

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Amendment of Rules 102(a), 205(c), 206, 213(d) and 218(c) of the Pennsylvania Rules of Disciplinary Enforcement; No. 34 Disciplinary Rules; Doc. No. 1

#### Order

*Per Curiam:*

And Now, this 9th day of September, 2004, Rules 102(a), 205(c), 206(a)—(c), 213(d) and 218(c) of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

#### 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 A. PRELIMINARY PROVISIONS

#### Rule 102. Definitions.

(a) *General rule.* Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

\* \* \* \* \*

**“Experienced hearing committee member.”** An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has previously served either (i) as a member of the Board, or (ii) as a member of a panel of hearing committee members for at least one year and on a hearing committee that has conducted at least one hearing into formal charges of misconduct by a respondent-attorney.

\* \* \* \* \*

**“Senior hearing committee member.”** An attorney who at the time is a member of the panel of hearing committee members in a disciplinary district and who has previously served either (i) as a member of the Board, or (ii) a full three-year term on a panel of hearing committee members and on hearing committees that have conducted at least three hear-

ings into formal charges of misconduct by respondent-attorneys for which formal transcripts have been prepared.

\* \* \* \* \*

#### Subchapter B. MISCONDUCT

#### Rule 205. The Disciplinary Board of the Supreme Court of Pennsylvania.

\* \* \* \* \*

(c) The Board shall have the power and duty:

\* \* \* \* \*

(3) To appoint [ **three or more hearing committees** ] not less than 18 hearing committee members within each disciplinary district. [ **The Board may also appoint up to six persons in each disciplinary district to serve as alternate members of hearing committees within that district.** ] Each [ **member of a hearing committee or alternate appointed** ] person appointed as a hearing committee member for a district shall be a member of the bar of this Commonwealth who maintains an office for the practice of law within that district. [ **Only persons who have previously served as a member of a hearing committee or of the Board shall be eligible for appointment as an alternate. An alternate shall have the status of a member of a hearing committee, but shall not be eligible to serve under paragraph (7) of this subdivision (c) or in the capacities reserved to regular members of a hearing committee by Rule 206(a) (relating to hearing committees and special masters).** ]

*Official Note:* The last sentence of paragraph (3) of subdivision (c) is intended to make clear that an alternate hearing committee member will be subject, among other things, to the provisions of Rules 209 (relating to immunity) and 220 (relating to recusal of members of the Board or a hearing committee or a special master). ]

\* \* \* \* \*

(5) To assign formal charges or the conduct of an investigatory hearing to a hearing committee or special master. The assignment to a hearing committee of formal charges or the conduct of an investigatory hearing may be delegated by the Board to its Secretary. [ **The reviewing member of a** ] A hearing committee member who has passed upon Disciplinary Counsel’s recommended disposition of the matter shall be ineligible to serve on the hearing [ **panel** ] committee that considers the matter.

\* \* \* \* \*

(7) To assign periodically, through its Secretary, [ **the senior or experienced hearing committee members of hearing committees** ] within each disciplinary district to:

\* \* \* \* \*

(ii) hear and determine attacks on the validity of subpoenas issued pursuant to Rule 213(a)(2) (relating to subpoena power, depositions and related matters)[ . ], as provided in Rule 213(d)(2); or

(iii) consider a petition for reinstatement to active status from inactive status under Enforcement Rule 218(c)(3)(ii) (relating to reinstatement) of a formerly admitted attorney who has not been suspended or disbarred.

\* \* \* \* \*

**Rule 206. Hearing committees and special masters.**

(a) When a hearing committee is [ first selected, one of its members shall be appointed for a term of one year, another member for a term of two years and the third member for a term of three years ] required to handle a matter, the Board shall appoint a hearing committee consisting of three hearing committee members from the appropriate disciplinary district. At least one of the members of the hearing committee shall be a senior hearing committee member, and another member shall be either a senior hearing committee member or an experienced hearing committee member. The Board shall designate [ the chairman ] one of the members so appointed as the chair for the committee, who shall be a senior hearing committee member. [ Thereafter all regular terms ] The terms of hearing committee members shall be three years and no member shall serve for more than two consecutive three-year terms. [ An alternate hearing committee member shall serve for a term of three years, and may serve for a second consecutive three-year term. ] Board rules may authorize a [ regular or alternate ] hearing committee member whose term has expired to continue to serve until the conclusion of any matter commenced before the member prior to the expiration of such term. A [ regular or alternate ] hearing committee member who has served two consecutive three-year terms may be reappointed after the expiration of one year. [ The ] A hearing committee shall act only with the concurrence of a majority of its members and two members shall constitute a quorum, except that a single [ regular, but not an alternate ] senior or experienced hearing committee member may act for the committee when the committee is sitting as an investigatory hearing committee under Enforcement Rule 213(a)(1) (relating to subpoena power, depositions and related matters), [ hearing and determining a challenge to a subpoena under Enforcement Rule 213(d)(2), ] or when conducting a prehearing conference [ or when considering a petition for reinstatement to active status from inactive status under Enforcement Rule 218(c)(3)(ii) (relating to reinstatement) of a formerly admitted attorney who has not been suspended or disbarred ]. The terms of hearing committee members shall commence on July 1.

