name and address of the proposed purchaser, the price to be paid; the terms of the proposed sale; and that the price offered is better than can be obtained at a public sale; and

(3) When the proposed sale is of an undivided interest, that the other parties in interest desire the sale to be made and are willing to join in the deed.

(b) In addition to exhibits referred to in Som. O.C.R. 12.12.1(b), the petition shall have attached affidavits of 2 real estate appraisers setting forth the information required by Pa.O.C.R. 12.10.(b).

(c) If all parties having an interest do not voluntarily appear as petitioners or respondents, petitioners shall request issuance of a citation directed to all parties who have not appeared.

(d) The court, in the decree approving or confirming the sale, will fix the amount of security which the fiduciary shall be required to enter.

Som. O.C.R. 12.12.4. Inalienable Property. Mortgage.

(a) *Contents of Petition.* A petition by a fiduciary to mortgage real property, under Chapter 83 of the P.E.F. Code, shall conform as closely as practicable to the requirements of Som. O.C.R. 12.9 with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed loan; and shall provide sufficient facts to enable the Court to determine whether the proposed loan should be approved.

(b) *Exhibits. Security.* The exhibits required by Som. O.C.R. 12.12.3.(b) shall be attached to the petition, with the proviso regarding consents, that if all parties having an interest do not voluntarily appear as petitioners or respondents, a citation will be granted directed to all parties who have not appeared, as provided by the P.E.F. Code. Security shall be fixed as provided by Rule 12.12.3.(d).

RULE 15—ADOPTIONS**Som. O.C.R. 15.1. Local Rules.**

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and to the extent not inconsistent therewith shall conform with the pertinent provisions of these rules or special order of the Orphans' Court, or, in the absence thereof, with the provisions of Pa.O.C. 15.

Som. O.C.R. 15.1.1. Local Practice and Procedure.

Practice and procedure with respect to all proceedings under the Adoption Act, 23 Pa.C.S.A. §§ 2101—2910, shall be as provided by this local Rule 15, and, also, in accordance with the provisions of Pa.O.C.R. 15, to the extent the latter is not inconsistent with the provisions of the current Adoption Act, 23 Pa.C.S.A. §§ 2101—2910 (the "Adoption Act").

Som. O.C.R. 15.1.2. Exhibits.

Appended to all petitions for voluntary relinquishment, involuntary termination and adoption shall be the following:

(a) A birth certificate or certificate of registration of birth of the subject child which contains the child's name, sex, date of birth and parents' names.

(1) Whenever a birth certificate has been filed with the Clerk in a companion proceeding, reference to the companion case term and number shall be sufficient.

(2) A notice of birth registration is not an acceptable substitute for a certified copy of a birth certificate or a certification of registration of birth.

(b) When required by the Court, certified copies of marriage licenses regarding the biological parent or parents of the subject child and the proposed adoptive parents, as proof of the following:

(1) The marital status of the biological mother at the birth of the subject child and for one year prior thereto.

(2) The marriage of the proposed adoptive parents to each other.

Som. O.C.R. 15.2.1. Voluntary Relinquishment to Agency.**(a) Petition.**

A Petition under section 2501 of the Adoption Act to relinquish parental rights and duties with respect to a child who has been in the care of an Agency shall be in a form approved by the court, and shall include the following allegations:

(1) The name, address, age, racial background and religious affiliation of each petitioner.

(2) The information required in subparagraph (1) as to any parent who is not a petitioner, or the reason why such information is unavailable.

(3) The marital status of the mother as of the time of the birth of the child and during one year prior thereto, and, if the mother was married, the name of her husband or husbands, and her maiden name.

(4) The name, age, date of birth, racial background, sex and religious affiliation of the child.

(5) The name and address of the Agency having care of the child.

(6) The date when the child was placed with the Agency and the circumstances surrounding the placement.

(7) When the child's parents are not married to each other, whether they intend to marry each other.

(8) The reason for seeking relinquishment.

(9) That each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in the petitioner's and the child's best interests.

(10) Whether either natural parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. § 501, et. seq.).

(b) Exhibits.

The petition shall have attached to it the following exhibits, in addition to those specified in Rule 15.1.2:

(1) The joinder of a parent who is not a petitioner, if obtainable.

