

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement; No. 10 Disciplinary Rules Doc. No. 1

Order

Per Curiam:

And Now, this 7th day of December, 2000, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Pa.R.J.A. 103(b). New Pa.R.D.E. 217(j) shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall apply:

(i) immediately to persons becoming formerly admitted attorneys on or after the date of such publication; and

(ii) commencing January 1, 2001 to persons who are formerly admitted attorneys on the date of such publication.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 217. Formerly admitted attorneys.

* * * * *

(j) A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements:

(1) All law-related activities of the formerly admitted attorney shall be conducted under the direct supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is employed by a law firm, an attorney of the firm shall be designated by the firm as the supervising attorney for purposes of this subdivision.

(2) For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following:

(i) legal work of a preparatory nature, such as legal research, assembly of data and other neces-

sary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and

(iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(3) A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(4) Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(i) performing any law-related activity for a law firm or lawyer if the formerly admitted attorney was associated with that law firm or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;

(ii) performing any law-related services from an office that is not staffed, on a full time basis, by a supervising attorney;

(iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

(iv) representing himself or herself as a lawyer or person of similar status;

(v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);

(vi) rendering legal consultation or advice to a client;

(vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

(viii) appearing as a representative of the client at a deposition or other discovery matter;

(ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(x) receiving, disbursing or otherwise handling client funds.

(5) The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of employment, identifying the supervising attorney, certifying that the formerly admitted attorney has been employed and that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the employment of the formerly admitted attorney.

(6) The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

Note: Subdivision (j) is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. Subdivision (j) is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, subdivision (j) is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

[Pa.B. Doc. No. 00-2202. Filed for public inspection December 22, 2000, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 99]

Adoption of Code of Civility; No. 258; Supreme Court Rules Doc. No. 1

Order

Per Curiam:

And Now, this 6th day of December, 2000, the Court hereby adopts the Code of Civility, as follows.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart D. CODE OF CIVILITY

CHAPTER 99. CODE OF CIVILITY

Preamble

The hallmark of an enlightened and effective system of justice is the adherence to standards of professional responsibility and civility. Judges and lawyers must always be mindful of the appearance of justice as well as its dispensation. The following principles are designed to assist judges and lawyers in how to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession. These principles are intended to encourage lawyers, judges and court personnel to practice civility and decorum and to confirm the

legal profession's status as an honorable and respected profession where courtesy and civility are observed as a matter of course.

The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Integrity and courtesy are indispensable to the practice of law and the orderly administration of justice by our courts. Uncivil or obstructive conduct impedes the fundamental goal of resolving disputes in a rational, peaceful and efficient manner.

The following principles are designed to encourage judges and lawyers to meet their obligations toward each other and the judicial system in general. It is expected that judges and lawyers will make a voluntary and mutual commitment to adhere to these principles. These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct.

I. A Judge's Duties to Lawyers and Other Judges:

1. A judge must maintain control of the proceedings and has an obligation to ensure that proceedings are conducted in a civil manner.

2. A judge should show respect, courtesy and patience to the lawyers, parties and all participants in the legal process by treating all with civility.

3. A judge should ensure that court-supervised personnel dress and conduct themselves appropriately and act civilly toward lawyers, parties and witnesses.

4. A judge should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

5. A judge should always refer to counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or by the professional title of attorney or counselor while in the courtroom.

6. A judge should not employ hostile or demeaning words in opinions or in written or oral communications with lawyers, parties or witnesses.

7. A judge should be punctual in convening trials, hearings, meetings and conferences.

8. A judge should be considerate of the time constraints upon lawyers, parties and witnesses and the expenses attendant to litigation when scheduling trials, hearings, meetings and conferences to the extent such scheduling is consistent with the efficient conduct of litigation.

9. A judge should ensure that disputes are resolved in a prompt and efficient manner and give all issues in controversy deliberate, informed and impartial analysis and explain, when appropriate, the reasons for the decision of the court.

10. A judge should allow the lawyers to present proper arguments and to make a complete and accurate record.

11. A judge should not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which he or she represents.

12. A judge should recognize that the conciliation process is an integral part of litigation and thus should protect all confidences and remain unbiased with respect to conciliation communications.

13. A judge should work in cooperation with all other judges and other jurisdictions with respect to availability of lawyers, witnesses, parties and court resources.

14. A judge should conscientiously assist and cooperate with other jurists to assure the efficient and expeditious processing of cases.

15. Judges should treat each other with courtesy and respect.

II. The Lawyer's Duties to the Court:

1. A lawyer should act in a manner consistent with the fair, efficient and humane system of justice and treat all participants in the legal process in a civil, professional and courteous manner at all times.

2. A lawyer should speak and write in a civil and respectful manner in all communications with the court and court personnel.

3. A lawyer should not engage in any conduct that diminishes the dignity or decorum of the courtroom.

4. A lawyer should advise clients and witnesses of the proper dress and conduct expected of them when appearing in court and should, to the best of his or her ability, prevent clients and witnesses from creating disorder and disruption in the courtroom.

5. A lawyer should abstain from making disparaging personal remarks or engaging in acrimonious speech or conduct toward opposing counsel or any participants in the legal process and shall treat everyone involved with fair consideration.

6. A lawyer should not bring the profession into disrepute by making unfounded accusations of impropriety or personal attacks upon counsel and, absent good cause, should not attribute improper motive or conduct to other counsel.

7. A lawyer should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

8. A lawyer should not misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.

9. A lawyer should be punctual and prepared for all court appearances.

10. A lawyer should avoid ex parte communications with the court, including the judge's staff, on pending matters in person, by telephone or in letters and other forms of written communication unless authorized. Communication with the judge on any matter pending before the judge, without notice to opposing counsel, is strictly prohibited.

11. A lawyer should be considerate of the time constraints and pressures on the court in the court's effort to administer justice and make every effort to comply with schedules set by the court.

12. A lawyer, when in the courtroom, should make all remarks only to the judge and never to opposing counsel. When in the courtroom a lawyer should refer to opposing counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or the professional title of attorney or counselor.

13. A lawyer should show respect for the court by proper demeanor and decorum. In the courtroom a lawyer should address the judge as "Your Honor" or "the Court" or by other formal designation. A lawyer should begin an argument by saying "May it please the court" and identify himself/herself, the firm and the client.

14. A lawyer should deliver to all counsel involved in a proceeding any written communication that a lawyer

sends to the court. Said copies should be delivered at substantially the same time and by the same means as the written communication to the court.

15. A lawyer should attempt to verify the availability of necessary participants and witnesses before hearing and trial dates are set or, if that is not feasible, immediately after such dates have been set and promptly notify the court of any anticipated problems.

16. A lawyer should understand that court personnel are an integral part of the justice system and should treat them with courtesy and respect at all times.

17. A lawyer should strive to protect the dignity and independence of the judiciary, particularly from unjust criticism and attack.

[Pa.B. Doc. No. 00-2203. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CHS. 1 AND 3]

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

Order

Per Curiam:

And Now, this 12th day of December 2000, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted proposed amendments to Rules of Procedure 102, 110, 301 and 302, as more specifically hereinafter set forth, *It Is Hereby Ordered That* Rules of Procedure 102, 110, 301 and 302 shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT PART IV. COURT OF JUDICIAL DISCIPLINE ARTICLE I. PRELIMINARY PROVISIONS CHAPTER I. GENERAL PROVISIONS IN GENERAL

Rule 102. Definitions.

The following words and phrases when used in these rules shall have the following meanings, unless the context or subject matter otherwise requires:

Board is the Judicial Conduct Board.

Board Complaint is the formal charging document filed by the Board to initiate proceedings in the Court pursuant to Article V, § 18(b)(5) of the Pennsylvania Constitution.

Charges are the formal charges contained in the Board Complaint filed with the Court by the Board alleging that a judicial officer has been convicted of a felony, violated Article V, § 17 of the Pennsylvania Constitution, engaged in misconduct in office, neglected or failed to perform the duties of office or engaged in conduct which prejudiced the proper administration of justice or brought the judicial office into disrepute, violated a canon of legal or

judicial ethics or standards of conduct or a rule of the Supreme Court, or that the judicial officer is mentally or physically disabled.

Clerk is the person appointed by the Court to serve as Clerk of the Court.

Conference Judge is a Court member appointed by the President Judge following the filing of a Board Complaint, to preside at the pre-trial conference, to rule on the omnibus motion, and, during a panel hearing, to make evidentiary rulings. A Conference Judge may also be appointed by the President Judge to rule on preliminary motions in proceedings other than those initiated by the filing of a Board Complaint.

Court is the Court of Judicial Discipline. Unless the context clearly indicates otherwise, the term shall include a panel.

Full Court is at least a quorum of the Court.

Judicial Officer includes district justices, judges of the Philadelphia Municipal and Traffic Courts, judges of the Pittsburgh Magistrates Court, judges of the courts of common pleas, the Commonwealth Court, and the Superior Court, justices of the Supreme Court and senior judges or district justices of any court.

Majority is a majority of the members of the Court qualified to vote.

Panel is a group of no fewer than three members of the Court appointed by the President Judge.

Petition for Relief is a document filed pursuant to these Rules to initiate proceedings other than formal charges in the Court.

Preliminary Conference Judge is a member of the Court appointed by the President Judge when deemed appropriate to convene and preside at a preliminary conference.

President Judge is a member of the Court elected by the Court to act as the President Judge.

Quorum is five members of the Court.

Verification is a written statement of fact by the signer, supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities.

Rule 110. Entry of Appearance.

(A) Counsel for a Judicial Officer shall file an entry of appearance with the Clerk of the Court and shall serve a copy of the entry on the Board Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number. Admission Pro Hoc Vice shall be in accordance with the Pennsylvania Bar Admission Rules.

Official Note: Counsel should file an entry of appearance within 15 days of service of the Board Complaint or a Preliminary Conference Judge will be appointed in accordance with Rule 301(B).

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule 301. Initiating Formal Charges: Preliminary Conference Judge; Conference Judge; Scheduling.

(A) *Board Complaint.* Proceedings in the Court shall be commenced by the filing of a Board Complaint with the Clerk and concurrent service of the Board Complaint on the Judicial Officer.

(B) *Appointment of Preliminary Conference Judge.* If the Clerk does not receive an entry of appearance for the Judicial Officer within 15 days of service of the Complaint as specified in Rule 302(B), the Clerk shall so notify the President Judge. Within five (5) days of receipt of such notification the President Judge shall appoint a member of the Court to serve as Preliminary Conference Judge.

(C) *Duties of Preliminary Conference Judge.* As soon as practicable after appointment, the Preliminary Conference Judge shall schedule and conduct a preliminary conference at which the Judicial Officer shall be advised of his or her right to be represented by counsel.

(D) *Appointment of Conference Judge.* Within 10 days after a Board Complaint is filed pursuant to paragraph (A), the President Judge shall appoint a member of the Court to serve as Conference Judge on the case as provided in these rules.

(E) *Duties of Conference Judge Following the Filing of Formal Complaint.* In addition to the other duties of Conference Judge set forth in these rules, the Conference Judge shall:

- (1) dispose of all pre-trial motions;
- (2) schedule and conduct a pre-trial conference, in accordance with C.J.D.R.P. No. 421; and
- (3) upon disposition of all pre-trial matters, certify to the President Judge notice that the matter is ready for trial.

(F) The Clerk shall serve certified copies of orders scheduling pre-trial conferences and trials to the Board and the Judicial Officer.

Rule 302. Contents of Board Complaint.

(A) For each charge against the Judicial Officer, the Board Complaint shall:

- (1) state in plain and specific language the nature of the charge;
- (2) specify the allegations of fact upon which the charge is based.

(B) The Board Complaint shall contain a notice to the Judicial Officer advising the Judicial Officer to engage an attorney to represent him or her before the Court in connection with the charges set out in the Board Complaint and directing that the attorney shall file an entry of appearance within 15 days of the service of the Board Complaint. The notice shall be substantially in the following form:

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline within 15 days of the service of this Complaint in accordance with C.J.D.R.P. No. 302(B).

(C) If an entry of appearance is not filed within the time specified in paragraph (B), the Clerk shall immediately notify the President Judge.

(D) Within five (5) days of notification by the Clerk as in paragraph (C), the President Judge shall appoint a member of the Court to serve as Preliminary Conference Judge. The Preliminary Conference Judge shall then proceed in accordance with C.J.D.R.P. No. 301(C).

(E) The Board Complaint shall give notice to the Judicial Officer of the time period within which the Judicial Officer must file an omnibus motion pursuant to Rule 411.

(F) The Board Complaint shall be signed and verified by counsel for the Board.

[Pa.B. Doc. No. 00-2204. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Promulgation of New Rule 1036 Governing Dismissal Upon Affidavit of Noninvolvement; No. 344; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 11th day of December, 2000, new Pennsylvania Rule of Civil Procedure 1036 is promulgated to read as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2001.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

Rule 1036. Dismissal Upon Affidavit of Noninvolvement.

(a) As used in this rule, "action" means an action subject to an Act of Assembly which provides for dismissal of the action as to a party based upon an affidavit of noninvolvement.

Official Note: Actions pursuant to the following Acts of Assembly are within the scope of this rule: Section 7502 of the Judicial Code, 42 Pa.C.S. § 7502, an action for negligence against a construction design professional and Section 827-A of the Health Care Services Malpractice Act, 40 P.S. § 1301.827-A, a medical malpractice action naming a health care provider as a defendant.

(b) Any party seeking dismissal of the action shall file a motion to dismiss which shall have attached thereto the affidavit of noninvolvement.

(c) Any party opposing the motion may file a response.

(d) Upon reviewing the motion and any response thereto and determining the existence of a prima facie case for dismissal of the action as to a party, the court shall enter an order

(1) allowing any party opposing the motion

(i) to conduct limited discovery directed solely to the issue of involvement of any party seeking dismissal and

(ii) prior to the disposition of the motion, to file affidavits, depositions and such other evidentiary materials as would permit a jury to find that any party seeking dismissal was involved in any activities upon which the claim is based, and

(2) scheduling an argument to decide the motion.

(e) The argument shall be limited to the sole issue of whether any party opposing the motion has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party seeking dismissal to be submitted to a jury.

Explanatory Comment

New Rule 1036 sets forth a procedure to govern dismissal of an action pursuant to an affidavit of noninvolvement. Two statutes, cited in the note to subdivision (a), presently provide for such an affidavit: Section 7502 of the Judicial Code¹ relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act² relating to health care providers.

These statutes speak of having "the action against such construction design professional dismissed upon the filing of an affidavit of noninvolvement"³ and of causing an action against a health care provider "to be dismissed upon the filing of an affidavit of noninvolvement with the court."⁴ The role of the court in these procedures, not specified by the statutes, is supplied by the new rule.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 00-2205. Filed for public inspection December 22, 2000, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1915]

Amendments to the Rules Relating to Domestic Relations Matters; Recommendation 56

The Domestic Relations Procedural Rules Committee proposes the following amendments to Rules of Civil Procedure 1910.3, 1910.6, 1910.13-2, 1910.16-2, 1910.16-4, 1910.16-6 and 1915.3. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed amendments to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Thursday, March 1, 2001 and must be directed to:

Patricia A. Miles, Esquire
Council, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2116

E-mail patricia.miles@supreme.court.state.pa.us

The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

¹ 42 Pa.C.S. § 7502.

² 40 P.S. § 1301.827-A.

³ 42 Pa.C.S. § 7502(a).

⁴ 40 P.S. § 1301.827-A(a).

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3 Parties.

An action shall be brought

(a) by a person, including a minor parent or a minor spouse, to whom a duty of support is owing, or

* * * * *

Rule 1910.6 Notification.

(a) Parties to a support action and their attorneys shall be provided notice of all proceedings in which support obligations might be established or modified. Notice must be provided at least 20 days prior to the proceeding. The parties and their attorneys shall also be provided with a copy of any order issued in the support action within 14 days after issuance of the order. If there is no activity in a support action for a period of two years, the domestic relations section shall send a notice to each of the parties' attorneys advising each attorney that his or her appearance in the support action shall be deemed to be withdrawn unless the attorney objects within thirty (30) days of the date the notice is mailed to the attorney. An attorney representing a party in a support action shall not be deemed to be representing that party in any other action, nor shall a withdrawal of appearance in a support action be deemed to be a withdrawal of appearance for the party in any other proceeding.

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

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Official Note: Standards for setting bail are set forth in Rule of Criminal Procedure [4004] 525.

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Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

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(f) Dependency Tax Exemption. In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

* * * * *

PART IV. SPOUSAL SUPPORT OR APL

With Dependent Children

- 12. Obligor's Monthly Net Income (line 4)
13. Less Obligor's support, alimony pendente lite or alimony obligations, if any, to children or former spouses who are not part of this action (See Rule 1910.16-2(c)(2))
14. Less Obligee's Monthly Net Income (Line 4)
15. Difference
16. Less Obligor's Total Child Support Obligation (line 11)
17. Difference
18. Multiply by 30%
19. AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL

Without Dependent Children

- 20. Obligor's Monthly Net Income (line 4)
21. Less Obligor's support, alimony pendente lite or alimony obligations, if any, to children or former spouses who are not part of this action (See Rule 1910.16-2(c)(2))
22. Less Obligee's Monthly Net Income (Line 4)
23. Difference
24. Multiply by 40%
25. AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL

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Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation

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(c) Unreimbursed Medical Expenses. Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes and obligor's share added to his or her basic support obligation.

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(4) For purposes of calculating annual expenses pursuant to this subdivision (c), the year begins on the effective date of the support order.

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CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

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(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody, partial custody or visitation must file an acknowledgment or claim of paternity pursuant to 23 Pa.C.S. § 5103 and attach a copy to the complaint in the custody action.

* * * * *

[Explanatory Comment—1994

A system of office conferences or pretrial conferences is not required by these rules. Business of the Court Rule 212 governing pretrial conferences is sufficient to permit a local court to require the holding of a conference when it is practical and feasible.]

[Pa.B. Doc. No. 00-2206. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1100]

Order Amending Rule 1117¹; No. 267; Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 1117 (Presence of the Defendant) that were adopted on December 8, 2000, effective January 1, 2001. The changes make it clear that the defendant's absence without cause does not preclude proceeding with the trial, including the imposition of sentence, and address in the Comment the requirements for the waiver of a defendant's presence at trial. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 8th day of December, 2000, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B. 5869 (December 5, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 720), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 1117 is amended in the attached form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2001.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1100. TRIAL

Rule 1117. Presence of the Defendant.

(a) The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause shall not preclude proceeding with the trial including the return of the verdict **and the imposition of sentence.**

* * * * *

Official Note: Rule 1117 [Adopted] adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after

¹ Rule 1117 will be renumbered Rule 602 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001.

Comment

[Paragraph (c) was added in 1994 to make it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.]

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, see e.g., *Commonwealth v. Vega*, 719 A.2d 227 (Pa. 1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) or from waiving the right to be present by his or her actions, see e.g., *Commonwealth v. Wilson*, 712 A.2d 735 (Pa. 1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present).

Former Rule 1117(c) was moved to Rule 642 (Trial *de novo*) in 2000 as part of the reorganization of the rules.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the December 8, 2000 amendments published with the Court's Order at 30 Pa.B. 6546 (December 23, 2000).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 1117²

Presence of Defendant; Waiver

On December 8, 2000, effective January 1, 2001, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 1117 (Presence of Defendant) to make it clear that the defendant's absence without cause does not preclude proceeding with the trial, including the imposition of sentence, and to address in the Comment the requirements for the waiver of a defendant's presence at trial.

The Committee examined Rule 1117 in response to an inquiry from the Court concerning the juxtaposition of the first sentence of Rule 1117(a) with the last sentence, and whether they were intentionally not "parallel." The first sentence of Rule 1117(a) requires the defendant's presence at every stage of the trial, including the trial, the return of the verdict, and the imposition of sentence; the last sentence makes reference only to proceeding in the defendant's absence with the trial and the return of the verdict.

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² Rule 1117 will be renumbered Rule 602 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

Because Rule 1117(a) is virtually the same as it was when adopted by the Court in the mid-1960's, the Committee's history concerning the intent of the rule is meager, so the former Committee's reason for proposing the inclusion of the language "and at the imposition of sentence" in the first sentence of Rule 1117(a), but omitting similar language from the second sentence, is not apparent. Furthermore, a review of the case law was similarly lacking in guidance, since the Court has not spoken directly on sentencing a defendant in absentia. In view of this, to correct the inconsistency, "and the imposition of sentence" has been added at the end of the second sentence of Rule 1117(a).

During our consideration of Rule 1117(a), the Committee reviewed the line of cases addressing waiver of the right to be present at trial. Noting that Rule 1117(a) requires that a defendant be present at all stages of the trial but is silent concerning waiver, the Committee agreed that it would be helpful to the bench and bar if the Rule 1117 Comment was revised to include examples of the ways in which a defendant may waive the right to be present at trial. Accordingly, the Rule 1117 Comment has been revised to include the parenthetical citation to *Commonwealth v. Vega*, 719 A.2d (Pa. 1998), which addresses waiver when the defendant is present, to make it clear that 1) the rule is not intended to prohibit a defendant from affirmatively waiving the right to be present at any stage of the trial, and 2) before permitting the waiver, the court must conduct an on-the-record colloquy that includes an explanation of the consequences of forfeiting the right to be present. Similarly, a parenthetical citation to *Commonwealth v. Wilson*, 712 A.2d 735 (Pa. 1998), which is representative of the line of cases addressing waiver when the defendant intentionally absents himself or herself, to make it clear that a defendant may waive the right to be present by his or her actions.

