

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Amending Rule 131; No. 279 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 131 (Location of Proceedings Before Issuing Authority). The amendments provide that the president judge of a judicial district may establish procedures for summary trials to be held a centralized location within the judicial district. The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 12th day of March, 2002, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 30 Pa.B. 1362 (March 11, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 745), 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 131 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2002.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

#### PART C. Venue, Location, and Recording of Proceedings Before Issuing Authority

#### Rule 131. Location of Proceedings Before Issuing Authority.

(A) An issuing authority within the magisterial district for which he is elected or appointed shall have jurisdiction and authority at any time other than during his established office hours to receive complaints, issue warrants, hold preliminary arraignments, fix and take bail and issue commitments to jail at his residence within the magisterial district, but all hearings and trials before such issuing authority shall be held publicly at his established office, or at another location, within or without the magisterial district, designated by the [President] president judge, unless an emergency exists or the number of persons lawfully assembled and entitled to be present is too great to be accommodated in such place, in which event the hearing or trial may be adjourned as quickly as may be, to a suitable place, within the magisterial district.

(B) [The] When local conditions require, the [President Judge shall, where local conditions require,] president judge may establish procedures [whereby, in all or certain classes of cases,] for preliminary hearings or summary trials, in all cases or in certain classes of cases, [may] to be held at a

central place or places within the [Judicial District] judicial district at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require. [When the defendant or his counsel and the attorney for the Commonwealth agree, the preliminary hearing shall be held at the established office of the issuing authority who received the complaint.]

#### Comment

\* \* \* \* \*

This rule allows the [President Judge] president judge of a [Judicial District] judicial district the discretion to determine what classes of cases require centralized preliminary hearings or summary trials, and requires [him] the president judge, or the president judge's designee, to establish a schedule of central places within the Commonwealth to conduct such hearings or summary trials, and the hours [thereof] for the hearings or trials at the central locations.

Ideally, this rule should minimize the inconvenience to defense counsel and the attorney for the Commonwealth by eliminating the necessity of travel at various unpredictable times to many different locations throughout the [Judicial District] judicial district for the purpose of attending preliminary hearings or summary trials. [However, where it is convenient to hold the preliminary hearing in the magisterial district where the case arose, the rule allows the party to so stipulate.] Finally, this rule allows preliminary hearings or summary trials for jailed defendants to be held at a location close to the place of detention.

**Official Note:** Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; [Paragraph] paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002.

#### Committee Explanatory Reports:

\* \* \* \* \*

**Final Report explaining the March 12, 2002 amendments concerning centralized courts for summary trials published with the Court's Order at 32 Pa.B. 1630 (March 30, 2002).**

#### FINAL REPORT<sup>1</sup>

*Amendments to Pa.R.Crim.P. 131*

#### CENTRALIZED COURTS FOR SUMMARY TRIALS

On March 12, 2002, effective July 1, 2002, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 131 (Location of Proceedings Before Issuing Authority) to provide that the president judge of a judicial district may

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

establish procedures for summary trials to be held at a centralized location within the judicial district.

As part of its ongoing review of the Criminal Rules, the Committee has been reviewing the provisions of Rule 131.<sup>2</sup> In considering correspondence we received concerning another proposal regarding Rule 131<sup>3</sup> and the locations from which an issuing authority may conduct business, some members noted that the language in Rule 131(A) and (B) may be perceived as inconsistent, and pointed out that if a district justice has jurisdiction to conduct hearings and summary trials in their regular business office, the same should apply if the president judge has established a centralized court.

After considering this concept, the Committee agreed that the same reasons for creating a centralized court for preliminary hearings applies to summary trials. These reasons include: 1) minimizing the inconvenience to counsel, particularly the public defenders and attorneys for the Commonwealth, by eliminating the travel to many locations throughout the judicial district; and 2) allowing summary trials for imprisoned defendants to be held at a location close to the place of detention.

The Committee published a Report explaining the proposed Rule 131 amendments concerning centralized courts for summary trials.<sup>4</sup> We received a number of publication responses from district justices expressing concerns about the propriety of these changes, particularly as it would impact the "community based" system of justice the minor courts now provide.

After a reviewing all the responses to the publication concerning centralized courts for summary trials, the Committee reaffirmed its proposal, and its conclusion that the decision whether there should be centralized courts should be left with the president judge who is in the best position to assess the needs of the judicial district. Furthermore, experience with the provision for centralized courts for preliminary hearings has shown that president judges have not exercised their discretion lightly. In view of this, the Committee expects that the president judges, in exercising their discretion under the rule, will weigh the concerns of the district justices and balance them against the need in the judicial district for establishing centralized courts for summary trials. However, sensitive to the concerns of the district justices to the amendments, the Committee, at three subsequent meetings, reexamined the changes and the reasons supporting them. The Committee each time reaffirmed the earlier decision to go forward with the proposal, because the decision whether to have centralized courts should rest with the president judge.

Accordingly, Rule 131(B) has been amended to provide that a president judge, in his or her discretion, may establish centralized courts for summary trials. These changes do not mandate that centralized courts be established for summary trials, but are discretionary, providing each president judge with the option to establish a centralized court for summary trials when the need outweighs the inconvenience to the parties, police, and public.

Paragraph (B) also has been amended by the deletion of the provision for the defendant and the Commonwealth to agree to have the preliminary hearing in the issuing

authority's office. The Committee agreed that if the president judge has decided that it is important to set up a central location(s) for preliminary hearings, then the parties should not be able to circumvent that decision, and also concluded that this provision applies to summary trials. The Comment has been revised to conform to this change.

Finally, correlative to these changes, the Comment has been revised to make it clear that the president judge's order moving proceedings could be a standing order rather than being a separate order in each case to accommodate, for example, conducting proceedings in a state prison located in a magisterial district.

[Pa.B. Doc. No. 02-488. Filed for public inspection March 29, 2002, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DELAWARE COUNTY

#### Orphans' Court Rules; No. 137-2002

#### Order

*And Now*, to wit, this 27th day of February, 2002, it is hereby *Ordered* and *Decreed* that all Delaware County Orphans' Court Rules previously in effect up to the date of this Order are hereby rescinded, and the following Local Rules which are appended to this Order, are hereby adopted as the Local Rules of the Orphans' Court Division of Delaware County, Pennsylvania, effective this date.

KENNETH A. CLOUSE,  
*President Judge*

#### Local Rule 1.2A. Index of Proceedings.

The clerk shall assign to each new matter a file number. The file number, and the name of the matter shall be included in the caption of all papers filed in court or in the clerk's office.

#### Local Rule 1.2B. Sessions of Court.

(1) The court will sit in stated session on the first Monday of every month for the presentation for audit of accounts and such other business as may properly come before the court.

(2) The court will sit on such other occasions and for such other purposes as may from time to time be specially fixed with reasonable notice to the parties in interest or to counsel of record.