(2) If the other parent is deceased, a certified copy of the death certificate.

(3) The joinder of the Agency having care of the child and its consent to accept custody of the child until such time as the child is adopted.

The joinder of the Agency shall be executed and acknowledged by an official authorized to do so, and proof of such authority shall be kept on file with the court (see Som. O.C.R. 15.8.1, *infra.*).

(4) A proposed decree in a form approved by the court.

(c) Disposition of Petition.

(1) The petition shall be filed with the Clerk, and a scheduling praecipe shall be filed in accordance with Som. R.J.A. 1090, with copy to the Court Administrator, who shall place the matter on the next available hearing list, unless otherwise directed by the court.

(2) Absent exceptional circumstances, or unless the other parent is deceased, the court will not entertain a petition by one parent where the rights of the other parent have not been previously terminated or cannot be terminated at the hearing.

(3) Information concerning any proposed adoption of the child who is the subject of the petition shall be made available to the court at the hearing.

(d) Notice and Hearing.

(1) If a parent has not relinquished his or her rights and duties in and to the child, or joined in the other parent's petition hereunder, then notice of the hearing, together with a copy of the petition, shall be served upon the non-petitioning/non-joining parent.

(2) Unless excused by the court, at or prior to the hearing, each petitioner and each person whose consent or joinder is attached to the petition shall be examined under oath at the hearing.

Som. O.C.R. 15.3.1. Voluntary Relinquishment to Adult Intending to Adopt Child.**(a) Petition.**

A Petition under section 2502 of the Adoption Act to relinquish parental rights with respect to a child who has been in the exclusive care of an adult or adults who have filed a report of Intention to Adopt shall be in a form approved by the Court, and shall include the allegations required under subparagraphs (1), (2), (3), (4), (7), (8), (9), and (10) of Som. O.C.R. 15.2.1.(a), and

(1) The date when the Report of Intention to Adopt was filed.

(2) The date when the child was placed with the adult or adults and the circumstances surrounding the placement.

(b) *Exhibits.*

The petition shall have attached to it the following exhibits, in addition to those specified in Rule 15.1.2:

(1) The joinder of a parent who is not a petitioner, if obtainable.

(2) If the other parent is deceased, a certified copy of the death certificate.

(3) The separate consent of the adult or adults to accept custody of the child.

(4) A proposed decree in a form approved by the Court.

(c) *Disposition of the Petition.*

(1) The petition shall be filed with the Clerk, and a scheduling praecipe shall be filed in accordance with Som. R.J.A. 1090, with copy to the Court Administrator, who shall place the matter on the next available hearing list, unless otherwise directed by the Court.

(2) Absent exceptional circumstances, or unless the other parent is deceased, the Court will not entertain a petition by one parent where the rights of the other parent have not been previously terminated or cannot be terminated at the hearing.

(3) Absent exceptional circumstances, a petition for voluntary relinquishment to an adult intending to adopt will not be entertained by the Court unless a petition for adoption under section 2701 of the Adoption Act with respect to the subject child has also been filed.

(d) *Notice and Hearing.*

(1) If a parent has not relinquished his or her right in the child or joined in the petition hereunder, then notice of the hearing on a parent's petition to voluntarily relinquish rights, together with a copy of the petition, shall be served upon such non-petitioning/non-joining parent.

(2) Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

Som. O.C.R. 15.3.2. Alternative Procedure for Relinquishment.

(a) *Petition to Confirm Consent.*

A petition under Section 2504(a) of the Adoption Act shall be in a form approved by the court, and shall include the following allegations:

(1) The name, address and standing of the petitioner or petitioners, and the date on which the report of intention to adopt and/or the petition for adoption was filed.

(2) The name, age, address and current marital status of the natural parent or parents.

(3) The name, sex, date of birth and the child proposed to be adopted, and the date on which the child was placed with the proposed adoptive parents.

(4) The date on which the petition or petitions for voluntary relinquishment were filed.

(5) The date of the execution of the consent or consents to the adoption by the natural parent or parents.

