

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 7]

Amendment of Rule 702 of the Pennsylvania Rules of Judicial Administration; No. 198 Judicial Administration Doc. No. 1

Order

Per Curiam

And Now, this 6th day of November, 1998, Rule 702 of the Pennsylvania Rules of Judicial Administration is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 702 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 7. ASSIGNMENT OF JUDGES

ASSIGNMENT AND TRANSFER OF JUDGES

Rule 702. Divisional assignment of judges.

1. Each judge appointed or elected to fill a vacancy in a court of common pleas having [**one or**] more **than two** divisions shall be initially assigned by the president judge of the court to be a member of a division of the court. Unless previously approved by the Supreme Court, such assignment shall be temporary only until such approval has been received.

2. The president judge of a court of common pleas which consists of [**one or**] more **than two** divisions may make temporary assignments of judges from one division to another division of the court when required in order to expedite the business of the court. He shall not make any permanent re-assignment of a judge from one division to another division without the approval of the Supreme Court.

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[Pa.B. Doc. No. 98-1935. Filed for public inspection November 27, 1998, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 33]

Amendment of Canon 7B(2) of the Code of Judicial Conduct; No. 199 Judicial Administration Doc. No. 1

Order

Per Curiam

And Now, this 9th day of November, 1998, Canon 7B(2) of the Code of Judicial Conduct is amended to read as follows.

To the extent that notice of the proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Canon 7B(2) of the Code of Judicial Conduct is hereby found to be required in the interest of justice and the efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 33. CODE OF JUDICIAL CONDUCT

Canon 7. A judge should refrain from political activity inappropriate to his judicial office.

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B. Campaign conduct.

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(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than thirty days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, **and all fundraising activities in connection with such judicial campaign shall terminate no later than the last calendar day of the year in which the judicial election is held.** A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

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[Pa.B. Doc. No. 98-1936. Filed for public inspection November 27, 1998, 9:00 a.m.]

[207 PA. CODE CH. 51]

Amendment of Rule 15D(4) of the Rules Governing Standards of Conduct of District Justices; No. 117 Magisterial Docket; No. 1 Book 2

Order

Per Curiam

And Now, this 9th day of November, 1998, Rule 15D(4) of the Rules Governing Standards of Conduct of District Justices is amended to read as follows.

To the extent that notice of the proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 15D(4) is hereby found to be required in the interest of justice and the efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 51. STANDARDS OF CONDUCT OF DISTRICT JUSTICES

PENNSYLVANIA RULES FOR DISTRICT JUSTICES

Rule 15. Public Office and Political Activity.

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D. With respect to his campaign conduct, a district justice or a candidate for such office shall:

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(4) not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions, and all fundraising activities in connection with such campaign shall terminate no later than the last calendar day of the year in which the election is held. A candidate should not use or permit the use of a campaign contribution for the private benefit of himself or members of his family.

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[Pa.B. Doc. No. 98-1937. Filed for public inspection November 27, 1998, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Residential Placement Providers—Reporting Requirements

Family Court Division; Administrative Order #98-06 (Revises Administrative Order #82-01)

Effective immediately, all providers in institutional, group living, or foster residential placements for delinquent juveniles committed to said provider by the Juvenile Court shall file at least ten (10) days prior to any administrative review, review or discharge hearing:

(A) Progress Reports—At each three (3) month anniversary of a child's placement with said residential program. Said report to be filed with the Chief of Juvenile Branch, with copies to the assigned Probation Officer, District Attorney and Defense Counsel and shall delineate the social, behavioral, academic and vocational progress of said child. Where the placement involves additional special treatment components, including drug or alcohol treatment, sex offender treatment, psychiatric, retardation or learning disability therapy, said report shall also describe the child's course of treatment and progress. All incidents of normative or problematic behavior shall be delineated in the report.

Where the Court, pursuant to Department of Human Services regulations has set a five (5) month review date, a five (5) month report will be filed in lieu of a six (6) month report.

In all instances where there is an initial five (5) month administrative review, the child shall not be brought to Court, except by order of the Court, upon motion of District Attorney, Defense Counsel, Placement Institution, or Court itself. In that instance, said request being made at the date of the five (5) month administrative review hearing, the Court shall list the case no later than thirty (30) days, after the five (5) month review hearing for the child's appearance in Court. Following the administrative review hearing, the Court shall list the case four (4) months after the administrative review at which time the child may be brought down, if so ordered.

(B) Discharge or Transfer Reports—Upon any motion or recommendation for discharge (with or without jurisdictional restraint) or transfer to another institution or program or probation, provider shall file with the Chief of the Juvenile Branch with copies to the assigned Probation Officer, District Attorney and Defense Counsel, a comprehensive report delineating the program's entire experience with said child, specifically addressing social, behavioral, academic and vocational progress; and where appropriate the drug, alcohol, sex offender, psychiatric, retardation and/or learning disability therapy regarding the resident's progress therein. Any instances of problematic or normative behavior are to be detailed.

"Transfer to another institution or program" means any increase or reduction in the level of treatment, supervision or structure within the same agency or with any other provider.

Please note that a Court Order is required to bring a child to a hearing if the child is to be detained at the Youth Study Center or at a community based detention shelter. Whenever a child is brought down pursuant to a bring down on a Court Order for a hearing on the

discharge or transfer, a copy of the report must accompany the child if the child is to be detained at the Youth Study Center or community base shelter pending the hearing.

(C) *Passes, Work Release, Escape and Leaves*—Under the recently enacted Victims Bill of Rights, victims of feloniously assaultive crimes are entitled to be informed, whenever the assailant “is to be released on parole, furlough or any other form of supervised or unsupervised release.” Accordingly, all residential providers are hereby required to follow the Home Pass Protocol published by the Pennsylvania Juvenile Court Judges’ Commission. All notifications must comply with standards set forth in said protocol. The institution is required to file a supplemental notice of any failures to return, lateness in returning or any other normative or problematic behavior which occurs in or away from the agency after the commencement of the release program. Any cancellation of release shall be immediately reported to the District Attorney—686-4094 for communication to the victim.

(D) *A.W.O.L. and/or Violation of Law*

(1) Upon a committed child’s unauthorized leave from a residential placement or his/her failure to return from an authorized leave, the staff of said program shall immediately, in person or by telephone, report the child’s status to the Chief of the Juvenile Branch or his designate, the District Attorney’s Office, and the appropriate local police authority. During regular working hours 9 a.m. to 5 p.m., personal or telephone notification should be directed to the assigned probation officer or that probation officer’s supervisor. Telephone reporting after 4 p.m., holidays and weekends is to be directed to the Intake Interviewer on duty at 686-4818 or 686-4999, and the District Attorney’s Office 686-6303 and a written report of all such incidents is to be faxed to the Chief of the Juvenile Branch at (215) 686-4014 within twenty-four (24) hours of occurrence.

(2) Upon the commission of any incident which would be a crime, by or upon any juvenile resident, the staff of any residential program shall notify the Chief of the Juvenile Branch in writing within twenty-four (24) hours. This report does not obviate any responsibility to notify proper law enforcement agencies.

PAUL P. PANEPINTO,
Administrative Judge
Family Court Division

[Pa.B. Doc. No. 98-1938. Filed for public inspection November 27, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY Local Rules Relating to Divorce

Order

And Now this 3rd day of November 1998, the Bucks County Rules of Civil Procedure are amended as follows.

1. Rules 1920.13*(d), 1920.22*(c), 1920.33*(g), 1920.42*(c), *(d) and *(e), 1920.51*(f) and *(g), 1920.54*(e), 1920.55*(d), 1920.*63 and 1920.76*(a) are rescinded.

2. Rules 1920.33*(g), 1920.42(d)*(3), 1920.42*(f), 1920.51*(f) and *(g), 1920.55-3(c)*(1), 1920.*63 and 1930.5*(c) are promulgated:

Rule 1920.33*(g) Failure to File Pre-Hearing Statement.

1. Specific testimony or evidence may be excluded at the master’s hearing or at the hearing de novo when a party has failed to comply with Pa.R.C.P. 1920.33.

2. The deadline for filing pre-hearing statements is modifiable only on written agreement or on a finding of good cause.

Rule 1920.42(d)*(3) Proceedings Upon Filing of Counter-Affidavit.

When a counter-affidavit denies irretrievable breakdown of the marriage or two-year separation, either party may file a motion for record hearing before the permanent master on grounds for divorce.

Rule 1920.42*(f) Form of Divorce Decree.

1. The caption of the decree of divorce shall include the statutory grounds for the divorce.

2. The decree shall not retain jurisdiction of ancillary claims or convert spousal support to alimony pendente lite except in accordance with Bucks County Court Rule 1920.16*(a).

3. The decree shall incorporate a property settlement agreement only if one of the provisions of the agreement requests incorporation or if incorporation is requested in a separate written stipulation.

Rule 1920.51*(f) Permanent Masters.