#### Local Rule 1.2C. Arguments; Briefs.

(1) The court from time to time shall fix dates for argument and shall give or cause to be given at least two (2) weeks prior written notice thereof by mail or by personal service to all parties in interest or their counsel of record. The court may require such notice to be given by counsel for the moving party. Matters so listed shall not be continued except by the court for cause shown on written application, or in open court, with due notice to all other parties in interest. If a matter so fixed for argument is reached on the date of argument and either or both sides are not ready to proceed, the court, in its discretion, may make final disposition of the matter.

<sup>2</sup> The Committee's consideration of Rule 131 took place prior to the April 1, 2001 effective date of the Court's reorganization and renumbering of the Criminal Rules, hence the Reports referenced in this Final Report refer to Rule 22, the former number of Rule 131.

<sup>3</sup> See 29 Pa.B. 2664 (May 22, 1999).

<sup>4</sup> See 30 Pa.B. 1362 (March 11, 2001).

(2) The form of briefs for arguments, the time for filing the same and the furnishing of copies thereof shall, as nearly as may be applicable, comply with the appropriate local rules.

**Local Rule 1.2D. Holidays and Court Postponements as Affecting Sessions and Return Days.**

Whenever a session of court, a return day, or the time for performing any judicial or clerical duty falls on a holiday, Saturday, or Sunday, the next following day which is not a holiday, Saturday, or Sunday shall be the day for the session, return day, or the time for performance of the judicial or clerical act, unless otherwise provided by these rules. The court may for any reason postpone a session, return day, or the time for performing a judicial duty to a time designated.

**Local Rule 1.2E. Attorney's Appearance.**

Every attorney participating in any proceeding shall enter an appearance by written order or by endorsement on papers filed and shall not withdraw the same without leave of court.

**Local Rule 1.2F. Trust Inter Vivos.**

The original trust instrument and any amendments thereto shall be filed with the clerk when the court is first required to exercise its jurisdiction over the inter vivos trust. The instrument shall be indexed and recorded by the clerk. Any revocation shall be likewise filed, indexed, and recorded. The rules of court applicable to testamentary trusts shall apply to trusts inter vivos as far as appropriate.

**Local Rule 1.2G. Sureties.**

*Individual Sureties.* Individuals or organizations proposed as sureties on bonds of fiduciaries shall take an affidavit on the printed form supplied by the Clerk of Orphans' Court, setting forth the facts required thereby. Such affidavit shall be filed together with the bond when that is filed for approval and shall be renewed annually thereafter as long as the bond shall remain in effect. No attorney or employee of this court shall act as surety in any proceeding in this court, except by leave of court.

**Local Rule 1.2H. Corporate Fiduciaries.**

(1) Corporations having fiduciary powers and authorized to do business in the Commonwealth may act as fiduciaries in matters pending in this court; provided, however, that initially there shall be filed with the clerk, after December 1, 1969, a copy of a certificate evidencing the approval of the State Banking Department, the Comptroller of Currency, or the Federal Reserve Board, as the case may be, to exercise fiduciary powers certified to be true and correct by an executive officer of the corporation. Thereafter on or before the first day of May of each year such corporation shall file a statement, verified by the oath or affirmation of an executive officer thereof, that it is qualified to continue to act in such capacity, to which statement shall be appended a copy of the most recent report of condition stated in call form, furnished to the Secretary of Banking, the Comptroller of Currency or the Federal Reserve Board as the case may be.

(2) Except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

**Local Rule 1.2I. Petition by Personal Representative to Fix or Waive Additional Security.**

(1) *Form of Petition.* In a sale, whether public or private, of real estate by a personal representative without benefit of an order of court directing or authorizing

such sale, where he was required to give bond as such personal representative, he shall present his petition to the court before the proceeds of the sale are paid to him by the purchaser, setting forth:

- (a) the date of death of the decedent.
- (b) the date of the grant of letters to the petitioner.
- (c) the amount of the bond or bonds filed by him and the date of such filing and the name or names of his surety;
- (d) the total valuation of the personal estate as shown in the inventory and appraisal, if any; and the total proceeds of any real estate sold previously.
- (e) a short description of the real property sold, the name of the purchaser, and the amount of the consideration to be paid; and,
- (f) a prayer for an order fixing the amount of additional security or for an order excusing him from filing additional security, as the case may be.

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

**Local Rule 1.2J. Termination of Inactive Cases.**

Annually, all cases in which the dockets of the office of the Clerk of the Orphans' Court indicate there has been no activity for two (2) years or more, and where no active status certificate has been filed, shall be marked "terminated under Pa. R.J.A. 1901." Any case so terminated shall not be reinstated except upon application to the court and for cause shown. Prior to the termination of any case under this Rule, notice shall be given pursuant to Pa. R.J.A. 1901.

**Local Rule 3.1A. Pretrial Conference.**

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

- (a) the simplification of the issues.
- (b) the necessity or desirability of pleadings and/or amendments thereto.
- (c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
- (d) the limitations of the number of expert witnesses.
- (e) the advisability of a preliminary referral of issues to a master for findings to be used as evidence when the trial is to be by jury; and,
- (f) such other matters as may aid in the disposition of the action.

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

**Local Rule 3.2A. Pleadings.**

The pleadings in matters before the Orphans' Court Division shall be limited to a petition, an answer, new matter, a reply, preliminary objections, and an answer to preliminary objections.

**Local Rule 3.4A. Form; Additional Requirements.**

(1) *Endorsement.* Every pleading shall be endorsed with the name, address and Supreme Court I.D. number of counsel.

(2) *Signature and verification.* Every pleading shall be signed by the attorney or one of the parties and where facts are averred, shall be verified by one or more of the parties. If it is impracticable to meet this requirement, such pleading may be signed and verified by someone familiar with the facts, in which case the reasons for such failure to sign or failure of one of them to verify shall be set forth.

(3) *Decree.* The decree shall have a caption and be attached to the face of the petition.

**Local Rule 3.5A. Citations.**

Unless otherwise stated in both the court's decree and in the citation, the return date set forth in the citation shall represent a return date only, for filing return of service and/or notice, and for the filing of any response to the pleading pursuant to which the citation has been issued. Upon request of counsel or by order of court a hearing may be scheduled after the return date.

**Local Rule 5.1A. Method. Legal Publication.**

*The Delaware County Legal Journal* shall be the legal periodical for the publication of notices, whenever publication in a legal periodical is required by Act of Assembly or by rule or order of court.

**Local Rule 5.1B. Service; On Attorneys.**

Written notice, served personally on an attorney of record or the person in charge of his office, or by mail addressed to his office, shall be notice to the party whom he represents, except where personal service on the party is specifically required.

**Local Rule 5.3A. Advance Notice.**

In any proceeding in which no preliminary decree is required, the notice may be given in advance of the filing of the petition or other application to the court. In such cases the requirements of Pa. O.C. Rule 5.4 and Del. Co. O.C.D. Rule 5.4A may be complied with by attaching the documents to the petition. The court may direct additional notice whenever that is deemed advisable by the nature of the proceedings or the circumstances.

**Local Rule 5.4A. Notice. Additional Requirements.**

In addition to the requirements of Pa. O.C. Rule 5.4 above, the following requirements shall be observed:

(1) *Copy of Notice to be Attached.* A copy of the notice required to be given shall be attached to the petition or return.