[Pa.B. Doc. No. 00-2207. Filed for public inspection December 22, 2000. 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 500]

Proposed Amendments Concerning Default Judgment Prohibited in Actions for the Recovery of Possession of Real Property

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.C.P.D.J. 504, 512, and 514 to clarify that default judgments may not be entered in actions for the recovery of possession of real property ("Landlord/Tenant" actions), and to make other technical or "housekeeping" amendments to these rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the

official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or e-mail to: mike.krimmel@supreme.court.state.pa.us no later than Friday, January 26, 2001.

By the Minor Court Rules Committee:

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 504. Setting the date for hearing; delivery for service.

* * * * *

Official Note:

The hearing date in subdivision (1) of this rule [**was**] **is** required to be set not less than seven days from the filing of the complaint because of the requirement [**of Pa.R.C.P.D.J. No. 1**] in Rule 506(B) that service be made at least five days before the hearing. It was thought that the requirement that the [**complaint be served**] **hearing be held** not more than fifteen days from the filing of the complaint should provide ample time to make the type of service required in these cases. However, the complaint may be reinstated upon written request of the plaintiff as in [**trespass and assumpsit cases**] **civil actions**. [See Pa.R.C.P.D.J. No. 314 (E) and the Note to Pa.R.C.P. D. J. No. 314.] See Rule 314(E) and Note.

The notice for the defendant set forth in subdivision (4) of this rule varies somewhat from the notice required in [**trespass and assumpsit**] **civil actions** under [**Pa. R.C.P.D.J. No. 1**] **Rule 305**. There are a number of reasons for this. First, there can be no default judgment in these possessory actions [**and, secondly,**] . See Rule 512(A) and Note. **Secondly**, it was thought that cross-complaints of defendants in these cases should be limited to those arising out of the occupancy of the premises.

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; **Note amended** _____, **effective** _____.

Rule 512. Hearings and Evidence.

A. The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property.

B. The district justice shall be bound by the rules of evidence, except that a bill, estimate, receipt or statement of account which appears to have been made in the

regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy or authenticity.

Official Note:

Subdivision A of this rule is intended to make clear that the district justice may not enter a default judgment in a possessory action, including a judgment for money only. The plaintiff must appear and give testimony to prove the complaint even when the defendant fails to appear for the hearing. See Rule 514(A) and Note. See also Section 250.503(a) of The Landlord and Tenant Act of 1951, 68 P.S. § 250.503(a). When the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint.

Subdivision B of [This] this rule is the same as Rule 321 of the [trespass and assumpsit] civil action rules.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended _____, effective _____.

Rule 514. Judgement.

* * * * *

Official Note:

Subdivision A of this rule requires that the plaintiff appear and give testimony to prove the complaint before the district justice can enter judgment against the defendant, even when the defendant fails to appear for the hearing. The district justice may not enter a default judgment in a possessory action, including a judgment for money only. See Rule 512(A) and Note. The various issues that the district justice must determine at the hearing include, but are not limited to the amount of rent due, if any; the amount of damages for unjust detention, if any; the amount of physical damages to the leasehold premises, if any; the amount found to constitute the monthly rental, and; the amount of the security deposit held by the landlord, if any.

The separate entries provided in Subdivision A are made necessary as a result of the rental deposit provisions for appeal or certiorari contained in [Pa. R.C.P.D.J. Nos. 1008.B. and 1013.B.] Rules 1008(B) and 1013(B), as well as the wage attachment provisions contained in [Act 5 of 1996] Section 8127 of the Judicial Code, 42 Pa.C.S. § 8127 (Act 5 of 1996).

Subdivision B of this rule makes provision for a money judgment for the defendant if the defendant prevails in a greater amount on the defendant's cross-complaint.

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective December 1, 1983; amended March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."]; March 28, 1996, effective March 29, 1996; Note amended _____, effective _____.

REPORT

Proposed Amendments to Pa.Rs.C.P.D.J. 504, 512, and 514

Default Judgement Prohibited in Actions for the Recovery of Possession of Real Property ("Landlord/Tenant" Actions)

The Committee undertook a review of the issue of the entry of default judgments in landlord/tenant actions on its own initiative, recognizing a need for clarification in the rules that default judgments should be prohibited in these cases. The prohibition against default judgments in landlord/tenant cases is referred to in the Note to Rule 504, but the Committee felt that the prohibition should be more prominently announced in the rules. The Committee noted that the statewide district justice computer system (DJS) does permit entry of a disposition of default judgment in landlord/tenant actions, and that many district courts routinely enter this disposition when a defendant fails to appear for a landlord/tenant hearing. The Committee learned that the DJS recorded 12,000 such dispositions in 1999 alone.

In conjunction with the clarification regarding default judgments, the Committee also recognized the need for several technical or "housekeeping" amendments to Rules 504, 512, and 514.

A. Default Judgments in Landlord/Tenant Actions

In considering how to clarify the prohibition of default judgments in landlord/tenant actions, the Committee first considered whether such a prohibition is necessary and whether it is appropriately pronounced by procedural rule. The question was raised as to why it is necessary to hold a perfunctory hearing when the defendant fails to appear. Upon review of the Landlord and Tenant Act of 1951 and the existing rules, the Committee concluded that such a hearing is necessary. First, the Committee looked to the statutory language of the Landlord and Tenant Act of 1951, 68 P.S. § 250.101 et seq. Section 250.503(a) of the Act states, inter alia:

(a) On the day and at the time appointed or on a day to which the case may be adjourned, the justice of the peace shall proceed to hear the case. If it appears that the complaint has been sufficiently proven, the justice of the peace shall enter judgment against the tenant: . . .

68 P.S. § 250.503(a) (emphasis added). This statutory language suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint.

Secondly, Rule 514 contains language similar to that found in 68 P.S. § 250.503(a). Rule 514(A) states, inter alia:

(A) If it appears at the hearing that the complaint has been proven, the district justice shall enter judgment against the defendant that the real property be delivered up to the plaintiff and shall enter judgment by separate entries: . . .

Pa.R.C.P.D.J. No. 514 (emphasis added). The language of this rule, like that in the statute, suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint. In further support of its conclusion, the Committee noted that Rule 514 requires that the district justice make a number of separate determinations when entering judgment for the plaintiff, not all of which can be ascertained from the face of the complaint. Specifically, the district justice must determine, inter alia, the amount found to constitute the monthly rental. Also,

if a security deposit is to be applied to the judgment, the district justice needs to determine the amount of the security deposit held by the landlord. These determinations cannot be ascertained from the complaint, and therefore can be made only after hearing testimony.

Having concluded that a hearing is required before a district justice can enter judgment for the plaintiff in a possessory action, and therefore that default judgment should be prohibited, the Committee went on to discuss the most appropriate way in which to incorporate this into the rules. As previously stated, the Note to Rule 504 already states that "... there can be no default judgment in these possessory actions ..." Pa.R.C.P.D.J. No. 504, Note. The Committee considered an amendment to Rule 504, but ultimately focused its attention on Rule 512, relating to hearings and evidence. The Committee decided that Rule 512 should be divided into two parts. Subdivision A would read, "The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property." Subdivision B would contain the existing language of the rule. A sentence would then be added to the note to clarify that the district justice may not enter a default judgment, including a judgment for money only.

The Committee also decided that the Note to Rule 504, relating to setting the date for hearing, delivery of service; and the Note to Rule 514, relating to judgment, should be amended to make clear that default judgments are not permitted and to cross reference Rule 512 with regard to this prohibition.

B. Technical and "Housekeeping" Amendments

In conjunction with the substantive changes discussed above, the Committee identified a number of technical and "housekeeping" amendments needed in the notes to Rules 504, 512, and 514.

In the Note to Rule 504, the Committee is proposing a change to the second sentence of the first paragraph to substitute the phrase "complaint be served" with the phrase "hearing be held" to make the language in the note consistent with the rule. The existing reference to complaint being served "... not more than fifteen days from the filing of the complaint ..." is not consistent with the rule and has created some confusion.¹

In the Note to Rule 512, the Committee proposes to clarify the proper procedure when the plaintiff fails to appear at a landlord/tenant hearing. While this procedure is made clear in civil actions by Rule 319, relating to failure of a party to appear at the hearing, there is no analogous rule in the 500 Series, nor did the Committee believe that such a rule would be necessary. The proposed change to the note, however, would simply clarify that when the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint.

In the Note to Rule 514, the Committee is proposing a new first paragraph to not only clarify that the plaintiff must appear and give testimony, but also to clarify the various issues that the district justice must determine, at the hearing, before the district justice can enter judgment for the plaintiff.

¹ This particular change was actually considered by the Committee in 1997 and was identified as the Committee's Recommendation #1 of 1997. However, for unknown reasons, the Committee never published the recommendation and there is some confusion as to whether or not it was "officially" submitted to the Supreme Court for approval. Therefore, this change is being incorporated into this current proposal and replaces Recommendation #1 of 1997.

In the notes to all three rules, the Committee proposes minor changes to correct citation form and the make references to other rules more consistent.

[Pa.B. Doc. No. 00-2208. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Scheduling Civil Trials Involving State Prisoners; Administrative Doc. 02 of 2000

And Now, this 1st day of December, 2000, it is hereby *Ordered and Decreed* that Administrative Docket 06 of 1998 is hereby rescinded.

It is further *Ordered and Decreed* that civil cases may be scheduled requiring the presence of an on-writ incarcerated prisoner at the discretion of the team leader in consultation with the Trial Division Administrative Judge and the Supervising Judge of the Criminal Division. Requests for the presence of an on-writ state incarcerated prisoner shall be weighed against the scheduling impact on criminal listings, the availability of prison bed space, the availability of sheriffs to both guard and transport the prisoner, the current prison population, the costs associated with the request, the availability of alternatives such as video conferencing, and other factors deemed appropriate to the decision.

By the Court

JOHN W. HERRON,
Administrative Judge, Trial Division

This Administrative Docket is promulgated in accordance with the April 11, 1987 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's web site at <http://courts.phila.gov>.

[Pa.B. Doc. No. 00-2209. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY

PART II. ALLEGHENY COUNTY COMMON PLEAS RULES

Orphans' Court Rules

Order of Court

And Now, this 6th day of December, 2000, the Board of Judges of Allegheny County having voted at the Board of

Judges' meeting held October 16, 2000 to rescind in their entirety existing Allegheny County Orphans' Court rules and to adopt the attached Allegheny County Orphans' Court rules, it is hereby Ordered and Decreed that all existing Allegheny County Orphans' Court rules are rescinded and the attached Orphans' Court rules are adopted.

This Order is promulgated in accordance with Pa.O.C. Rule 1.2 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. This Order shall be filed with the Prothonotary of Allegheny County in the Rules Docket. Copies shall be submitted to the Clerk of the Orphans' Court, the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Procedural Rules Committee.

By the Court:

ROBERT A. KELLY,
President Judge

ORPHANS' COURT DIVISION RULE 1.2

Rule 1.2A. Sessions of Court; Standard of Time; Motions.

Sec. 1. Sessions of Court.

The regular sessions of the Court will be held daily, except Saturdays, Sundays and legal holidays, unless otherwise ordered.

Sec. 2. Standard of Time.

Whenever a certain time is stated in these Rules, it shall mean prevailing time.

Sec. 3. Petitions; Motions.

All petitions, motions and miscellaneous business must be presented at 9:30 a.m. or at such other time as may be fixed by Order of Court.

The party who presents a petition or motion shall include a notice of presentation and certificate of service unless all parties in interest consent to the motion. Unless the sole relief requested is the issuance of a citation, ten (10) days' notice of presentation of any petition or motion is required absent an emergency or consent by the opposing party to a shorter notice of presentation.

Where a judge has been actively involved in the matter which is the subject of the petition or motion, counsel shall present the petition or motion to such judge.

Sec. 4. Costs; Vacation of Order for Failure to Pay Cost.

No petition shall be retained of record and no citation, rule or certificate shall be issued, except for cause shown, until all filing costs have been paid. If the costs are not paid within thirty days, the Clerk shall report the default to a judge, who may vacate the order of court.

Rule 1.2B. Attorneys.

Sec. 1. Appearance.

Every attorney presenting any paper to the Court or to the Clerk shall endorse thereon the attorney's name, office address, and telephone number in Pennsylvania and the attorney's identification number issued by the Court Administrator of Pennsylvania. Such endorsement shall constitute an appearance. An appearance may also be entered by praecipe.

Sec. 2. Withdrawal of Attorney Appearance.

An attorney's appearance for a party may not be withdrawn without leave of court unless another attorney has entered or simultaneously enters an appearance for the party.

An attorney of record who desires to withdraw an appearance with leave of Court must:

(a) File a verified petition setting forth the reasons for the request;

(b) At least ten (10) days prior to the time of presentation of the petition, serve upon the client and all other parties to the proceeding a true and correct copy of the petition and a notice of the date, time and place that the petition will be presented to the Court; and

(c) Certify that the petition and notice of the time, date and place of presentation of the petition were duly served.

Leave to withdraw an appearance will not be granted unless, after consideration of all relevant factors, the Court determines that the withdrawal will not unduly prejudice any party or unduly delay the processing of the case for final disposition.

Sec. 3. Agreements.

All agreements between attorneys will be considered of no validity, if disputed, unless made in writing or of record in open Court.

Sec. 4. Attendance, Appearance or Verification by Counsel.

Whenever these Rules provide for attendance, appearance, or signing or verification by any person or entity, such attendance, appearance, signing or verification may be by counsel of record; provided, however, that factual allegations in a petition for other than procedural relief shall be verified by the party on whose behalf the petition is presented or by an authorized person familiar with such facts, other than counsel.

Rule 1.2C. Recording Inter Vivos Trusts.

Before a petitioner can invoke the jurisdiction of the Court relating to inter vivos trusts, such petitioner must record the instrument creating the inter vivos trust in the office of the Clerk or the Recorder of Deeds of Allegheny County. Unacknowledged instruments may be recorded in the office of the Clerk by proof of the signatures thereto in the manner required for the probate of wills, unless otherwise ordered by the Court. Nothing herein shall prevent a beneficiary of an inter vivos trust from proceeding by citation to compel the production and recording of a trust instrument.

ORPHANS' COURT DIVISION RULE 2.3

Rule 2.3. Definitions.

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

"Clerk" shall mean the Clerk of the Orphans' Court Division of the Court of Common Pleas of Allegheny County, Pennsylvania.

"Court", "Orphans' Court" or "Orphans' Court Division" shall mean the Orphans' Court Division of the Court of Common Pleas of Allegheny County, Pennsylvania, or any judge thereof, having jurisdiction.

"Fiduciary" shall mean and include executors, administrators, guardians, trustees and attorneys-in-fact,

whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans' Court Division.

"PA O.C. Rules" shall mean the Pennsylvania Supreme Court Orphans' Court Rules, as amended from time to time.

"PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code of 1972, 20 Pa.C.S.A. § 101 et seq., as amended from time to time.

"Register of Wills" or "Register" shall mean the Register of Wills of Allegheny County, Pennsylvania.

ORPHANS' COURT DIVISION RULE 3.2

Rule 3.2. Return Days.

The return day is the last day to answer or take other legal action with respect to a citation or other process. The answer or other pleading shall be filed at or before 9:30 a.m. on the return day.

A pre-hearing conference date, a hearing date, or both, shall be fixed by the Court but shall not be the same date as the return day unless specially ordered.

ORPHANS' COURT DIVISION RULE 3.7

Rule 3.7. Hearings; Briefs; Amicus Curiae.

(a) When pleadings have been filed by the parties in conformity with prescribed procedure, or when the time for filing additional pleadings has expired, or when no pleadings are required, the Court will fix a day for a pre-hearing conference date, a hearing, or both, notice of which shall be given to all parties as the Court may direct.

(b) Unless prohibited by the Court, briefs shall be permitted as a matter of course and shall be provided to the Court and counsel of record (or opposing unrepresented parties) as directed by the Court. Such briefs shall contain a statement of the questions involved, a history of the case and the argument.

(c) Appearances and briefs amicus curiae may be entered and filed with leave of Court and as the Court may direct.

ORPHANS' COURT DIVISION RULE 5.7

Rule 5.7. Parties in Military Service.

When any party in interest in any proceeding in this Court is in the military service of the United States, the procedure shall conform to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C.A. 501 et seq.

ORPHANS' COURT DIVISION RULE 6.1

Rule 6.1. Form of Account.

Sec. 1. Form.

Accounts of all fiduciaries presented for confirmation and audit, whether joint or separate, shall be prepared in any form approved by the Supreme Court or in the forms A to E of this Rule and shall be designated by consecutive numbers starting with First and shall be further designated as Interim or Final. The model account formats of the PA O.C. Rules shall be the preferred format. An account which is not in a form consistent with these Rules shall not be confirmed nisi and shall not be scheduled for audit.

Accounts filed after confirmation nisi of an account shall be designated Supplemental. No account will be confirmed absolute pending disposition of all previously filed unaudited and unconfirmed accounts unless the

account includes all matters embraced in such prior accounts. The original and one copy of the account shall be filed with the Clerk.

Sec. 2. Copy of Inventory.

Accounts filed by executors, administrators, and guardians under this Rule shall have attached thereto a copy of the inventory (and any supplemental inventory) certified by counsel to be a true and correct copy of the inventory filed.

Sec. 3. Signing-Notice to Co-Fiduciary.

Every account shall be signed by all the fiduciaries stating it. Notice shall be given to each co-fiduciary who does not join in the statement of the account, and proof thereof shall be filed with the Clerk.

Sec. 4. Verification of Accounts.

Every account shall be supported by the verifications of all fiduciaries joining therein stating that (i) the account as stated is true and correct; (ii) that all disbursements credited have been paid to the parties entitled thereto; and (iii) with respect to the accounts of personal representatives (except as provided in Rule 6.4), that four months have elapsed from the date of the first complete advertisement of the grant of letters.

Sec. 5. Request for Distribution.

There shall be a request for distribution signed by the accountant at the end of the account requesting that distribution be determined by the Court in accordance with the petition for distribution to be offered in evidence at the audit of the account.

Sec. 6. Confirmation Nisi; Audit List.

All accounts filed with the Clerk will be confirmed nisi not less than thirty days after the time of filing. An audit list will be made up of all accounts confirmed nisi. The audit list will be called beginning on the second Monday following confirmation nisi, and shall continue thereafter each day until all of the accounts have been audited.

Sec. 7. Attendance at Audits.

(a) Except as provided in subsection (b) immediately below, accountants, claimants, and all other interested persons, either personally or through their counsel, shall attend audits at the time fixed therefor and furnish such information and produce such evidence as may be necessary to make proper disposition of claims and objections, and to determine proper distribution.

(b) Unless ordered by the Court, an accountant is not required to attend the audit if the petition for distribution has been verified by the accountant.

Sec. 8. Continuance.

Unless otherwise ordered by the Court, if a case on an audit list is continued, it shall be placed upon the next audit list by the Clerk.

Sec. 9. Petition for Distribution; Amendments/ Additions.

(a) Except as provided by subsection (b) immediately below, every petition for distribution may be typed on forms provided by the Clerk (or a reasonable facsimile thereof) signed and verified by the accountant, and offered in evidence at the audit of the account. The petition shall be prima facie evidence of the allegations therein and, unless objected to by an interested party or by the Court, or changed or altered by the evidence offered at the audit or subsequently with leave of Court, shall be conclusive for the entry of a decree of confirma-

tion and distribution. Receipts or disbursements received or made after audit and before the entry of a decree of distribution may be accounted for in a supplemental account, which shall be signed and verified by the accountant.

(b) If additional assets are discovered after audit and confirmation absolute of an account, then a signed and verified petition for the distribution of the same may be filed without an inventory or a formal accounting, provided that it appears in such petition that any inheritance or estate tax due on account thereof has been paid, that there are no known unpaid creditors of the estate and provided that the appropriate notice of presentation has been given.

(c) In addition to the matters required by subsection (a) above, the petition submitted by a guardian of the estate of a person who is still a minor shall set forth the name, address and relationship of the person who assisted the minor in the examination of the account. For any petition for distribution which is filed because a minor has reached the age of majority, the petitioner shall attach a certified copy of the minor's birth record, or such other evidence of age as the Court shall require.

Sec. 10. Distribution in Kind Under Sec. 3534 of the PEF Code.

(a) In every estate in which real estate remains for distribution, the decree of distribution shall consist of two schedules:

- Schedule A—Distribution of personalty.
- Schedule B—Distribution of real estate.

Schedule B shall contain a legal description and shall be submitted to the Court at the audit of the account.

(b) If the heirs, devisees, or legatees elect in writing to take real estate not specifically devised, then it shall be allotted and decreed to them in accordance with their written election or agreement.

(c) If the heirs, devisees, or legatees do not elect in writing to take unconverted real estate in kind, or if they are unable to agree as to the division thereof, any party in interest, including the personal representative of the estate, by petition presented at or prior to the audit of the account, may request the Court to divide, partition, and allot the real estate. When so requested by petition to divide, partition, and allot unconverted real estate, the Court shall fix a procedure for the disposition of such petition.

Sec. 11. Audit; Confirmation; Distribution; Suspension.

(a) Accounts confirmed nisi and any supplements thereto offered at the audit will be examined and audited by the Court. After audit, the accounts will be confirmed absolutely as stated or as modified and re-stated in accordance with the evidence, and balances for distribution decreed to the parties or suspended as circumstances may require. A decree of distribution for a decedent's estate shall not be entered unless proper advertisement has been made or has been excused by the Court in accordance with Rule 6.4.

(b) A decree of distribution may suspend distribution of any part of an estate. In order to lift such a suspension, a petition for that purpose must be submitted to the judge who entered the original decree suspending distribution, setting forth all receipts and disbursements since the entry of that decree. A proposed decree of distribution shall be attached to the petition.