1. All claims for divorce under Section 3301(a), (b) and (d)(1)(ii) of the Divorce Code, and all claims for annulment shall be heard by one of the permanent masters. The proceedings shall be conducted in accordance with Pa.R.C.P. 1920.55-2.

2. All claims for equitable division of marital property, counsel fees, costs and expenses and any aspect thereof shall be heard by one of the permanent masters. The proceedings shall be conducted in accordance with Pa.R.C.P. 1920.55-3.

Rule 1920.51*(g) Application for Hearing, Objections to Applications, Forms, Times.

1. An application for hearing by the master of related claims may be filed only after entry of an order approving grounds for divorce or annulment and after the moving party has complied with Pa.R.C.P. 1920.31(a)(1) and 1920.33(a), and with any orders entered pursuant to Bucks County Rule 1930.5*(c).

2. The application for hearing shall be substantially in the form set out in the Bucks County Rule 1920.74(c) and shall propose a deadline for filing of pre-hearing statements.

3. The application for hearing shall be stricken by the master for failure of the moving party to comply with Pa.R.C.P. 1920.31(a)(1) and 1920.33(a), and with any orders entered pursuant to Bucks County Rule 1930.5*(c). A motion to strike shall be substantially in the form set out in Bucks County Rule 1920.74(d), and shall be filed within 10 days of service of the application for hearing.

Rule 1920.55-3(c)*(1) Demand for Hearing De Novo, Withdrawal.

A written demand for a hearing de novo on claims for alimony, equitable distribution of marital property, coun-

sel fees, costs and expenses may not be withdrawn without leave of court unless the opposing party consents in writing to the withdrawal.

Rule 1920.*63 Discontinuance.

An action for divorce, annulment or equitable division of marital property may not be withdrawn or discontinued without leave of court or a written agreement of the parties filed of record.

Rule 1930.5*(c) Discovery.

The procedure for compelling compliance with R.C.P. 4001 et seq. shall be in accordance with Bucks County Rule 4019(g)(1)*(a) and *(b).

It is hereby *Ordered* that these changes shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

ISAAC S. GARB,
President Judge

[Pa.B. Doc. No. 98-1939. Filed for public inspection November 27, 1998, 9:00 a.m.]

ERIE COUNTY

Revision and Restatement of the Orphans' Court Rules

Order

And Now, this 10th day of November, 1998, the following revisions and amendments to the Rules designated as the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania are hereby Approved, Adopted and Promulgated as Rules of Court. These Rules shall become effective thirty (30) after publication in the *Pennsylvania Bulletin*.

JOHN A. BOZZA,
President Judge

Rule 1

Judges—Local Rules

1.2.1 The Business of the Court

(a) *Motion Court*. Unless otherwise ordered by the Court, Motion Court will be held every Monday through Thursday at 9:00 a.m.

(b) *Audit List*. Accounts are audited on the fourth Monday of each month during the year, except during the months of June and August. Should the Audit day fall on a holiday, the Audit date shall be on the next following business day.

1.2.2 Argument.

Cases requiring argument are heard at a time fixed by the Court.

1.2.3 Attorneys.

(a) *Attorney as Surety*. An attorney shall act as surety only by special Order.

(b) *Notice to Counsel*. Notice by or to attorneys shall be in writing, given to the attorney of record or to an employee of his office, and shall be considered notice to the party represented unless personal notice to the party is required.

(c) *Removal of Records*. No records shall be removed from the office of the Clerk without a written Order of Court. The Clerk shall report to the Court any failure to comply with the Order.

(d) *Appearance*. Any attorney representing a party in any proceeding in the Orphans' Court Division shall enter a written appearance with the clerk of the Orphans' Court which shall state the attorney's Pennsylvania Supreme Court Identification Number and an address within the Commonwealth at which papers may be served. Written notice of entry of appearance shall be given forthwith to all parties.

1.2.4 Sureties. Individual—Corporate

(a) *Individual Sureties*. Individuals proposed as sureties on bonds of fiduciaries shall file affidavits on the printed forms supplied by the Clerk. The affidavits and bond shall be filed for approval.

(b) *Bond Without Surety*. The Court may permit a party in interest to execute an individual bond, without surety upon such conditions as the Court requires.

(c) *Corporate Sureties*. Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in the Orphans' Court; provided, that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, is filed of record.

(d) *Duty of fiduciary*. It is the duty of the fiduciary to determine that its surety remains responsible and that any bond remains continuously in effect.

1.2.5 Certificates of Appointments. Fiduciaries.

The Clerk shall not issue a certificate of appointment of any fiduciary until the security, if any, ordered by the Court, has been filed, approved and entered.

1.2.6 Individual Fiduciaries. Assets and Investments.

(a) *Segregation and Designation of Assets*. Assets subject to the jurisdiction of the Court and held by individual fiduciaries shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such unless they are left in the name of the decedent, the incapacitated person, or the minor.

(b) *Small estates*. Where the cash assets of an estate are \$1,000.00, or less, the fiduciary may deposit such cash in the attorney's trustee account.

(c) *Deposit of Uninvested Funds*. All funds held uninvested shall be deposited in financial institutions, the deposit of which are insured by a Federal governmental insurance agency, in such manner as to guarantee that all such funds are fully insured, unless otherwise authorized by the Court.

1.2.7 Corporate Fiduciaries. Approval. Security.

(a) *In General*. Corporations having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court; provided that a current certificate evidencing the approval of the State Banking Department, or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers, is on file with the Clerk.

(b) *Period of Approval*. The approval granted by the Court under subparagraph (a) of this Rule shall be for a

period of one year and thereafter annually, subject; however, to compliance by the corporation with these Rules and with such other rules and regulations governing approval of continuance as the Court will, from time to time, promulgate.

(c) *Security*. A bond will not be required of an approved corporate fiduciary except when required by statute or for special cause shown.

1.2.8 Release of Fiduciary and Surety.

No fiduciary, bonding company or corporation that files its own bond, or individuals who become sureties on bonds, will be released from their liabilities on the bond until all of the requirements relative to the administration of the estate have been fulfilled. Any surety may be substituted by special Order of Court, but the old surety shall only be released after filing and confirmation of an account, unless excused from doing so by Order of Court.

1.2.9 Trusts Inter Vivos.

The Rules of Court applicable to testamentary trusts shall apply to trusts inter vivos.

1.2.10 Legal Periodical.

The *Erie County Legal Journal* is the legal periodical for the publication of legal notices in Erie County.

1.2.11 Return Days.

Return days shall be on such day as may be fixed by Order of Court unless otherwise provided by statute or Rule of the Supreme Court.

Rule 2

Construction and Application of Rules

2.3.1 Definitions.

The following words, when used in these Rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) "Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Court House is closed.

(b) "Common Pleas" means the Court of Common Pleas of Erie County.

(c) "Exceptions" shall mean written objections to a ruling of the Court.

(d) "Local Rule" shall mean the Erie County Orphans' Court Rules.

(e) "Objections" shall mean written objections to actions of a fiduciary.

(f) "PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code as found in 20 Pa.C.S.A. § 101, et seq., as shall be amended from time to time.

(g) "State Rule" shall mean the Pennsylvania Supreme Court Orphans' Court Rules.

Rule 3

Pleadings and Practice

3.2.1 Pleadings.

The Pleadings in matters before the Orphans' Court are limited to a petition, (including a petition for a citation or for declaratory relief), an answer (which may include new matter), a reply, preliminary objections and an answer to preliminary objections.

(a) *New Matter*. Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter".

(b) *Reply*. A reply shall be required when New Matter is set forth in the answer.

(c) *Preliminary Objections*.

(1) Preliminary objections are available to any party, but shall be limited to questions of:

(A) law;

(B) form; or

(C) jurisdiction.

(2) An answer to preliminary objections is limited to the averments of fact concerning jurisdiction set forth in the preliminary objections.

3.2.2 Disposition of Pleadings.

(a) *Failure to Answer*. If the respondent fails to file a timely answer, all averments of fact within the petition may be deemed by the Court to have been admitted.

(b) *Failure to Reply*. If the petitioner fails to file a reply to an answer which contains new matter, the averments of fact set forth under the new matter may be deemed admitted and the case will be at issue.

(c) *Failure to File an Answer to Preliminary Objections*. If the petitioner fails to file an answer to preliminary objections raising questions of jurisdiction, the averments of fact set forth in the preliminary objections may be deemed admitted and the case will be at issue on the preliminary objections.

3.4.1 Form. Additional Requirements.

(a) *Typing. Endorsements*. Every pleading shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number of counsel and, where practicable, typewritten and double-spaced or printed.

(b) *Notice to Plead*. Every pleading to which a response is required shall have endorsed thereon, or included therein as the first page thereof, in a conspicuous place, a notice to defend and notice to plead addressed specifically to each party from whom a response is required. The form as required by RCP 1018.1 and RCP 1361 (as said Rules may be in force or hereafter amended) shall be used.