(b) Hearing committees shall have the power and duty:

\* \* \* \* \*

[ (3) To review, by the member assigned, and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands and institution of formal charges.

(4) To hear and determine, by the member assigned, attacks on the validity of subpoenas issued pursuant to Rule 213(a)(2) (relating to subpoena power, depositions and related matters). ]

(c) [ Where a regular hearing committee member is disqualified or otherwise unavailable to serve with respect to any particular formal proceeding, the Secretary shall assign an alternate hearing committee member to serve in place of the unavailable member with respect to that proceeding. Particular formal charges may not be referred to a hearing committee unless at least one regular member of the committee serves on the committee during its handling of those charges. ] If [ the chairman ] a member of a hearing committee [ is ] becomes disqualified or otherwise unavailable to serve with respect to any particular [ formal proceeding ] matter, the Secretary shall designate [ the chairman of the hearing committee for that proceeding who shall be a regular member of the committee ] a replacement. [ Where it is impracticable to refer particular formal charges to any established hearing committee within a disciplinary district, the Board in the manner provided by Board rule shall select a special hearing committee from all available regular hearing committee members within an adjacent district. ]

\* \* \* \* \*

**Rule 213. Subpoena power, depositions and related matters.**

\* \* \* \* \*

(d) *Challenges.* Any attack on the validity of a subpoena issued under this rule shall be heard and determined by:

\* \* \* \* \*

(2) a [ member of a ] hearing committee member in the disciplinary district in which the subpoena is returnable in the case of a subpoena authorized by subdivision (a)(2).

\* \* \* \* \*

**Rule 218. Reinstatement.**

\* \* \* \* \*

(c)(1) Petitions for reinstatement by formerly admitted attorneys shall be filed with the Board.

\* \* \* \* \*

(7) A petition for reinstatement to active status from inactive status by a formerly admitted attorney who has not been suspended or disbarred shall be considered by a single senior or experienced hearing committee member who shall perform the functions of a hearing committee under this subdivision (c), and the rules of the Board may provide for abbreviated procedures to be followed by that hearing committee member.

\* \* \* \* \*

[Pa.B. Doc. No. 04-1769. Filed for public inspection September 24, 2004, 9:00 a.m.]

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL [231 PA. CODE CH. 1910]

### Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 71

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as follows. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The Committee solicits comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, November 5, 2004 directed to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
FAX (717) 795-2175  
E-mail: patricia.miles@pacourts.us

*By the Domestic Relations  
Procedural Rules Committee*

ROBERT C. CAPRISTO,  
*Chair*

### Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

#### **Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.**

\* \* \* \* \*

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support **or alimony pendente lite** (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support **or alimony pendente lite** shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support **or alimony pendente lite**, and awarding the net difference **either** to the non-custodial parent as spousal support/**alimony pendente lite** **or to the custodial parent as child support as the circumstances warrant.**

**Official Note:** One of the circumstances the trier of fact should consider is the tax consequences of each type of payment.

\* \* \* \* \*

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

\* \* \* \* \*

##### *(b) Health Insurance Premiums.*

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it. **Notwithstanding the prior sentence, there shall be no apportionment of that portion of the premium covering the party who is maintaining the insurance if that party is not owed a duty of support by the other party.** If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no duty of support is owed or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event this portion is not known or cannot be verified, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

**[ For example, if ] Example 1, If the parties are separated, but not divorced, and Husband pays \$200 per month [ for ] toward the cost of a health insurance policy provided through his employer** which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, Wife's percentage share of \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

**Example 2. If the parties are divorced and Father pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Mother, the parties' child and two additional children from a previous marriage, the portion of the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the amount of the premium attributable to Father and the two other children is \$120 (\$40 per person multiplied by**

three) and that amount is deducted from the total cost of the premium, leaving \$80 (\$200-\$120=\$80) to be allocated between the parties.

\* \* \* \* \*

**Official Note:** Subdivision (b) of this Rule does not apply to Medical Assistance. See 23 Pa.C.S. § 4326(l). The 2004 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no duty of support owed to that party by the other party. See *Maher v. Maher*, 835 A.2d 1281 (Pa. 2003).

(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. **Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a duty of support by the other party.** The court may direct that obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

\* \* \* \* \*

[ Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. ]

**Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order.**

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. **However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.**

**Official Note:** Subdivision (a) was amended in 2004 to include the statutory provision at 23 Pa.C.S. § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. 2003), is inconsistent, it is overruled. See 23 Pa.C.S. § 4352(e) for additional provisions.

\* \* \* \* \*

[Pa.B. Doc. No. 04-1770. Filed for public inspection September 24, 2004, 9:00 a.m.]