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

(3) *Registered or Certified Mail.* Return of notice by registered or certified mail shall state the date and place of mailing and shall include the return receipt or a photostatic copy thereof. When the person who gives notice by registered or certified mail has personal knowledge, or has cause to believe, that such notice was not received by the person to be notified, he shall so state in the return. When the address of the person to be served by registered or certified mail is in a country other than the United States of America, a statement that the notice

was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

**Local Rule 6.1A. Form. Additional Requirements. Style.**

(1) *Paper.* Accounts shall be stated upon paper not less than eight and one-half inches by eleven inches, in size, the pages to be fastened together securely at the top and numbered consecutively at the bottom.

(2) *Copies.* Neither carbon copies of typewritten accounts, nor copies made by any process which are not clearly legible, shall be filed.

(3) *Caption.* The caption shall be as shown in Del. Co. O.C.D. Rule 6.1C.

**Local Rule 6.1B. Gross Estate. Summary, Balance.**

The first page or pages of the account shall show, in addition to the caption, the gross estate, being the total of all receipts of principal and income.

**Local Rule 6.1C. Form of Accounts.**

For the form of accounts prescribed by the Rule, see the Appendix. To the model forms set forth in the Appendix, the court requires that there be inserted under Introductory Material in each of the accounts a listing of the gross estate which is the total of principal receipts and income receipts.

**Local Rule 6.1D. Appointed Estates.**

Assets appointed by the donee of a testamentary power and which must be accounted for by the fiduciary of the donee because awarded to him by a court of the donor's jurisdiction, shall be shown in an entirely separate account. Such assets shall not be included in an account of the donee's own estate unless the court of the donor's jurisdiction has adjudicated a blending by the donee of the appointed estate with his own. Separate accounts of appointed estates shall be captioned as the estate of the donor of the power. The caption shall also set forth accountant's name, describing him as fiduciary of the donee and the court which awarded the assets to the accountant.

**Local Rule 6.1E. Distribution before Filing Account.**

Payments made in distribution from principal or income, except those made by guardians or trustees under order of court or by the terms of the will or trust instrument, may be set forth under a separate heading following the itemized receipts and disbursements. Credit for such distributions, however, will not be noted in the adjudication, and they will not be deducted from the balance for distribution awarded in the adjudication unless vouchers for such distributions are filed with the Auditing Judge at the audit or at some subsequent time before the adjudication is filed. However, the court, where such vouchers are lacking, will make awards subject to distributions already properly made.

**Local Rule 6.1F. Blending.**

Accounts which blend items of receipt, disbursements or distribution, or which include receipts, disbursements or investments foreign to it, shall not be filed.

**Local Rule 6.1G. Orphans' Court Checklist.**

Accountants or their attorney shall file with the clerk the documents required by and comply with the checklist(s) (available in the clerk's office) for the type of account being filed.

**Local Rule 6.1H. Execution.**

(1) *Signing.* Accounts shall be signed by the fiduciaries stating them.

(2) *Affidavit or verification.* Accounts shall have attached to the end thereof the affidavit or verified statement, as defined by Rule 76 of the Pennsylvania Rules of Civil Procedure, of one or more of the fiduciaries joining in the account, wherein it is sworn, affirmed or verified that the account as stated is true and correct and, except where accountants are trustees or guardians, that the grant of letters and the first complete advertisement thereof occurred more than four months before the filing of the account.

**Local Rule 6.1I. Annexed Accounts.**

A guardian, personal representative or trustee who has received property from a guardian, personal representative or trustee in distribution of another estate or trust may annex a copy of the account of said estate or trust to his or her account. Notice must be given to all interested parties of the annexation.

**Local Rule 6.3A. Time and Contents of Notice.**

Notice shall be given at least twenty (20) days prior to the audit and shall set forth in addition to the requirements of Pa. O.C. Rule 6.3:

(1) (except as to legatees or claimants whose legacies or claims have been or will be satisfied in full) either that a copy of the account and a copy of the will or trust instrument will be sent upon request or where a copy of same is available for inspection, and that any persons who object to the transactions shown in the account must either (a) file written objections in conformity with Pa. O.C. Rule 6.10 prior to audit or (b) appear in person or by counsel at the audit under penalty that the court may otherwise assume that you have no objections; and

(2) the accountant's interpretation of any dispute, or fairly disputable question, known to the accountant, together with a copy of the instrument or material parts thereof containing any provision which forms the basis of the dispute, and a statement that if the person notified does not agree with the accountant's interpretation, he must appear at the audit in person or by counsel to present his contention, under penalty for failure to appear that the court will assume that he agrees with the accountant's interpretation; and

(3) unless shown in the account the amount of any commission claimed by the accountant and the amount of any attorney's fee claimed as due the accountant's attorney; and

(4) in case of notice to a claimant, the accountant's understanding of the nature of the claim, whether the claim is admitted or contested; if admitted, whether it will be paid in full or in part, and, if contested that an appearance in person or by counsel must be made at the audit to press any such claim.

**Local Rule 6.4A. Date of Filing.**

An account shall be filed not later than the fifth Tuesday preceding the day on which it is to be called for audit, except when that Tuesday falls on a Holiday, in which event such account must be filed not later than the next preceding non-Holiday.

**Local Rule 6.6A. Filing.**

No account shall be accepted for filing and advertisement unless accompanied by the Petition for Adjudication. Accounts received by the clerk or by the register and

found to violate any provisions of these rules, will not be considered "filed" and will be immediately rejected or subsequently returned to accountants or their counsel.

**Local Rule 6.9A. Filing Petition for Adjudication.**

The statement of proposed distribution shall be the concluding paragraph of the printed forms of petition for adjudication to be filed with the account. The petition for adjudication shall be signed by each accountant and sworn to by at least one of them.

**Local Rule 6.10A. Objections to Accounts—Form of Objections.**

Objections to accounts, petitions for adjudication and statements of proposed distribution shall be in writing, numbered consecutively, signed by the objector or his attorney, and each objection shall:

(1) be specific as to description and amount;

(2) raise but one issue of the law and fact, but if there are several objections to items included in or omitted from the account relating to the same issue, all such objections shall be included in the same objection; and

(3) set forth briefly the reason or reasons in support thereof.

**Local Rule 6.10B. Objections to Accounts—Filing—Service of Copy.**

(1) *Time of Filing.* Objections may be filed as of course, with the clerk, on any day prior to the session of court when the account or petition for adjudication objected to is listed for audit, or at, but not later than, such session.

(2) *Service of Copy.* A copy of the objections shall be served without delay after filing, on accountant's attorney or on the accountant if not represented, in the manner provided in Pa. O.C. Rule 5.1 and Del. Co. O.C.D. Rules 5.1A, B&C.

**Local Rule 6.10C. Objections to Accounts—Continue Audit.**

When objections have been filed, the audit of the account will be continued, upon call of the audit list, to a day fixed by the court for auditing the account and hearing the objections.