(c) *Signature and Verification*. All pleadings shall be signed by the attorney and verified by at least one of the parties involved. If this is impracticable, they may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to do so shall be set forth.

(d) *Decree*. Every proposed decree shall bear the caption of the case and shall be attached to the petition.

(e) *Consents*. The petition shall recite that all necessary consents are attached or shall set forth the names of the persons who do not consent. The Court may direct that notice be given or that a citation be directed to persons who do not consent to show cause why the prayer of the petition shall not be granted.

(f) *Paper Size*. No paper or other document may be filed in the Register of Wills or Clerk of Orphans' Court Division other than paper 8 1/2" x 11" in size. The only exception to this Rule is the filing of a Will.

(g) *Cover Sheet*. All motions presented at motion Court shall include a completed motion Court cover sheet in the form required by the Court.

(h) *Notice Requirements Prior to Presentation at Motion Court.*¹ Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

(1) *Contents of Notice.* The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion and Order.

(2) *Certification of Notice.* The motion or petition must contain a certificate signed by counsel verifying that proper notice was given under this Rule.

(3) *Length of notice required.* Except where otherwise required under the Local Rules, the following notice shall be required:

(A) Two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office, or

(B) Five (5) full business days' notice must be given if notice is by mail.

(4) *Failure to give notice.* The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause is shown to the Court.

3.5.1 Service of Copies of Pleadings.

(a) *Pleadings.* A copy of every pleading filed in a case shall be promptly served upon counsel of record for all parties in interest; or, in the absence of counsel, upon the parties themselves.

(b) *Briefs.* All briefs shall be filed directly with the Clerk of the Court, with copies to the Judge and to all parties of record or their counsel of record.

3.6.1 Depositions, Discovery and Production of Documents.

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court.

(a) Leave to take depositions and/or to obtain discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.

(b) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.

3.6.2 Perpetuation of Testimony.

The procedure relating to perpetuation of testimony shall be governed by special Order of Court in every case.

3.7.1 Pre-trial Conference.

In any action the Court, of its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

- (a) The simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions or stipulations of fact and documents which will avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses; and

(e) Such other matters as may aid in the disposition of the action.

The Court may make an Order reciting the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such Order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

Rule 5

Notice

5.1.1 Method of Serving Notice. Public Sale of Real Property.

Notice of the public sale of real property shall be given:

(a) By advertisement once a week for three successive weeks in the *Erie County Legal Journal* and at least in one other newspaper of general circulation in Erie County; and

(b) By handbills, one of which shall be posted at a conspicuous place on the real property to be sold, and at least three of which shall be posted in three public places in the vicinity of such real property; and

(c) By personal notice, sent via registered or certified mail, to all parties in interest, of the time and place of the proposed sale, at least ten days prior to the time set for the sale of the property.

5.2.1 Method of Serving Notice. Person under Incapacity With No Fiduciary.

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

(a) Said person's spouse; or

(b) Next of kin; or

(c) The person with whom said person resides or by whom said person is maintained; or

(d) The superintendent or other official of the institution having custody of said person; or

(e) In such manner as the Court, by special Order, may direct.

5.2.2 Method of Serving Notice. Presumed Decedents and Unascertained Persons.

Notice to be given to an absentee, a presumed decedent, or to an unknown or unascertained person, shall be given in the manner provided by Act of Assembly, or, in the absence thereof, in such manner as the Court, by special Order, shall direct.

5.4.1 Return of Notice. Additional Requirements.

(a) *Copy of Notice to be Attached.* A copy of the notice required to be given shall be attached to the petition or return and shall set forth the date the notice was served.

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

(c) *Registered or Certified Mail.* Return of notice by registered or certified mail shall set forth the date and place of mailing and shall include the return receipt, or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowl-

¹ See also Rule 7 for additional notice requirements.

edge or cause to believe that such notice was not received by the person to be notified, he shall so state in the return. When a person resides in a foreign country, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

(d) *Publication.* Return of notice by publication shall consist of proofs of publication, together with affidavits of publication by the publisher or his agent.

5.4.2 Petitions for Approval or Confirmation of Public Sale.

Petitions for approval or confirmation by the Court of the public sale of real property shall be verified and shall set forth:

- (a) The notice as given as provided by Rule 5.4.1(a);
- (b) The price obtained; and
- (c) The name and address of the purchaser and an averment that the purchaser was the highest bidder.

5.6.1 Legatees, Devisees and Beneficiaries of Dispositive Instruments. Notice to Named Individuals.

In every proceeding involving a dispositive instrument requiring the filing of a Pennsylvania Inheritance Tax Return (including, inter alia, wills and inter-vivos trusts), the Fiduciary shall within three (3) months after the probate of the Will, or within six (6) months of the happening of the event giving rise to the disposition of any interest in any property, whichever shall first occur, notify all individuals and institutions named in said dispositive instrument of the probate or the happening of the event giving rise to the disposition of the interest. The notice shall be submitted by regular U. S. Mail and shall include the following:

- (a) In the case of a will²:
 - (1) The name of the decedent and date of death;
 - (2) The date that a Will has been probated and the location;
 - (3) Notification that the addressee has been named as a legatee or devisee in said will;
 - (4) The address where a copy of the will can be acquired, if desired.
- (b) In the case of a dispositive instrument other than a will:
 - (1) The name of the creator of the property interest;
 - (2) The nature of the property interest created;
 - (3) Notification that the addressee has been named as a beneficiary in said dispositive instrument and a copy of such instrument or a description of the beneficiary's interest under the terms of the instrument;
 - (4) The address where a copy of the dispositive instrument can be acquired, if desired.

Rule 6

Accounts and Distributions

6.1.1 Accounts. Form. Additional Requirements.

In addition to the requirements of State Rule 6.1, accounts shall meet the following requirements:

(a) *Form.* Except as herein provided, all accounts shall be in the form approved by the Pennsylvania Supreme

² The form provided by the Register of Wills at the time of Appointment of a Personal Representative may be used to meet the requirements of this section.

Court and known as the Uniform Fiduciary Accounting Standards. Should the account fail to comply with the said accounting standards, the Clerk shall notify the Accountant to immediately comply prior to twenty (20) days before the Audit Day. The corrected account shall be given to all parties in interest. A failure to correct the account shall result in the account being stricken.

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

(c) *Use of forms provided by Register of Wills.* Accounts may continue to be stated in conformity with and on forms provided by the Register of Wills.

6.1.2 Reporting Requirements for Sales and Purchases Between Estate and Accountant.

The account shall specifically describe and indicate the amount:

(a) Of the purchase price for all assets which have been purchased from the estate by the accountant, individually, as a fiduciary or in any other capacity; and

(b) Received for all assets sold to the estate which are owned by the accountant, individually, as a fiduciary or in any other capacity.

6.1.3 Execution and Verification of Account.

Every account filed with the Register or Clerk shall be signed by each accountant, unless special leave of Court is obtained, and shall be verified by at least one accountant. It must be sworn or affirmed:

(a) That the disbursements claimed have been made to the parties entitled thereto;

(b) That the account as stated is true and correct;

(c) That notice has been given to each unpaid creditor, whether or not payment is contested;

(d) In a decedent's estate, that four months have elapsed from the date of the first complete advertisement of the original grant of letters, unless the accountant has been directed by the Court to file an account prior to that time.

6.1.4 Receipts for Disbursements.

Disbursement receipts or canceled checks of five hundred dollars (\$500.00), or more, or reproduced copies of either, shall be presented with the account; except corporate fiduciaries in lieu thereof may file copies of their ledger sheets showing disbursements. In the case of inheritance taxes, bequests and distributive shares, all receipts or canceled checks or reproduced copies of either shall be filed with the account without regard to the amount thereof.

If counsel for the fiduciary certifies that a receipt or cancelled check executed by the distributee is not available despite good faith efforts to obtain same, a photocopy of the front of the check accompanied by evidence of payment by the bank shall be acceptable.

6.1.5 Small Estates.

Where an estate does not exceed in value the amount fixed by the PEF Code as a small estate, an account may be filed and confirmed in accordance with the applicable Statutory authority. Petitions for the Settlement of Small Estates must conform to the PEF Code, this Rule and Local Rules 7 and 12.0.1.

6.2.2 Accounts of Guardians of the Estates of Minors.

The guardian of the estate of a minor shall submit to the Court with the audit statement and account:

- (a) A statement of the manner and date of appointment of the guardian;
- (b) A statement that notice of the audit has been given to all known, unpaid claimants;
- (c) If a final account because the minor has attained majority, a statement, setting forth:
 - (1) the date the minor attained majority;
 - (2) that the former minor examined the account;
 - (3) that the former minor has received the money or benefit of the money for which credit is taken in the account;
 - (4) that the former minor approves the account and requests that it be confirmed;
 - (5) that, upon distribution to the former minor of the balance shown therein, subject to such additional credits as may be authorized by law and set forth in the adjudication, that the guardian shall be discharged; and
 - (d) If the minor is deceased, or has been adjudged an incapacitated person, a statement of proposed distribution to a duly appointed fiduciary.