(6) That a period of forty (40) days has elapsed since the execution of the consent to the adoption and that the consenting parent has not filed or proceeded with a petition for voluntary relinquishment of parental rights as provided for in sections 2501 and 2502 of the Adoption Act.

(7) Whether either natural parent of the child is entitled to the benefits of the Soldiers and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. § 501, et seq.).

(b) *Exhibits to Petition to Confirm Consent.*

The petition shall have attached to it the following exhibits, in addition to those specified in Som. O.C.R. 15.1.2:

(1) The original consent of the natural parent in the form prescribed by section 2711(d)(1) and (2) of the Adoption Act.

(2) A proposed decree in a form approved by the court.

(c) *Petition for Termination of Parental Rights of Non-Consenting Putative Father.*

A petition under section 2504(c) of the Adoption Act shall be in a form approved by the court, and shall include the following allegations:

(1) The name, address and standing of the petitioner or petitioners, and the dates on which the report of intention to adopt and/or the petition for adoption was filed.

(2) The name, age, address and marital status of the biological parents as of the birth of the child and during one year prior thereto.

(3) The name, sex, date of birth of the proposed adoptee and the date on which the child was placed with the proposed adoptive parents.

(4) That the biological mother of the adoptee was unmarried at the child's birth.

(5) That the putative father has refused to execute a written consent to the adoption of the proposed adoptee and has not filed an acknowledgment of paternity.

(6) Whether the putative father is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. § 501, et seq.).

(d) *Exhibits to Petition for Termination of Parental Rights of Non-Consenting Putative Father.*

The petition shall have attached to it the following exhibits, in addition to those specified in Som. O.C.R. 15.1.2:

(1) A birth certificate of the proposed adoptee which indicates that no acknowledgment or claim of paternity has been filed.

(2) A proposed decree in a form approved by the Court.

(e) *Disposition of Petitions Under Section 2504.*

(1) The petition shall be filed with the Clerk, and a scheduling praecipe shall be filed in accordance with Som. R.J.A. 1090, with copy to the Court Administrator, who shall place the matter on the next available hearing list, unless otherwise directed by the court.

(2) Absent exceptional circumstances, the Court will not entertain a petition to confirm the consent of only one biological parent, unless the other parent is the petitioner or the spouse of a petitioner in an adoption pending in this court; or the other parent is a putative father who (i) has refused to execute a consent, and has not filed an acknowledgment of paternity, or (ii) is deceased.

(3) Absent exceptional circumstances, a petition to confirm consent will not be entertained by the court unless petition for adoption under section 2701 of the Adoption Act has been filed with this court.

(f) *Notice and Hearing.*

(1) Notice of the hearing on the petition to confirm consent, in the form prescribed by section 2513(b) of the Adoption Act, together with a copy of the petition omitting all references to the proposed adoptive parents, shall be served upon the natural parent or parents whose consent is sought to be confirmed, the other parent, a putative father whose rights are sought to be terminated, and to the parents or guardian of a consenting parent who has not reached 18 years of age.

(2) Each petitioner shall be examined under oath at the hearing.

Som. O.C.R. 15.4.1. Involuntary Termination of Parental Rights.

(a) *Petition.*

A petition for involuntary termination of parental rights under sections 2511 and 2512 of the Adoption Act shall be in the form approved by the court, and shall include the following allegations:

(1) The name and address of the petitioner and his or her standing.

(2) The name, sex, date of birth, racial background and religious affiliation of the child.

(3) The name, age, address, racial background and religious affiliation of the parent or parents of the child.

(4) The marital status of the mother as of the time of the birth of the child and during one year prior thereto and, if the mother was married during that time, the name of her husband or husbands, and her maiden name.

(5) The date when the child was placed in the care of the petitioner.

(6) Facts constituting grounds for the involuntary termination under section 2511 of the Adoption Act, and a reference to the applicable subsection or subsections.

(7) Whether either natural parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. § 501, et seq.).

(8) That the petitioner will assume custody of the child until such time as the child is adopted.

(b) *Exhibits.*

The petition shall have attached to it the following exhibits, in addition to those specified in Som. O.C.R. 15.1.2:

(1) The joinder of the agency having care of the child and its consent to accept custody of the child until such time as the child is adopted. The joinder shall satisfy the requirements of Som. O.C.R. 15.2.1(b)(3).