Sec. 12. Receipts for Distributions.

Receipts for distribution, if obtained, may be filed with the Clerk.

Note: The forms for accounts have not been reproduced in this publication.

ORPHANS' COURT DIVISION RULE 6.3

Rule 6.3. Notice to Parties in Interest.

No account shall be confirmed absolutely unless the accountant has given written notice of the filing of the account and the call thereof for audit and confirmation in accordance with PA O.C. Rule 6.3. Notice sent by first class mail shall be deemed compliance with this rule. The notice shall (i) include a statement that a petition for distribution will be presented at the audit, (ii) state the date, time, and place of the audit to the extent then known, and (iii) include a statement as to any matters for which the accountant intends to request an adjudication at audit.

ORPHANS' COURT DIVISION RULE 6.4

Rule 6.4. Time for Filing of Accounts.

The following accounts may be filed before four months have elapsed from the date of the first complete advertisement of the grant of letters:

- (a) An account of an administrator d.b.n. when four months have elapsed since the first complete advertisement of the original grant of letters;
- (b) An account of an administrator pendente lite;
- (c) An account filed pursuant to Sec. 3531 of the PEF Code, dealing with small estates;
- (d) An account directed to be filed by the Court.

ORPHANS' COURT DIVISION RULE 6.10

Rule 6.10. Objections to Account; Service.

Any objection to an account and to any matter set forth in or arising out of the petition for distribution shall be made orally or in writing prior to or at audit. Written objections to accounts may be filed prior to audit with the Clerk. Copies of all objections, when filed or presented, must be served on counsel of record for the accountant or on the accountant who is not so represented. The accountant or counsel will provide written notice of the filing of the objections to all parties in interest or to their counsel, if known.

ORPHANS' COURT DIVISION RULE 7.1

Rule 7.1. Exceptions.

(a) *General Rule.* No later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if grounds for appeal are preserved as provided in subdivision (b) of this Rule.

(b) *Waiver.* Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

(c) *Time for Filing Exceptions.* If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

(d) *Multiple Aggrieved Parties.* Where more than one party is aggrieved by a final appealable order under Pa.

R.A.P. 341(b) or 342, a timely appeal filed by any party supersedes exceptions by any other party and the other shall be submitted directly to the appellate court.

(e) *Adoptions and Involuntary Terminations.* No exceptions shall be filed to any final order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. Section 2501, et seq.

(f) *Time Limits for Decision on Exceptions.* The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

(g) *Exceptions.* Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

(h) *Transcript of Testimony.* All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

ORPHANS' COURT DIVISION RULE 10.2

Rule 10.2. Appeals From the Register of Wills.

(a) *Form and Notice of Appeal*

An appeal from a decree of the Register shall be made to the Court in a form substantially similar to Form A of this rule or on any substantially similar form.

Notice of such appeal shall be served on all interested parties or their counsel.

(b) *Form of Petition*

After an appeal has been taken to the Court from any decree of the Register, the appellant shall present a petition to the Court within thirty days after filing the appeal. Such petition shall specify the grounds upon which the appeal is based; shall set forth the names and addresses of all interested parties and the necessary jurisdictional facts; shall be signed by the appellant or appellant's counsel of record; and shall be filed with the Clerk. A copy of the decree of the Register and a copy of the appeal form shall be annexed to the petition. Thereupon the Court will award a citation to all interested parties to show cause why the appeal should not be sustained and the decision complained of set aside.

(c) *Action Upon Default*

When on appeal no petition is filed within thirty days, the appeal may be dismissed by the Court upon petition of any party in interest.

If the respondent 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.

ORPHANS' COURT DIVISION RULE 12.7

Rule 12.7. Resignation and Discharge of Living Fiduciaries.

When a fiduciary has not completed the administration of the estate, the fiduciary's petition for leave to resign and be discharged shall set forth:

(a) The nature of the fiduciary capacity;

(b) The date and a reference to the record of the fiduciary's appointment and the names of the fiduciary's sureties, if any;

(c) The kind and value of the property remaining in the estate;

(d) Whether an account has been or will be filed; and

(e) The reason for the fiduciary's resignation.

The prayer shall be (i) for the acceptance of the resignation and an order directing payment and transfer of the remainder of the property in the fiduciary's hands to the fiduciary's successor; and (ii) for the discharge of the fiduciary and the fiduciary's sureties, if any, upon confirmation of the fiduciary's account.

The Court, with or without notice to the parties and with or without a hearing, may accept the fiduciary's resignation and direct the fiduciary to make payment and transfer of the assets of the estate to the fiduciary's successor and may require the fiduciary to state and file an account.

The proposed successor fiduciary and the representatives of persons not sui juris, if appointed, and any other interested person, may examine the assets of the estate and any account filed, and, when necessary, file objections. Upon consideration thereof and after audit and confirmation of the account, if filed, and proof that all taxes assessed have been paid or that provision has been made for their payment, the Court will decree a discharge of the accounting fiduciary and the fiduciary's sureties, if any, upon payment and transfer of the assets remaining in the hands of the fiduciary to the fiduciary's successor or as otherwise directed by the Court.

ORPHANS' COURT DIVISION RULE 12.9, 12.10 and 12.11

Rules 12.9, 12.10 and 12.11. Public or Private Sale or Options of Real Property; Mortgage or Lease of Real Property.

Any petition for leave to make a public or private sale of real property of a decedent or to mortgage, lease, or exchange real property, or to grant an option for the sale, lease, or exchange of real property under Sections 3351, 3352, 3353 or 3354 of the PEF Code shall set forth the following:

Sec. 1. Real Property.

(a) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; the name and date of appointment of the personal representative; and the amount of bond given by the personal representative, if any;

(b) a description adequate to describe the real property involved, with the improvements thereon, how acquired by the decedent, its rental income or value, its value shown by the inventory, and, if the Pennsylvania transfer inheritance tax appraisal has been filed, its value as shown therein;

(c) the names of all parties interested as heirs, devisees, legatees, or lienholders who will be affected by the

granting of the petition, the interest of each, an indication of whether any of such are not sui juris, together with the names of their fiduciaries, if any:

(d) the names of the parties in interest consenting to the transaction;

(e) the reasons why the sale or other requested disposition of the real property is desirable for the proper administration and distribution of the estate; and

(f) the mortgages, if any, to be discharged by sale with the consent of the mortgagees;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the requirements set forth in subparagraphs (a) through (f) immediately above, the petition shall set forth:

(g) the name of the proposed purchaser, purchase price, terms of the transaction and that, in the opinion of the petitioner, the price offered is better than can be obtained at public sale; and

(h) that the real property has been valued by at least two qualified real estate appraisers not personally interested in the proposed transaction.

When approval of a mortgage or lease is sought, then in addition to the requirements of subparagraphs (a) through (f) of Section 1 of this rule, the petition shall set forth the name of the person desiring to enter into the transaction, together with a summary of the terms of the instrument which the Court is requested to approve.

Sec. 2. Exhibits.

Exhibits to such petitions shall be attached in the following order:

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

(b) a certificate of the proper county authority showing the assessed value of the real property;

(c) the joinder of parties who consent to the transaction; and

(d) a copy of the inventory;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the exhibits required by subparagraphs (a) through (d) immediately above, the following exhibits shall be attached:

(e) a copy of the contract of sale or other instrument which the Court is requested to approve; and

(f) copies of the affidavits of the appraisers or the appraisals which conform to the requirement of the PA. O.C. Rules.

When approval of a mortgage or lease is sought, then in addition to the exhibits required by subparagraphs (a) through (d) of this Section 2, a copy of the proposed mortgage or lease shall be attached as an exhibit.

Sec. 3. Notice.

If the property is located in Allegheny County, then public notice of a proposed public or private sale, or an exchange, or an option shall be given by advertisement once a week for three successive weeks in the daily editions of the *Pittsburgh Legal Journal* and in one newspaper of general circulation published in Allegheny County. If the property is not located in Allegheny County, then such public notice shall be given in the legal periodical, if any, of that county and in one newspaper of general circulation published in such county. In either case, public notice shall include the posting of at least

five notices of the proposed sale, exchange or option on and in the immediate vicinity of the premises to be sold, exchanged, or optioned.

Sec. 4. Bid Process.

On or before the return day of a public sale, the proofs of publication and of posting of notice, if required, shall be filed. On such return day, the Court will then open the sales to competitive sealed bidding or may permit competitive oral bidding in an open court or the Court may refer the matter to the Clerk and fix the time and place during the same day when the Clerk will offer the property at auction and make immediate return thereto to the Court. The successful bidder shall forthwith deposit cash or its equivalent with the personal representative in a sum not less than ten percent of the amount of the bid; the balance shall be paid as directed by the Court.

Sec. 5. Additional Security.

On or after the return day of a sale or other transaction hereunder, the Court shall fix the amount of the security or additional security which the personal representative shall be required to enter. If, however, the facts warrant and a stipulation is entered by the surety on any existing security accepting liability for the proceeds of the sale or other transaction, the Court may excuse the personal representative from entering security or additional security. The surety on any additional bond, except for cause shown, shall be the same as on the original bond. The bond shall be presented to the Court for approval.

Sec. 6. Similar Petitions.

Petitions of trustees under Secs. 7133, 7141 and 7142 of the PEF Code, petitions of guardians under Secs. 5152 and 5155 of the PEF Code, and petitions of guardians under Secs. 5521 and 5522 of the PEF Code, shall conform so far as possible to the provisions of this rule.

Sec. 7. Personal Property.

When a sale, pledge, mortgage, lease, exchange, or option of personal property requires the approval of the Court, then the petition for such approval shall conform so far as possible to the provisions of this rule.

ORPHANS' COURT DIVISION RULE 12.16A

Rule 12.16A. Small Estates.

Any petition for settlement of a small estate as authorized by the PEF Code shall set forth the following:

Sec. 1. Personalty Only. When the estate of the decedent consists of personalty only, the petition shall set forth the following:

(a) The name, date of death and domicile of the decedent; whether the decedent died testate or intestate; if testate, whether the will was probated; whether letters have been granted, and if so, on what date and to whom;

(b) The items of personal property owned by decedent and their values at the date of death;

(c) The names of all beneficiaries under the will, if any, as well as the names of decedent's next of kin if not named as beneficiaries under the will;

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

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

(f) When a family exemption is claimed:

(1) by whom the exemption is claimed;

(2) the name of the surviving spouse, if any, whether the family relationship was maintained, and whether the spouse has forfeited his or her rights;

(3) if children of the decedent are claiming the exemption, then the names of all children and whether such children were members of the same household as the decedent at death, indicating any who are not sui juris, or if there are no such children, the names of the parent or parents of the decedent who were members of the same household as decedent at death;

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

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

(g) An itemized list of unpaid administrative expenses, preferred debts, and taxes, including those due to the Commonwealth;

(h) An itemized list of all claims and whether or not admitted;

(i) The names of all next of kin and legatees under the will, if any, not joining in the petition.

Exhibits shall be attached in the following order:

(1) A copy of the will, if any;

(2) The joinder of all next of kin, legatees, creditors, sureties on any administrator's bond, and any others interested in the decedent's estate, who consent to the granting of the petition;

(3) A receipt or statement from the agent of the Commonwealth showing that the Pennsylvania inheritance tax has been paid in full, or such agent's consent to the granting of the petition; and

(4) An itemized list of all disbursements made prior to filing the petition, specifying the date, amount, payee and purpose of each disbursement.

Sec. 2. Realty. When the estate of the decedent consists of personalty and realty or realty only, then in addition to the information required by Section 1 of this Rule, the petition shall set forth the following:

(a) The date of the first complete advertisement of the letters, and the amount of bond, if any; and

(b) The names of all devisees under the will, if any.

In addition to the exhibits required by Section 1 of this Rule, the petitioner shall attach proof of advertising as an exhibit to the petition.

ORPHANS' COURT DIVISION RULE 12.16B

Rule 12.16B. Sales of Real Estate; Additional Security or Waiver Thereof.

Sec. 1. In the case of a personal representative who has been required to give bond, the petition for an order requiring additional security or excusing such personal representative from entering additional security under the applicable provisions of the PEF Code, shall set forth the following:

(a) the name, residence, and date of death of decedent; whether the decedent died testate or intestate; the name of the personal representative and the date of appointment;

(b) the amount of the bond filed with the Register and the name of the surety thereon;

(c) a description adequate to identify the real estate to be sold and the improvements thereon;

(d) the name and address of the purchaser and the price to be paid;

(e) the names of all parties in interest and whether or not they are sui juris.

When an order excusing the entry of additional security is requested, or when security previously entered is to be used to secure in whole or in part the proceeds of the sale referred to in the petition, there shall be attached to the petition a stipulation signed by the surety on the existing bond accepting liability for the proceeds of the real estate to be sold.

Sec. 2. Exhibits.

Exhibits to such petitions shall be attached in the following order:

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

(b) a copy of the inventory, if filed;

(c) a copy of the agreement of sale; and

(d) consents, if any, of the parties in interest.

Sec. 3. Surety.

Except for cause shown, the surety on the bond of the personal representative at the time of appointment shall be surety on any additional bond.

Sec. 4. Form of Additional Bond.

When an additional bond is required, or a personal representative is excused from entering additional security, an order of Court in substantially the following form shall be annexed to the petition:

And now, this ____ day of _____, 20 __, upon consideration of the annexed petition and on motion of _____, it is ordered, adjudged, and decreed that _____, _____ of the estate of _____,

(Personal Representative) deceased, enter in the office of the Register of Wills additional security in the amount of \$ _____, with _____ as surety and, upon the entry of the same, the said _____ is authorized to receive the

(Personal Representative) proceeds of the sale of the real estate known as _____, _____ Pennsylvania as the (Number, Street and Municipality) same is more fully described in the Petition.

Sec. 5. Petition of Trustees.

Petitions of trustees relating to the posting or excusing of security or additional security under the applicable provisions of the PEF Code shall conform substantially to the foregoing provisions of this rule.

ORPHANS' COURT DIVISION RULE 12.16C

Rule 12.16C. Minors; Allowances.

A petition for allowance pursuant to Section 5164 of the PEF Code, shall set forth:

(a) the name, address and age of the minor, the person with whom the minor resides, and the date of appointment and qualification of the minor's guardian;

(b) the names and addresses of the minor's living parents, their incomes and whether their incomes are sufficient to support and maintain their children;

(c) the present net value and kind of the minor's estate, whether real or personal, the net income therefrom during the six months preceding the petition, and any other information respecting principal and income which

may be of advantage to the Court in fixing the amount to be authorized for the specific purpose;

(d) whether any person has made any provision by will or otherwise for the education and support of the minor and, if so, a copy thereof;

(e) all previous allowances by decree;

(f) the school or institution which it is proposed the minor shall attend and how the desired allowance shall be paid; and

(g) a recommendation to the Court of an amount that should be allowed.

ORPHANS' COURT DIVISION RULE 12.16D

Rule 12.16D. Termination of Trusts.

A petition for the termination of a trust in whole or in part, and for the transfer of personal property and conveyance of real estate held in trust, to the appropriate persons shall set forth the following:

(a) the name and residence of the testator or settlor, the terms of the trust, and any known reason, not expressed in the deed, trust instrument or will, why the trust was created;

(b) the names and address of all parties who are or possibly may be parties in interest, whether they are sui juris, and if they are not sui juris, the names of their fiduciaries, if any;

(c) a description of all property impressed with the trust and whether it has been affected by an election or any other act or proceeding which would necessitate the termination of the trust;

(d) the names of all parties who have consented to the termination, and the names of all parties who have not consented to the termination; and

(e) the reason why the trust should be terminated and the absence of any reason for its continuance.

ORPHANS' COURT DIVISION RULE 12.16E

Rule 12.16E. Change of Situs of Trust.

Sec. 1. Petitions. An application for transfer of situs of any testamentary or inter vivos trust shall be by petition of a trustee or any party in interest. The petition shall set forth the following:

(a) the name of the decedent or settlor and the date of the establishment of the trust estate;

(b) the names and addresses of all fiduciaries;

(c) the names and addresses of all parties in interest and whether they are sui juris and join in the prayer of the petition;

(d) a statement whether all taxes due the Commonwealth and its political subdivisions have been paid or provided for;

(e) a brief statement of the reasons why the change of situs is necessary or desirable;

(f) the name and address of a successor trustee or trustees, if appropriate, and the court which will have jurisdiction over the trust;

(g) the place where the trust instrument is recorded; and

(h) a statement of what actions will be taken in the other jurisdiction causing the appropriate court located therein to accept jurisdiction of the trust.

Sec. 2. Exhibits. Exhibits shall be attached in the following order:

(a) a copy of the instrument and all amendments thereto which created the trust;

(b) joinder of all parties who consent;

(c) acceptance of successor trustee or trustees;

(d) if the successor trustee is a corporation, a certificate of the appropriate official that the proposed trustee is authorized to transact trust business and the most recent statement of condition, including trust assets being administered;

(e) a copy of the order of the court in the new situs accepting jurisdiction over the trust.

ORPHANS' COURT DIVISION RULE 12.16F

Rule 12.16F. Compromise or Settlement of Survival Actions.

Sec. 1. Petitions.

Whenever a personal representative, who has a right of action to recover damages under the Survival Statutes and who has not brought suit, wishes to compromise or settle such a claim, whether or not any claim has been made for damages under the Wrongful Death Statute, the personal representative shall present his petition to the Orphans' Court Division for approval of the compromise or settlement. The petition shall contain the following averments:

(a) the name, age, state of health, residence and date of death of the decedent and whether the decedent died testate or intestate;

(b) the name of the personal representative, the date of the personal representative's appointment, that letters were granted and duly advertised, and the amount of bond, if any;

(c) the occupation of the decedent at the time of the decedent's death, the salary and average earnings, the name of the decedent's employer and address if the decedent was not self-employed;

(d) the names of all heirs or next of kin (noting those dependent upon the decedent) and whether they are sui juris, together with the names of their guardians, if any;

(e) the names and addresses of all creditors who have or had claims against the estate, whether or not they have been paid, and, if paid, by whom;

(f) a brief recital of the facts constituting the cause of action;

(g) a statement of reason for the proposed compromise or settlement, the amount thereof, including the amount of counsel fees and legal expenses, and the proposed apportionment between the survival action and the wrongful death action, if any; and

(i) that notice of the presentation of the petition has been given to all parties in interest who do not join.

The prayer of the petition shall be for approval of the compromise or settlement.

Sec. 2. Exhibits.

The following exhibits shall be attached to the petition:

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

(b) an affidavit of service of notice;

(c) the joinder of all parties who consent.

Sec. 3. Hearing.

When the averments of the petition require it, the Court upon its own motion or upon the request of any party in interest, will set a date for hearing.

Sec. 4. Distribution.

Distribution of the amount received in compromise or settlement of a survival action shall be made in accordance with Rule 6 or Rule 12.16A of these Rules.

ORPHANS' COURT DIVISION RULE 12.16G**Rule 12.16G. Petition to Settle Claims.***Sec. 1. Contents of Petition.*

Where no action has been instituted, a petition by a guardian of a minor (as the term "guardian" is defined under Pa. R.C.P. 2026) for authority to settle a claim for damages proposed to be paid to the estate of a minor shall be verified by the guardian of the minor, shall contain a statement of the nature of the evidence relied upon to show liability, the elements of damage, the injuries sustained, and the list of expenses incurred or to be incurred. The petition shall be accompanied by the following exhibits:

(a) A statement by counsel as to such counsel's professional opinion regarding the desirability of the settlement and reasons therefor, a description of the services rendered, a description and the amount of reimbursable expenses requested, and the amount of fees requested, which, except in extraordinary circumstances, shall not exceed 33-1/3 percent of the present value of a structured settlement or 33-1/3 percent of the gross recovery of any other settlement;

(b) A statement by the attending physician as to the injuries sustained by the minor, treatment administered and the prognosis; and

(c) In property damage claims, a statement by the party who made the repairs or appraised the loss.

Sec. 2. Deposit of Funds by Order of Court.

All petitions under this Rule where the proceeds of settlement are to be deposited in a savings account or in a certificate of deposit, shall have attached to the petition an order including the following:

It is hereby ordered and decreed that the amount of \$ _____ shall be deposited in the name of _____, a minor, by counsel of record in a savings account or certificate of deposit in a federally insured bank, savings and loan association or credit union. The savings account or certificate of deposit shall be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF MAJORITY OR BY FURTHER ORDER OF COURT."

Sec. 3. Settlement of Filed Action.

For approval of a minor's claim where an action has been instituted, see Allegheny County Civil and Family Division Rule 2039.