6.3.1 Notice to Parties in Interest.

No account shall be confirmed unless:

- (a) The accountant has mailed or given to each distributee or the distributee's attorney of record, except where a specific legatee has been paid in full, a complete account and written notice of the filing thereof in accordance with Local Rule 7.1.2(b); and
- (b) The accountant has given notice to each unpaid creditor, whether or not payment is contested in accordance with Local Rule 7.1.2(b).

6.4.1 Filing for a Particular Audit.

Accounts to appear on a particular audit list must be filed not later than the seventh Wednesday preceding the day on which the list is audited.

6.4.2 Postponement or Adjournment and Method of Audit.

Audits may be postponed or adjourned at the discretion of the Auditing Judge. Accounts shall be audited by the Auditing Judge, who shall give written notice to counsel for the accountant of:

- (a) Any objections and the hearing dates thereon;
- (b) Any conditions precedent to confirmation of the account;
- (c) Confirmation; and
- (d) Any other matters deemed appropriate by the Court.

6.4.3 Attendance at Audit not Required.

Attendance at the audit by the accountant, by the attorney for the accountant or any interested party shall not be required.

6.6.1 Advertisement of Accounts.

The Clerk shall give notice of all accounts filed both in the Clerk's Office and in the Office of the Register of Wills and of the time and place of audit by advertising

once a week for four (4) successive weeks in the legal periodical and in one newspaper of general circulation published in Erie County.

6.6.2 Filing.

Accounts received by the Clerk or by the Register and found to violate any provision of these Rules or the State Rules will not be docketed.

6.9.1 Audit Statement.

(a) The Audit Statement shall be signed by each accountant and verified by at least one of them, which Affidavit shall state that a copy of the proposed distribution has been mailed or given to each unpaid creditor and to each distributee or his attorney of record, except to specific legatees who have been paid in full, which notice shall state that written objections must be filed at least four (4) days prior to the date of audit. The Audit Statement shall include a statement of proposed distribution.

(b) The Audit Statement shall be filed not later than four (4) weeks prior to the date of the audit. A copy of the Audit Statement shall be served on all parties in interest not later than twenty (20) days prior to the Audit date.

6.9.2 Unknown or Non-Resident Distributees. Report by Fiduciary.

Whenever it shall appear at the audit of an account that the identity or whereabouts of a distributee is unknown, or that if distribution is made, the beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property to be awarded, and the Court is requested to withhold distribution or to make a provisional award thereof to the accountant, to the Clerk of the Orphans' Court, or to the State Treasury through the Department of Revenue, or in any manner other than to the distributee or the nominee of said distributee, the fiduciary or his counsel shall submit to the Court or auditor, as the case may be, a written report outlining the investigation made and the facts upon which the request is based.

6.9.3 Contents of Report.

The report shall be submitted at the audit and shall include substantially the following:

(a) *Unknown Distributee.* If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report at the audit, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(1) The nature of the investigation made to locate the heirs of the decedent, in complete detail; and

(2) In cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain. The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership, school records; social security, Veterans' Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

(b) *Non-Resident Distributees.* If the fiduciary requests the Court to withhold distribution to a non-resident

distributee, he or she shall submit a written report at the audit, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(1) The relationship of the distributee to the decedent, and any available information concerning his present whereabouts;

(2) In cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and

(3) The reasons for the request that distribution be withheld, and the suggested manner of withholding.

6.9.4 Additional Receipts and Disbursements.

Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the statement of proposed distribution or in a separate statement attached thereto.

6.10.1 Objections to Account or Statement of Proposed Distribution. Form, Notice and Time.

(a) Objections to an account or statement of proposed distribution shall be filed at least four (4) days prior to the audit.

(b) Each objection shall be specific as to description and amount.

(c) Objections shall be filed with the Clerk of the Orphans' Court.

(d) A copy of the objections shall be served promptly after filing upon the Court by mailing or delivering a copy to the Auditing Judge, upon counsel for the accountant and counsel for all other parties who have entered appearances.

(e) The Court, for cause shown, may extend the time for filing of objections; provided that a request for extension of time by any person or entity having received notice of the account and statement of proposed distribution has been filed or presented prior to the date of the audit.

(f) Failure by a party or entity to whom notice of the account and statement of proposed distribution has been given in accordance with these Local Rule 6.9.1 to file timely objection or to request an extension of time in which to file objections shall constitute a waiver of objections.

6.11.1 Schedule of Distribution: Confirmation of Title to Real Property.

Approval of a schedule of distribution shall be in the nature of a confirmation of title in the respective distributees.

(a) *Separate Awards of Real Property.* A schedule of distribution shall set forth separate awards of real property in separate paragraphs.

(b) *Description of Real Property. Certification by Counsel.* Real property shall be described in the manner appearing in the last deed of record and shall, in addition, include information pertinent to the derivation of decedent's title.

6.11.2 Determination of Title to Real Property. PEF Code Section 3546.

(a) *Contents of Petition.* A petition under PEF Code Section 3546 for the determination of title shall set forth:

(1) The name of the petitioner and the relationship of the petitioner to the decedent;

(2) The facts on which the claim of the petitioner is based;

(3) Whether the decedent died testate or intestate, and where, when and to whom letters were granted;

(4) A description of real property located within the Commonwealth, and the place, book and page of recording the last deed thereto;

(5) The names and addresses of all known creditors and parties in interest; and

(6) The facts material to a determination of the title.

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

(1) The notice which has been given to creditors, parties in interest; and, if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and

(2) A copy of the decedent's Will.

(c) *Service.* The decree shall be served on all known heirs and creditors of the decedent thirty (30) days prior to final confirmation, which must be at least three (3) months after the date of the decree nisi. The final confirmation date shall be advertised once in the legal publication and once in a newspaper of general circulation, or as the Court shall otherwise direct.

Rule 7

Exceptions

7.1.1 Filing of Exceptions.

Exceptions authorized by this Rule shall be filed in the office of the Clerk of the Orphans' Court.

7.1.2 Finality of Certain Orders, Decrees and Adjudications.

(a) Orders, Decrees and Adjudications entered in the following matters where no objections have been filed or asserted prior to their entry and those which dispose of objections filed or asserted in timely fashion shall be final and not subject to further exceptions:

(1) An Adjudication approving an account and distribution as set forth on an audit statement or statement of proposed distribution; and

(2) Where not less than ten (10) business days' written notice of intention to present the petition and a copy of the petition and proposed Order or Decree has been given to all parties in interest:

(A) Those approving settlement of a small estate on petition or settlement of an estate, guardianship or trust administration;

(B) Those approving public or private sale of real estate;

(C) Those approving a claim for family exemption;

(D) Those entered upon petition in other matters where such notice has been given.

(b) Where the moving party has given to all parties in interest not less than ten (10) business days' written notice of intention to present a petition specified in this Rule including the date, time and place of filing, presentation or in the case of an account, audit statement or statement of proposed distribution, has given notice of the filing and deadline for filing written objections in accordance with the requirements of the Local Rule 6.9.1(b) and in each case has served all parties in interest with such notice a copy of such petition, account, audit statement or

statement of proposed distribution and proposed decree, if any, the failure by a party in interest to assert objection to such document and/or proposed Order or Decree prior to entry thereof shall constitute a waiver of objections thereto. In such event, exceptions to such Order, Decree or Adjudication shall not be authorized or allowed.

(c) All accounts, audit statements, statements of proposed distribution and petitions subject to this Rule to which objections must be asserted in timely fashion or are waived shall be accompanied by a notice to all parties in interest, signed by the moving party or that party's counsel and substantially in the following form:

(CAPTION)

**NOTICE AS REQUIRED BY ERIE COUNTY
ORPHANS' COURT RULE 7.1.2 (c)**

THE ATTACHED DOCUMENT REQUESTS THAT THE COURT ENTER A FINAL ORDER OR DECREE AND AUTHORIZE THE REQUESTED ACTION WITHOUT FURTHER PROCEEDINGS OR APPEAL UNLESS A PARTY IN INTEREST PROMPTLY ASSERTS OBJECTIONS TO THE REQUESTED RELIEF.

[select one or the other of the following paragraphs]

OBJECTIONS TO AN ACCOUNT, AUDIT STATEMENT OR STATEMENT OF PROPOSED DISTRIBUTION MUST BE FILED IN WRITING IN THE OFFICE OF THE ERIE COUNTY CLERK OF THE ORPHANS' COURT, ERIE COUNTY COURT HOUSE, 140 WEST 6TH STREET, ERIE, PA 16501 NOT LATER THAN THE DEADLINE FOR FILING OBJECTIONS, WHICH IS

OR

OBJECTIONS TO A PETITION MUST BE ASSERTED EITHER AT THE TIME OF THE PETITION'S PRESENTATION TO THE COURT AS SET FORTH IN A NOTICE ACCOMPANYING THE PETITION OR BY A WRITING FILED IN THE OFFICE OF THE ERIE COUNTY REGISTER OF WILLS PRIOR TO THE DATE AND TIME OF INTENDED PRESENTATION.