**Local Rule 6.10D. Audits and Claims.**

(1) *Audit List*—The audit list will be called as provided in Del. Co. O.C.D. Rule 1.2B(1) of these Rules. An appearance slip shall be filed on behalf of each party represented at audit, and counsel for the accountant shall be present at the audit unless excused by the court.

(2) *Audit—Contested Claims.*

(a) *Audit of Account.* Whenever a claim against an estate is not admitted by accountant or is contested by any interested party, or when a question of law is submitted for adjudication, the account of that estate will be audited at the stated meeting of court at which the account is called for audit, but the claim or question of law will not then be heard and a time for a hearing thereon will be fixed by the court.

(b) *Claimant's Statement.* The attorney for claimant shall file with the clerk, prior to the hearing, a written statement of all material facts relied upon and shall serve a copy thereof on the attorney for accountant or other contesting parties at least five (5) days prior to the hearing in the manner provided in Del. Co. O.C.D. Rule 5.1B.

(3) *Petition for Adjudication.*

(a) *Recital of Facts.* Accountant shall file with his account a petition for adjudication, setting forth all facts necessary to enter a proper decree.

(b) *Forms of Petitions.* The petition for adjudication shall be on forms provided by the clerk, or typewritten in conformity therewith, signed by the fiduciaries stating the account and verified by at least one of them.

(c) *Exhibits.* Accountants shall submit with the petition the several documents enumerated in the endorsement and in the marginal instructions of the forms provided by the clerk together with a copy of the audit notice under Del. Co. O.C.D. Rule 6.3A and an affidavit listing those to whom such audit notice was sent.

(d) *Objections.* Objections to the petition for adjudication may be made orally at the time of audit.

(4) *Additional Receipts and Disbursements.* Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the petition for adjudication, or in a separate statement attached thereto, or in the appearance slip of the attorney for accountant.

**Local Rule 6.11A. Schedules of Distribution.**

(1) *Filing.* The court, when it appears advisable or when requested, will direct the attorney for accountant to prepare and file a schedule of distribution. Schedules shall be certified by the attorney for accountant to be correct and in conformity with the adjudication, and shall be filed with the clerk. When a schedule is approved in writing by parties in interest, the attorney for accountant shall also certify whether or not such parties constitute all of those affected thereby.

(2) *Confirmation.* If no objections are filed by the tenth day after the schedule was filed, it will be confirmed, as of course. Schedules approved in writing by all parties in interest affected thereby will be confirmed, as of course, on the day filed. Thereupon the accountant shall have authority to make necessary assignments and transfers of any assets awarded in kind.

(3) *Objections.* Objections to schedules of distribution shall be filed with the clerk, and may not be filed later than the tenth day after the schedule was filed, unless said period of ten (10) days is extended by the court. Such objections may raise questions relating only to the schedule itself, and shall in no event raise questions which were or could have been raised previously, by claims, or by objections to the account or statement of proposed distribution, or by exceptions to the adjudication. Objections to schedules shall be in writing, numbered consecutively, signed by the objector or his attorney and each objection shall:

(a) Be specific as to description and amount.

(b) Raise but one issue of law or fact, but if there are several objections to items included in or omitted from the schedule relating to the same issue, all such objections shall be included in the objection.

(c) Set forth briefly the reason(s) in support thereof.

(4) *Partial Confirmation.* Where the matters which are the subject of a schedule of distribution are so separate and distinct that an objection to any of them, whether sustained or dismissed, cannot affect the others, the confirmation of such schedule shall not be suspended except to the extent of the objection. Distribution may proceed as to all other matters and the usual process to enforce it may issue.

(5) *Additional Receipts and Disbursements.* Receipts and disbursements since the date to which the account was stated shall be set forth in the schedule of distribution.

**Local Rule 6.11B. Schedules of Distribution—Notice of Filing.**

(1) *When Notice Given.* Notice of filing the schedule of distribution shall be given to all parties in interest affected thereby who do not attach to it or submit with it their written approval, but only when the schedule contains:

(a) items of additional receipts or disbursements not included in the adjudication; or

(b) distribution of assets which were awarded in kind in the adjudication, but which were neither specifically bequeathed to the distributee nor elected by him to be taken in kind or which were revalued.

(2) *Time and Method of Notice.* Such notice shall be given no later than the day of the filing of the schedule, by letter addressed to the last known address of the party in interest or his attorney.

(3) *Return of Notice.* The attorney for accountant shall certify on the schedule that due notice of the filing thereof was given as required by this rule and he shall attach a copy of the notice and a list of those to whom such notice was sent.

**Local Rule 6.11C. Objections to Schedule of Distribution—Notice of Filing, Time Method, and Return.**

(1) *To Whom Given.* Notice of filing of objections to the schedule of distribution shall be given to the accountant and to all parties in interest affected thereby or their attorneys.

(2) *Time and Method of Notice.* Written notice shall be given no later than the day of the filing of the objections to the schedule by letter addressed to the last known address of accountant and all other parties in interest affected thereby or their attorneys. A copy of the objections shall be included with the notice to the accountant or the accountant's attorney.

(3) *Return of Notice.* At the time of the filing of the objections, the attorney for the objector shall file a written certification that due notice of the filing thereof was given as required by these rules, to which certification there shall be attached a copy of said notice as well as the names and addresses of the parties notified or their attorneys.

**Local Rule 6.11D. Distribution of Real Estate.**

(1) *When no partition or allotment required, or when distributees agree to schedule.* Schedules of distribution shall include separate awards of real estate to the parties entitled thereto, whether individually or, where the circumstances require, in undivided interests. The real estate so awarded shall be described in the same detail and with the same particularity as is commonly required to be included in deeds and should recite how the title was acquired by decedent. Approval of schedules of distribution shall be in the nature of confirmation of title in the respective distributees, and the clerk is authorized to certify to integral excerpts or extracts from such schedules, so approved, for purposes of recording such devolutions of real estate in the Office of the Recorder of Deeds.

(2) *Partition or Allotment of Real Estate Requested by Accountant or by a Party in Interest.* Whenever partition

or allotment of real estate is requested by the accountant or a party in interest, the request shall be made at the audit and the court shall make such order, including a direction to submit an information certificate, issued by an attorney or a responsible title insurance company, showing the current state of the title, if required, provisions for owelty, if any, the preparation of a schedule of distribution, notice to the parties, and fixing the dates of further hearings, as may be necessary under the circumstances to protect all parties in interest.

(3) *Form of Clerk's Certificate.* The following form shall be prepared by the attorney for the accountant, and submitted to the clerk for execution on final confirmation of an adjudication awarding real estate:

See Form in Appendix

**Local Rule 6.11E. Settlement of Small Estates.**

*Forms of Petitions. Contents.* Petitions under Probate, Estates, and Fiduciaries Code § 3102 for distribution of small estates shall set forth:

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

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

(3) The names and relationships of all beneficiaries entitled to any part of the estate under the will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under Probate, Estates and Fiduciaries Code § 3101, or otherwise, and whether any of them are minors, incompetents or deceased with the names of their fiduciaries, if any.