ORPHANS' COURT DIVISION RULE 12.16H**Rule 12.16H. Corporations Serving as Fiduciaries.***Sec. 1. Petitions.*

Subject to the provisions of Section 6 of this Rule 12.16E, a petition of a corporation organized under the laws of the Commonwealth or of the United States having fiduciary powers, doing business for one year or longer and desiring to exercise fiduciary powers, shall set forth the following:

(a) the corporate name, the location of its business, the statutory authority for its existence, the date and purpose of its incorporation, any changes therein and the number of years it has been in operation;

(b) the names and addresses of its executive officers and directors and the stock in the petitioner held by each;

(c) the interest, direct or indirect, which the petitioner has in the capital stock of any other corporation organized for the conduct of a similar business; and the name of any corporation or group of allied persons or both holding or controlling a majority of the stock of the petitioner;

(d) if the petitioner is a national banking association, the grant of fiduciary powers to it by the Comptroller of the Currency;

(e) that the petitioner will make a deposit of the sum of \$500 with the Clerk on presentation of the petition, to be used so far as necessary to pay the fees of the Examiner of Fiduciaries and will make any further deposit in excess thereof that may be ordered by the Court; and

(f) the passage of a resolution by the board of directors of the petitioner providing:

(i) that it will submit to a preliminary examination of all its books, assets and liabilities, and, if approved, will submit to all other examinations directed by the Court and will pay all costs and expenses of examination fixed by the Court;

(ii) that fiduciary funds and investments under the control of the Court will not be mingled with assets owned by the petitioner or other assets in which it has any interest except as fiduciary,

(iii) that investments made by the petitioner as fiduciary shall be so designated that the estate or trust to which such investments belong shall be clearly shown;

(iv) that uninvested capital trust funds and income to be invested shall be segregated and designated as directed by applicable state and federal law;

(v) that it will submit to the Court in January and July of each year a statement duly verified showing its financial condition at the close of business on December 31st and June 30th of each year in the form required by the Examiner of Fiduciaries;

(vi) that it accept the provisions of the Acts of Assembly relating to corporate fiduciaries now or hereafter in existence, and of all orders and rules of court relating to the petitioner;

(vii) that the petitioner will not become surety on any bond, except as otherwise allowed by law;

(viii) that designated officers will execute any and all petitions, writings and obligations necessary in the exercise of fiduciary powers and that their names and any changes therein will be filed of record with the Examiner of Fiduciaries;

(ix) that its counsel of record shall be the agent of the petitioner to receive all notices issuing from the Court; and

(x) that the gross amount loaned by it to all its officers and directors and to the firms or houses in which they may be interested, directly or indirectly, shall not exceed the amount allowed by applicable state and federal law.

(g) whether the petitioner has applied to any other court in Pennsylvania for approval to exercise fiduciary powers, and the results of any such applications.

Sec. 2. Exhibits.

Exhibits shall be attached in the following order:

(a) a certified copy of its charter, amendments and renewals;

(b) the approval of the State Banking Department or a certified copy of the certificate from the Comptroller of the Currency granting it the right to exercise fiduciary powers;

(c) a certified copy of the resolution of the petitioner embodying the allegations of Section 1(f), of this Rule;

(d) a current financial statement of the petitioner showing its total assets and liabilities in the form required by the Secretary of Banking or the Comptroller of the Currency; and

(e) the certificate of approval, or order for authority to exercise fiduciary powers by the Court of Common Pleas of the county where the corporate petitioner's principal office is located as well as all certificates of approval or orders for authority to exercise fiduciary powers which have been issued by any other court of any other county in Pennsylvania.

Sec. 3. Officer's Oath to Petition—Records for Examiner.

The petition shall be sworn to by an officer of the petitioner authorized by resolution. When the petition is presented to the Court, counsel shall deliver to the Examiner:

(a) a certified copy of the last report of the petitioner's examination by the Secretary of Banking or the Comptroller of the Currency; and

(b) a copy of the petitioner's by-laws.

Sec. 4. Preliminary Order.

Upon presentation of the petition, a preliminary order will be made in the following form:

And now, this ____ day of _____, 20 __, the within petition having been presented in open Court, upon consideration thereof it is ordered, adjudged and decreed that the petition be referred to _____, Examiner of Fiduciaries, who is directed to make a report thereon to the Court.

Sec. 5. Final Order.

After examination and report by the Examiner and consideration by the Court, a final order of approval may be made in the following form:

And now, this ____ day of _____, 20 __, it appearing to the Court that the petition of _____, a corporation, for authority to exercise fiduciary powers, was presented in open Court and referred to _____, Examiner, who has filed a report, and it further appearing from such petition and report that the petitioner has complied with the applicable laws and the rules of this Court, and has subjected itself to all orders and rules of this Court hereafter to be made, upon motion of _____, counsel for petitioner, it is ordered, adjudged and decreed that _____ be and is hereby authorized to act as fiduciary, when designated, chosen or appointed according to law.

Sec. 6. Suspension of Rule with Respect to Certain Corporations or Entities

The application of this Rule shall be suspended with respect to corporations or entities desiring to exercise fiduciary powers in Allegheny County, Pennsylvania, if such corporation or entity is one of the following:

(a) a national bank authorized to exercise fiduciary powers pursuant to 12 U.S.C. 92(a) and to perform fiduciary services in this Commonwealth;

(b) a bank, a bank and trust company, a trust company or to the extent provided under the Pennsylvania Banking Code of 1965, a savings bank which is authorized to perform fiduciary services under Section 106 of the Pennsylvania Banking Code of 1965;

(c) a federal savings bank which is authorized to exercise trust powers by the Office of Thrift Supervision pursuant to 12 U.S.C. § 1464(n); or

(d) a bank, a bank and trust company, a trust company or savings bank which is regulated by the Office of Thrift Supervision, chartered under laws of another state or territory of the United States and satisfies the requirements of Section 106(b) of the Pennsylvania Banking Code of 1965.

Such corporation or entity shall submit to the Orphans' Court a copy of its charter, and for corporations or entities described under subsection (d) above an approval letter from the Pennsylvania Department of Banking under Section 106.

Corporations or entities qualifying under any of the above requirements need not comply with the requirements of this Rule, but shall file annually with the Court a statement that they continue to be authorized to exercise fiduciary powers by their governing regulatory entity. In the event the corporation or entity has its authorization to exercise fiduciary powers revoked or suspended, the Court shall be immediately notified.

ORPHANS' COURT DIVISION RULE 12.16I**Rule 12.16I. Surety Companies.***Sec. 1. Petitions.*

A petition of a surety company, whether a stock company or a mutual company, having a capital and surplus of not less than \$4,000,000.00, with a minimum paid-in capital of \$1,000,000.00, to become surety on bonds of fiduciaries shall set forth in the following order:

(a) the corporate name, the location of its business, the statutory authority for its existence, the date and purpose of its incorporation, any changes therein, and the number of years it has been in operation;

(b) the amount, if any, of its capital stock, how paid, the number of shares issued and par value thereof;

(c) the amount of its capital and surplus;

(d) the names and addresses of its officers (excluding assistant officers), and directors and the ownership interest in the petitioner held by each;

(e) the interest, direct or indirect, which the petitioner has in the capital stock of any other corporation organized for conducting a similar business; and the name of any corporation or group of allied persons or both holding or controlling a majority of the stock of the petitioner;

(f) whether the petitioner has assumed or underwritten policies issued by any other company and in force at the date of its petition;

(g) the provision made to protect itself from excessive losses in the event of a catastrophe under employers' liability or workers' compensation contracts or otherwise;

(h) that on presentation of the petition, the petitioner will deposit a sum determined by the Court, to be used as

far as necessary to pay the fees of an examiner and will make any further deposit in excess thereof that may be ordered by the Court;

(i) the passage of a resolution by the board of directors of the petitioner providing:

(1) that it will submit to a preliminary examination of its books, assets and liabilities and, if approved, will submit to all other examinations ordered by the Court and will pay all costs and expenses of examination fixed by the Court;

(2) that fiduciary property coming into its custody will not be taken out of the jurisdiction of the Court but will be managed and controlled by the company subject to orders of the court;

(3) that no suretyship will be accepted in any sum greater than allowed by any Act of Assembly of Pennsylvania;

(4) that it will submit to this Court not later than the first week of March of each year a statement duly verified showing its financial condition at the close of business on December 31st preceding, in the form required by the Insurance Commissioner of the Commonwealth of Pennsylvania, together with a sworn or certified copy of the annual renewal certificate when issued by the Insurance Commissioner of Pennsylvania, permitting the transaction of its business within the Commonwealth;

(5) its acceptance of the provisions of the Acts of Assembly of Pennsylvania relating to surety companies now or hereafter in existence and to all final orders of court relating to the petitioner;

(6) that the names of its officers or agents authorized to execute petitions, writings, and obligations on its behalf, and any changes therein, will be filed of record in the Court with the Examiner of Fiduciaries; and

(7) that its counsel of record shall be the agent of the petitioner to receive all notices issuing from the Court.

Sec. 2. Exhibits.

Exhibits shall be attached in the following order:

(a) a certified copy of its charter with amendments and renewals;

(b) a certificate of authority to do business in Pennsylvania issued by the Insurance Commissioner;

(c) a certified copy of the resolution of the petitioner embodying the allegations of clauses (1), (2), (3), (4), (5), (6), and (7) of Sec. 1(i) of this rule;

(d) a financial statement of the petitioner showing its total assets and liabilities in the form required by the Insurance Commissioner of Pennsylvania; and

(e) a certified copy of the certificate appointing the Insurance Commissioner of Pennsylvania attorney in fact for the petitioner.

Sec. 3. Officer's Oath to Petition. Records for Examiner.

The petition shall be sworn to by an officer of the petitioner authorized by resolution to do so. When the petition is presented to the Court, counsel shall deliver to the Examiner:

(a) a copy of the last report of the petitioner made to the Insurance Commissioner of any state;

(b) a certified copy of the last report of examination by the Insurance Commissioner of any state; and

(c) a copy of the petitioner's by-laws.

Sec. 4. Preliminary Order.

Upon presentation of the petition a preliminary order will be made in the following form:

And now, _____, 20 __, the within petition having been presented in open court, upon consideration thereof it is ordered, adjudged, and decreed that the petition be referred to _____, Examiner of Fiduciaries, who is directed to make a report thereon to the Court.

Sec. 5. Final Order.

After examination and report by the Examiner and consideration by the Court, a final order of approval may be made in the following form:

And now, this ____ day of _____, 20 __, it appearing to the Court that the petition of _____, a corporation, for authority to become surety on bonds or undertakings, was presented in open Court and referred to _____, Examiner, who has filed a report, and it further appearing from such petition and report that the petitioner has complied with the applicable laws and with the rules of this Court and has subjected itself to all orders and rules of this Court hereafter to be made, upon motion of _____, counsel for petitioner, it is ordered, adjudged, and decreed that _____ be and is hereby authorized to become surety on bonds or undertakings permitted or required by law.

Sec. 6. Annual Examination Fee.

Every surety company, after approval by the Court, shall annually deposit with the Clerk a sum determined by the Court for the expenses of examination of the annual records required to be submitted under Sec. 1(i)(4) in addition to the expense of any other examination which may be required.

ORPHANS' COURT DIVISION RULE 14

Rule 14. Incapacitated Persons; Guardians.

Sec. 1. Petition Contents.

(a) A petition for the appointment of a guardian of the estate or person of an alleged incapacitated person shall set forth:

(1) the name, age, residence and post office address of the alleged incapacitated person;

(2) the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person;

(3) the name and address of the person or institution providing residential services to the alleged incapacitated person;

(4) the names and addresses of other service providers;

(5) the name and address of the person or entity whom petitioner asks to be appointed guardian;

(6) an averment that the proposed guardian has no interest adverse to the alleged incapacitated person;

(7) the reasons why guardianship is sought;

(8) a description of the functional limitations and physical and mental condition of the alleged incapacitated person;

(9) the steps taken to find less restrictive alternatives;

(10) the specific areas of incapacity over which it is requested that the guardian be assigned powers; and

(11) the qualifications of the proposed guardian.

(12) If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and the net income of the alleged incapacitated person from all sources to the extent known;

(13) the potential for conflict with regard to the issue of who will be appointed as guardian and with regard to the issue of capacity;

(14) the current status of the alleged incapacitated person (i.e. unconscious, unable to communicate due to a stroke, combative, etc.); and

(15) If an emergency guardian is sought, the petition shall also include an indication as to whether or not the condition of the alleged incapacitated person is one that will or will not be remedied within the first 72 hours.

(b) A consent, signed by the proposed guardian, shall be attached to the petition in which the proposed guardian shall agree to act as guardian of the person or the estate of the alleged incapacitated person if appointed by the Court and shall state that the proposed guardian has no interest adverse to that of the alleged incapacitated person and is not a fiduciary of any estate, trust or similar fund in which the alleged incapacitated person has an interest.

(c) The petition shall conclude with a prayer for the appointment of a guardian of the estate or person or both of the alleged incapacitated person and for the award of a citation directed to the alleged incapacitated person to show cause why he should not be adjudged an incapacitated person and why a guardian should not be appointed.

Sec. 2. Preliminary Order; Notice; Service.

(a) Upon presentation of a petition for the appointment of a guardian, the Court will enter a preliminary order awarding the citation prayed for. The form of the preliminary order shall be substantially as set out in the appendix to this Rule.

(b) Written notice of the petition and hearing, to which shall be attached the citation and a copy of the petition and preliminary order, shall be provided to the alleged incapacitated person. The written notice shall be in large type and in simple language and shall indicate the purpose and seriousness of the proceeding, the rights that can be lost as a result thereof, the date, time and place of the hearing, and that the alleged incapacitated person has the right to request the appointment of counsel, to have counsel appointed if the Court deems it appropriate, and to have such counsel paid for if it cannot be afforded. The form of written notice shall be substantially as set out in the appendix to this Rule.

(c) Personal service of the written notice, petition, citation and preliminary order shall be made on the alleged incapacitated person and the contents and terms of the petition shall be explained to such person to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the Court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the Court may direct, including other service providers. An Affidavit of Service shall be filed on or before the day of hearing.

Sec. 3. Notice of Retention of Counsel.

(a) Counsel retained by the person alleged to be incapacitated in a petition under 20 Pa.C.S.A. § 5511(A) shall enter an appearance and shall provide a copy thereof to the petitioner at least seven (7) days prior to the date set for hearing as set out in the appendix to this Rule.

(b) If petitioner does not receive notice under Sec. 3(a) that counsel has entered an appearance on behalf of the alleged incapacitated person, petitioner shall notify the Court in writing at least seven (7) days prior to the date set for hearing that the alleged incapacitated person is not represented by counsel as set out in the appendix to this Rule.

Sec. 4. Hearing.

At the time fixed for the hearing on the petition, testimony shall be submitted in support of the petition (See 20 Pa.C.S.A. §§ 5512.1, 5518 and 5518.1). The alleged incapacitated person shall be present in court at such hearing unless (1) the Court is satisfied, upon the deposition or testimony of, or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or (2) it is impossible for him to be present because of his absence from the Commonwealth.

Sec. 5. Appointment of Guardian.

(a) *Findings.* In all cases, the Court, upon presentation of proper proof, shall consider and make specific findings of fact as required by 20 Pa.C.S.A. § 5512(A).

(b) *Final Orders.* The Court shall determine whether a plenary or limited guardian of the person or estate of the alleged incapacitated person is required. The forms of final orders for the appointment of plenary and limited guardians are set out in the appendix to this Rule.

Sec. 6. Emergency Guardians.

(a) *Petition.* A petition for the appointment of an emergency guardian of the person or estate of the alleged incapacitated person shall both set forth the information required in 20 Pa.C.S.A. § 5511(E) and Sec. 1 of this Rule and shall be subject to the provisions of 20 Pa.C.S.A. § 5511 (including those relating to notification concerning the right to counsel and the appointment of such counsel for the alleged incapacitated person), unless the Court directs in its order setting the time of the emergency hearing that the preparation and inclusion of such information is not feasible under the circumstances. Such emergency petitions must, however, contain facts and information sufficient to enable the Court to determine that: 1) the person allegedly lacks capacity; 2) is in need of the appointment of an emergency guardian; and 3) the failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person.

(b) *Citation.* Upon presentation of an appropriate petition for the appointment of an emergency guardian of the person or estate of an alleged incapacitated person, the Court will enter an order awarding a citation, subject to the provisions of 20 Pa.C.S.A. § 5511(A), and will direct such notice as it shall determine to be feasible in the circumstances to persons appearing to be entitled to such notice. In addition to fixing a return day for the filing of a written answer to the petition (though such written answer shall not be mandatory), the order shall also fix a time and place for hearing on the petition. The citation, together with written notice of the Petition, to which shall be attached a copy of the petition and the order, shall be served personally upon the alleged incapacitated

person prior to the hearing. The forms of orders for the setting of a hearing upon a petition for appointment of an emergency guardian of the person or the estate of an alleged incapacitated person shall be substantially as provided in the appendix to this Rule.

(c) *Hearing.* At the time fixed for hearing on the petition for appointment of an emergency guardian, testimony shall be submitted in support of the petition (See 20 Pa.C.S.A. §§ 5513 and 5518). The alleged incapacitated person shall be present at the hearing unless: 1) the Court is satisfied, upon the deposition, testimony or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence, or 2) it is impossible for him to be present because of his absence from the Commonwealth.

(d) *Appointment of Emergency Guardian.* Upon proper proof, the Court shall make a finding of incapacity and appoint an emergency guardian of the person or estate, or both, pursuant to 20 Pa.C.S.A. §§ 5512.1 and 5513 and, if the petition is for the appointment of an emergency guardian of the estate, will fix the amount of the surety bond, if any, to be filed by the guardian. The required bond must be submitted to the Court for approval and filed in the Clerk's office before the order of appointment will be released by the Court. The emergency guardian of an alleged incapacitated person shall have only and be subject to such powers, duties, and liabilities and serve for such time as the Court in its order of appointment shall direct. The forms of orders of appointment of an emergency guardian shall be substantially as provided in the appendix to this Rule.

Sec. 7. Inventory.

Within three months after the real or personal property of the incapacitated person comes into his possession or as otherwise ordered by the Court, a guardian of the estate of an incapacitated person shall verify by oath and file with the Clerk an inventory and appraisal of personalty and a statement of real estate, and a statement of any real or personal property which the guardian expects to acquire thereafter.

Sec. 8. Reports Required of Guardian.

(a) Each guardian of an incapacitated person shall file a report with the Court at least once within the first twelve (12) months of his appointment or such earlier time as may be set by the Court and at least annually thereafter.

(b) The annual report of a guardian of the estate of an incapacitated person shall include:

(1) Assets held by the guardian and the current value thereof.

(2) All receipts and disbursements of principal and income since the date of appointment of the guardian, or, if later, since the date of the last annual report. The report shall identify expenditures which have been made since the date of appointment or, if later, the date of the last annual report, pursuant to any order for an allowance under 20 Pa.C.S.A. § 5536, or otherwise for the housing, maintenance, support medical expenses, rehabilitation, education and other needs of the incapacitated person.

(3) The estimated annual income of the assets held by the guardian and from other sources.

(4) Subject to the foregoing, an annual report may be in the form prescribed for Accounts of Guardians of the Estates of Minors under Orphans' Court Rule 6.

(5) Notice of the filing of the annual report by the guardian of an estate shall be provided to the guardian's surety, the guardian of the person if someone other than the guardian of the estate, the incapacitated person and his or her counsel, if any, and such other interested parties as the Court may direct.

The form of the Report of a guardian of the estate shall be substantially as set out in the appendix to this Rule.

(c) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the estate of such incapacitated person shall file a final report with the Court. The final report shall be in the form prescribed for accounts of guardians of the estates of minors under Rule 6 of this Court and shall cover the period from the date of the appointment of the guardian of the estate to the date of death of the incapacitated person or the adjudication of capacity. Such final report shall be filed as an account of the guardian in the office of the Clerk as provided by 20 Pa.C.S.A. § 5532 and the practice and procedure concerning the filing and audit of such account, reviews, distribution and rights of distributees shall conform to the practice and procedure governing the account of a guardian of a minor as set forth in 20 Pa.C.S.A. § 5533 and Rule 6 of this Court.

(d) The annual report of guardian of the person of an incapacitated person shall include:

(1) Current address, type of placement and living arrangements of the incapacitated person, e.g.: private home, personal care facility, hospital, institution, etc.

(2) Major medical or mental problems of the incapacitated person.

(3) A brief description of the social, medical, psychological and other support services the incapacitated person is receiving.

(4) The opinion of the guardian as to whether the guardianship should continue or be terminated or modified, and the reasons therefor.

(5) The number and length of times the guardian visited the incapacitated person in the past year.

The form of the report of a guardian of the person shall be substantially as set out in the appendix to this Rule.

(e) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the person shall file a final report with the Court, providing the address and type of placement of the incapacitated person as of the date of death or adjudication of capacity, number and length of times the guardian visited the incapacitated person since the last report, and the reason why the report is being filed. The form of the final report of the guardian of the person shall be substantially as set out in the appendix to this Rule.

Sec. 9. Petition for Allowance.

A petition under 20 Pa.C.S.A. § 5536 for an allowance from the incapacitated person's estate during incapacity, may be presented by the guardian or any interested party. The petition shall set forth:

(a) the name of the guardian and the date of the guardian's appointment; if the petitioner is not the guardian, the petitioner's relationship to the incapacitated person or the nature of the petitioner's interest;

(b) the nature and present value of the incapacitated person's estate and the net annual income therefrom;

- (c) the address of the incapacitated person;
- (d) the names and addresses of the incapacitated person's dependents, if any;
- (e) a statement of all claims of the incapacitated person's creditors known to the petitioner;
- (f) all previous allowances by decree; and
- (g) a prayer for the allowance requested.

No order for an allowance out of an incapacitated person's estate shall be made without prior notice to the incapacitated person's guardian, if any.

Sec. 10. Sales, Mortgages, Leases, Exchanges and Options.

A petition for a sale, mortgage, lease, exchange or option of an incapacitated person's real or personal property shall comply with 20 Pa.C.S.A. §§ 3353, 5155, and 5521(B), and the applicable provisions of Rules 12.9, 12.10 and 12.11 of this Court.

Notice of a sale or other transaction under this section shall be given to all persons who are sui juris and would be entitled to share in the estate of the incapacitated person if the incapacitated person died intestate at the time the petition is presented.

Sec. 11. Small Estates.