IF YOU DO NOT OBJECT TO THE ATTACHED DOCUMENT, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION. IF YOU DO OBJECT TO THE DOCUMENT AND/OR THE PROPOSED ORDER OR DECREE, YOU MUST ASSERT YOUR OBJECTIONS PRIOR TO THE APPLICABLE DEADLINE FOR ACTION. IF YOU FILE WRITTEN OBJECTIONS, YOU MUST MAIL A COPY OF SUCH OBJECTIONS TO THE UNDERSIGNED AND TO ALL OTHER PERSONS WHO ARE PARTIES TO THE MATTER, OR THEIR ATTORNEY(S).

IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, CONTACT THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Erie County Lawyers' Referral Service
302 West 9th Street
Erie, PA 16502-1427
Telephone: (814) 459-4411

Mailing Date

Attorney for

7.1.3 Finality of Other Orders and Decrees.

All other Orders and Decrees entered in proceedings shall be final as of the date of filing unless exceptions thereto are taken within ten (10) days after the date of filing thereof.

7.1.4 Effect of Exceptions Upon Decree Nisi.

(a) An exception to any part of a Decree Nisi shall stay the entire Decree, so that the Decree shall not be a final Order until the exception(s) is/are disposed of.

(b) After expiration of the time for filing of exceptions, the Court upon petition filed by any party may enter an Order or Decree declaring those portions of the Decree Nisi not excepted thereto final and binding pending entry of a Final Decree after consideration of the exceptions that have been filed.

(c) Such interim Order or Decree shall not render the original Decree Nisi or any portion thereof a final Order for purposes of appeal, the Final Decree after consideration of exceptions constituting such final Order.

7.1.5 Exceptions to Orders and Decrees.

(a) *Additional Exceptions.* In the event exceptions are filed by any party, all other parties shall have an additional period of ten (10) days from the service of the initial exceptions within which to file additional exceptions.

(b) *Form of Exceptions.* All exceptions shall set forth, with particularity and in numbered paragraphs, the portion(s) of the Order to which exception is taken and the basis for each exception. Only one exception shall be made per paragraph. Points of law may be addressed in a separate brief.

(c) *Procedure for Service of Exceptions.* The party filing the exception, promptly after filing, shall deliver or serve upon the judge who made the Order or Decree being excepted to and upon all other parties or their counsel of record a copy of the exceptions with the exceptant's proposed Order for argument or hearing on the exception. The party filing the exception shall file a certificate of service.

(d) *Procedure Following Filing of Exceptions.*

(1) Upon the expiration of time for filing additional exceptions and replies to exceptions filed, the Court shall enter an Order setting the time and date of the hearing or argument on the exceptions if it deems the same appropriate, unless the parties should stipulate that no argument and/or hearing is necessary.

(2) The Court may order the parties to file briefs or memoranda supporting the position(s) taken by the parties, and may set deadlines for their filing.

(3) Following argument, or upon submission of the exceptions, replies and/or briefs, if any, or upon stipulation and without argument, the Court shall enter an Order or Decree disposing of the exceptions as raised.

7.1.6 Effect of Exceptions on Adjudications, Orders and Decrees.

(a) If specific exceptions to one or more portions of an Adjudication, Order and Decree are filed, the Adjudication, Order or Decree shall become final and binding as to matters not affected by the exceptions.

(b) No Adjudication, Order or Decree to which timely exceptions are taken shall become final for purposes of appeal until the exceptions are disposed of, and the period within which an appeal must be filed shall begin on the date the Order or Decree disposing of all exceptions is filed.

7.1.7 Other Exceptions.

Exceptions not otherwise covered by this Rule shall be filed or presented at such time and place, and in such form, as the Court may direct.

Rule 8**Auditors and Masters****8.1.1 Appointment.**

(a) *Auditors.* An Auditor shall be appointed only when all parties in interest, or their counsel, consent thereto in writing.

(b) *Master.* A Master may be appointed by the Court, on its own motion, or upon the petition of the accountant, or of any party in interest.

(c) Auditors and Masters shall be members of the Bar of this Court.

8.1.2 Manner and to Whom Notice is Given.

(a) An Auditor or Master shall give at least ten (10) days' written notice of his appointment and of the time and place of his or her first hearing to all persons who have appeared of record, and to such other persons and in such manner as the Court may direct.

(b) Notice of succeeding hearings given by the Auditor or Master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

(c) The hearing shall be held at a time and place indicated and not later than forty-five (45) days after the Auditor's or Master's appointment and shall be extended only upon application to the Court for good cause shown.

(d) The report of the Auditor or Master shall be filed within ninety (90) days after appointment and shall be extended only upon application to the Court for good cause shown.

8.6.1 Notice of Intention to File. Exceptions.

(a) An Auditor or Master shall give ten (10) days' written notice to all parties of record of his or her intention to file his report on a day certain and make a copy thereof available for their inspection during such notice period.

(b) Exceptions, if any, shall be filed with the Auditor or Master before the date fixed for the filing of the report and notice thereof shall be given by the exceptant to all parties of record. Upon the filing of exceptions, the Auditor or Master shall consider and dispose of them, and may amend the report if the exceptions are, in the opinion of the Auditor or Master, in whole or part, well founded.

8.7.1 Exceptions Before the Court.

At the hearing before the Court on the confirmation or approval of the report of an Auditor or Master, the exceptant shall be confined to the exceptions filed by that party with the Auditor or Master unless otherwise allowed by the Court.

8.8.1 Filing of Security With Clerk.

The Court may require that security be filed with the Clerk for the compensation of the Auditor or Master and, until filed, the Auditor or Master need not proceed with the performance of his duties.

8.8.2 Compensation of Auditor or Master.

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. The Court may require payment of the Auditor's or Master's fees in advance.

Rule 9**Official Examiners****9.1.1 Examiners—Appointment and Ordinary Duties.**

The Court may appoint by special Order an examiner or examiners who shall examine the assets held by a fiduciary and make full written report thereon to the Court showing what assets belong to the estate, how they are registered or otherwise earmarked as the property of the estate to which they belong, and where and how the cash belonging to the estate is kept or deposited.

9.1.2 Examiners—Special Duties.

The Court may, in any Order appointing an examiner or examiners, also request the examiner or examiners to accomplish one or more of the following:

(a) Determine, in the case of a trust, if its purposes are being carried out;

(b) Determine if the funds and assets in the hands of the fiduciary are being used or applied in accord with any trust instrument, Will, applicable statute, regulation or Court Order;

(c) Make a written report including findings of fact, conclusions of law; and, when appropriate, recommendations for the consideration of the Court; and

(d) Such other matters at the Court may designate.

9.1.3 Examiners—Compensation.

Examiners shall be allowed such fees from principal or income, or apportioned between principal and income, as may be directed by the Court.

Rule 10**Register of Wills****10.2.1 Appeal by Petition.**

All appeals to the Court shall be by petition of a party in interest, shall be signed by counsel, if any, verified by petitioner, and shall set forth:

(a) The caption;

(b) A heading indicating briefly the purpose of the petition;

(c) A concise statement of the facts relied upon to give the Court jurisdiction and to justify the relief desired, and any averments specifically required by any State Rule or Local Rule. The statement shall be divided into paragraphs numbered consecutively, each containing but one material allegation, and shall cite the applicable section of any Act of Assembly relied upon;

(d) The names of all parties in interest, indicating those not sui juris. The names of fiduciaries of parties not sui juris shall be set forth with references to their appointments;

(e) A prayer for the relief desired;

(f) There shall be attached to the appeal petition as exhibits the originals or copies of all Wills, codicils, consents, joinders, approvals, contracts and any other written instruments relied on or pertinent. Exhibits which are not originals and not otherwise certified shall be certified by counsel to be correct. If the petitioner is unable to attach any exhibit, such shall be stated in his petition, with the reason for the inability; and

(g) Within ten days of filing the petition for appeal, the appellant shall file a bond and secure its approval by the

Register and shall request a Citation by the Court to all parties in interest, including those not represented on the record.

10.2.2 Award of Citations.

After the filing of the petition referred to in Local Rule 10.2.1 and the approval of the bond by the Register, the Court will, by Order, award a Citation to all parties in interest, including the Register, to show cause why the appeal should not be sustained and the decision complained of set aside and, in cases where resolution of an issue is desired and a jury trial demanded, why the disputed issue of fact should not be submitted to a jury.

10.2.3. Non Pros.

If the bond is not presented within ten (10) days of taking the appeal, the Clerk of the Orphans' Court, upon praecipe of the appellee, shall order a judgment of non pros.