(4) The person or persons, if any, entitled to the family exemption and, if a claim therefor is made in the petition, any additional facts necessary to establish the prima facie right thereto, as required by Pa. O.C. Rule 12.1.

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

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

(7) An averment showing the status of the inheritance tax return.

(8) If any unpaid beneficiary, heir, or claimant has not joined in the petition, a statement that twenty (20) days' notice of intention to present the petition has been given in accordance with these rules.

(9) A prayer for distribution of the personal property to those entitled, and in appropriate cases for the discharge of the personal representatives.

*Exhibits.* There shall be attached to the petition the following exhibits.

(1) The original of the decedent's will if it has not been probated, or a copy of the will if it has been probated.

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

(3) An itemized list of disbursements made prior to the filing of the petition, indicating the payor and whether the disbursements were in payment of administration

expenses, preferred or ordinary debts, items of distribution or the family exemption.

(4) Original Death Certificate.

*Appraisements.* No appraisal shall be required unless ordered by the Court.

**Committee Comment:** Forms may be made available for settlement of small estates in the office of the Clerk of Orphans' Court.

**Local Rule 7.1A. Place for Filing.**

Exceptions, to the extent permitted by Supreme Court Orphans' Court Rule 7.1, shall be filed in the Office of the Clerk of Orphans' Court.

**Local Rule 8.1A. Local Rule as to Notice.**

Auditors and masters shall give at least ten (10) days' notice of hearings held by them to all parties interested or to their attorneys of record in the manner provided in Pa. O.C. Rule 5.1.

**Local Rule 8.6A. Notice and Objections.**

An auditor or master shall give notice of the filing of his report to all parties of record. Any party in interest shall have the right to file objections to such report within said period of ten (10) days. If any objection is filed, the matter shall be set for argument in the manner provided in Del. Co. O.C.D. Rule 1.2C.

**Local Rule 8.7A. Decree.**

If no objection is filed within the period expressed in Del. Co. O.C.D. Rule 8.6A, the court may enter a decree confirming the auditor's report or adopting the master's report.

**Local Rule 9.1A. Duties.**

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

**Local Rule 9.1B. Reports and Fees.**

Reports of examiners shall be filed with the clerk. The examiner's fee will be fixed and awarded by the court when acting on the report, payable out of the assets examined.

**Local Rule 10.2A. Form of Appeal.**

Appeals taken from the judicial acts or proceedings of the Register of Wills shall be addressed to Court of Common Pleas, Orphans' Court Division, and filed with the clerk of said division, shall specify the issues upon which based, and shall set forth the names of all interested parties and the necessary jurisdictional facts. A copy thereof shall be filed concurrently with the Register of Wills.

**Local Rule 10.2B. Issuance of Citation.**

When an appeal has been filed, the record shall be transmitted to the clerk of this court, and thereafter a citation shall issue as of course, without petition, directed to all persons named in the appeal as interested parties to show cause why the appeal should not be sustained. The citation, with a copy of the appeal, shall be served in the manner provided by Pa. O.C. Rule 3.5 and Del. Co.

O.C.D. Rule. Such citations will be made returnable to a day certain; but not less than twenty (20) days after issuance.

**Local Rule 12.1A. Whether Petition Required.**

The procedure for the family exemption may be by petition to the court in any case and must be by petition in all cases not within rules 12.1B and 12.1C below.

**Local Rule 12.1B. Voluntary Distribution.**

When the personal representative at his own risk delivers or permits to be retained assets of the estate in satisfaction or partial satisfaction of the exemption he shall set forth the same as a credit in the account.

**Local Rule 12.1C. Award in Adjudication.**

When the spouse or an adult child claims the exemption, but payment or delivery thereof is not to be made until distribution of the estate is awarded by the court upon the personal representative's account, the award thereof will be included in the adjudication upon written request submitted at the audit. Such request may be made by the personal representative or the claimant and may be made by including it in the petition for adjudication.

**Local Rule 12.1D. When Appraisal Unnecessary.**

Unless otherwise directed by the court, no appraisal shall be required, if the exemption is claimed under any one or more of the following:

- (1) Money.
- (2) From personal property and the gross value of the decedent's estate does not exceed the statutory amount for the family exemption.
- (3) In real or personal property at valuations agreed upon by all parties in interest.

**Local Rule 12.1E. Procedure when Appraisal Necessary.**

(1) *Personal Property.* When personal property is claimed and an appraisal is necessary, the court will direct the appraisal to be made by special order in each case.

(2) *Real Property.* When real property is claimed and an appraisal is necessary, appraisal shall be made by two appraisers as outlined in Section 3123 of the Probate, Estates, and Fiduciaries Code.

**Local Rule 12.1F. Notice.**

(1) *When no Petition.* When the procedure is without petition, no notice other than that to the personal representative need be given of the claim for exemption.

(2) *When Petition Filed.* When the procedure is by petition, notice of the filing thereof and of the date fixed by the court for confirmation and allowance shall be given by:

- (a) Actual notice to the personal representative, if any, and to all parties in interest, other than creditors, adversely affected by allowance of the exemption who do not join in the prayer of the petition, and by
- (b) Advertisement once a week for two successive weeks in *Delaware County Legal Journal* and in the newspaper of general circulation which is designated by the court in the preliminary decree.

(3) *After Appraisal.* When it is necessary for the court to appoint appraisers, the foregoing notice shall be given after the appraisal has been made and filed.

**Local Rule 12.1G. Objections.**

(1) *Voluntary Distribution.* Questions regarding disbursements claimed in the personal representative's account for assets delivered or permitted to be retained for or on account of the exemption may be raised only by objections to the account.

(2) *Audit.* Objections to exemptions claimed at the audit may be made orally, but shall subsequently be reduced to writing, or noted by the clerk upon the minutes or by the stenographer on his notes.

(3) *When Petition Filed.* When the procedure is by petition, questions as to the appraisal or allowance, or both, may be raised only by objections filed with the clerk on or before the time fixed for confirmation and allowance.

(4) *Objections to Appraisal.* Objections which relate only to the amount of the appraisal will be dismissed unless a definite and bona fide higher bid for the property is made, or facts warranting consideration by the court appear.

**Local Rule 12.1H. Final Decree.**

When the procedure is by petition, if no objections are filed on or before the time fixed in the preliminary decree, confirmation of the appraisal and allowance of the exemption may be obtained by submitting to the court the proof of notice and a form of final decree.

**Local Rule 12.2A. Appraisal of Property.**

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

**Local Rule 12.3A. Extension of Time.**

A petition for an extension of time in which the surviving spouse may file an election to take against the will shall include the items required for a petition under Pa. O.C. Rule 12.3(a) to the extent applicable.

**Local Rule 12.4A. Time of Filing Report.**

A guardian ad litem or trustee ad litem will be expected to file a report within sixty (60) days of his appointment, unless the time is otherwise fixed by the court.

**Local Rule 12.5A. Appearance at Presentation of Petition.**

Except as may be required by the court, the appearance of the minor in court to make the selection of a guardian of the estate or of the person is not required.