# Title 25—LOCAL COURT RULES

## BUCKS COUNTY

**Order Promulgating Rules of Civil Procedure 205.2(a), 205.2(b), 206.4(c), 208.2(c), 208.3(a), 208.3(b), 210, 1028(c), 1034(a) and 1035.2(a) and Rescinding Rules of Civil Procedure \*266, \*300, \*301, \*302, \*400.1, 440\*(c), \*(d), and \*(e), \*930, 1033\*(a), and 1034(a)\*(1)**

### Order of Court

And Now, this 1st day of September, 2004, Bucks County Rules of Civil Procedure 205.2(a), 205.2(b), 206.4(c), 208.2(c), 208.3(a), 208.3(b), 210, 1028(c), 1034(a) and 1035.2(a) are hereby promulgated as follows:

#### **Bucks County Rule of Civil Procedure No. 205.2(a) Physical Characteristics of Pleadings and Other Legal Papers.**

- (1) Legal papers in civil proceedings shall be filed in the Office of the Prothonotary.
- (2) All legal papers requiring action by a judge shall be backed with a backer at least 8 1/2 inches by 11 inches in size.
- (3) All legal papers shall contain in their caption the docket number of the action including the numerical identifier of the assigned judge.

#### **Bucks County Rule of Civil Procedure No. 205.2(b) Cover Sheets on Pleadings and Other Legal Papers**

Every initial filing commencing an action, appeal or miscellaneous application in the civil division of the Bucks County Court of Common Pleas shall be accompanied by an informational cover sheet in such form as may be prescribed by the Prothonotary. This cover sheet may collect such information as the names of parties and counsel, the nature of the matter being filed, the amount in controversy and such other miscellaneous information as may assist the Court in the administration of its dockets.

The failure to file this form or the failure to file the form correctly or completely may result in an order imposing sanctions.

*Note:* This form can be found online at [www.buckscounty.org/departments/prothonotary/pdf/Civil Court.pdf](http://www.buckscounty.org/departments/prothonotary/pdf/CivilCourt.pdf). Copies may also be obtained by calling the Office of the Prothonotary at 215 348-6191.

#### **Bucks County Rule of Civil Procedure No. 206.4(c) Rule to Show Cause. Alternative Procedures**

- (1) The Prothonotary shall forward every petition bearing a rule to show cause to the Court for review. At its discretion, the Court may issue a rule to show cause and forward a copy of same to the petitioner for service on all respondents.
- (2) A rule to show cause shall be served upon the respondents at least ten days prior to the return date, unless the Court shall specially authorize service within a shorter time. If for any reason satisfactory to the Court the petition and rule shall not have been served ten days before the return day, or the

length of time specially authorized, the Court may extend the return day thereof on motion of any interested party.

(3) A stay of proceedings, including a stay of execution, may be granted by the court in its discretion. If a stay of proceedings is required, the moving party shall schedule a conference with the assigned judge. Unless waived by the court, notice of the conference shall be provided to opposing counsel and any unrepresented parties. The application for stay shall be presented at the conference.

(4)(a) When a rule has issued and been properly served on all interested parties and a response is filed in opposition, the petition shall be submitted to and decided by the court pursuant to Bucks County Rule of Civil Procedure No. 208.3(b)

(4)(b) When a rule has issued and been properly served on all interested parties and no response in opposition has been filed, the moving party may file a motion and order to make the rule absolute any time after the return date.

**Bucks County Rule of Civil Procedure No. 208.2(c) Statement of Authority**

Where the authority for a motion is not self-evident, the motion shall cite a rule, statute or case which supports the requested relief and justifies the procedure utilized.

**Bucks County Rule of Civil Procedure No. 208.3(a) Scheduling and Hearing of Motions**

(1) When a motion has been filed, the Court may take the following actions:

(a) Issue a rule to show cause and forward a copy thereof to the movant for service upon all respondents;

(b) Schedule a hearing;

(c) Enter an order disposing of the motion.

(2) When the Court issues a rule on a motion, it shall be governed by the provisions of Pa. R. C. P. Nos. 206.5 and 206.7. When appropriate, the Court may refuse to issue a rule. If proper service has been made and no response has been filed, the rule may be made absolute by filing a motion and order for same. When a response is filed in opposition, the motion shall be submitted to and decided by the court pursuant to Bucks County Rule of Civil Procedure No. 208.3(b).

(3) Applications which are deemed to be an emergency by the assigned judge may be presented to the court at a conference or hearing. Notice of the scheduling of such conference or hearing shall be transmitted to all counsel and unrepresented parties as directed by the assigned judge.

(4) A rule to show cause shall be served upon the respondents at least ten days prior to the return date, unless the Court shall specially authorize service within a shorter time. If for any reason satisfactory to the Court the petition and rule shall not have been served ten days before the return day, or the length of time specially authorized, the Court may extend the return day thereof on motion of any interested party.

**Bucks County Rule of Civil Procedure No. 208.3(b) Alternative Procedures**

(1) This rule shall govern disposition of:

(a) rules to show cause to which responses in opposition have been filed;

*Note:* See B. C. R. C. P. No. 208.3(a)(2) and 206.4(c)(4)(a).

(b) preliminary objections;

*Note:* See B. C. R. C. P. No. 1028(c).