10.2.4 Certified Cases.

When a certification of a dispute has been made by the Register of Wills to the Orphans' Court Division under PEF Code § 907, the Court will determine whether pleadings will be required.

10.2.5 Jury Trial.

A person entitled to and desiring a trial by jury, shall make timely demand therefore in accordance with the PEF Code.

10.2.6 Depositions, Discovery, Production of Documents and Perpetuation of Testimony.

The practice relating to depositions, discovery, production of documents and perpetuation of testimony shall conform to the practice prescribed by Rules 3.6.1 and 3.6.2.

10.2.7 Exceptions.

The practice relating to exceptions shall conform to the practice prescribed by Rule 7.

10.2.8 Subpoenas.

Subpoenas, with or without a clause of *duces tecum*, shall be issued by the Clerk.

10.2.9 Action Upon Default.

If the respondent in any action fails to comply with the requirements of any citation or notice, the Court, upon proof of service thereof, shall make such Order as may be just and necessary.

10.2.10 Enforcement of Decrees.

(a) *Applications for Enforcement, Procedure.* All applications to enforce a decree or adjudication for the payment of money or costs or for the delivery of any goods, chattels, or other assets of an estate by a fiduciary or surety, shall be by petition of the person or persons entitled thereto, briefly setting forth the facts. If the application is satisfactory to the Court, an Order will be granted to pay or transfer, assign or deliver, as the case may be.

(1) *Service.* If possible, a copy of the Order, certified by the Clerk or counsel, must be served upon the respondent personally at least ten (10) days prior to the day specified therein. If such service is not possible, service may be made as required of a citation by PEF Code § 765.

(b) *Writ of Attachment.* If the Order of Court is not complied with on or before the day specified, upon proof of service of the order as required of a citation by Section 765, PEF Code, 20 Pa.C.S.A. Section 765, and upon

petition setting forth the necessary facts, a writ of attachment of the person will be awarded.

(c) *Sequestration.* If an Order to pay or transfer, assign or deliver has not been complied with on or before the date specified in such Order, upon proof of service of the Order upon a fiduciary or surety in the manner required for the service of a citation by PEF Code § 765, or upon proof of service of notice of such Order as provided in Section 768 of said Code, and upon petition setting forth the necessary facts, the Court may direct sequestration of real or personal property or attachment execution.

Rule 12

Special Petitions

12.0.1 Settlement of Small Estates.

(a) Form of Petitions. Contents.

Petitions under PEF Code § 3102, as amended for the settlement of small estates shall set forth:

(1) The name and address of the petitioner and the relationship of the petitioner to the decedent.

(2) The name, date of death and domicile of decedent, whether the decedent died testate or intestate, the dates of the probate of the Will and of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount.

(3) The names and relationship of all beneficiaries entitled to any part of the estate under the Will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under PEF Code § 3101 and whether any of them are minors, incapacitated or deceased with the names of their fiduciaries.

(4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.

(5) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit.

(6) An itemization of all paid administrative costs, funeral expenses, debts and distributions, and of assets then remaining for distributions.

(7) A list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted.

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

(9) A prayer for distribution of the property, setting forth the persons entitled and their distributive shares, and requesting the discharge of the personal representative and the release of surety, if letters have been granted and advertised.

(b) Required Exhibits.

The following exhibits shall be attached to the petition:

(1) The original of the decedent's Will, if it has not been probated.

(2) Joinders of unpaid beneficiaries, heirs and claimants insofar as they are obtainable.

(3) A statement from the inheritance tax department showing the status of the inheritance tax, if any tax is due.

(4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least ten (10) business days prior to presentation of the petition.

(5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

12.1.1 Family Exemption. Additional Requirements.

A petition for the family exemption shall also set forth in separate paragraphs:

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

(b) The name, address and relationship of the petitioner to the decedent, and whether the petitioner was a member of the same household as the decedent at the date of decedent's death;

(c) The name of the spouse, if any, and whether the spouse forfeited spousal rights;

(d) Whether the decedent died intestate or testate, and the date of the appointment of the fiduciary, if any;

(e) The description and value of the property claimed;

(1) If an inventory has been filed, the petition shall set forth the value of the property claimed as fixed in the inventory.

(2) If it is not included in the inventory, an appraisal or written confirmation of the value of the property as of the date of death must be attached to the petition, unless the property claimed consists of personal property in the form of cash, bank accounts or government bonds whose value is ascertainable from its face; and

(f) That ten (10) business days' prior notice of intention to present the petition at a stated regular session of Motion Court has been given to the personal representatives, or when no letters have been granted, to the parties adversely affected. The ten (10) days' notice requirement shall not be required in the case of a petition filed by a surviving spouse, nor shall ten (10) days' notice be required if the petition contains consents executed by all other parties in interest.

(g) The family exemption petition may be included in a petition for settlement of small estates.

12.5.1 Minor's Estate. Appearance Before the Court. Minor over Fourteen.

A minor over the age of fourteen (14) shall appear in person at the presentation of the petition for appointment of guardian. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition.

12.5.2 Minor's Estate. Restricted Account.

(a) No guardian shall exercise any authority under his appointment until the guardian shall have filed and had approved by the Court a bond in an amount directed by the Court, except where the guardian is a corporate fiduciary authorized to act as such under applicable law.

(b) In lieu of bond, the Court may authorize the guardian to deposit the cash in a federally insured interest bearing account or a money market or cash

management account guaranteed by the Security Investors Protection Corporation, with the restriction, "Not to be withdrawn prior to the minor's attainment of the age of eighteen (18) except on Order of Court." Proof of such deposit shall be presented to the Clerk of the Orphans' Court within thirty (30) days.

12.5.3 Minor's Estate Not Exceeding Amount Established by PEF Code.

(a) *Disposition. In General.* If the value of the real and personal estate of a minor does not exceed the amount established by the PEF Code, the Court may:

(1) Authorize payment or delivery thereof to the minor, or the parent or other person maintaining the minor; or

(2) Direct the deposit of the money in a restricted account or accounts, in the name of a natural guardian of the minor, or of the minor alone; or

(3) Make such provision for the retention or deposit of securities or other assets, as the Court shall deem for the best interests of the minor.

(b) *Mortgage or Sale of Real Property.* If the entire estate of a minor does not exceed the amount established by the PEF Code, the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the Rules governing the sale or mortgage of real property by a guardian. The Order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account or accounts.

12.5.4 Minor's Estate. Allowance.

When a petition is necessary for an allowance from a minor's estate, the petition shall set forth:

(a) The manner of the guardian's appointment and qualification, and the dates thereof;

(b) The age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, and the name and age of the minor's spouse and children, if any;

(c) The value of the minor's estate, real and personal, where located and the net annual income;

(d) The circumstances of the minor, whether employed or attending school; and, if the minor's parents are living, the reason why the parents are not discharging their duty of support;

(e) The date and amount of any previous allowance by the Court;

(f) The financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; including whether there is adequate provision for the support and education of the minor, spouse and children.

(g) If the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if known, for the guardian's failure to do so.

12.6.1 Appointment of Trustee. Exhibits.

The following exhibits shall be annexed to the petition:

(a) A copy of the trust instrument;

(b) The consent by the proposed trustee to act as such; and

(c) Any consents or joinders of parties in interest.

12.6.2 Appointment of Successor Co-Trustee.

When the governing instrument requires two or more co-fiduciaries and one is unable to serve for any reason, it shall be the obligation of the other fiduciary to petition the Court for the appointment of a successor co-fiduciary.

12.7.1 Discharge of a Personal Representative. PEF Code § 3531.

When the gross real and personal estate of a decedent does not exceed the amount established by statute, the personal representative, after the expiration of one year from the grant of letters, may present a petition to the Court with an account attached under the provisions of PEF Code § 3531. The petition shall conform as far as practicable to the requirements of a petition for settlement of a small estate under the provisions of PEF Code § 3531.

12.9.1 Public Sale. Contents of Petition. Additional Requirements.

(a) *Personal Representative.* A petition by a personal representative to sell real property at public sale, under Section 3353 of the PEF Code shall set forth in separate paragraphs:

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

(2) That the personal representative is not otherwise authorized to sell by the PEF Code; or 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) Whether an inventory and appraisal have been filed, the total value of the property shown therein; and the value at which the real property to be sold was included therein;

(4) If the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

(5) The names and relationships of all parties in interest; a brief description of their respective interests; whether any of them are minors, adjudicated incapacitated or deceased, and, if so, the names and the record of the appointment of their fiduciaries, if any;

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (40% county tax assessment x common level ratio factor); and

(7) Sufficient facts to enable 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 PEF Code § 3353, shall also set forth in separate paragraphs:

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

(2) A recital of the relevant provisions of the Will or deed pertaining to the real property to be sold, and the history of the trust;

(3) The names and relationships of all parties in interest; a brief description of their respective interest; whether any of them are minors, adjudicated incapacitated or deceased, and if so, the names and record of appointment of their fiduciaries, if any;

(4) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (40% county tax assessment x common level ratio factor);

(5) That the trustee is not otherwise authorized to sell by the PEF 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

(6) Sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

(c) *Guardian of Minor.* A petition by a guardian to sell real property at public sale, under PEF Code § 3353, shall set forth in separate paragraphs:

(1) The age of the minor;

(2) The names of the minor's next of kin and the notice given them of the presentation of the petition;

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

(4) A recital of the provisions of the Will or deed relating to the real property to be sold;

(5) The nature and extent of the interest of the minor, of the guardian and of third persons in the real property;

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value (40% county tax assessment x common level ratio factor); and

(7) Sufficient facts to enable the Court to determine that the proposed sale will be in the best interest of the minor.