**Local Rule 12.5B. Restricted Accounts; Waiver of Bond.**

In lieu of the appointment of a guardian, the court may authorize the deposit of funds of a minor in a fully insured account pursuant to the provisions of Section 5103 of the Probate, Estates and Fiduciaries Code.

**Local Rule 12.5C. Allowances.**

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

- (1) The manner of the guardian's appointment and qualification, and the dates thereof.
- (2) The age and residence of the minor, whether his or her parents are living, the name of the person with whom he or she resides, the name and address of the minor's spouse and children, if any.



(3) The value of the minor's estate, real and personal, and the net annual income.

(4) The circumstances of the minor, whether employed or attending school; if the minor's father, mother or other person charged with the duty of supporting the minor is living, the financial condition and income of such person and why he is not discharging his duty to support the minor; and whether there is adequate provision for the support and education of the minor, his spouse and children.

(1) The date and amount of any previous allowance by the court.

(2) The financial requirements of the minor and his family unit, in detail, and the circumstances making such allowance necessary.

**Local Rule 12.6A. Exhibits.**

The following exhibits shall be annexed to the petition:

- (1) A copy of the trust instrument.
- (2) The consent by the proposed trustee to act as such.
- (3) Any consent or joinders of parties in interest.

**Local Rule 12.7A. Discharge of Personal Representative Under Section 3531 of Probate, Estates, and Fiduciaries Code.**

A petition with account annexed under Section 3531 of Probate, Estates and Fiduciaries Code shall conform to the extent practicable with the requirements of a petition for the settlement of a small estate under Section 3102 of Probate, Estates, and Fiduciaries Code, as set out in Del. Co. O.C.D. Rule 6.11E.

**Local Rule 12.9A. Public Sale, Contents of Petition, Additional Requirements.**

(1) *Personal Representative*—A petition by a personal representative to sell real property at public sale, under Section 3353 of the Probate, Estates and Fiduciaries Code shall also set forth in separate paragraphs:

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

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

(c) Whether an inventory and appraisal has been filed, the total value of the property shown therein, and the value at which the real property to be sold was included therein;

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

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

(f) A full description of the real property to be sold, the improvements thereon, by whom and in what capacity it is occupied, its rental value and current tax assessment; and

(g) Sufficient facts to enable the court to determine that the sale is desirable for the proper administration and distribution of the estate.

(2) *Trustee*—A petition by a trustee to sell real property at public sale, under Section 7133 of the Probate, Estates and Fiduciaries Code shall also set forth in separate paragraphs:

(a) How title was acquired to the property which is the subject of the Petition, including the date and place of probate of the will, or recording of the deed;

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

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

(d) The improvements on the property, by whom and in what capacity it is occupied, its rental value and current tax assessment;

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

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

(3) *Guardian*—A petition by a guardian of a minor's estate to sell real property at public sale, under Section 5155(1) of the Code shall also set forth in separate paragraphs:

(a) The age of the ward;

(b) The names of the ward's next-of-kin and the notice given them of the presentation of the petition. When there are no known next-of-kin who are sui juris to whom notice may be given, public notice in accordance with Del. Co. O.C.D. Rule 12.9C, must be given and proofs thereof must be attached to the petition as an exhibit;

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

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

(e) The nature and extent of the interest of the ward, and of other persons in the real property;

(f) The improvements on the property, by whom and in what capacity it is occupied, its rental value and current tax assessment; and

(g) Sufficient facts to enable the court to determine that the proposed sale will be in the best interest of the ward.

**Local Rule 12.9B. Public Sale, Exhibits.**

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

(1) a copy of the will, deed, or decree by which the fiduciary was appointed; and

(2) any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join; and

(3) consent by any mortgagee whose lien would otherwise not be discharged by the sale; and

(4) an affidavit as to value by one real estate appraiser.

**Local Rule 12.9C. Notice and Return.**

(1) *Notice*—After the allowance of a petition for public sale of real property, notice of the public sale shall be given:

(a) By advertisement once a week for three consecutive weeks in the *Delaware County Legal Journal* and in one other newspaper of general circulation in Delaware County in the vicinity of the subject property; and by posting a notice on the premises and three (3) additional notices in the immediate vicinity of the premises to be sold; and

(b) By personal notice or certified mail to all parties in interest of the time and place of the proposed sale at least ten (10) days prior thereto; or

(c) By such other notice as the court may by special order direct.

(2) *Return*—Returns of public sale of real property for the purpose of an approval or confirmation by the court shall be in the form of an affidavit, which shall set forth:

(a) The information required by Del. Co. O.C.D. Rule 5.4A with the attachment of proofs of publication in accordance with Del. Co. O.C.D. Rule 12.9C(1)(a);

(b) The price obtained;

(c) The name and address of the purchaser and that he was the highest bidder.

**Local Rule 12.9D. Security.**

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

**Local Rule 12.10A. Exhibits.**

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

(1) A copy of the will, deed, or decree by which the fiduciary was appointed.

(2) Any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join.

(3) Consent by any mortgagee whose lien would otherwise not be discharged by the sale, or if not attached, the reason therefore.

(4) A copy of the agreement of sale.

**Local Rule 12.10B. Procedure on Day Fixed for Approval.**

(1) *Private Sale*. Whenever on the day fixed for approval of a private sale a person other than the proposed purchaser named in the petition, or more than one such other person, shall appear for the purpose of offering a higher price than that to be paid by the proposed purchaser named in the petition, the following procedure shall be followed unless otherwise directed by the court:

(a) No offer from any proposed purchaser other than the one named in the petition will be considered, unless it is at least ten percent (10%) higher and is payable in cash.

(b) If one or more interested purchasers other than the proposed purchaser named in the petition do appear and state their willingness to offer at least ten percent (10%) more, the court will conduct an auction. The proposed

purchaser named in the petition and all other interested purchasers shall have the opportunity to make cash offers at least ten percent (10%) higher than the offer of the original proposed purchaser, until the highest price offered by any interested purchaser shall be determined.

(c) The court will then entertain the highest offer made by an interested purchaser and will enter an appropriate decree.

(2) *Options for Private Sale*. Subparagraph (1) of this Rule shall apply to the approval of a grant of an option for private sale; however, in addition to the provisions of subparagraph (a) thereof, any other proposed purchaser must also offer a consideration for the option itself which is at least one hundred percent (100%) higher and is payable in cash.

(3) *Private Exchange*. The procedure in the event another person appears on the day fixed for approval of an exchange, for the purpose of offering a different consideration, shall be as the Court directs by special order.

**Local Rule 12.10C. Security.**

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

**Local Rule 12.11A. Additional Requirements.**

(1) *Exhibits*—There shall be attached to a petition to mortgage or lease property, where applicable:

(a) A copy of the will, deed or decree by which the fiduciary was appointed;

(b) Consents to the mortgage or release signed by those parties in interest who do not join in the petition, and the names and a copy of the notice which has been given to those parties who do not consent;

(c) A written statement by the proposed mortgagee indicating a commitment to grant the mortgage loan;

(d) an appraisal by a real estate appraiser of the real property on which the proposed mortgage is to be secured;

(2) *Security*—The amount of the bond or initial security required to be entered, or the waiver thereof, will be determined by the court in its decree approving the proposed mortgage.