(c) motions for judgment on the pleadings;

*Note:* See B. C. R. C. P. No. 1034(a).

(d) motions for summary judgment;

*Note:* See B. C. R. C. P. No. 1035.2(a).

(e) objections to written discovery requests; and

(f) such other miscellaneous applications as may be designated by the Court.

(2) Subject to the requirements of Pa.R.C.P. No. 206.7, when the matter is at issue and ready for decision, the moving party on the application shall, by praecipe, order the same to be submitted for disposition pursuant to this rule. The praecipe shall be substantially in the form set forth in Bucks County Rule of Civil Procedure 208.3(b)(7).

No pleading requiring a response under Pa. R. C. P. 1026 shall be moved for disposition under this rule until the time for response has lapsed.

The following shall accompany the praecipe and pleading being submitted for disposition:

(i) A proposed form of order;

(ii) A brief or memorandum of law in support of each position taken with regard to the disposition of the matter; and

(iii) A certificate establishing the date of service of the above documents on all counsel and unrepresented parties, and the addresses at which they were served.

Within ten days of the date of filing of the above praecipe and its accompanying documents, every party opposing the application of the moving party shall file a brief or memorandum of law with the clerk of the court, serving copies of same on all other parties. The Court, in its discretion, may extend the time for filing of briefs or memoranda of law.

(3) If any party shall fail to file a brief or memorandum of law on any issue presented for disposition by the judge within the time provided by subsection (b) hereof, or within the time as extended by the Court, the Court, in its discretion, may consider that such party has abandoned his position with respect to such issue for disposition.

(4) At the expiration of ten full days following the filing by the moving party of the praecipe mentioned in subsection (2) of this rule, the clerk shall forthwith deliver the whole record together with the file, the briefs or memoranda of law, to the judge to whom the case has been assigned.

(5) Subject to the requirements of Pa. R. C. P. No. 206.7, any other party may by praecipe forward a matter to the Court for dismissal of the application at issue when the party who submitted it does not comply with the provisions of subsection (2) of this rule. Written notice of the intent to file under this subsection shall be given to the party whose application is at issue at least ten days prior to such submission, during which period of time the non-

complying party shall have the opportunity to come into compliance with the requirements of subsection (2). An affidavit of service of such notice shall accompany the praecipe filed under this subsection. A proposed form of order shall also accompany the praecipe. For the purpose of Pa. R. C. P. No. 206.7, a party initiating action under this subsection shall be considered the petitioner.

(6) Unless oral argument has been requested by the moving party in the praecipe, or by any other party within the 10-day period specified in subsection (2) hereof, the matter shall be disposed of by written order, forthwith or after such further proceedings including oral argument as may be required by the Court. If oral argument has been requested by a party or otherwise required by the Court, the Court may schedule the case for argument either by telephone conference, argument in chambers or in open Court within thirty (30) days of the filing of the praecipe. Disposition of the matter shall then proceed pursuant to the provisions of Bucks County Rule of Civil Procedure \*210(a) and (b), the Court fixing the time and order of filing of briefs. Argument before an en banc panel shall be at the sole discretion of the Court.

(7) The praecipe shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS  
BUCKS COUNTY, PENNSYLVANIA

\_\_\_\_\_ : No. \_\_\_\_\_  
v. :  
\_\_\_\_\_ :

Praecipe Under Bucks County Rule of  
Civil Procedure 208.3(b)

TO THE PROTHONOTARY:

Please refer the above-captioned matter to the assigned judge for disposition.

Oral argument  is  is not requested. (CHECK ONE)

Matter for disposition: \_\_\_\_\_

(signature) \_\_\_\_\_

(name) \_\_\_\_\_

(Attorney I. D. #) \_\_\_\_\_

**Bucks County Rule of Civil Procedure No. 210 Form and Content of Briefs and Argument Procedures**

(a) Counsel for the moving party, at the time he files the praecipe moving the case for disposition, shall deliver to the Prothonotary one copy of his brief. Copies of the briefs shall be served on all opposing counsel and any unrepresented parties. The briefs shall address the enumerated matters in substantially the following format:

(1) History of the Case. A brief, informal statement of the facts material to the matter under consideration, by the party having the burden of the issue. The opposing side may also include a history of the case in its brief.

(2) How the Question is Raised. Refer to such pleadings, motions, etc., as will show how the matter comes before the Court for decision.

(3) Questions Involved. A succinct statement in separate, numbered paragraphs of the legal questions to be decided by the Court.

(4) Argument. This may contain the parties' argument of the law and testimony involved and citations of material decisions. Every verbatim quotation from a decision shall be immediately followed by the citation giving both the page of the decision and the page of the quotation.

(5) Conclusion. The form of order of the court that the respective parties contend should be made.