(d) *Guardian of Incapacitated Person.* A petition by a guardian to sell real property at public sale, under PEF Code § 3353, shall set forth in separate paragraphs the same information as required for the sale by a guardian of a minor with sufficient additional facts to enable the Court to determine that the proposed sale will be in the best interest of the incapacitated person.

12.9.2 Public Sale. Exhibits.

The following exhibits shall be attached to the petition by a personal representative, trustee or guardian, to sell real property at public sale:

(a) Certification that ten (10) business days' notice has been given to those parties who do not consent or join; and

(b) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

12.9.3 Public Sale of Real Property. Notice. Confirmation.

(a) *Notice.* After the allowance of a petition for public sale, notice in approved form of the proposed sale shall be given in the manner provided by Local Rule 5.1.1.

(b) *Confirmation.* If no objection is filed, the Court may enter a decree confirming the sale upon submission of a return of sale as provided by Local Rule 5.4.2.

12.9.4 Public Sale. Security.

On the return day of the sale, the Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter, or will excuse the fiduciary from entering additional security.

12.10.1 Private Sale. Contents of Petition. Additional Requirements.

Where the power to sell real property is not granted by the will, trust instrument or statute, a petition by personal representative, trustee or guardian, to sell real property at private sale shall also conform as closely as practicable to all requirements of these Rules with regard to a petition to sell real property at public sale by the same fiduciary.

12.10.2 Private Sale. Exhibits.

Personal Representative. Trustee. Guardian. The following exhibits shall be attached to the petition by a personal representative, trustee or guardian to sell real property at private sale:

- (a) Certification that ten (10) business days notice has been given to those parties who do not consent or join; and
- (b) A copy of the agreement of sale; and
- (c) Affidavits in the form required by State Rule 12.10(b) unless otherwise ordered by the Court.

12.10.3 Private Sale. Higher Offer.

Any person desiring to make a substantially higher offer for real property offered at private sale may do so at the time the petition of the fiduciary for leave to make such private sale is presented to the Court, whereupon the Court will make such Order as it deems advisable under the circumstances.

12.10.4 Private Sale. Security.

The Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter, or will excuse the fiduciary from entering additional security.

12.10.5 Petition to Fix or Waive Additional Security. Personal Representatives.

(a) *Form of Petition.* In a sale, whether public or private, of real estate by a personal representative acting without benefit of an Order of Court directing or authorizing such sale, but who was required to give bond, the personal representative shall present a petition to the Court before the proceeds of the sale are paid by the purchaser, setting forth:

- (1) The date of death of the decedent;
- (2) The date of the grant of letters to the petitioner;
- (3) The amount of the bond or bonds filed by the petitioner, the date of such filing and the name or names of the surety;
- (4) The total valuation of the personal estate as shown in the inventory and appraisal, if any; and the total proceeds of any real estate sold previously;
- (5) A short description of the real property sold, the name of the purchaser, the amount of the consideration to be paid and the terms of the sale;
- (6) A list of all liens of record known to petitioner, including mortgages, delinquent taxes, judgments, etc., and the names and relationships of all parties in interest; with a brief description of their respective interests; and
- (7) A prayer for an Order fixing the amount of additional security or for an Order excusing the filing of additional security.

(b) *Surety on Additional Bond.* The surety on any additional bond, except for cause shown, shall be the same as on the original bond.

12.11.1 Mortgage of Real Property. Additional Requirements.

(a) *Contents of Petition.* A petition to mortgage real property by a personal representative, trustee or guardian, shall conform as closely as practicable to the requirements of these Rules 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 mortgage loan; and shall set forth sufficient facts to enable the Court to determine whether the proposed mortgage should be approved.

(b) *Exhibits.* There shall be attached to the petition certification that ten (10) business days' notice has been given to those parties who do not consent or join.

12.12.1 Inalienable Property.

In addition to the requirements of PEF Code Chapter 83 and State Rule 12.12, in the case of

(a) *Public Sale.* The content of the petition, required exhibits, notices, confirmation and security shall conform to the requirements of Rule 12.9.1 through 12.9.4.

(b) *Private Sale.* The content of the petition, required exhibits, provisions as to higher offers, security and petitions to fix or waive additional security shall conform to the requirements of Rule 12.10.1 through 12.10.5.

(c) *Mortgage.* The content of the petition, required exhibits, notices and action on security shall conform to the requirements of Rule 12.11.1.

12.12.2 Notice. Discretion of Court.

If it appears that all parties having a present or potential interest may not have been identified or served with notice, the Court shall have discretion to issue a citation and require such additional notice as it deems appropriate.

12.12.3 Inalienable Property. Real Estate or Fiduciaries in Other Counties.

(a) Fiduciaries whose appointments originated in this county shall obtain leave of this Court to petition the Court of another county of this Commonwealth, under the Inalienable Property Act, to sell or mortgage real property located in that county. Such leave may be obtained by petition to this Court setting forth briefly the substantial averments of a petition for the sale or mortgage of real property.

(b) Fiduciaries whose appointments originated in other counties of this Commonwealth shall obtain leave of the Court of their appointment to petition this Court under Inalienable Property Act to sell or mortgage real property located in this County. The petition to this Court shall comply with the provisions of these Rules with regard to the sale or mortgage of real property and shall include, as exhibits, copies of the petition and of the decree of the Court of origin.

Rule 13

Distribution—Special Situations

13.3.1 Unknown Distributee. Contents of Report.

If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report at the time of the filing of the audit or petition to settle a small estate, verified by affidavit of the fiduciary or his counsel, in

which shall be set forth the nature of the investigation⁶ made to locate the heirs of the decedent, in complete detail.

Rule 14
Incapacitated Persons

14.1.1 Procedure.

(a) All petitions or motions requiring a hearing shall first be submitted along with a motion cover sheet, proposed Order for scheduling hearing and proposed final decree to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(1) Upon the assignment of a hearing date by the Family/Orphans' Court Administrator, the original Petition or Motion and one copy shall be filed with the Clerk of the Orphans' Court. A copy shall also be given to the Family/Orphans' Court Administrator.

(2) All other pleadings not requiring a hearing shall be filed directly with the Clerk of the Orphans' Court.

(b) Emergency petitions requiring the immediate attention of the Court shall be presented to the Family/Orphans' Court duty judge.

(c) The petitioner shall provide a copy of the petition and any Orders or proposed Orders to the Clerk of the Orphans' Court who shall prepare and attach a Citation and Notice as required by PEF Code § 5511(a).

(d) The petition and citation shall be served personally upon the alleged incapacitated person by the Orphans' Court Investigator. The petitioner shall serve a notice of the petition and hearing by first class mail to the following persons:

(1) All persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at the time;

(2) The person or institution providing residential services to the alleged incapacitated person;

(3) Any attorney in fact under a durable power of attorney;

(4) Such other parties as the Court may direct.

14.2.1 General Practice and Procedure.

(a) *Petition Contents.* A Petition to adjudicate a person incapacitated and for the appointment of a guardian shall contain all of the information required by PEF Code § 5511(e) and State Rule 14.2 and shall also include the following additional information:

(1) Whether the alleged incapacitated person executed a durable Power of Attorney and the name and current address of the attorney in fact.

(2) Whether the alleged incapacitated person executed a Will or other testamentary document and the location of the original document.

(3) Whether the alleged incapacitated person executed a living will, advance health care directive or similar document and the location of the original document.

(b) *Notice of Representation.* The petitioner shall notify the Court in writing at least seven (7) days prior to the hearing whether counsel has been retained by or for the

alleged incapacitated person. If counsel has been retained, the petitioner shall provide the name, address and telephone number of counsel.

(c) *Evidence.* The evidence presented may be in accordance with PEF Code § 5518 as provided in the form affidavit provided by the Clerk of the Orphans' Court.

(d) *Presence of Alleged Incapacitated Person.* The alleged incapacitated person shall be present at the hearing unless:

(1) The Court is satisfied, upon the deposition or testimony of or sworn statement [as provided by the form adopted by the Clerk of the Orphans' Court] by a physician or licensed psychologist, that the alleged incapacitated person's physical or mental condition would be harmed by being present at the hearing; or

(2) It is impossible for the alleged incapacitated person to be present because of absence from the Commonwealth.