(a) When the entire real and personal estate, wherever located, of a resident or non-resident alleged incapacitated person has a gross value of \$25,000 or less, a petition to have him adjudged incapacitated shall be filed in the form prescribed in Sec. 1 of this Rule except that the appointment of a guardian of his estate shall not be requested. After the hearing on such a petition and upon presentation of the required evidence, the Court will make a finding of incapacity as to the alleged incapacitated person and may authorize the person or institution maintaining the person to receive and hold or dispose of the property of the person without the appointment of a guardian or the entry of security.

(b) Without the appointment of a guardian, any amount in cash of a resident or non-resident incapacitated person may be ordered by the Court to be deposited in one or more savings accounts in the name of the person in banks, building and loan associations or savings and loan associations insured by a federal government agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every such order shall contain a provision that no withdrawal can be made from any such account except as authorized by order of Court.

Sec. 12. Foreign or Successor Guardian.

(a) A foreign guardian shall file an exemplification of the record of the foreign guardianship in the office of the Register of Wills and thereafter a petition with the Court requesting full faith and credit to be given to the foreign adjudication of incompetency. The Court will enter a preliminary order awarding a citation directed to the alleged incapacitated person and providing that at least twenty days' written notice of the proceeding be given to all persons appearing to be entitled to such notice. In addition to fixing a return day for the citation, the order shall also fix a time and place for hearing on the petition. The citation, together with a copy of the petition and order, shall be served personally on the alleged incapacitated person. Notice to other persons shall be given personally or by registered or certified mail. The forms of preliminary and final orders as approved by the Court are as provided in the appendix to these Rules.

(b) The Court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.

Sec. 13. Distribution of Principal (Estate Plan).

In all petitions brought under 20 Pa.C.S.A. § 5536(b), the Court will appoint a guardian ad litem to represent the interests of the incapacitated person at the hearing on the petition.

Alternate

In all petitions brought under 20 Pa.C.S.A. § 5536(b), petitioner shall (1) request the Court to appoint a guardian ad litem to represent the interests of the incapacitated person in the proceedings, or (2) assert facts and circumstances as to why such guardian need not be appointed.

TABLE OF APPENDICES

Note: The Table of Appendices and forms have not been reproduced in this publication.

ORPHANS COURT DIVISION RULE 15

Rule 15. Adoption.

Sec. 1. Venue.

A proceeding for voluntary relinquishment, involuntary termination of parental rights, confirm consent to adoption, or adoption may be brought in the County of Allegheny if the parent or parents or the adoptee or person or persons who have filed a report of intent to adopt, reside in Allegheny County, or if an office of an agency having custody of or having placed the adoptee is located therein. Such a proceeding may also be brought with leave of Court in Allegheny County if the adoptee formerly resides in Allegheny County.

Sec. 2. Parties.

Any individual may be adopted, regardless of his age or residence. Any individual may become an adopting parent. Parent includes adoptive parent.

Sec. 3. Voluntary Relinquishment. Relinquishment to Agency. Petition.

(a) A petition of a parent or parents for permission to relinquish forever all parental rights and duties with respect to a child under the age of eighteen years who has been in the care of an agency for a minimum period of three (3) days, or, whether or not the agency has the physical care of the child, the agency has received a written notice of the present intent to transfer to it custody of the child, executed by the parent, shall contain the following information:

- (1) The name and address of petitioner and identity, i.e., parent.
- (2) The name, address, age, racial background and religious affiliation of the parent or parents, and all alleged parents and any deceased parent.
- (3) The marital status of the mother as of the time of birth of the child and during one (1) year prior thereto, and, if the mother has ever been married, the name of her husband or husbands, and her maiden name and how prior marriages were terminated;
- (4) The name, age, date of birth, racial background, sex and religious affiliation of the child; the name of the child

shall include all names by which child has been identified on the birth certificate and any other legal document;

(5) The name and address of the agency having care of the child;

(6) The date when the child was placed with the agency;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the mother of the child was married within one (1) year prior to the birth of the child but identifies the natural father as a person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (2);

(9) The date on which the parent has executed a written notice of the present intent to transfer to the agency custody of the child, if said notice was executed;

(10) The reasons for seeking relinquishment.

(11) If Petitioner also seeks to terminate the parental rights of the putative father, then state whether or not the putative father has filed a petition to Voluntarily Relinquish his parental rights pursuant to 23 Pa.C.S.A. Section 2501 and 2503 and whether the putative father has filed an Acknowledgment of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 8302 or 8303.

The prayer shall be for permission to relinquish forever all parental rights and duties of the Petitioner with respect to the child and to award to the agency the custody of the child. The prayer may also be for permission to terminate the parental rights of the putative father pursuant to 23 Pa.C.S.A. Section 2503(d).

(b) *Exhibits.*

The petition shall have attached to it the following exhibits:

(1) An original or certified birth certificate or certification of registration of birth of the child;

(2) The written notice executed by the Petitioner to the agency of that parent's present intent to transfer to the agency custody of the child, if applicable;

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

(4) Original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of mother's previous election to resume maiden name, if applicable;

(5) Original or certified copy of documentation from appropriate State Agency certifying Acknowledgement of Paternity or Claim of Paternity indicating that no acknowledgement of paternity or claim of paternity has been filed.

(c) *Preliminary Decree and Hearing.*

Upon presentation of the petition, the Court, by preliminary decree, shall fix a time for hearing which shall be not less than ten days after filing of the petition. Notice shall be given to the Petitioner. Notice of the hearing shall also be given to the other parent including any alleged natural father, to the putative father whose parental rights could be terminated pursuant to 23 Pa.C.S.A. Section 2503(d), and to the legal father (spouse of mother within during one (1) year prior to birth, if he is not identified as the natural father, and to the parents or guardians of a Petitioner who has not reached the age of 18 years. The Petitioner and an authorized representa-

tive of the agency (if agency is involved) shall be examined under oath at the hearing. The hearing shall be in private. The notices shall be in substantially the following forms, and Affidavit/Proof of Service of the required notices of hearing shall be filed with the Court at least five (5) days prior to the scheduled hearing.

(1) *Notice to Petitioner of Hearing on Petition for Voluntary Relinquishment.*

(Caption of Case)

TO: (name of petitioner) , MOTHER/FATHER/LEGAL FATHER OF (adoptee's name) , BORN ON THE DAY OF , , AT (hospital) , (city), (county), (state) .

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD, (insert name of child). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON , AT .M. YOUR PRESENCE IS REQUIRED AT THE HEARING. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) *Notice to the Other Parent and Legal Father.*

(Caption of Case)

TO: (other parent and/or legal father) , MOTHER/FATHER/LEGAL FATHER OF (adoptee's name) , BORN ON THE DAY OF , , AT (hospital) , (city), (county), (state) .

A PETITION HAS BEEN FILED BY (petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE/HE HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON , AT .M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(3) *Notice to Putative Father whose rights may be terminated.*

(Caption of Case)

TO: (name of putative father) , FATHER OF (adoptee's name) BORN ON THE DAY OF , , AT (hospital) , (city), (state) .

A PETITION HAS BEEN FILED BY (petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

YOUR RIGHTS TO (adoptive's name) MAY ALSO BE TERMINATED IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO EITHER APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS TO (adoptive's name) OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING.

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

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) Notice to Parent(s) or Guardian of Petitioner who has not reached the age of 18 years.

(Caption of Case)

TO: _____, MOTHER/FATHER OF _____, MINOR NATURAL FATHER/MOTHER OF (adoptive's name) BORN ON THE _____ DAY OF _____, _____, AT (hospital), (county), (city), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO HIS/HER CHILD, (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(d) Final Decree. (1) A decree of termination in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition For Voluntary Relinquishment of Parental Rights and duties to an Agency having been heard, upon consideration thereof and of the supporting testimony and it appearing that _____ desires

to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore it is ordered, adjudged and decreed that all parental rights and duties of _____ with respect to said child are hereby terminated in accordance with The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings; and that custody of _____ is hereby awarded to _____.

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2503(d) then a decree in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition For Voluntary Relinquishment of Parental Rights and duties to an Agency having been heard, upon consideration thereof and of the supporting testimony and it appearing that _____ desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore it is ordered, adjudged and decreed that all parental rights and duties of _____ with respect to said child are hereby terminated in accordance with The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father, _____ will not file a Petition to voluntarily relinquish his parental rights pursuant to The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503, he has not filed an Acknowledgement of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, he has not appeared to object to the termination of his parental rights to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

Now, therefore it is ordered, adjudged and decreed that the parental rights of the putative father _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2503 (d); said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

It is further ordered and decreed that custody of _____ is hereby awarded to _____.

_____, J

(e) Right to file personal information. At the time the decree of termination is transmitted to the parents whose rights are terminated, the Court shall advise that parent in writing of his or her right to place personal information on file with the Court and with the Department of Health pursuant to 23 Pa.C.S.A. Section 2905 (d) (relating to impounding of proceedings and access to records).

Sec. 4. Relinquishment to Adult Intending to Adopt Child. Petition.

(a) A petition of a parent for permission to relinquish forever all parental rights with respect to a child under the age of eighteen years who has been in the exclusive

Name of Attorney
Address
Telephone Number

Name of Attorney
Address
Telephone Number

(3) Notice to Putative Father whose rights may be terminated.

(Caption of Case)

TO: _____ (putative father), FATHER OF
(adoptive's name), BORN ON THE _____ DAY OF
_____, _____, AT (hospital), _____ (city),
(county), _____ (state).

A PETITION HAS BEEN FILED BY (Petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE HAS TO YOUR CHILD. (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, at _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

YOUR RIGHTS TO (adoptive's name) MAY ALSO BE TERMINATED IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO EITHER APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS TO (adoptive's name) OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING.

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

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) Notice to Parent(s) or Guardian of Petitioner who has not reached the age of 18 years.

(Caption of Case)

TO: _____, MOTHER/FATHER OF _____
MINOR NATURAL FATHER/MOTHER
OF (adoptive's name), BORN ON THE _____ DAY OF
_____, _____, AT (hospital), _____ (county),
(city), _____ (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO HIS/HER CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

(d) Final Decree.

(1) A decree of termination in substantially the following form shall be submitted to the Court at the Hearing:

And now, this _____ day of _____, _____, the foregoing Petition for Voluntary Relinquishment of Parental Rights to an adult(s) intending to Adopt Child having come on to be heard, upon consideration thereof and of the supporting testimony and it appearing that _____, desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of the _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2502 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings; and that custody of _____ is hereby awarded to _____.

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2503 (d), then a decree in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition for Voluntary Relinquishment of Parental Rights to an Adult(s) intending to Adopt Child having come on to be heard, upon consideration thereof and of the supporting testimony and it appearing that _____, desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2502 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father _____ will not file a Petition to voluntarily relinquish his parental rights pursuant to 23 Pa.C.S.A. Section 2502 or 2503 of the Adoption Act, he has not filed an Acknowledgement of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, he has not appeared to object to the termination of his parental right to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of the putative father _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2503 (d); said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

It is further ordered and decreed that custody of _____ is awarded to _____.

_____, J

Sec. 5. Alternative Procedure for Relinquishment. Petition to Confirm Consent to Adoption.

(a) A petition of an intermediary (or adoptive parents where there is no intermediary) to confirm the consents to an adoption where the parent has executed a consent to adoption as required by 23 Pa.C.S.A. Section 2711 and has failed for period of forty (40) days after executing the consent to file or proceed with a petition for voluntary relinquishment of parental rights, shall contain the following information:

(1) The name and address of the Petitioner and identity, i.e., parent, agency, intermediary;

(2) The name, address, age, racial background and religious affiliation of the parents, including the mother and father and all alleged parents and deceased parent;

(3) The marital status of the mother as of the time of birth of the child and during one (1) year prior thereto, and, if the mother has ever been married, the name of her husband or husbands, and her maiden name and how prior marriages were terminated;

(4) The name, age, date of birth, racial background, sex and religious affiliation of the child; the names of the child shall include all names by which the child has been identified on the birth certificate and any other legal document;

(5) The name and address of the agency, or the adopting parent(s) if non-agency adoption, having care of the child;

(6) The date when the child was placed with agency, or adopting parents if non-agency adoption;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the mother of the child was married during one (1) year prior to the birth of the child but has identified the father as a person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (2);

(9) If the father is unknown, whether there have been any claims of paternity or acknowledgment of paternity filed pursuant to 23 Pa.C.S.A. Section 5103;

(10) That the parent has executed a Consent to Adoption pursuant to 23 Pa.C.S.A. Section 2711 and has failed for a period forty (40) days after executing said consent to file or proceed with a petition for voluntary relinquishment of parental rights.

(11) If a putative father's rights are being terminated, pursuant to 23 Pa.C.S.A. 2504(c), that said putative father will not execute a consent to adoption as required by Section 2711 and has not filed an acknowledgement of paternity or claim of paternity pursuant to 23 Pa.C.S.A. Section 5103;

(12) That the agency, or the adopting parent(s) if a non-agency adoption, agree to accept custody of the child until such time as the child may be adopted;

(13) The reasons for seeking relinquishment.

The prayer shall request the Court to Confirm the consent to adoption and to terminate the parental rights of that parent to the child and to award custody to either the agency or, in the case of a non-agency adoption, to the adults intending to adopt. If the rights of the putative father are not to be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), the prayer shall also request same.

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

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

(2) An original or certified copy of the birth certificate or certification of registration of birth of the child;

(3) The separate consent of the agency, or of the adult or adults intending to adopt, to accept custody of the child until such time as the child may be adopted;

(4) Original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of any previous elections to resume maiden name relating to the mother;

(5) If the natural father is unknown or if the rights of the putative father are to be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), the original or certified copy of documentation from the appropriate state agency certifying that no Acknowledgment of Paternity or Claim of Paternity has been filed.

(6) The original Consent signed by the parent pursuant to 23 Pa.C.S.A. Section 2711.

(c) *Preliminary Decree and Hearing.* Upon presentation of the petition the Court, by preliminary decree, shall fix a time for hearing which shall be not less than ten (10) days after filing of the petition. Notice shall be given to the parent(s) whose rights are to be terminated, the other parent (including any alleged father), the putative father whose rights could be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), to the legal father if he has not been identified as the father, and to the parent(s) or guardian(s) of a natural parent who has not reached the age of 18 years. Affidavit/Proof of the required notice of hearing on termination of parental rights shall be filed with Court at least five (5) days prior to the scheduled hearing.

The Petitioner unless otherwise permitted by the Court, and the witnesses to the Consent executed pursuant to Section 2711 of the Adoption Act, shall also appear unless:

(1) The signatures of the parent and witnesses are notarized; or

(2) One of the witnesses to the Consent is an attorney; or

(3) One of the witnesses to the Consent is a representative of a licensed adoption agency or child welfare agency representative.

(1) *Notice to the Parent whose rights are being terminated.*

(Caption of Case)

TO: (name of parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE DAY OF, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ .M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED. YOU ARE WARNED THAT EVEN IF YOU FAIL TO APPEAR AT THE SCHEDULED HEARING, THE HEARING WILL GO ON WITHOUT YOU AND YOUR RIGHTS TO YOUR

CHILD MAY BE ENDED BY THE COURT WITHOUT YOUR BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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The Allegheny County Bar Association
920 City-County Building
Pittsburgh, PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) Notice to the Other Parent of Hearing on Petition to Confirm consent and Terminate Parental Rights.

(Caption of Case)

TO: (name of other parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE ___ DAY OF ___, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name) HAS TO YOUR CHILD, (name of Adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON ___, AT ___ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(3) Notice to Putative Father whose rights may be terminated pursuant to 23 Pa.C.S.A. Section 2504(c).

TO: (name of putative father), FATHER OF (adoptive's name), BORN ON THE ___ DAY OF ___, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name) HAS TO YOUR CHILD, (name of Adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON ___, AT ___ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

THIS PETITION ALSO ASKS THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD (adoptive's name). YOU ARE WARNED THAT IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING, THE

HEARING WILL GO ON WITHOUT YOU BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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920 City-County Building
Pittsburgh, Pennsylvania 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) Notice to Parent(s) or Guardian(s) of Parent who has not reached the age of 18 years.

(Caption of Case)

TO: (name), MOTHER/FATHER OF (name of parent), MINOR FATHER/MOTHER OF (adoptive's name), BORN ON THE ___ DAY OF ___, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO (HIS/HER) CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING (HIS/HER) RIGHTS TO (HIS/HER) CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON ___, AT ___ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(d) Final Decree. A decree of termination in substantially the following form shall be submitted to the Court at the Hearing:

(1) DECREE

AND NOW, this ___ day of ___, the foregoing Petition to Confirm Consent to Adoption having come on to be heard, upon consideration thereof and the consent attached thereto executed by (name of parent), (mother/father) of (adoptive's name), and it appearing that (name of parent) has failed for a period in excess of forty (40) days after executing the aforesaid consent to file or proceed with a Petition for Voluntary Relinquishment of Parental Rights, the Court finds that the facts averred in said petition are true and that the prayer of the petition should be granted;

NOW, THEREFORE IT IS ORDERED AND DECREED that the Consent to Adoption of (adoptive's name) executed by (parent's name) be and is hereby confirmed in accordance with the Adoption Act, 23 Pa.C.S.A. Section 2504 and the parental rights of (parent's name) to (adoptive's name) be and are hereby terminated; said termination to extinguish the power or the right of said natural parent to object to or receive notice of adoption proceedings;

AND IT IS FURTHER ORDERED AND DECREED that custody of (adoptive's name) be and is hereby

awarded to (agency name, or adopting parent(s) name(s) if non-agency adoption).

BY THE COURT:

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), then a decree in substantially the following form shall be submitted to the Court at the hearing:

AND NOW, this ____ day of _____, _____, the foregoing Petition to Confirm Consent to Adoption having come on to be heard, upon consideration thereof and the consent attached thereto executed by (parent's name), (mother/father) of (adoptivee's name), and it appearing that (parent's name) has failed for a period in excess of forty (40) days after executing the aforesaid consent to file or proceed with a Petition for Voluntary Relinquishment of Parental Rights, the Court finds that the facts averred in said petition are true and that the prayer of the petition should be granted:

NOW, THEREFORE IT IS ORDERED AND DECREED that the Consent to Adoption of (adoptivee's name) executed by (parent's name) be and is hereby confirmed in accordance with the Adoption Act, 23 Pa.C.S.A. Section 2504 and the parental rights of (parent's name) to (adoptivee's name) be and are hereby terminated; said termination to extinguish the power or the right of said natural parent to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father, (putative father's name), will not execute a consent to an adoption as required by 23 Pa.C.S.A. Section 2711, has not filed an Acknowledgment of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, has not appeared to object to the termination of his parental rights to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

NOW, THEREFORE, it is ORDERED AND DECREED that the parental rights of the putative father, (putative father's name), with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2504(c); said termination to extinguish the power or right of said (putative father's name) to object to or receive notice of Adoption proceedings;

IT IS FURTHER ORDERED AND DECREED that custody of (adoptivee's name) is hereby awarded to (agency, or adopting parent's name(s) if non-agency adoption).

BY THE COURT:

_____, J

Sec. 6. Involuntary Termination of Parental Rights Petition.

(a) A petition for involuntary termination of parental rights with respect to a child under the age of 18 years may be filed by any of the following:

- (1) Any parent when termination is sought with respect to another parent;
- (2) An agency; or
- (3) The individual having custody of or standing in loco parentis to the child and who has filed a Report of Intention to Adopt.

(b) The petition shall contain the following information:

(1) The name and address of the petitioner and identity, i.e., parent, agency or other as permitted by the statute;

(2) The name, address, age, racial background and religious affiliation of the parent or parents and all alleged parents or person and any deceased parent;

(3) The marital status of the mother as of the time of the birth of the child and during one (1) year prior thereto, and if the mother has ever been married, the name of her husband or husbands and/or maiden name and how prior marriages were terminated;

(4) The name, age, date of birth, racial background, sex and religious affiliation of child; the name of the child shall include all names by which child has been identified on the birth certificate and any other legal document;

(5) The date when the Intention to Adopt was filed;

(6) The date when the child was placed with the adult or adults intending to adopt;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the child is born out of wedlock and the father has been identified, information as to the father shall be set forth as required in subparagraph (1);

(9) If the mother of the child was married within one (1) year prior to the birth of the child but identified the natural father as the person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (1);

(10) If the natural father is unknown, whether there has been any acknowledgement of paternity pursuant to 23 Pa.C.S.A. Section 5103;

(11) The grounds for involuntary termination;

(c) The prayer shall be for a decree terminating forever all parental rights with respect to the child and awarding custody of the child to the petitioning agency or individual.

(d) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) An original or certified birth certificate or certification of registration of birth of the child;

(2) The separate consent of the adult or adults intending to adopt, to accept custody of the child, or agency intending to accept custody;

(3) The original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of any elections to resume maiden name relating to the mother;

(4) The original or certified copy of Acknowledgement of Paternity or Claim of Paternity indicating that no acknowledgement of paternity or claim of paternity has been filed;

(5) A copy of the Court Order which adjudicated the child dependent, if child is currently under legal custody of Children and Youth Services or other child welfare services;

(6) If child was previously adopted, attach a certified copy of adoption decree.