(b) A party other than the moving party may order a matter on the argument list after having given the moving party and all other parties two weeks' written notice of his intention to do so. The moving party shall file his briefs with the clerk of the appropriate division of the court and serve copies thereof on all opposing counsel and any unrepresented parties within one week after the filing of the praecipe placing the case on the argument list. The failure of the moving party to so file his briefs may render him liable to have the application for relief denied by the Court at the opening of the next argument session immediately following the placing of the case on the argument list and on the motion of the party ordering the case on the argument list. After receiving notice of intention to order the case on the argument list, the moving party may apply to the judge to whom the case has been assigned for additional time within which to file his brief.

(c) Reply briefs shall be filed with the Prothonotary and counsel for all other parties no later than one week prior to the date fixed for argument and shall be the same in number as the moving party's brief.

(d) The Prothonotary shall, upon receipt of all briefs, cause the same to be delivered to the court, but shall not docket them.

**Bucks County Rule of Civil Procedure No. 1028(c) Procedure for the Disposition of Preliminary Objections**

The provisions of Pa. R. C. P. No. 206.7 shall govern preliminary objections raising disputed issues of fact. When preliminary objections are ready for disposition, they shall be submitted to and decided by the court pursuant to B. C. R. C. P. No. 208.3(b).

**Bucks County Rule of Civil Procedure No. 1034(a) Procedure for the Disposition of Motions for Judgment on the Pleadings**

Motions for judgment on the pleadings shall be submitted to and decided by the court pursuant to B. C. R. C. P. No. 208.3(b).

**Bucks County Rule of Civil Procedure No. 1035.2(a) Procedure for the Disposition of Summary Judgment Motions**

Summary judgment motions shall be submitted to and decided by the court pursuant to B. C. R. C. P. No. 208.3(b).

Bucks County Rules of Civil Procedure Nos. \*266, \*300, \*301, \*302, \*400.1, 440\*(c), \*(d), and \*(e), \*930, 1033\*(a), 1034(a)\*(1) are hereby rescinded

These rules shall be effective immediately upon publication on the website of the Administrative Office of Pennsylvania Courts.

*By the Court*

DAVID W. HECKLER,  
*President Judge*

[Pa.B. Doc. No. 04-1771. Filed for public inspection September 24, 2004, 9:00 a.m.]

### MERCER COUNTY

#### Revision of Local Rules of Civil Procedure L1915.26(b), L1915.27(d) and L1920.51(a)(3); No. 2004 2375

##### Order

*And Now*, this 1st day of September, 2004, the court hereby *Approves, Adopts and Promulgates* the Revisions of Mercer County Local Rules of Civil Procedure L1915.26(b); L1915.27(d), and L1920.51(a)(3), effective thirty (30) days after the date of publication of these Rules in the *Pennsylvania Bulletin*, pursuant to Rule 239 of the Pennsylvania Rules of Civil Procedure.

When effective, these revised Local Rules of Civil Procedure supercede the prior Local Rules of Civil Procedure of the same numbers, which are hereby repealed.

It is also *Ordered and Directed* the Court Administrator of Mercer County shall file seven (7) certified copies of these Rules with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one certified copy with the Civil Procedural Rules Committee.

It is further *Ordered and Directed* that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of the Local Rules.

A copy of these Revised Rules shall be published in the *Mercer County Law Journal*.

*By the Court*

FRANCIS J. FORNELLI,  
*President Judge*

#### **Revised Mercer County Local Rule of Civil Procedure L1915.26(b):**

"If a party is unrepresented, notice of the Master's conference shall be served upon the party by the Master by first class United States mail, postage prepaid, addressed to the party's last known address."

#### **Revised Mercer County Local Rule of Civil Procedure L1915.27(d):**

"A fee in an amount to be determined by general order of Court shall be assessed against each party for a Master's hearing on the issues, of partial custody and/or visitation, however, the fee shall be waived for any party determined to be indigent."

#### **Revised Mercer County Local Rule of Civil Procedure L1920.51(a)(3):**

"Unless the moving party is granted leave to proceed in forma pauperis, no master will be appointed until the

proper fee for the appointment of the master is paid, or the court permits otherwise. If the monies are not forthcoming and there are no other proceedings in the case for a period of two years, the matter will be subject to termination pursuant to Rule 1901 of the Pennsylvania Rules of Judicial Administration."

[Pa.B. Doc. No. 04-1772. Filed for public inspection September 24, 2004, 9:00 a.m.]

### MERCER COUNTY

#### Revision of the Local Rules of Orphan's Court; No. 2004-499

##### Order

*And Now*, this 1st day of September, 2004, the court hereby *Approves, Adopts and Promulgates* the Revision of the Mercer County Local Rules of Orphan's Court, effective thirty (30) days after the date of publication of these Rules in the *Pennsylvania Bulletin*, pursuant to Pa. Rule of Orphan's Court Procedure 1.2.

When effective, these Local Rules of Orphan's Court supercede all prior Local Rules of Orphan's Court, which are hereby repealed.

It is also *Ordered and Directed* the Court Administrator of Mercer County shall file seven (7) certified copies of these Rules with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one certified copy with the Orphan's Court Procedural Rules Committee.

It is further *Ordered and Directed* that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Courts shall furnish to any person a copy of the Local Rules.