14.2.3 Proof of Service.

Prior to the hearing, the petitioner shall file an affidavit or verification that the proper service of notice of the petition and hearing was made to all parties listed in the petition and to any other parties required by the Court to be notified.

14.2.4 Emergency Guardianships.

(a) A petition for emergency guardianship under PEF Code § 5513 may be filed by separate petition or with a petition for appointment of a permanent guardian. Reasons for the need for emergency guardianship shall be clearly set forth in the petition.

(b) Notice to the alleged incapacitated person and other interested persons of the petition and hearing shall be required unless it appears to the Court not to be feasible under the circumstances. It shall not be necessary for a citation to issue or be served on the alleged incapacitated.

(c) The emergency guardian of the estate shall account to the Court for all funds it receives and expends during its appointment as emergency guardian.

(d) At the hearing for the appointment of emergency guardian the provisions of PEF Code § 5518, regarding medical testimony, shall apply.

(e) The emergency appointment may be continued by the Court until the final disposition of the petition for determination of incapacity.

14.2.5 Post Adjudication Duties.

(a) *Annual report.* Within one year from the date of the appointment, and annually thereafter or otherwise as the Court may direct, the guardian shall file a periodic report in a form approved by the Court.

(b) *Final Accounting.* Upon the death of an incapacitated person, upon an adjudication of capacity or as the Court may require, the practice and procedure with regard to the filing and auditing of accounts as well as distribution of assets comprising the estate of a person who has been adjudicated incapacitated shall conform with the practice and procedures governing trustees' accounts and small estates.

(c) *Additional Assets.* If, upon the filing of the Inventory, or any time thereafter, it appears that the value of the estate which has, or is about to, come into the possession and/or control of the guardian, exceeds the amount set forth on the original petition by \$10,000 or

⁶ The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership; school records; social security; Veterans' Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

more, the guardian shall notify the Court which may determine whether additional security is necessary.

(d) *Testamentary Writings, Living Wills and Advance Health Care Directives.* The original and a copy of the will or other testamentary writing and any living will or advance health care directive of the incapacitated person shall be submitted to the Court for inspection as soon as possible following the hearing or, in any event, no later than the date set for the filing of the Inventory. The Court shall compare the copy with the original, retain the copy, and return the original to the guardian.

14.2.6 Modification of Guardianship.

The guardian, incapacitated person or other interested party may petition the Court for review of the guardianship as follows:

- (a) When the incapacitated person has regained capacity;
- (b) Where there has been a significant change in the ward's capacity;
- (c) Where there is a significant change in the need for guardianship services;
- (d) Upon request for the appointment of a successor guardian;
- (e) For any other good cause shown.

14.3.1 Adjudication of Capacity.

(a) A petition to adjudicate that a person previously adjudged incapacitated has regained capacity shall set forth:

- (1) The date of the adjudication of incapacity;
 - (2) The name and address of the guardian;
 - (3) If the incapacitated person has been a patient in a mental hospital, the name of the institution, the date of admission and the date of discharge;
 - (4) The present address of the incapacitated person and the names of all persons residing in the same household.
 - (5) The names and addresses of the next of kin of the incapacitated person;
 - (6) An averment that the mental health of the incapacitated person has been restored; and,
 - (7) A request that the guardian be directed to file an account or other final report as the Court may require.
- (b) *Proof of Service.* Proof of service of notice of the hearing to all parties in interest shall be presented at the time of the hearing.

Rule 15 Adoption

15.1.1 Procedure.

(a) All Petitions or Motions requiring a hearing including those pertaining to Adoptions, Involuntary Terminations, Voluntary Relinquishments and Confirmation of Consent shall first be submitted to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(b) Upon the assignment of a hearing date the original Petition or Motion shall be filed with the Clerk of the Orphans' Court and a copy of the Order setting the date of the hearing shall be given to the Family/Orphans' Court Administrator.

(c) All other pleadings not requiring a hearing shall be filed directly with the Clerk of the Orphans' Court.

(d) Any Motion or Petition requiring immediate attention of the Court shall be presented at Family/Orphans' Court Motion Court, with notice to all parties as required by Erie County Civil Rule 440.

15.4.1 Involuntary Termination of the Parental Rights of a Putative Father Whose Identity or Whereabouts Cannot be Ascertained.

The parental rights of a natural or putative father whose identity or whereabouts cannot be ascertained must be terminated by an involuntary termination proceeding prior to approval of a final adoption.

(a) The involuntary termination petition must aver that the natural mother does not know the identity or whereabouts of the natural or putative father, must include his last known address, if known, and must also specify all attempts made by the Petitioner to determine the correct identity of the natural or putative father.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa.R.C.P. 430.

(c) Publication shall include, as a minimum, the contents of the citation attached to the Involuntary Termination Petition. Proof of publication shall be submitted to the Court prior to hearing.

(d) Exceptions to an Involuntary Termination Decree must be filed within ten (10) days of the filing of the Decree pursuant to Rule 7.

15.4.2 Petition to Terminate Putative Father's Rights Under § 2503(d) and § 2504(c).

(a) *Contents.* A Petition to terminate a putative father's rights under 23 Pa.C.S.A. Section 2503(d) or 2504(c) shall contain the following:

- (1) The names and addresses of the Petitioners;
- (2) The names and addresses of the birth parents and the putative father;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date of any proceedings to terminate the parental of the birth parents, including voluntary relinquishment, involuntary termination, or confirmation of consent;
- (4) A statement of any further proceedings pending in the adoption; and
- (5) The certification from the Pennsylvania Department of Vital Statistics pursuant to 23 Pa.C.S.A. § 5103 showing that no claim of paternity has been filed.

(b) Procedure.

(1) Upon presentation of a Petition to Terminate putative father's rights under 23 Pa.C.S.A. §§ 2503(d) or 2504(c), the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after the filing of the petition.

(2) Notice shall be provided in the form provided in 23 Pa.C.S.A. § 2513(b), and service shall be as provided in State Rule 15.6.

(3) Notice shall be given to the birth parents and putative father, and to the parents or guardians of a birth parent or putative father who has not reached age 18.

(4) Following hearing, the Court shall issue such decree as clearly sets forth that the parental rights of the putative father are terminated.

(5) A Petition to Terminate Putative Father's Rights may be brought in the name of the attorney for the adopting parents.

15.5.1 Consents to Adoption and Petition to Confirm Consent to Adoption.

All written consents to adoption must be confirmed by Court prior to the entry of a final Adoption Decree.

(a) *Form of Petition. Contents.* The Petition to Confirm Consent shall include the following:

- (1) The names and addresses of the petitioners;
- (2) The names and addresses of the birth parents;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date the consent to adoption was signed by the birth parent or parents. The original consent shall be attached to the petition or shall be part of prior pleadings; and

(4) A statement of any further proceedings pending in the adoption.

(b) *Procedure.*

(1) A Petition to Confirm Consent to Adoption may be filed no less than forty (40) days after a written consent has been signed by a birth parent.

(2) Upon presentation of a Petition to Confirm Consent to Adoption, the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after filing of the Petition.

(3) Notice shall be in the form provided in 23 Pa.C.S.A. Section 2513(b), and service shall be as provided in State Rule 15.6. Notice shall be given to the birth parents and putative father, if applicable, and to the parents or guardians of a consenting parent who has not reached age 18.

(4) Following hearing, the Court shall issue such decree as clearly sets forth that the consent to adoption is confirmed and that all rights of the consenting birth parent are terminated.

(5) A Petition to Confirm Consent may be brought in the name of the attorney for adopting parents.

(c) *Step Parent Adoption. Petition.*

(1) Contents. In the case of a step-parent adoption, a Petition to Confirm Consent may be included with the filing of a Petition for Adoption.

(A) Separate Decrees for the Confirmation of the Consent and for the Adoption must be provided.

(B) In addition to the inclusion of all information and averments needed for an adoption petition, all information and averments required for a Petition to Confirm Consent under 23 Pa.C.S.A. § 2504 and Local Rule 15.5.1. must be included in the petition.

(c) Notice of the hearing must be given to the natural parent in accordance with 23 Pa.C.S.A. Section 2513(b) and service shall be made as provided in State Rule 15.6.

(d) *Procedure.*

(1) At the hearing to confirm consent to adoption, or at the adoption hearing if the alternate procedure under Local Rule 15.5.1(c) is followed, the Court shall review the circumstances surrounding the execution and submission of all written consents to adoption. The Petitioners to the adoption shall present such information as may be necessary to allow the Court to review the execution of the consent, and to determine its validity. The Court shall then enter an Order confirming or rejecting the written consent to adoption.

(2) In the case of a step-parent adoption, the Court may then continue to take testimony as to the adoption itself but shall delay signing of the actual decree until at least ten (10) days after the date of the confirmation of consent.

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