(e) *Preliminary Decree and Hearing.*

Upon presentation of the petition the Court shall direct that it be filed and shall fix a date for hearing thereon not less than ten (10) days after the date of filing the petition. At least ten (10) days' notice of the hearing on the petition shall be given to the parent or parents, putative father, or parent of a minor parent whose rights are to be terminated and to the natural or appointed guardian of any parent or parents who is or are under the age of eighteen (18) years, by personal service or by registered mail to his or their last known address. Where personal service is not obtainable and the return receipt of the registered or certified mail does not bear the signature of the person to be notified, notice shall be given under appropriate Order of Court in accordance with Section 1(c) and (d) of Rule 12 of the Court, the last published notice to be at least ten (10) days prior to the date of hearing, the Court shall make a finding relative to the pertinent provisions of 23 Pa.C.S. Section 2531 of the Adoption Act, which finding shall be incorporated in a decree of termination of parental rights. The hearing may be private. Affidavit/Proof of Service of the required notices of hearing on termination of parental rights shall be filed with the Court at least five (5) days prior to the scheduled hearing.

(f) Notices.

(1) Notice to parent whose rights are being terminated of hearing on petition for involuntary termination of parental rights.

IN RE: ADOPTION OF _____, a minor.

No. _____ of _____ in the ORPHANS' COURT DIVISION OF THE ORPHANS' COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TO: (parent's name), MOTHER/FATHER OF (minor's name), A MINOR, BORN _____, IN (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD (insert name of child). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. A HEARING WILL BE HELD IN THE ORPHANS' COURT DIVISION, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____, ____ M. YOU ARE WARNED THAT EVEN IF YOU FAIL TO APPEAR AT THE SCHEDULED HEARING, THE HEARING WILL GO ON WITHOUT YOU AND YOUR RIGHTS TO YOUR CHILD MAY BE ENDED BY THE COURT WITHOUT YOUR BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
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 920 City-County Building
 Pittsburgh, PA 15219
 (412) 261-2088

 Name of Attorney
 Address
 Telephone Number

(2) Notice to the other parent of hearing on petition to terminate parental rights.

(Caption of Case)

TO: (name of other parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE _____ DAY OF _____, _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name), HAS TO YOUR CHILD (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH PENNSYLVANIA ON _____, _____, ____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

 Name of Attorney
 Address
 Telephone Number

(3) Notice to parent(s) or guardian(s) of parent who has not reached the age of 18 years.

(Caption of Case)

TO: (name), MOTHER/FATHER OF (name of parent), MINOR FATHER/MOTHER OF (adoptive's name), BORN ON THE _____ DAY OF _____, _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent), HAS TO (HIS/HER) CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHT TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH PENNSYLVANIA ON _____, _____, ____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

 Name of Attorney
 Address
 Telephone Number

(g) Final Decree. A decree of termination in substantially the following form shall be submitted to the Court at the hearing:

DECREE

AND NOW, this _____ day of _____, _____, the foregoing Petition for involuntary Termination of Parental Rights having come on to be heard, upon consideration thereof and of the supporting testimony and of the record, the Court finds that the facts averred in said Petition are true and the (name of parent) (mother/father) (state grounds for termination with reference to minor) _____

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that all parental rights of (parent's name), to the minor (minor's name), are hereby terminated, said termination to extinguish the power or the right of (parent's name), to object to or receive notice of adoption proceedings, and that the custody of

the minor, (minor's name), is hereby awarded to the (agency, intermediary; or adoptive parent(s)).

BY THE COURT:

Sec. 7. Report of Intention to Adopt. Investigation.

(a) Every person now having or hereafter receiving or retaining custody or physical care of any child under the age of eighteen (18) years, other than that person's own child, grandchild, stepchild, brother or sister of the whole or half blood, or niece or nephew by blood, or adoption, for the purpose or with the intention of adopting the child, shall file a Report relating thereto in the office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Allegheny County and shall contain the information required by Sec. 2531 of the Adoption Act. The Report shall be verified by affidavit and be filed within thirty (30) days of the date when the child came into the custody or physical care of the person filing the Report.

Attach copy of preplacement report or homestudy (§ 2530-2531 (7)). State whether birth mother has received counseling and where (§ 2505-2531 (5)).

(b) When a Report of Intention to Adopt has been filed, the case will be referred to the Adoption Department for investigation, which shall report on matters alleged in the Report and any other matters that may affect the welfare of the child, including the matters set forth in Sec. 2535 of the Adoption Act.

(c) The Report of Intent to Adopt shall substantially conform with Form A set forth in the Appendix.

Sec. 8. Report of Intermediary.

(a) *Intermediary*—an intermediary is defined as any person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement. If more than one person or agency acts in this capacity, they shall be identified as co-intermediaries.

(b) Each intermediary who or which has arranged the adoption placement of any child under the age of 18 years shall within six (6) months after filing the Report of Intention to Adopt, make and file with the Clerk of the Orphans' Court a written report under oath, and shall thereupon forthwith notify in writing the adopting parent or parents of the fact that the report has been filed and the date thereof.

(c) Contents of Report. The Report of Intermediary shall set forth the following information as required by 23 Pa.C.S.A. § 2533:

- (1) The name and address of the intermediary.
- (2) The name, sex, racial background, age, date and place of birth and religious affiliation of the child.
- (3) The date of the placement of the child with the adopting parent or parents.
- (4) The name, racial background, age, marital status as of the time of birth of the child and during one (1) year prior thereto, and religious affiliation of the parents of the child and the husband of the natural mother if he was her husband within one (1) year of the birth of the child.
- (5) Identification of proceedings in which any decree of termination of parental rights, or parental rights and duties, with respect to the child was entered.

(6) The residence of the parents or parent of the child, if there has been no such decree of termination.

(7) A statement that all consents required by Section 2711 of the Adoption Act (relating to consents necessary to adoption) are attached as exhibits on the basis upon which the consents are not required.

(8) An itemized accounting of moneys and consideration paid or to be paid to or received by the intermediary or to or by any other person or persons to the knowledge of the intermediary by reason of the adoption placement.

(9) A full description and statement of the value of all property owned or possessed by the child.

(10) A statement that no provision of any statute regulating the interstate placement of children has been violated with respect to the placement of the child.

(11) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor.

(12) A statement that medical history information was obtained and if not obtained, a statement of the reason therefor.

(13) The report of the intermediary shall have attached to it the following exhibits:

1. An original or certified copy of the birth certificate or certification of registration of birth of the child if it can be obtained.
2. A certified copy of any decree of termination of parental rights or parental rights and duties made by a court order other than the court in which the petition for adoption will be filed.
3. A certified copy of the acknowledgement of paternity filed from the appropriate state agency that no claim or acknowledgement of paternity has been filed by the putative father, or a statement that the same has been previously filed with the Court.
4. Where applicable, a copy of the approved Interstate Compact Placement Request (ICPC-100-A).

(d) No intermediary shall place a child in the physical care or custody of a prospective adoptive parent or parents unless a home study containing a favorable recommendation for placement of a child with the prospective parent or parents has been completed within three (3) years prior thereto and which has been supplemented within one (1) year prior thereto. A home study shall be conducted by local public child care agency, an adoption agency or a licensed social worker designated by the Court to perform such study. See 23 Pa.C.S.A. § 2530.

(e) Where a home study required under 23 Pa.C.S.A. is in process but not yet completed, an intermediary may make an interim placement provided the requirements of 23 Pa.C.S.A. 2530(c) are met.

(f) The intermediary in making a placement may honor the preference of the natural parents as to the religious faith in which the adoptive parents intend to rear the adoptive child. However, no person shall be denied the benefits of a placement because of a religious belief in the use of spiritual means or prayer for healing, 23 Pa.C.S.A. § 2725.

(g) Report of the intermediary shall substantially conform with the form set forth in Form B in the Appendix to this Rule.

Sec. 9. Petition for Adoption.

(a) The petition for adoption shall contain the following information:

(1) The full name, residence, marital status, age, occupation, religious affiliation and racial background of the adopting parent or parents and their relationship, if any, to the adoptee.

(2) A statement that a report of intention to adopt under 23 Pa.C.S.A. § 2531, a report of intermediary under 23 Pa.C.S.A. § 2530 and a homestudy and preplacement report under 23 Pa.C.S.A. § 2530 have been filed, if required.

(3) The name and address of the intermediary, if any.

(4) The full name of the adoptee and the fact and length of time of the residence of the adoptee with the adopting parent or parents.

(5) If there is no intermediary or if no report of the intermediary has been filed or if the adoptee is over the age of 18 years, all vital statistics and other information enumerated and required to be stated of record by 23 Pa.C.S.A. § 2533, so far as applicable.

(6) If a change in name of the adoptee is desired, the new name. When the person to be adopted has attained age eighteen (18) and a change of name is desired, Petitioner must submit evidence showing compliance with the law relating to change of name before a decree will be made.

(7) That all consents required by 23 Pa.C.S.A. § 2711 (relating to consents necessary to adoption) are attached as exhibits or the basis upon which such consents are not required, or a statement that same have been previously filed with the Court.

(8) That it is the desire of the petitioner or the petitioners that the relationship of parent and child be established between the petitioner or petitioners and the adoptee.

(9) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor and an allegation of the efforts made to obtain the certificate with a request that the Court establish a date and place of birth at the adoption hearing on the basis of the evidence presented.

(b) The petition for adoption shall contain the following exhibits:

(1) The consent or consents required and executed in accordance by Pa.C.S.A. § 2711 (relating to consents necessary to adoption). If the consents are executed before a notary public then one (1) witness to the consent shall be required to appear at the hearing; otherwise at least one (1) of the witnesses to said consent shall appear at the hearing. The consents need not be attached if they were previously filed with the Court, in which case, the Petition shall so state.

(2) Original or certified copy of birth certificate or certification of registration of birth of the child, unless previously filed with the record.

(3) Original or certified copy of marriage certificate of adoptors.

(4) Divorce decree of both of adoptors, and election to resume maiden name, if applicable.

(5) Death certificate of former spouse of both adoptors, if applicable.

(6) Death certificate of natural parents, if applicable.

(7) Original or certified copy of divorce decree, if any, of natural parents when petitioner is a step-parent.

(c) The petition shall substantially conform with Form C set forth in the appendix.

(d) A completed Certificate of Adoption Form H 105.091 shall be filed with the Court by Petitioners at the time the Petition for Adoption is filed.

(e) Hearing on Petition for Adoption—Disclosure of Fees and Costs.

The Court shall fix a time and a place for hearing. The hearing shall be private or in open Court as the Court deems appropriate.

At the hearing there shall be offered in evidence a report by petitioner, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel and any other fee, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

(f) Requirements and Form of Decree

If satisfied that the statements made in the Petition for Adoption are true, that the welfare of the person proposed to be adopted will be promoted by the requested adoption, and that all requirements of the Adoption Act have been met, the Court shall enter a decree so finding and directing that the person proposed to adopted shall have all the rights of a child and heir of the adopting parent or parents, and shall be subject to the duties of a child to him, or them. In any case in which the petition is withdrawn or dismissed, the Court shall enter an appropriate order in regard to the custody of the child.

Sec. 10. Name of Adoptee.

If requested by the petitioner, the decree may provide that the adoptee shall assume the surname of the adopting parent or parents and any given first and middle names that may be chosen. If the adoptee is over age 18 and desires a change in name evidence must be submitted showing compliance with the law relating to change of name before a decree will be made.

Sec. 11. Impounding of Proceedings.

All petitions, exhibits, reports, notes of testimony, decrees, and other papers pertaining to any proceeding under the Act shall be kept in the files of the Court as a permanent record thereof and withheld from inspection. Information in those records may only be made available under certain circumstances set forth in 23 Pa.C.S.A. Section 2905. Requests for information shall be by petition or letter to the Administrative Judge of the Orphans' Court Division.

Sec. 12. Docket Entries.

Upon the filing of any decree under the Adoption Act, the Clerk shall enter on the docket an entry showing the date of the decree, the name of the adopting parent or parents and the post-adoption name of the adoptee. Information identifying the natural parents shall not be entered on the docket.

Sec. 13. Certificate of Adoption.

After the decree is entered the Clerk shall issue to the adopting parent or parents a certificate reciting that the Court has granted the adoption. The certificate shall not disclose the name of any natural parent or the original name of the person adopted. The certificate shall be accepted in any legal proceedings in the Commonwealth, as evidence of the fact that the adoption has been decreed.

It shall be the responsibility of counsel for the adopting parent to inform other Divisions of this Court of the entry of an adoption decree if this information is relevant to proceedings in other Divisions. It shall be the responsibility of counsel for the adopting parent to also complete and file the Division of Vital Records forms necessary to amend the adoptee's birth certificate.

Sec. 14. Other Requirements.

Medical history information shall be as set forth in Sec. 2902 of the Adoption Act, counseling shall be as set forth in Sec. 2505, and representation for child and parent shall be as set forth in Sec. 2313.

Sec. 15. Definitions.

1. *Putative Father*—The alleged or reputed father that is not the legal father of a child born out of lawful wedlock. A putative father shall include one who has filed a claim of paternity as provided in 23 Pa.C.S.A. § 5103 prior to the institution of proceedings.

2. *Legal Father*—The spouse of the mother during the one (1) year immediately preceding the birth of the proposed adoptee.

Note: The forms have not been reproduced in this publication.

ORPHANS' COURT DIVISION RULE 17

Rule 17. Form for Filing and Indexing of Notice of Claim Against Real Property.

Sec. 1. Filing Notice. Form and Content.

Any person having a claim against the estate of a decedent and wishing to protect the claim against risk distribution of real property by the personal representative shall file, within one year after the decedent's death, a written notice of claim with the Clerk which may be in the following form:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

In re Estate of _____,
 _____, Deceased No. _____ of 20____

NOTICE OF CLAIM

To the Clerk of the Orphans' Court Division:

Index and make proper entry in your official records of the claim of _____ in the amount of \$ _____
 (Claimant)
 against the estate of the above-named decedent. This claim is filed under Sec. 3532(b)(2), PEF Code, 20 Pa.C.S. Sec. 3532(b)(2).

The decedent, whose residence last known to the undersigned was at _____ died on _____,
 (Address)

 (Claimant)

 (Claimant's Address)

[Pa.B. Doc. No. 00-2210. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Adoption of New Local Rules of Criminal Procedure and Revocation of All Old Local Rules of Criminal Procedure

Administrative Order No. 8-2000

And Now, this 6th day of December, 2000, it is hereby Ordered and Decreed that the following rules for Criminal Procedure in the 56th Judicial District composed of Carbon County be, and the same are, promulgated herewith, to become effective thirty (30) days after publication in the *Pennsylvania Bulletin*; and that the present Carbon County Rules of Criminal Procedure are revoked, effective at the same time.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the Carbon County Law Journal.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order in the Clerk of Court's Office.

By the Court:

JOHN R. LAVELLE,
President Judge

I. ADMINISTRATION OF CRIMINAL RULES

Rule 102.1. Citing the Criminal Procedural Rules.

All criminal procedural rules adopted by the Court of Common Pleas of Carbon County under the authority of Pa.R.Crim.1(b) shall be known as the Carbon County Rules of Criminal Procedure and shall be cited as "CARB.C.R.CRIM.P. _____."

Rule 106(B)(1). Continuances in Misdemeanor and Felony Cases.

(A) Continuances shall be submitted to the filing office in writing on the form approved by the Court attached

hereto and made a part hereof and marked "Exhibit I", without the necessity of formal presentation to the Court.

(B) After the continuance is filed and time stamped, it shall be forwarded by the filing office to the Motions and Petitions Coordinator in the Office of Court Administration for Court action and/or scheduling. Following Court action, the Motions and Petitions Coordinator shall return the Application for Continuance to the filing office for filing, docketing, and mailing.

(C) Uncontested continuances will be accepted by mail or electronically provided they are received at least three (3) working days in advance of the scheduled event. If the continuance is filed *less than three (3) working days* before the scheduled event, the attorney will be required to *personally present* it to the Motions and Petitions Coordinator for processing. If the continuance is granted, applying counsel has the duty to timely notify all other counsel or pro se defendants.

(D) Contested continuances must be presented in the Court Administration Office. Notice of presentation of the contested continuance must be given to opposing counsel at least three (3) days prior to presentation. The assigned Judge will conduct a telephone conference, which will be arranged by presenting counsel.

(E) In all cases where the effect of the continuance by the defendant would extend the time of trial beyond the time requirements of Pa.R.Crim.P. No. 1100, the defendant shall appear in Court with Counsel to waive the time requirements under said rule and to agree that his case may be called at a specific time to be fixed by the Court.

Rule 106(B)(2). Reasons for Continuances in Felony and Misdemeanor Cases.

I. No criminal trial shall be continued except for the following reasons:

(A) Prior commitment in the Supreme, Superior, or Commonwealth Court of Pennsylvania or any other appellate court.

(B) Incapacitating illness of defense counsel, Commonwealth Attorney, the defendant or an essential witness for either the prosecution or the Defense.

(C) Death in the immediate family of defense counsel, Commonwealth Attorney, the defendant or an essential witness for either the prosecution or the defense.

(D) Recusal of the Trial Judge.

(E) Defense counsel's prior attachment or is actually engaged in trial in a Court of record.

(F) Counsel unprepared for trial because recently retained, but only at the first listing.

(G) Proceedings are stayed by order of an Appellate Court.

(H) Discovery incomplete or outstanding pretrial motions, provided the application for a continuance on these grounds is made at least two days prior to the date of trial.

(I) Unavailability of defendant's Court-ordered mental health evaluation where insanity or competency to stand trial is in issue.

(J) Unavailability of a ballistics, breathalyzer or drug analysis report prepared by the Police Department, but only at the first listing.

II. Definitions:

(A) Incapacitating illness—A physical or mental impairment so severe that it prevents a person from attending trial.

(B) Essential Witness—One whose testimony at trial is indispensable in determining guilt or innocence.

(C) Engaged in trial in a Court or record that is commenced, but not completed prior to or on the date of the trial for which a continuance is requested.

Rule 120(A)(1). Entry of Appearance and Withdrawal.

(a) After a case has been returned to court, any motion filed by counsel shall be deemed an entry of appearance.

(b) Where counsel has entered an appearance, counsel's representation of the defendant shall be effective until sentencing has been imposed.

Rule 122(D). Compensation Rates for Court-Appointed Conflict Counsel.

I. *Non-Homicide Criminal Cases*

(1) Counsel, not exceeding one, who has been assigned to represent:

(a) a defendant charged with a non-homicide criminal offense;

(b) an individual in any post-conviction proceedings or,

(c) a juvenile formally charged with delinquency, shall, at the conclusion of the representation, or any segment thereof, be compensated for his/her services in such representation and reimbursed for all reasonable expenses advanced by counsel which were necessarily incurred.

(2) Upon the conclusion of counsel's representation under this Rule, or any segment thereof, the Judge sitting at the trial of the case, if there is a trial, otherwise, the Judge presiding over the disposition of the matter shall, after the filing of the claim and sworn statement, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(3) Counsel shall be compensated at a rate not exceeding forty dollars (\$40) per hour for time expended in a Court of record and at a rate of thirty dollars (\$30) per hour for time reasonably expended out of Court. For representation of a defendant in a case in which one or more felonies are charged or for proceedings under the Post Conviction Hearing Act, the compensation paid to an attorney shall not exceed fifteen hundred dollars (\$1,500). In a case in which only misdemeanors or juvenile delinquencies are charged, payment shall not exceed seven hundred and fifty dollars (\$750).

(4) Payment in excess of the limits stated herein may only be made, if the Judge to whom the application is made certifies that because of extraordinary circumstances set forth, such additional payments are necessary to provide fair compensation for representation.

(5) (a) Assigned counsel may also make a written request to obtain investigative, expert, or other services necessary to an adequate defense. Upon finding after proper inquiry that such services are necessary, the Court shall authorize counsel to obtain such services on behalf of a defendant. The compensation paid to a person for such services rendered to a defendant shall not exceed five hundred dollars (\$500).

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts autho-

rized by the Court, at the conclusion of such expert services rendered on behalf of the defendant, counsel may submit a Petition and Order for reimbursement to counsel of such expert fees. Said Petition and Order shall be submitted to either the Trial Judge, if there is a trial, or to the Judge presiding over the disposition of the matter and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses. Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and order payment to counsel of such expert fees as are considered reasonable and necessary.

(6) Counsel so assigned shall not, except with prior approval of the Court, receive or contract to receive directly or indirectly, any compensation for such services or reimbursement for expenses from any source other than herein provided.

(7) Counsel shall be appointed under this Rule only when, because of conflict of interest or other sufficient reason, the individual cannot properly be represented by the Public Defender.

II. Homicide Cases

(1) Counsel appointed shall not exceed one, except that in cases of extreme complexity or where the Trial Judge may, after consultation with, and the consent of the President Judge, appoint co-counsel.

(2) (a) Assigned counsel may also petition the Court to obtain investigative, expert, or other services necessary to an adequate defense. Upon finding, after proper inquiry, that such services are necessary, the court, by written order, shall authorize counsel to obtain such services on behalf of a defendant.

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts authorized by the court at the conclusion of such expert services rendered on behalf of the defendant, counsel may submit a Petition and Order for reimbursement to counsel of such expert fees. Said Petition and Order shall be submitted to the Trial Judge, and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses. Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and authorize payment to counsel of such expert fees as are considered reasonable and necessary. The reviewing Judge will then forward the Petition and Order for reimbursement to the Court Administrator for payment.

(3) Upon the conclusion of counsel's representation under this Rule, or any segment thereof, the Judge sitting at the trial of the case, if there is a trial, otherwise, the Judge presiding over the disposition of the matter, shall, after the filing of the claim and sworn statement, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(4) Counsel shall be compensated for services rendered at a rate not exceeding fifty dollars (\$50) per hour for time reasonably expended in Court, and forty dollars (\$40) per hour for time reasonable expended out of Court. Such compensation shall not exceed four thousand dollars (\$4,000) where one counsel has been assigned, and shall not exceed a total of six thousand (\$6,000) where two

counsel have been assigned. Payment in excess of the limits stated herein may only be made if the Court, to whom the application is made, finds that because of extraordinary circumstances set forth, such additional payments are necessary to provide fair compensation for representation.