A copy of these Revised Rules shall be published in the *Mercer County Law Journal*.

*By the Court*

FRANCIS J. FORNELLI,  
*President Judge*

#### **Local Rules of the Court of Common Pleas of Mercer County, 35th Judicial District Supplementing the Orphans' Court Rules Promulgated by the Supreme Court of Pennsylvania**

##### **RULE 1. JUDGES—LOCAL RULES**

##### **Local Rule 1.2:1 Argument Court.**

a. *Time*—Argument Court shall be held on the first Monday of each month unless otherwise specially ordered by the Court in any particular case.

b. *Listing and Notice thereof*—All cases for argument shall be placed on the Argument List at least thirty (30) days prior to the argument by praecipe to the Clerk. A copy of the praecipe ordering the case on the Argument List shall be sent to the opposing counsel and to the Court Administrator by the party placing the case on the Argument List, which praecipe shall include the name of the opposing counsel and whether the matter listed requires the taking of testimony.

c. *Scheduling*—The Court Administrator shall give notice to all counsel that the case has been placed on the Argument List and said notice shall contain the date upon which argument will be held. The Argument List shall also be published in the *Mercer County Law Journal* prior to argument.

d. *Briefs*—At least fifteen (15) days before the date of Argument Court, it shall be the duty of counsel for the rule or motion, or petitioner, exceptant or party filing preliminary objections, or who has the affirmative, to serve on adverse counsel a typewritten brief on paper 8 1/2 inches by 11 inches in size, double spaced, except for quotations containing a concise statement of the relevant facts, the questions involved, the argument, and the authorities relied upon. Counsel for the adverse party may prepare a brief which need only contain an argument and authorities relied upon, but counsel may add a counter statement of the facts, and a counter statement of the questions involved. Unless counsel does so, however, it will be assumed counsel is satisfied with them or such parts of them as remained unchallenged. At least five (5) days before Argument Court, counsel shall serve a copy of the reply brief upon opposing counsel, and copies of both briefs shall be delivered to the Court Administrator at least five (5) days before Argument Court. If either party fails to file a brief in accordance with these Local Rules, the Court shall dispose of the argument without brief.

**Local Rule 1.2:2 Attorneys.**

The Local Rules of Civil Procedure of the Court of Common Pleas of Mercer County relating to the admission and conduct of attorneys are adopted as the Rules for the Orphans' Court Division of this County.

**Local Rule 1.2:3 Costs.**

When not otherwise regulated by law, the Court will allocate costs in such manner as it deems equitable.

**Local Rule 1.2:4 Acknowledgement and Satisfaction.**

Acknowledgement of satisfaction of all sums of money or property ordered to be paid or delivered by any award or decree of this Court shall be in writing and filed with the Clerk, or acknowledged in such other manner as the Court may require.

**Local Rule 1.2:5 Petitions to Enforce Compliance.**

Any party in interest may petition the Court for an order to enforce compliance with the provisions of a decree or an adjudication. A copy of such order shall be served upon the respondent personally no less than ten (10) days before the date designated therein for payment or delivery. If a party fails to comply with the order, the other party may petition the Court for an appropriate writ to enforce compliance therewith.

**Local Rule 1.2:6 Certificates of Fiduciary Appointment.**

The Clerk shall not issue a certificate of appointment of any fiduciary until the security, if any required, has been entered.

**Local Rule 1.2:7 Witnesses. Attachment.**

Attachment to compel the appearance of a witness will not be issued, except under special circumstances, and unless the witness shall have been served with a subpoena at least twenty-four (24) hours before the date for hearing.

**Local Rule 1.2:8 Individual Sureties.**

a. *Application for Approval. Justification for Surety*—Except as otherwise provided by paragraph (b) of this

Local Rule, an application for the approval of an individual surety shall be accompanied by a justification of surety, in affidavit form, of the proposed surety, setting forth:

1. name, residence address;
2. location of the real property owned;
3. a brief description of the real estate and what it consists of;
4. how, or from whom, the real estate was obtained and when obtained;
5. that the surety or sureties do not contemplate selling of said property;
6. any encumbrance upon the real property;
7. the assessed value of the property for taxation purposes;
8. a certification of the value of the said property.

b. *Bond Without Surety. Confession of Judgment*—The Court, in its discretion, may permit a party in interest to execute an individual bond, without surety. When a party in interest is authorized to execute an individual bond or individual surety is approved, the Court may direct that the bond to be executed contain a warrant of attorney to confess judgment, with or without default, and that judgment thereon be entered of record in the Office of the Prothonotary.

**Local Rule 1.2:9 Corporate Sureties.**

a. *In General*—Surety companies duly authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in Court.

b. *Exceptions*—except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

**Local Rule 1.2:10 Assets and Investments.**

a. *Segregation and Designation of Assets*—Assets held by individual fiduciaries subject to the jurisdiction of the Court shall be kept separate and apart from their individual assets and, except where otherwise permitted by Act of Assembly, shall be held in the name of the fiduciary as such.

b. *Deposit of Uninvested Funds*—All funds held uninvested shall be deposited in a bank or banks, or trust company or trust companies, the deposits of which are insured by the Federal Deposit Insurance Corporation in such manner as to obtain the maximum deposit insurance coverage.