**Local Rule 14.2A. Testamentary Writings.**

All testamentary writings of the incapacitated person found by the guardian or in the possession of any other person shall at the time of the filing of the inventory be submitted by the guardian or such other person to the court for its inspection, together with a photographic type copy to be retained by the judge for his private file.

**Committee Comment.** Neither the will nor a copy thereof nor any description of its provisions should be permitted to become part of a file available for public inspection. See *Widener Estate*, 437 Pa. 294 (1970).

**Local Rule 14.2B. Allowances from Incapacitated Person's Estates.**

(1) *Petitions*. Petitions for allowances from an incapacitated person's estate or for the payment of counsel fees shall be governed by the appropriate provisions of Del. Co. O.C.D. Rule 12.5C and shall set forth:

(a) The name of the guardian, the date of his appointment; if the petitioner is not the guardian, his relationship to the incapacitated person, and, if not related, the nature of his interest.

(b) A summary of the inventory, the date it was filed, and the nature and present value of the estate.

(c) The address and the occupation, if any, 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 petitioner.

(f) A statement of the requested distribution and the reasons therefor; a statement of all previous distributions allowed by the court.

(2) *Notice to Veterans' Administration.* If any portion of the incapacitated person's estate is received from the United States Veterans' Administration or its successor, notice of the request for allowance shall be given to this agency.

#### **Local Rule 14.2C. Certification.**

In any petition filed pursuant to 20 Pa.C.S. § 5511, counsel for petitioner shall file with the Clerk of Orphans' Court at least seven (7) days prior to the hearing a Certification substantially in compliance with the form set forth in Del. Co. O.C.D. Rule 14.2D that provides the following information to the best of counsel's knowledge, information and belief:

(1) Whether counsel has been retained by or on behalf of the alleged incapacitated person.

(2) Whether the issue of capacity is or is not contested.

(3) Whether the testimony on the issue of capacity shall be presented in one or more of the following manners:

(a) Deposition by written interrogatory;

(b) By videotape deposition;

(c) Live testimony in court.

(4) Whether the issue relating to the choice of guardian is contested.

(5) Whether the alleged incapacitated person will or will not be present at the hearing pursuant to 20 Pa.C.S. § 5511(a) 1 and 2.

**Note:** Counsel is advised to carefully review the requirements of 20 Pa.C.S. § 5511 in completing the Certification required.

**Committee Comment:** In uncontested matters the medical or psychological testimony may be provided via verified deposition by written interrogatories. Forms of such written interrogatories approved by the court are available at the Office of the Clerk of Orphans' Court.

#### **Local Rule 14.2D. Compliance.**

The requirements of Del. Co. O.C.D. Rule 14.2C shall be met by the filing of a Certification substantially in compliance with the following:

#### **CAPTION CERTIFICATION**

The undersigned, \_\_\_\_\_, Counsel for the Petitioner in the above captioned matter, hereby certifies that:

(1) Counsel has/has not been retained by or on behalf of the alleged incapacitated person.

(2) The issue of capacity is/is not contested.

(3) The testimony on the issue of capacity shall be presented in one or more of the following manners; as checked below:

a. ( ) Deposition by written interrogatory;

b. ( ) Videotape deposition;

c. ( ) Live testimony in court.

(4) The issue of the choice of guardian is/is not contested.

(5) It is expected that the alleged incapacitated person will/will not be present at the hearing in compliance with 20 Pa.C.S. § 5511(a) 1 and 2.

I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief.

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

#### **Local Rule 14.3A. Accounts and Distribution.**

The practice and procedure with respect to the filing and audit of accounts, as well as the distribution of the assets comprising the estate, shall conform with the practice and procedure governing the accounts of guardians of minors.

**Note:** Del. Co. O.C.D. Rules 14.2A through 14.3A were initially adopted effective July 1, 1997 as Rules 14-2-1 through 14-3-1. Their adoption herein reflects only re-designation as Del. Co. O.C.D. Rules 14.2A through 14.3A in keeping with the renumbering of all Del. Co. O.C.D. Rules of the Orphans' Court.

#### **Local Rule 15.1A. Practice and Procedure Generally.**

This rule and the succeeding rules are adopted under the option given by Supreme Court Orphans' Court Rule 15.1 to adopt Del. Co. O.C.D. Rules in lieu of the ones otherwise provided by the Supreme Court. In selecting this option, the court is partly motivated by the concern that confusion could occur in attempting to follow rules adopted under an Act of Assembly since replaced by another Act of Assembly. These rules may be modified in a particular case by a special order of this court.

#### **Local Rule 15.1B. Appropriate Proposed Decree.**

In all proceedings hereunder, counsel for petitioner shall prepare and present at any hearing, the appropriate proposed decree.

#### **Local Rule 15.1C. Whether Hearing is Private.**

All hearings required under the Adoption Act, including relinquishment, termination and adoption proceedings, shall be held privately in the chambers of the hearing judge unless otherwise ordered by the court.

#### **Local Rule 15.1D. Whether Notice to Natural Father.**

(1) In agency (as opposed to private) proceedings only, if the mother whose rights are sought to be terminated, or who is voluntarily relinquishing the rights to her child or children shall appear at a hearing in regard to the termination or relinquishment of her rights, or at a hearing to confirm consent under § 2504(a) of the Adoption Act, as amended, and shall state that she knows the

identity of the natural father of the child or children, but refuses to identify that person for the court, then the court shall conduct an evidentiary hearing into the reasons why the mother refused to identify the natural father. If, after conducting this evidentiary hearing, the court is satisfied that the reasons for this refusal to identify the natural father are valid, and if the court should further find from this evidentiary hearing that sufficient evidence exists under the law for the termination of the parental rights of that natural father, then the court shall direct that the record of this evidentiary hearing be sealed, and the natural father not be given notice of the adoption hearing, at which time the mother shall then be required to state the name and last known address of the natural father of the child or children.

(2) Valid reason for refusing to identify the natural father shall include, but not be limited to, fear on the part of the mother for her life or physical safety in the event that the natural father is notified of the proceedings; irreparable harm to the child or the natural father or the present family of the natural father, if knowledge of this hearing shall be brought to the attention of the natural father; or a legitimate uncertainty on the part of the mother as to whether or not this person is, in fact, the natural father of the child or children.

(3) In private adoption proceedings only, the following notice provisions shall apply:

(a) If the name and whereabouts of the natural father are known, service shall be valid if mailed to his last known address by certified mail, return receipt requested.

(b) If the name of the natural father is known but no address is known, substituted service shall be valid by advertising once in the *Delaware County Legal Journal* and once in a newspaper of general circulation, as may be directed by the court.

(c) If no name for the natural father or address is known, the natural mother shall execute an affidavit (to be attached to the termination or confirmation petition or adoption petition) stating either that the identity of the natural father is unknown or that she refuses to identify the natural father.