(5) Counsel so assigned must file with the Judge an affidavit that he has not, directly or indirectly, received, nor entered into a contract to receive, any compensation for such services from any source other than herein provided.

III. Appointments

Appointments made pursuant to this rule continue through all stages of the proceedings.

IV. Payment

Such allowance of expenses and compensation under this Rule shall be a charge upon the County of Carbon, to be paid by the County upon Order of the appropriate Judge.

Rule 122(E). Transport Orders.

In any criminal proceeding in which a court appearance by an adult prisoner will be required, the attorney for the prisoner or for the party requesting the presence of the prisoner shall prepare a transport order and obtain the signature of the judge assigned to the case. It shall be the responsibility of the Motions and Petitions Coordinator to deliver necessary copies of the transport order to the Clerk of Courts and to the Sheriff. Absent genuine exigency or most unusual circumstances, a request for transport of prisoner shall be made to the Court not less than twenty-four (24) hours before the scheduled court appearance in cases where the prisoner is in Carbon County Prison and not less than three (3) days before such appearance where the prisoner is incarcerated outside Carbon County.

Rule 122(F). Interpreters.

In all criminal proceedings in Court or before District Justices, where either a defendant or a testifying witness so requests, an official interpreter or an alternate previously approved by the Court, shall be provided by the Court, through the Court Administrator's Office. It shall be the responsibility of counsel representing the defendant, or calling the witness, to notify the Court Administrator's Office, not less than twenty-four (24) hours in advance of the proceeding, when an interpreter will be needed.

Rule 132.1. Continuous Availability and Temporary Assignment of Issuing Authorities.

(A) The continuous availability of an issuing authority in Carbon County shall be arranged by the Court Administrator and all issuing authorities within the County. A rotating schedule of availability shall be maintained wherein each issuing authority will be available for duty on an equal time basis with every other issuing authority. A copy of the schedule of availability shall be provided to all law enforcement agencies with Carbon County, the District Attorney, and the Warden of the Carbon County Correctional Institution.

II. ARD RULES

Rule 311(C). A.R.D. Program.

(a) When scheduling a Preliminary Hearing, the District Justice Office shall forward an application for the ARD program and Prior Criminal Record Statement to the defendant along with the Criminal Complaint, Arrest

Warrant Affidavit, Notice of Hearing, Carbon County Public Defender Guidelines, Summons, Fingerprint Order Card, and for DUI Cases, Explanation of Accelerated Rehabilitation Program for Driving Under the Influence Offenders.

(b) The defendant shall complete and return the application for ARD and Prior Criminal Record Statement on the date of the Preliminary Hearing.

(c) If the District Attorney approves the application for ARD, defendant, defendant's counsel, and the Commonwealth attorney shall execute a Stipulation.

(d) If the defendant is charged with a violation of Section 3731 of the Vehicle Code, defendant, defendant's counsel, and the Commonwealth attorney shall execute an Explanation of Accelerated Rehabilitation Program for Driving Under the Influence Offenders (ARD) and Waiver of Rights Form.

(e) If a DUI/ARD has been negotiated, telephonic arrangements shall be made by the Secretary in the District Justice Office for scheduling of the CRN test, and the defendant shall be provided with a written notice of his CRN schedule date and shall acknowledge that date and time in writing.

(f) The District Justice shall schedule the case according to the annual criminal case scheduling grid.

(g) The Court shall assess the defendant an amount of money payable to the County of Carbon to help defray the costs of the Program. The said amount shall be established by the Court from time to time by Administrative Order.

Rule 320(D). Automated Expungement Under the Accelerated Rehabilitative Disposition Program.

A) Disposition

The following procedure shall expedite the final disposition of cases in the Accelerated Rehabilitative Disposition (ARD) Program:

1) The Adult Probation Office shall maintain an alphabetically sequenced file which lists those persons presently under the Accelerated Rehabilitative Disposition (ARD) Program, or having ever participated in such a program.

2) Each month, the Adult Probation Office will create a list of all probationers whose ARD probation period has terminated the previous month. This list will be distributed to the District Attorney.

3) The District Attorney will be responsible for reviewing the list. If the District Attorney has an objection, he must note that objection within on the list thirty (30) days of creation of the list.

4) If a case is reinstated for cause prior to the completion of the stipulated ARD probation period, the District Attorney must notify the Court Calendar Officer so that the case will then be properly relisted for trial.

B) Expungement

The following procedure shall be effective immediately to automatically expunge the criminal case record for those defendants who have completed the condition(s) of the ARD Program.

1) At the end of each month, the Adult Probation Office will prepare a list of all cases reaching final disposition under the ARD Program during the month. A copy of the list shall be provided to the District Attorney. The

produced list will carry a date on which the cases will be presented to the sentencing judge.

2) The District Attorney will review the listing of potential expungements and present the complete list to the President Judge indicating any cases which he/she feels should not be expunged along with the reason why the expungement should not take place. For proper cause, the case will be deleted from the expungement list by the President Judge.

3) In those cases in which the item is deleted, a letter will be produced and forwarded to the last known address of the defendant and to his attorney-of-record informing each that the case will not be automatically expunged by the Court, but that a petition may be initiated.

The intent of an expungement will be to prevent the inquiry into a person's criminal history of the expunged case by reference to the criminal records of 1) the local police department, 2) the Pennsylvania State Police, 3) the Federal Bureau of Investigation, and 4) the file folders and computer files of the Carbon County Common Pleas Court and District Justice Courts.

4) The procedure to accomplish this will be as follows:

a) The defendant computer record will be removed from the computer file maintained by the Clerk of Courts Office so that reference to an individual's computer criminal history may not be made from either the computer monitors or current criminal information data base.

b) At the same time the Court's computer record is expunged as in 4(a) above, an Order will be automatically produced ordering the local police department to destroy all criminal records, fingerprints, photographs, and photographic plates and to update the criminal extract to totally eliminate reference to the expunged incident.

c) The order in (b) above shall also order the Carbon County Bureau of Collections, the Adult Probation Office, the District Justice Offices, the Pennsylvania State Police and the Federal Bureau of Investigation to destroy all records pertaining to the same arrest.

d) The order in (b) above shall also order the Court Data Processing Director to remove all references pertaining to the same arrest from the computer indices of the Court of Common Pleas of Carbon County and the District Justices of Carbon County.

e) A letter shall be automatically produced by the District Attorney and mailed to the local police department to the last known address of the defendant, informing him or her that the local police department, the Pennsylvania State Police, and the Federal Bureau of Investigation have been ordered to expunge the criminal record for that specific case, that this procedure will be allowed only once in a person's life and that expungement will take place within ninety (90) days of the date of the Expungement Order. A copy of this letter shall also be sent to the defendant's attorney-of-record.

f) A certification, which states that the destruction of records has taken place as ordered, affixed to the Expungement Order shall be signed and returned by the District Justice and local police department to the Clerk of Courts. Said certification shall also be signed by the Court Data Processing Director. The Clerk of Courts shall then insert a copy of the certification with each appropriate case folder. The applicable case folder shall then be placed in a confidential status.

5) A monthly updated confidential list of completed expungements under this procedure shall be maintained by the Court.

III. PROCEDURE FROM ARREST TO FILING INFORMATION

Rule 502(2)(I). Arrest Without Warrant.

Pursuant to the authority set forth in Rule 502 of the Rules of Criminal Procedure, an arresting officer, when the officer deems it appropriate, may promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

1. The most serious offense charged is a misdemeanor of the second degree.
2. The defendant is a resident of the Commonwealth.
3. The defendant poses no threat of immediate physical harm to any other person or to himself or herself.
4. The arresting officer has reasonable grounds to believe that the defendant will appear as required; and
5. The defendant does not demand to be taken before an issuing authority.

Rule 507(B)(1). Approval by the District Attorney of Complaints and Arrest Warrant Affidavits.

The District Attorney of Carbon County having filed a Certification pursuant to Pa.R.Crim.P. 507(a) criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following offenses shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing:

- (1) Criminal Homicide 18 Pa.C.S.A. § 2501
- (2) Murder in any Degree 18 Pa.C.S.A. § 2502
- (3) Voluntary Manslaughter 18 Pa.C.S.A. § 2503
- (4) Involuntary Manslaughter 18 Pa.C.S.A. § 2504
- (5) Rape 18 Pa.C.S.A. § 3121
- (6) Statutory Sexual Assault 18 Pa.C.S.A. § 3122.1
- (7) Involuntary Deviate Sexual Intercourse 18 Pa.C.S.A. § 3123
- (8) Sexual Assault 18 Pa.C.S.A. § 3124.1
- (9) Aggravated Indecent Assault 18 Pa.C.S.A. § 3125
- (10) Spousal Sexual Assault 18 Pa.C.S.A. § 3128(a) or (b)
- (11) Arson 18 Pa.C.S.A. § 3301
- (12) Robbery 18 Pa.C.S.A. § 3701(a)(1)(i) or (ii) or (iii)
- (13) Homicide by Vehicle 75 Pa.C.S.A. § 3732
- (14) Homicide by Vehicle while Driving Under Influence 75 Pa.C.S.A. § 3735
- (15) Crimes Against Unborn Child in violation of 18 Pa.C.S.A. § 3125;
- (16) Violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P. S. § 780-113 (30), (Delivery or Possession with Intent to Deliver a Controlled Substance) shall not hereafter be accepted by any judicial officer, unless the complaints and affidavits have the approval of an attorney for the Commonwealth prior to filing.

Any criminal complaint filed against a person who is under 18 years of age under circumstances where the law authorizes such person to be charged as if he or she were an adult.

Rule 560(E). Information: Filing, Contents, Function.

(a) (1) Promptly after receipt of transcripts in court cases, the Clerk of Courts shall forward the same to the District Attorney. The District Attorney shall make such investigation deemed appropriate and shall then prepare and file the information against the defendants with the Clerk of Courts. The number of each court case shall run in numerical sequence beginning with one (1) followed by CR and the last two digits of the year of filing, for example 1 CR 99.

IV. BAIL

Rule 524. Valuation of Bail Bonds.

The actual net value of Real Estate securing a bail bond shall be the assessed value of realty deducting therefrom all liens and encumbrances or meet the requirements of Carbon County Rule of Criminal Procedure 528(D)(5).

Rule 528(C). Ten Percent (10%) Cash Bail.

(a) Any defendant who has been properly granted bail may obtain his release from custody as provided herein by (1) depositing with the District Justice or Clerk of Court a sum of money equal to ten percent (10%) of the full amount of bail, but in no event less than fifty dollars (\$50), (2) executing a bond in the form set forth in Pa.R.Crim.P. No. 4014, and (3) processing by the Bail Administrator. A private individual who is not a surety or fidelity company or professional bail bondsman or agent thereof may act as a third-party surety and execute the aforementioned bond on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety.

(c) Upon compliance with all the provisions of this Rule, the defendant shall be released from custody imposed in the criminal charge on which he has made bail.

Rule 528(D)(3). Realty as Bail.

(a) The defendant, or a third party surety as defined in Rule 4007, may post realty as security for bail. In this event, the following must be provided:

1. A written appraisal by a licensed real estate broker in the County in which the property is located.
2. Proof of entry of the bail bond as a lien in favor of the County of Carbon in the Prothonotary's Office of the County in which the property is situated.
3. If the property is mortgaged, a letter from the mortgagee indicating any unpaid balance due.
4. A current lien and judgment search by an attorney or reputable Title Insurance Company.
5. Affidavit of justification of surety as provided in paragraph (d).

(b) Upon review of the above documents, a determination must be made that the actual net value of the property is equal to the amount of the bond. Only after the information requested above is supplied and a determination is made that the actual net value is at least equal to the amount of the bond, will realty be accepted as consideration for bail.

(c) A given piece of realty shall only be used as bail under Rule 309.1 if it has not been posted or is not presently being used for bail for any other charges for defendants unless allowed by Court Order.

(d) If realty is offered as surety, the owner shall present justification for such by filing an affidavit containing the following information for such surety:

1. Owners name, address, age and occupation.
2. A general description of the real estate which is offered as surety.
3. A statement of the manner in which the title is obtained, including the deed or will book reference of the recording of such instrument of title.
4. A statement of all encumbrances, including taxes upon said real estate.
5. A statement of the assessed market and rental takings.
6. A statement of the assessed market and rental value of the real estate.
7. A statement that the real estate is not being contemplated or actually negotiated for in any sale.

Rule 528(D)(3)(a). Justification of Personal Surety.

In justification of bail, personal surety shall be required to give the following information under oath:

- (i) Name, address, age, and occupation;
- (ii) A general description of real estate in Carbon County of which the surety is a freeholder.
- (iii) A statement of the manner in which the surety obtained title, and upon failure to produce the evidence of title, the Deed Book or Will Book reference of the recording of the instrument by which the surety obtained title;
- (iv) A statement of all encumbrances, including taxes, upon said real estate.
- (v) A statement of all other surety undertakings;
- (vi) A statement of the assessed, market, and rental value of the real estate; and
- (vii) A statement that the surety is not contemplating or negotiating the sale of the real estate.

Rule 528(D)(5). Qualification of Surety.

(5) Residents or owners of realty in order to be qualified to act as sureties must own realty within the Commonwealth of Pennsylvania. In all cases of realty owned outside Carbon County, the surety must provide the following:

- (i) Affidavit of Justification of such surety;
- (ii) Written appraisal by a reputable licensed real estate broker in the county in which the property is situate;
- (iii) Proof of entry of the bond in favor of the Commonwealth in the Prothonotary's Office of the county in which the property is situate;
- (iv) Letter from the mortgage company indicating the unpaid balance due on the mortgage covering the said property, if any;
- (v) A lien and judgment search by a reputable title insurance company.

Rule 528(D)(6). Corporate Surety.

Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in this Court; provided that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania,

evidencing such right, shall be on file with the Clerk and that no bond shall be executed by any surety company after May 1 of any year until such a certificate issued after March 31 of the same year shall have been filed with the Clerk, and further provided that, with the exception of bonds filed by insurance companies in motor vehicle misdemeanors, any surety company shall be required to post the sum of twenty-five thousand dollars (\$25,000) as security with the Clerk of Court.

Rule 535(A). Receipt.

At the time of posting of any bail, including percentage bail, but excluding a surety bond, the office at which the bail is posted shall issue to the person posting the bail a receipt itemizing the bail and the fees and costs which will apply in the absence of a violation or forfeiture.

Rule 535(D)(1). Disposition of Bail—Administrative Fee.

The Clerk of Courts shall, upon full and final disposition of a case, retain the sum of seventy-five dollars (\$75.00) as an administrative fee. This sum shall be considered earned at the time the bail undertaking is executed.

Rule 535(D)(2). Disposition of Bail Deposited by Defendant.

If the Court, upon sentence, orders the defendant to pay a fine and costs of prosecution or to make restitution, the Court may order that the amount deposited by the defendant, whether under the percentage cash bail program or otherwise, shall be first applied in the case of percentage bail to the administrative costs of the Clerk of Courts then to any restitution ordered by the Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D)(3). Disposition of Bail Deposited by a Third Party.

Where a third party surety has deposited money, under the percentage cash bail program or otherwise, the monies deposited shall be first applied to the administrative costs of the Clerk of Courts. With the voluntary written authorization of the person who deposited the bail, any balance shall then be applied to any restitution ordered by the Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D)(4). Authorization to Pay Attorney.

When authorized in writing by the defendant and any third party surety who posted the deposit, whatever balance of such deposit is repayable to the defendant or the third party surety, may be paid to the defendant's attorney of record, upon filing such written authorization with the Clerk of Courts.

Rule 535(E). Removal of Judgment Indexed Against Realty.

The Clerk of Courts shall, within 20 days after the full and final disposition of a case on which realty has been posted as bail, notify the surety to present to the Clerk of Courts for execution by the Clerk of Courts a praecipe to remove the judgment previously entered by the Clerk of Courts.

Rule 535(F). Notice to Person Posting Bail.

Notice of full and final disposition of a case shall be sent by the Clerk of Courts to the person who originally posted money at his address of record. Any money not claimed within one hundred and eighty (180) days from

the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Carbon.

Rule 529(A). Bail Reduction.

The Bail Administrator shall be given at least twenty-four (24) hours notice of presentation of a petition by defendant to reduce bail in court cases. Defense counsel and the District Attorney shall make an effort to agree on an appropriate amount of bail and any special conditions, the breach of which would result in revocation of bail. If an agreement can not be reached on petition, the Court shall set a time for hearing.

V. PRETRIAL PROCEDURES TO CALL OF LIST

Rule 570(D). Pretrial Conferences.

(a) Pretrial conferences shall be conducted by the District Attorney, defense counsel, or the pro se defendant on all cases which have not resulted in plea agreements at the preliminary hearing level. A criminal case scheduling grid, prepared annually by Court Administration, shall establish the dates for pretrial conferences. All defendants must be present in person or through the video conferencing system except for good cause shown. This will be the last date on which negotiated pleas will be accepted. Pleas entered after this date will be "open" with respect to sentence.

(b) Prior to the Defendant's Pre-trial Conference, the District Attorney shall obtain data of the prior criminal convictions, if any, of the defendant. Within forty-five (45) days of receipt of the report, the District Attorney shall calculate the prior record score for guideline sentencing purposes.

(c) At the Pre-trial Conference, the District Attorney shall make the Sentencing Guideline Report available to defense counsel, and if unrepresented, the defendant.

(d) At the end of the pretrial conference, written stipulations for pleas, trials, or other dispositions shall be filled out and shall be signed by the District Attorney or Assistant District Attorneys, defense counsel, and defendant. The original stipulation shall be filed in the Clerk of Court's office and copies forwarded to the District Attorney's Office, defense counsel and defendant and to the Deputy Court Administrator/Case Manager for scheduling purposes.

(e) Upon failure of defendant to appear at a pretrial conference in accordance with this Rule, defendant's bail shall be forfeited and a bench warrant shall be issued.

Rule 571(C)(3). Arraignment in Non-Capital Cases.

1. Arraignments in non-capital cases shall be conducted in accordance with the annual criminal case scheduling grid established by the Deputy Court Administrator/Case Manager.

2. Every defendant who shall be held for Court by the District Justice at the conclusion of the preliminary hearing or at the time he waives his preliminary hearing shall be furnished with a Notice of Arraignment and Pretrial Conference form and, in appropriate cases, applications for ARD Program by District Justice.

3. The Notice of Arraignment and Pre Trial Conference forms furnished by the District Justice shall advise the defendant when to appear before the District Attorney for the purpose of arraignment and pretrial conference. Defendant shall acknowledge receipt of the notice of arraignment and pretrial conference.

4. When the defendant is held for Court the District Justice shall also transmit to the Clerk of Courts and to the District Attorney a copy of the notice of arraignment and pretrial conference.

5. Every defendant against whom an information has been filed shall be arraigned before the District Attorney or, if the District Attorney deems it necessary, before the Court.

6. All defendants who are unrepresented by counsel must appear personally at arraignment.

7. Defendants who are represented by counsel must also appear personally at arraignment unless:

a. Counsel, on the form provided by the Clerk of Courts, has entered a written appearance, acknowledged receipt of copies of the information and instruction sheet and concurs in his/her client's waiver of formal arraignment; and

b. Defendant has acknowledged receipt of copies of the information and instruction sheet, waived explanation by the District Attorney and formal arraignment and represented that he/she understands:

(i) the nature and seriousness of the charges and possible consequences of conviction;

(ii) rights explained in the sheet of written instructions;

(iii) necessity of filing an omnibus pretrial motion to exercise pretrial rights;

(iv) the requirement of notice to assert such defenses as alibi and insanity or diminished capacity and the consequences of failure to file proper notices; and

(v) the time limits in which defendant may commence discovery and file an omnibus pretrial motion: and

c. Defendant enters a plea of not guilty and requests a Jury trial

8. Defendants and counsel shall be provided copies of the information and instruction sheet used and approved by the Court. This instruction sheet shall be read by the District Attorney or an Assistant District Attorney at the beginning of arraignment. Persons wanting explanation will be permitted to ask questions.

9. Defendant will be individually called before the District Attorney or an Assistant District Attorney at which time the information will be read and the nature of the charges explained. Formal explanation may be waived if:

a. the charges are misdemeanors and no jail sentence is contemplated: or

b. counsel is present and waives a reading.

Rule 573(1). Pre-Trial Discovery and Inspection.

Defense counsel desiring pre-trial discovery and inspection under Pa.R.Crim.P. No. 573 shall make an appointment with the District Attorney's Office for that purpose. At that conference, in addition to discussing discovery sought, the parties shall discuss possible plea negotiations.

Rule 574.1. Motions & Petitions Procedure.

(F) Motions and Petitions shall be submitted to the filing office, without the necessity of presentation to the Court.

(G) The Motion or Petition is filed, time stamped, docketed, and entered in the Court Computer System. It shall then be forwarded by the filing office to the Motions

and Petitions Coordinator in the Office of Court Administration for Court action and/or scheduling. The Motions and Petitions Coordinator shall, after action by the Court, return the Motion or Petition to the filing office for mailing.

(H) All Motions and Petitions subject to this rule shall be accompanied by the following items in the following order:

1. A completed cover sheet in the Form of Exhibit "A";
2. A proposed order (and rule to show cause, if necessary);
3. Stamped, addressed envelopes for each attorney of record and unrepresented party; and
4. Sufficient copies of the Petition or Motion and proposed Order or Rules for each attorney of record and unrepresented party.