**Local Rule 1.2:11 Court Depository.**

a. *Official Depository*—The Court will, from time to time, designate a banking institution as the official depository of the Court.

b. *Deposits*—Moneys and securities paid or delivered into the Court shall immediately, upon the receipt thereof by the Clerk, be deposited with the Court depository or to the credit of the proper estate or proceeding. The depository shall keep separate accounts for each payment and delivery and designate each by name of the proper estate or proceedings.

c. *Withdrawal Orders*—No money shall be paid or delivered by such depository except upon the check or order of the Clerk, countersigned by a Judge of the Court, and accompanied by a certificate endorsed on the check or



order, under the hand of the Clerk and the seal of the Court, that the money or property was ordered to be paid or delivered.

d. *Accounting by Clerk*—Each year, or at such other times as the Court may direct, the Clerk shall have the bank or deposit book settled by the depository and shall make and present to the Court an account of the moneys paid into and out of the account, and shall exhibit the deposit book as a voucher for the correctness thereof.

**Local Rule 1.2:12 Accounts.**

The accounts of fiduciaries shall be presented to Court for nisi confirmation at the date and time set for confirmation of accounts by the Court as set forth in the Annual Court Calendar, unless otherwise directed by the Court.

**Local Rule 1.3 Termination of Inactive Cases**

During the month of April of each year, the Clerk of the Orphans' Court shall determine in which matters not concluded there has been no activity during the previous two years. The Clerk of the Orphans' Court shall then give notice in each such matter as provided by Pa. R.J.A. 1901(c). If no action is taken, or no written objection stating good cause is filed in such matter within 30 days, the Clerk of the Orphans' Court shall enter an order terminating the matter. If written objection is filed in such matter within 30 days, the Clerk of the Orphans' Court shall list the matter for the next available Argument List without further praecipe and give notice to all parties. Failure of the objector to appear and to show good cause may result in the dismissal of the action. Where publication is required, such publication shall be twice printed in the *Mercer County Law Journal*.

**RULE 2. CONSTRUCTION AND APPLICATION OF RULES**

**Local Rule 2.3:1 Definitions.**

In addition to those words and phrases defined by the Supreme Court Rules, the following words and phrases when used in these Local Rules unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Local Rule:

"Affidavit" means a written statement made under oath or equivalent affirmation.

"Hearing Judge" means that Judge to whom a motion, petition or other pleading is presented.

"Supreme Court Rules" means the Supreme Court Orphans' Court Rules.

"Verify," "verification," or "verified statement" means an unsworn written statement made under penalty of perjury.

**RULE 3. PLEADING AND PRACTICE:**

**Local Rule 3.1:1 Notice to Defend or Plead.**

Where a notice to defend or to plead has been endorsed on a pleading, the pleadings and practice shall conform with the pleading and practice in equity insofar as the requirement of responsive pleading.

**Local Rule 3.1:2 Hearings:**

Petitions and motions shall have attached thereto a proposed order of Court, which shall be prepared by the party presenting the petition or motion, and which shall include a date and time for a hearing and for the taking of testimony, if necessary.

**Local Rule 3.1:3 Hearing Judge.**

When a proceeding on a particular estate or matter has been previously heard by a Hearing Judge, all subsequent proceedings pertaining to the same estate or matter, whenever possible shall be presented to the same Hearing Judge.

**RULE 6. ACCOUNTS AND DISTRIBUTIONS**

**Local Rule 6.1(e): 1 Form of Accounts. Additional Requirements.**

Each account:

1. Shall itemize the assets of which the balance is composed;

2. Shall be accompanied with a statement of proposed distribution, or a request that distribution be determined by an auditor;

3. Shall be accompanied by a certificate of the attorney for the accountant that to the best of knowledge, information, and belief, the debits and credits and any statement of proposed distribution filed therewith are correct and proper and that any required legal advertisement has been duly published;

4. Shall be accompanied by an affidavit or verification of at least one accountant that the account is true and correct to the best of knowledge, information, and belief, and that all notices required by law or Rules of Court have been served upon all parties in interest; and

5. Shall be accompanied by a proposed decree of nisi confirmation and a proposed decree of confirmation absolute.

**Local Rule 6.1(f):1 Approved Forms.**

The Register and Clerk shall provide printed forms designed in accordance with these Local Rules. An accountant shall use either these printed forms together with such additional pages as shall be necessary, or a typed account similar in form.

**Local Rule 6.3:1 Contents of Notice. Additional Requirements.**

The notice to parties in interest shall set forth:

1. the date on which the account will be presented to the Court for nisi confirmation, and that the account will be confirmed absolutely unless objections are filed within ten (10) days thereafter;

2. whether the claim, interest or objection of the person notified is admitted or contested, and if admitted, whether it will be paid in full or in part; and

3. the accountant's interpretation of any dispute or fairly disputable question, known to or reasonably ascertainable by the accountant.