In the case where identity is unknown, no notice to a putative father shall be required for either a termination or adoption hearing. In addition, the affidavit may contain averments establishing the existence of grounds for involuntary termination under § 2511 of the Adoption Act. The affidavit may be offered into evidence as substantive proof of the statements contained therein without the personal appearance of the affiant.

#### **Local Rule 15.1E. Representation for Child.**

Whenever it is appropriate for the appointment of counsel under Section 2313 of the Adoption Act, as amended, the following procedures shall prevail:

(1) It shall be the obligation of the agency (as defined by Section 2102 of the Adoption Act of 1981) or counsel for the adopting parents in a private adoption proceeding, to present the court with a written motion and proposed order for the appointment of counsel to represent a child in an involuntary termination proceeding as required by Section 2313 of the Adoption Act of 1981.

(2) Counsel shall be appointed from the list maintained by the Court Administrator for the appointment of attorneys and guardians ad litem in dependency and abuse cases. The fees to be paid to attorneys so appointed in termination proceedings, shall be the same as those paid in dependency and abuse cases for one day representation but shall not exceed the maximum set forth in the Adoption Act, as amended. Said fee shall be taxed as costs to the adopting parent or parents at the time of filing a petition for adoption. Unless the court otherwise directs, only one attorney and only one fee shall be required for more than one child of the same parent whose rights are being terminated.

#### **Local Rule 15.1F. Consents of Natural Parents.**

If both natural parents of the child intended to be adopted have executed consents to the adoption, the same may be admitted into evidence as proof of relinquishment, abandonment and consent to adoption at the time of the final adoption hearing.

#### **Local Rule 15.1G. Conditional Relinquishment.**

The hearing judge may, in his discretion, allow a relinquishment by one parent to be conditioned upon relinquishment or termination of the interest of the other parent of the child intended to be adopted.

#### **Local Rule 15.1H. Certificate of Birth.**

(1) If available, a certificate of birth from the Bureau of Vital Statistics must be produced and admitted into evidence prior to the signing of a final decree in adoption.

**Committee Comment:** Section 2534 of the Adoption Act requires attachment of birth certificate as an exhibit if it can be obtained.

(2) If no birth, marriage, divorce or death certificate can be obtained, the reason therefore shall be so stated and efforts made to obtain same shall be stated in the report of intermediary or petition to adopt; and a request made that the court establish a date and place of birth, marriage, divorce or death.

#### **Local Rule 15.1I. Certificate of Health.**

At an adoption hearing there shall be offered into evidence a certificate of health signed by a licensed physician, attesting to the present condition of health of the following persons:

- (1) Each adoptee;
- (2) Any non-related adopting parent.

#### **Local Rule 15.1J. Child Abuse and Police Clearances.**

At an adoption hearing there shall be offered into evidence current (within one (1) year of the hearing) child abuse and police clearances on forms provided by the Department of Public Welfare and the State Police for the following persons:

- (1) Any adopting parent;
- (2) Any person over the age of eighteen (18) who is residing in the home of the adopting parent(s) and adoptee.

**Local Rule 15.1K. Exhibits at Adoption Hearings.**

All exhibits to be entered into evidence at an adoption hearing, including birth certificates and certificates of health as required herein, and the proposed Final Decree shall be submitted to the court no later than one (1) week prior to the hearing unless otherwise directed by the court.

**Local Rule 15.1L. Final Adoption Decree.**

Following the entry of a decree of termination, either voluntary or involuntary, or pursuant to a petition to confirm consent, thirty (30) days shall elapse before a final adoption decree is entered.

**Local Rule 15.1M. Consent by Parents.**

In addition to the requirements of Section 2711(d) of the Adoption Act, as amended, a consent signed by either parent shall contain statements regarding the following:

- (1) Date and place of birth of child.
- (2) Authorization of Intermediary.
- (3) Authorization and release of hospital.
- (4) Waiver of notices.
- (5) Admission of consent into evidence, if applicable.

**Local Rule 15.1N. Birth Outside Commonwealth.**

When the child proposed to be adopted has been born outside the Commonwealth of Pennsylvania, notification of the proposed adoption shall be given to the Pennsylvania Department of Public Welfare if required by, and if in conformance with, the Public Welfare Code, Article 7, Sub-Article (d), Act of June 13, 1967 (P. L. 31, No. 21) 62 P. S. § 742 et seq; and a clearance certificate from the Department shall be produced for the court.

**Note:** Del. Co. O.C.D. Rules 15.1A through 15.1L were initially adopted April 29, 1981; amended September 28, 1982 as Rules 15-1-1 through 15-1-12. Their adoption herein reflects only re-designation as Del. Co. O.C.D. Rules 15.1A through 15.1L in keeping with the renumbering of all Del. Co. O.C.D. Rules.

**Local Rule 17.1A. Local Rules.**

The rules set forth herein which do not appear in boldface type shall be known as Delaware County Orphans' Court Division Rules and shall be cited as Del. Co. O.C.D. Rules.

[Pa.B. Doc. No. 02-489. Filed for public inspection March 29, 2002, 9:00 a.m.]

---

## SUPREME COURT

### Assessment of Fees for Use of Advanced Communication Technology; No. 241 Judicial Administration; Doc. No. 1

#### Order

*Per Curiam*

*And Now*, this 13th day of March, 2002, no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

[Pa.B. Doc. No. 02-490. Filed for public inspection March 29, 2002, 9:00 a.m.]

### Schedule of Holidays for Year 2003 for Staffs of the Appellate Courts and the Administrative Office of Pennsylvania Courts; No. 240 Judicial Administration; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 12th day of March, 2002, it is hereby ordered that the following paid holidays for calendar year 2003 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 2003	New Year's Day
January 20, 2003	Martin Luther King, Jr. Day
February 17, 2003	Presidents' Day
April 18, 2003	Good Friday
May 26, 2003	Memorial Day (Observed)
July 4, 2003	Independence Day
September 1, 2003	Labor Day
October 13, 2003	Columbus Day (Observed)
November 4, 2003	Election Day
November 11, 2003	Veterans Day
November 27, 2003	Thanksgiving Day
November 28, 2003	Day After Thanksgiving
December 25, 2003	Christmas Day

[Pa.B. Doc. No. 02-491. Filed for public inspection March 29, 2002, 9:00 a.m.]

---

### Sessions of the Supreme Court of Pennsylvania for the Year 2003; No. 136 Appellate Court Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 12th March, 2002, it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2003 as follows:

Pittsburgh (Administrative Session)	January 9
Philadelphia (Administrative Session)	February 13
Pittsburgh	March 3 through March 7
Philadelphia	April 7 through April 11
Harrisburg	May 13 through May 16
Pittsburgh (Administrative Session)	June 4
Pittsburgh	September 8 through September 12
Philadelphia	October 20 through October 24
Harrisburg	December 2 through December 5

Additional argument/administrative sessions may be scheduled as the Court deems necessary.

[Pa.B. Doc. No. 02-492. Filed for public inspection March 29, 2002, 9:00 a.m.]