(I) All Motions and Petitions shall be in writing, signed by a party or counsel of record and shall contain the caption of the case, the name, address, telephone number and Supreme Court identification of counsel for the moving party and the names and addresses of adverse parties and their attorneys.

Rule 574.2. Pro Se Filings.

(1) All pro se petitions and motions must be filed and docketed in the office of the Clerk of Courts. Petitions and motions sent to any other office shall be returned with a copy of this rule attached thereto.

(2) The Clerk of Courts shall forward a copy of all documents by individuals themselves, to their attorney of record, if any.

(3) All pro se filings must be clocked in by the Clerk of Courts. Filings which are not in compliance with the law or rule of court shall be duly noted and forwarded immediately to the Motions and Petitions Coordinator. The Court Administrator, after consulting with the Court, shall notify the individual of the deficiency in the filing.

(4) Notice to any individual who has filed a deficient pleading shall be as follows:

NOTICE: YOU HAVE FILED A DOCUMENT WITH THE COURT OF COMMON PLEAS WHICH IS NOT IN COMPLIANCE WITH THE LAW OR RULE OF COURT. YOU ARE ADVISED THAT YOUR FAILURE TO COMPLY MAY RESULT IN PREJUDICE TO YOUR RIGHTS OR CLAIM. YOU SHOULD CONSULT A LAWYER IMMEDIATELY. IF YOU CANNOT AFFORD A LAWYER, YOU MAY BE ENTITLED TO BE REPRESENTED FREE OF CHARGE BY THE PUBLIC DEFENDER'S OFFICE. IF YOU BELIEVE YOU QUALIFY, CONTACT THE FOLLOWING OFFICE:

Carbon County Public Defender
Carbon County Courthouse
Jim Thorpe, PA 18229

IF YOU ARE INCARCERATED, YOU MAY OBTAIN AN APPLICATION FOR THE PUBLIC DEFENDER'S OFFICE BY ASKING THE STAFF IN THE JAIL.

IF YOU ARE ALREADY REPRESENTED BY COUNSEL, A COPY OF YOUR FILING HAS BEEN SENT TO THEM BY THE CLERK OF COURTS.

IF YOU ARE NOT REPRESENTED BY COUNSEL AND DESIRE TO REPRESENT YOURSELF OR DO NOT QUALIFY FOR FREE COUNSEL, YOU ARE INSTRUCTED THAT YOU MUST BRING YOUR FILING INTO COMPLIANCE WITH THE LAW OR RULE OF

COURT YOU HAVE VIOLATED, OR YOUR RIGHTS OR CLAIM MAY BE PREJUDICED.

Rule 578(A). Omnibus Pre-Trial Motions.

All Omnibus pre-trial motions shall be presented within thirty (30) days after arraignment date (even though waived) (in accordance with Pa.R.Crim.P. No. 579) to the Court, which shall promptly set the hearing or argument dates.

Rule 578(B). Pre-Trial Pro Se Motions.

Where a defendant is represented by counsel, no pre-trial motions shall be considered by the court unless prepared and presented by that counsel. Any pro se pre-trial motions filed by defendant represented by counsel shall be immediately referred by the court to counsel.

Rule 588. Arguments.

Subject only to such modifications as may be required by the special provision of Pa.R.Crim.P. 720 and Carbon County Criminal Rule 720(E), the practice and procedure with respect to all matters of listing of arguments, form of briefs, filing of briefs, sanctions for failure to time file briefs, and oral arguments shall be governed by Pa.R.Crim.P. 210 and 211.

Rule 590(D). Guilty Plea Colloquy Form.

(a) During the course of counseling a defendant relative to any plea of guilty or nolo contendere in the Court of Common Pleas, counsel shall review with the defendant the Carbon County Guilty Plea Colloquy Form available from the Office of the District Attorney, and shall explain to the defendant the contents of that form. Such forms shall be initialed and signed by the defendant where appropriate and counsel's signature thereon shall constitute a certification by the attorney that he/she has read, discussed and explained the plea form to the defendant, and that to the best of his/her knowledge, information and belief, his client understands what he is doing by entering his plea.

(b) Guilty plea colloquy forms shall be filed in open Court at the time of entry of any plea of guilty or nolo contendere.

(c) For pleas to a summary offense, the plea form need only consist of the disposition page, and need only state the offenses to which the defendant is pleading and the sentence which he is to receive.

Rule 590(E). Call of the List.

VII) The call of the criminal list for a particular criminal trial session of Court shall be held by the Court at 9:30 A.M. on the Thursday morning prior to the first day of the Court's trial session as set forth on the annual Court calendar prepared by the Deputy Court Administrator/Case Manager.

VII) All unrepresented defendants and all attorneys representing defendants must attend the criminal calendar call of the list unless:

- 1) A date certain has been scheduled for the entry of a plea or;
 - 2) A motion for a continuance has been previously properly presented and granted; or
 - 3) The Court has excused a defendant and/or counsel based on good cause shown or defense counsel and the District Attorney's office have agreed that the defendant and/or counsel may be excused from the call of the list.
- b) Failure to comply with the requirements of this rule may result in the imposition of sanctions of the Court

including the issuance of a bench warrant and revocation of bail bond. Additionally, the District Attorney's office may file a charge of default in required appearance.

c) Counsel shall keep the assigned judge advised of any changes in the status of his case or the availability of the defendant for trial.

VI. TRIAL

Rule 646(C). Admission and Custody of Exhibits.

A) Counsel for the respective parties shall retain possession, and shall be responsible for, the care and custody of all tangible exhibits used at hearings and trials, whether or not they have been presented, marked, identified and used, until such time as they have been formally offered into evidence.

B) From and after an order of admission, or if admission is denied, if the Court should so order, the Court Stenographer shall take possession, and shall be responsible for the care and custody of all such tangible exhibits during the remainder of the hearing or trial, and thereafter, until further order of the Court.

C) At any time after final disposition of the case, including the expiration of any applicable appeal period, the Court Stenographer may, after notice to counsel for all parties, petition the Court for an order authorizing the removal and disposition by destruction, or otherwise, of any tangible exhibit of a size or weight precluding its enclosure in a regular case file.

VII. PRESENTENCE PROCEDURES

Rule 702(C). Presentence Procedures.

(a) Before the sentencing hearing, counsel for defendant, or if unrepresented, the pro se defendant shall obtain from the District Attorney's Office a form entitled "Appellante Rights of Defendant After Sentencing." Counsel shall review with the Defendant said form and shall explain to the Defendant the contents of that form. Such form shall be initialed and signed by the defendant where indicated and counsel's signature thereon shall constitute a certification by counsel that he/she has read, discussed, and explained the form to the defendant, and to the best of his/her knowledge, information, or belief the defendant understands the form. (The form is marked FORM IV and is attached hereto in the ADDENDA to these Rules.)

(b) Prior to imposition of sentence, a completed Guideline Sentencing Form, as required by 204 Pa. Code § 303.1(d), shall be made available to the sentencing judge.

(c) (1) If a pre-sentence investigation report is required by the sentencing Judge, the Guideline Sentencing Form shall be prepared by the report preparer.

(2) If a pre-sentence investigation report is not required, the Guideline Sentencing Form shall be prepared by the District Attorney.

(d) The Guideline Sentencing Form shall be reviewed by counsel for both the Commonwealth and the defendant prior to submission to the sentencing judge.

(e) The Clerk of Courts—Criminal Division shall send a copy of the Guideline Sentencing Form to the Pennsylvania Commission on Sentencing.

Comment: 204 Pa. Code § 303.1(d) provides that a Pennsylvania Commission on Sentencing Guideline Sentencing Form shall be completed at the Court's direction and shall be made a part of the record no later than

twenty days after the date of each sentencing, and a copy shall be forwarded to the Pennsylvania Commission on Sentencing.

As used in Section (c), "imposition of sentence" includes imposition of probation.

VIII. PAROLE AND PROBATION

Rule 708(B)(4). Petition for Parole.

Within thirty (30) days before a defendant becomes eligible for parole (except for DUI cases), the Adult Probation Office shall conduct an investigation to determine whether the defendant should be released at the expiration of his or her minimum sentence. Said investigation shall include whether District Attorney or victim have any opposition, the defendant's course of conduct while incarcerated, whether a suitable residence is available, defendant's potential for obtaining employment, and a payment plan for any outstanding, costs, fines, and restitution. Upon completion of said investigation, the Adult Probation Office shall make a recommendation for approval or denial of parole and transmit said recommendation to the Sentencing Judge. If the Court denies parole, the defendant shall have the right to a hearing upon filing a Petition for Parole.

Rule 708(E). Violation of Probation, Parole, or Ard.

1. When it is alleged that a defendant is in violation of his or her probation/parole, a Gagnon I hearing shall be held before a member of the Adult Probation staff designated for that purpose by the President Judge. This hearing will be held within ten (10) Court business days if the defendant is incarcerated as a result of the violation(s). That designated hearing officer shall be responsible for advising the defendant of all information required at a Gagnon I hearing. Should the hearing officer, at the Gagnon I hearing, find that a prima facie case exists, the following procedure shall be followed.

(a) A Gagnon II hearing, whether it be with regard to a contested violation, alleged violations or merely for the purpose of disposition or for both purposes, shall be scheduled promptly, but no later than 120 days after the officer files a motion with the Court requesting that a Gagnon II hearing be scheduled and advising in that motion as to when the Gagnon I hearing was completed.

(b) That motion shall also indicate whether the allegations are contested or whether the Gagnon II hearing will be for disposition purposes only. The hearing officer shall serve a copy of the motion upon the District Attorney's office. The defendant shall be afforded the right to representation by an attorney of choice, or upon his/her application, the appointment of the Public Defender for the Gagnon II hearing.

(c) Should a determination be made by the hearing officer at the Gagnon I hearing, that the defendant should be returned to continued supervision at liberty, the defendant shall be released from custody, if incarcerated, and continue on probation/parole.

2. When a defendant is alleged to be in violation of ARD, a hearing shall be held before the Court. Defendant shall have the right to waive said hearing by signing the Stipulation to the REVOCATION OF ARD form. (Said form is marked FORM III and attached in the ADDENDA to these rules.)

Rule 708(F). Arrest and Processing of Probation/Parole Violators.

When a duly appointed adult probation officer has conducted an investigation which reveals that a violation

of supervision has been committed by the defendant, the officer shall request a supervisor to issue a "Supervisor's Warrant" for the arrest and detention of the defendant. The defendant shall be arrested upon issuance of the warrant, by any peace officer in the Commonwealth authorized to make arrests, or in the case of a defendant who has absconded the Commonwealth, the warrant shall be submitted to the proper police agency for processing as per normal procedure. Following arrest, the filing officer shall request a Gagnon I hearing before the Court designated hearing officer, which will be held within ten (10) Court business days. The above procedure relating to Rule 1409 shall then be followed.

Should the filing officer determine that a supervisor's warrant is not needed, a Gagnon I hearing will be scheduled as soon as possible following discovery of the violations(s), and the 1409 procedure will continue as stated. Notice of the Gagnon I hearing, in this instance, shall be served upon the defendant by the filing officer and a Gagnon I hearing would then be scheduled at the convenience of the hearing officer.

IX. POST SENTENCE

Rule 720(E). Post-Sentence Motions.

(1) *Service of post-sentence motions*—Post sentence motions shall be filed within 10 days from the date of the sentence with the Clerk of Courts and copies thereof delivered to the trial judge, the court reporter and the district attorney on the same day. Such motions shall include a separate page addressed to the court reporter setting forth specifically those portions of the record which are to be transcribed. Any changes in the request for transcription shall be in writing addressed to the court reporter.

(2) Any request for leave to file additional specific grounds shall be made by a motion and proposed order, and the motion shall contain specific reasons in support thereof. With prior notice to opposing counsel, the motion shall be presented to the trial judge within 10 days after the copy of the record is transmitted to defendant's counsel, if any, and otherwise to the defendant.

(3) *Filing and delivery of transcript*—Transcript of the trial shall be delivered by the court reporter to the Clerk of Courts within 60 days from service upon the court reporter of the request for transcript referred to in Carbon County Rule of Criminal Procedure 750(E)(1) above unless further extended by order of the trial judge upon cause shown. A copy of said transcript shall be delivered forthwith by the court reporter to counsel for

any party ordering a copy or upon an unrepresented party ordering a copy. The court reporter shall execute and file with the Clerk of Courts and the Deputy Court Administrator/Case Manager a certification indicating the date when copies of the record were delivered to each of the above.

(4) *Time for argument*—Within ten (10) days of the filing of a post-sentence motion, the Deputy Court Administrator-Case Manager shall fix a date and time of argument and, if the judge decides briefs are required to dispose of the motion, briefs shall be filed with the Clerk of Courts with copies to the judge and opposing counsel.

(5) *Time for service of briefs*—The defendant shall serve upon the Commonwealth and the Court one copy each of a brief not less than 20 days before the date fixed for argument. The Commonwealth shall serve upon counsel for the defendant, if any, or otherwise on the defendant, and the Court one copy of its brief not less than 3 days before the date fixed for argument.

(6) *Failure to file briefs*—When a case is listed for argument, if the moving party has filed no briefs, the motions or petitions shall be dismissed as of course. If the opposing party has filed no brief, the moving party shall proceed ex parte.

(7) *Extension of briefing deadline*—Any party, for good cause, may apply for an extension of time to file his brief. The application shall identify the moving party, state the reasons for the request of extension, and recite whether the request for extension is opposed or unopposed.

Rule 720(F). Appeals to Supreme, Superior and Commonwealth Court.

In all direct appeals to the Supreme, Superior, and Commonwealth Courts of Pennsylvania from orders or decrees of this Court, appellant's counsel shall, immediately upon taking the appeal, serve upon the judge of this Court from whose order or decree the appeal was taken, a concise statement of the matters complained of and intended to be argued on appeal, so that an appropriate opinion may be prepared.

Immediately upon filing a brief or paper book with any Appellate Court, a copy thereof shall be served upon the judge of this Court from whose order or decree the appeal was taken.

Whenever an appeal is withdrawn by counsel, notice of such fact shall immediately be given to the judge from whose order or decree the appeal was taken.

CARBON COUNTY COURTS
APPLICATION FOR CONTINUANCE
CIVIL—CRIMINAL
INSTRUCTIONS

- 1. Applying counsel shall submit application for continuance to other counsel who will indicate in Sec. III, any opposition, or if none so indicate, and sign.
2. Make copies of form for Filing Office, all counsel, pro se parties, and Court Administration.
3. Application shall first be filed and then submitted to the Court, which will indicate action taken in Sec. V. Copies will be distributed as indicated in (2) above.

I. Application is hereby made to continue the [] trial [] hearing [] argument [] conference [] plea [] sentencing [] arbitration scheduled in the following case:

VS NO. _____
DATE SCHEDULED _____
NO. OF PREVIOUS CONTINUANCES _____ by Plaintiff _____ by Defendant

II. The application is made for the following reasons:

- [] vacation [] negotiating settlement [] record incomplete
[] illness of atty. [] expert unavailable [] counseling ordered
[] illness of party [] party unavailable [] other—specify
[] late sub of atty. [] atty. unavailable [] _____
[] conflict—atty.

Signature of Counsel Date Representing

III. Application is (opposed/not opposed) for the following reason:

Signature of Counsel Date Representing

IV. (In criminal cases only) Attached hereto and made a part hereof is a duly executed waiver of defendant's right to a speedy trial under Pa.R.Crim.P. No. 1100.

V. Action taken by the Court. AND NOW, _____,

- [] Application is denied
[] No further continuances.
[] Application is granted and the case is continued to the date listed below. Counsel are hereby attached for this proceeding on the new date:

Judge

FORM "I"

CARBON COURT OF COMMON PLEAS
CRIMINAL DIVISION
MOTION COURT COVER SHEET
NO.

vs.

FILING OF: Commonwealth ()

Defendant ()

TYPE OF FILING (check one):

- () 1. Application for Continuance
() 2. Motion for Discovery & Inspection (RCRP 305) (113)
() 3. Motion to Dismiss (115)
() 4. Omnibus Pretrial Motion (160)
() 5. Motion to Suppress (124)
() 6. Petition for Counsel-Conflict Case (213)
() 7. Petition to Consolidate (217)
() 8. Petition to Discharge (RCP 314) (220)
() 9. Petition for Special Furlough (225)
() 10. Petition for Parole (228)
() 11. Petition to Reconsider Sentence (240)
() 12. Petition to Revoke Parole (243)
() 13. Petition to Revoke Probation (246)
() 14. Petition to Reduce Bail (249)
() 15. Petition for Writ of Habeas Corpus (267)
() 16. Post Trial Motions (274)
() 17. Petition for Forfeiture (356)
() 18. Petition for Destruction (219)
() 19. Petition for Attorney Fees (227)
() 20. Other Motion or Petition (specify):
() 21. Response to:

OTHER ATTORNEY:

Attorney's Name (Typed)

Attorney for:

() Commonwealth () Defendant

N.B. The numbers after the Motion or Petition above are docket codes used in the Court Computer System. Please be precise when checking your Motion or Petition. When filing Motion or Petition, provide Clerk with sufficient copies for opposing Counsel and filing Counsel.

THIS FORM IS AVAILABLE IN THE CLERK OF COURTS OFFICE

FORM "II"

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

vs.

No.

STIPULATION TO THE REVOCATION OF ARD

I, the Defendant in the above captioned case, hereby acknowledge receipt of a copy of the Petition for Revocation of ARD filed by the Carbon County Office of Adult Probation and Parole alleging that I have violated certain condition(s) of the ARD Program.

I understand that I have the absolute right under Pennsylvania Rule of Criminal Procedure 184 to challenge the allegations contained in the Petition and to have a hearing in front of a Judge to determine whether or not I violated the condition(s) of the ARD Program.

I voluntarily waive my right to challenge the allegations contained in the Petition and to have a hearing in front of a Judge to determine whether or not I violated the condition(s) of the ARD Program and I hereby consent to the Revocation of my placement in the ARD Program without the necessity of a hearing.

I fully understand that, as a result of my consent to the Revocation of my placement in the ARD Program without the necessity of a hearing, my placement in the ARD Program will be automatically revoked and that the charges for which I was placed in the ARD Program will be scheduled for a Pre-Trial Conference before the District Attorney's Office for further disposition.

Date: _____
Defendant

FORM "III"

TO THE DEFENDANT:

PLEASE READ AND THEN REVIEW THE FOLLOWING INFORMATION WITH OUR LAWYER. IT EXPLAINS THE RIGHTS YOU HAVE FOLLOWING SENTENCING. IF YOU DO NOT UNDERSTAND ANYTHING CONTAINED ON THIS DOCUMENT, ASK YOUR LAWYER OR THE SENTENCING JUDGE TO EXPLAIN IT TO YOU. DO NOT SIGN THIS DOCUMENT UNTIL YOU UNDERSTAND IT FULLY.

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

vs.

NO(s).

:
:
:
:
:

DEFENDANT

APPELLATE RIGHTS OF DEFENDANT AFTER SENTENCING

1. After you are sentenced, you have the right to file either a post-sentence motion or an appeal to the Superior Court of Pennsylvania.
2. If you wish to file a post-sentence motion, it must be filed with the Criminal Clerk of Courts of Carbon County no later than 10 days after the imposition of sentence.
3. If you wish to file an appeal, a notice of appeal must be filed with the Criminal Clerk of Courts of Carbon County, within 30 days of imposition of sentence. This is a right of appeal which you may exercise without filing a post-sentence motion. If you file a post-sentence motion, you would also have a right to appeal from an order deciding that motion or denying the motion by operation of law.
4. If you file a post-sentence motion, all requests for relief must be stated with specificity and particularity, and consolidated in the motion, which may include:
 - (a) a motion challenging the validity of a plea of guilty or nolo contendere, or the denial of a motion to withdraw a plea of guilty or nolo contendere;
 - (b) a motion of judgment of acquittal;
 - (c) a motion in arrest of judgement;
 - (d) a motion for a new trial; and/or
 - (e) a motion to modify sentence.
5. If you file a post-sentence motion, it and any supplemental motion you may be permitted to file, must be decided by the judge within 120 days of the filing of the original motion. The judge may, at your request, grant one 30 day extension for deciding the motion, if good cause is shown. If the judge fails to decide the motion within the allowed time, the motion will be denied by operation of law, and the clerk will enter an order denying the motion.
6. If you file a post-sentence motion, and wish to appeal from the order deciding or denying the motion, a notice of appeal must be filed with the Criminal Clerk of Courts of Carbon County, within 30 days of that order.
7. Whether or not you file a post-sentence motion, all issues raised before or during trial are preserved for appeal.
8. You have the right to assistance of counsel in the preparation of a post-sentence motion or any appeal. If you are indigent, you have the right to proceed without payment of costs and with counsel appointed to represent you without charge. If you are now represented by the Public Defender's Office and continue to qualify for their services, that office would continue to represent you without cost.
9. If you qualify for bail and are released on bail after sentencing, a condition of release will be that you either file a post-sentence motion and perfect an appeal, or, when no post-sentence motion is filed, perfect an appeal with the time permitted by law.

THE COURTS

I affirm that I have read the above information completely, that I understand its full meaning, and that I have been given a copy of this document for my records and review.

Date: _____

Signature of Defendant

I, _____, Attorney for the above captioned defendant, state that I have advised my client of the meaning of this document and of his/her post-sentence and appeal rights as required by Pa.R.Crim.P. 1405 (3); that it is my belief that the defendant comprehends and understand those rights and what is set forth herein, and that Defendant has received a copy of this form.

Attorney for the Defendant

FORM "IV"

[Pa.B. Doc. No. 00-2211. Filed for public inspection December 22, 2000, 9:00 a.m.]