(2) A proposed decree in a form approved by the court.

(c) *Disposition of Petition.*

(1) The petition shall be filed with the Clerk and a scheduling praecipe shall be filed in accordance with Som. R.J.A. 1090, with copy to the Court Administrator and a copy thereof shall be served upon the respondent. This shall be in addition to the notice of hearing required by Rule 15.4.1(e).

(2) At the time when the petition is filed with the Clerk, the matter shall be placed on the next available hearing list by the Clerk. However, the matter shall not be heard before the time for filing responsive pleadings has elapsed (O.C. Rule 3.2). Notice thereof shall be given by the Clerk of counsel and by counsel to the respondent as required by Som. O.C.R. 15.4.1(e).

(3) Absent exceptional circumstances, or unless the other parent is deceased, the court will not entertain a petition for involuntary termination of parental rights filed by an agency or an adult intending to adopt where the parental rights of the other parent have not been previously terminated, or cannot be terminated at the hearing.

(4) If the court is satisfied that, after reasonable investigation, the identity of a natural parent is unknown, no notice under this rule will be necessary with respect to such parent.

(5) To establish a "reasonable investigation" a "Petition for Leave to Forego Involuntary Termination Proceedings Regarding the Unknown Parent of (name of child)" shall be presented to the Motions Judge and shall contain the following allegations:

(i) the circumstances surrounding the conception of the child including the approximate date and location;

(ii) all of the information regarding the unknown parent that is known by the other natural parent or petitioner; and

(iii) the efforts made by the identical natural parent or petitioner, by anyone acting on behalf of the identified parent, by petitioning adoptive parents and/or anyone acting on their behalf, to attempt to identify, locate, or contact the unknown natural parent based on the information provided in subsections (i) and (ii) above; or

(iv) the reasons why any of the above information cannot be provided.

(6) if a natural parent is not the petitioner there shall be attached to the petition as an exhibit:

(i) the consent and joinder of the identified natural parent;

(ii) a certified copy of the death certificate of the identified natural parent; or

(iii) the affidavit of the identified natural parent that the allegations in the petition are true and correct and that the identity and whereabouts of the other natural parent are unknown to the affiant.

(7) If the requirements of subparagraph (7) above cannot be satisfied, the petition shall contain an allegation explaining the reasons therefor.

(d) *Representation for Minors.*

(1) Counsel.

When a petition for involuntary termination is being contested by one or both parents, counsel for the petitioners shall file with the petition or present, to the Motions Judge, prior to the scheduled hearing, a motion for the appointment of counsel to represent the minor child or children, together with a proposed order in a form approved by the court.

(2) *Guardian Ad Litem.*

When the termination of the parental rights of a minor parent is sought, the court, if it finds that the minor

parent is not adequately represented, may appoint a guardian ad litem to represent the interests of the minor parent.

(e) *Notice and Hearing.*

(1) Notice of the hearing on the petition for involuntary termination of parental rights, in the form and manner prescribed by section 2513 of the Adoption Act, shall be served upon the following persons:

(i) the parent or parents whose rights are sought to be terminated; and

(ii) the parent or parents and the guardian ad litem, if any, of a natural parent who is under the age of 18 years.

(2) Each petitioner shall be examined under oath at the hearing unless excused by the court.

(3) The notice of hearing required in this rule shall be in addition to the requirement of service of the petition in accordance with Som. O.C.R. 15.4.1.(c)(1).

(f) *Decrees of Termination of Parental Rights; Form.*

When a petition for involuntary termination of parental rights is uncontested by the respondent, the court, after hearing, shall issue an order setting forth its findings regarding the grounds for involuntary termination of parental rights and either granting or denying the termination. All such decrees of termination of parental rights in uncontested matters shall be final orders.

Som. O.C.R. 15.8.1. Registration with the Court of Authorized Persons.

Any agency licensed by the Department of Public Welfare which proposes to accept custody of any child for purposes of relinquishment or adoption under these rules, shall file with the Clerk a copy of the resolution, certified by the secretary of the agency, setting forth the names and titles of all persons authorized to act or testify on behalf of the Agency in any proceeding before the court.

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