**Local Rule 6.3:2 Advertisement of Accounts.**

All accounts required by law to be filed with the Register or with the Clerk shall be advertised by the Register or Clerk in the manner prescribed by law and shall also state that unless objections are filed within ten (10) days after nisi confirmation, the account will be confirmed absolutely and that thereafter distribution may be decreed by the Court, without reference to an auditor, in accordance with any statement of proposed distribution filed with the account.

**Local Rule 6.9(a):1 Form of Statement of Proposed Distribution.**

The statement of proposed distribution, if any, shall accompany the account as provided in Local Rule 6.1(e):1,

and shall specify the names of the person or persons to whom the balance available for distribution is awarded, the exact amount of share awarded to such person or persons, and whether the proposed distribution is in cash or in kind.

**Local Rule 6.9(b):1 Notice and Advertisement.**

Notice and advertisement of a statement of proposed distribution shall be given at the same time and in the same manner as the account as provided in Local Rules 6.3:1 and 6.3:2.

**Local Rule 6.10:1 Objections.**

Objections to an account or statement of proposed distribution shall be filed with the Clerk within ten (10) days after nisi confirmation. In the event objections are filed prior to nisi confirmation, they shall be considered as objections to the decree nisi.

**Local Rule 6.11.1 Confirmation Absolute.**

a. Unless objections are filed in accordance with Local Rule 6.10:1, the confirmation of accounts and statements of proposed distribution filed with accounts shall be made absolute by the Clerk, without further order of Court, provided that an affidavit or verification is filed showing that notice has been given in compliance with Local Rule 6.3:1. The confirmation of the account and any statement of proposed distribution filed with the account shall be placed upon the record and the account by the Register and Clerk.

b. No account, or statement of proposed distribution filed with any account, shall be considered finally confirmed except by written confirmation by the Clerk as hereinbefore provided or by order of Court; and such final confirmation, if relating to a statement of proposed distribution filed with any account, shall expressly state that it is a final confirmation of the account and the statement of proposed distribution filed therewith.

**Local Rule 6.11.2 Confirmation of Title to Real Property.**

a. *In General*—When the account and the statement of proposed distribution filed therewith have been finally confirmed as hereinbefore provided, such confirmation shall be in the nature of confirmation of title to real property in the respective distributees.

b. *Separate Awards*—A schedule of distribution shall set forth separate awards of real property in separate paragraphs.

c. *Description*—Real property shall be described in the manner appearing in the last deed of record, or in some other proper manner, and in addition, shall include information pertinent to the derivation of title.

d. *Certification by Clerk*—The Clerk may, at the request of any party in interest, certify excerpts from a decree of distribution for recording in any public office for recording deeds.

**Local Rule 6.11.3 Distribution without Audit.**

After final confirmation of the account, the Court, on motion or petition, may decide that the matter does not call for reference to an auditor and may decree distribution substantially in conformance with the statement of proposed distribution filed with the account, provided such motion or petition is accompanied by:

1. an affidavit or verification of the accountant that there are no unpaid debts or taxes, and that all beneficiaries have received notice of the statement of proposed distribution;

2. an affidavit or verification by the accountant or one of the next of kin or beneficiaries stating the names and addresses of all the beneficiaries, and that they are all sui juris., or if not, the names and addresses of their fiduciaries;

3. a statement by the attorney for the accountant that the schedule of distribution is correct and in accordance with law; and

4. a proposed decree of distribution.

**RULE 8. AUDITORS AND MASTERS**

**Local Rule 8.1:1 Notice of Hearings.**

a. *Original Hearing*—Ten (10) days notice of the time and place of the first hearing before the auditor or master shall be served in writing on all known heirs, devisees, unpaid legatees, and distributees, or their attorneys resident within the county, and to all others by advertisement in one (1) newspaper of general circulation within the county and the *Mercer County Law Journal* once a week for three (3) consecutive weeks prior to the day of the hearing, unless notice be dispensed with by agreement of all parties in interest, or by order of Court. Auditors and masters shall state in their report the manner and to whom notice was given.

b. *Subsequent Hearings*—Notice of succeeding hearings given by the auditor or master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

**Local Rule 8.6:1 Notice of Filing Report. Preliminary Exceptions.**

After the report is prepared, the auditor or master shall serve on the parties, or their attorneys, ten (10) days written notice of the day fixed for filing the same and in the meantime, such parties shall be allowed access thereto. Any party interested may file preliminary exceptions to the report, before the day fixed for the filing thereof. If preliminary exceptions are filed, the auditor or master shall reexamine the report and amend the report if the preliminary exceptions are, in whole or in part, well founded. If the report is not filed at the time fixed therefore in the said notice, said report shall only be filed after five (5) days written notice is given to the parties, or their attorneys. The auditor or master shall certify in the report the manner and time of serving the notice herein required.

**Local Rule 8.7:1 Approval of Expenses and Fees prior to Confirmation.**

No auditor's or master's report shall be confirmed nisi or otherwise approved until such time as the Court shall have entered an order approving the amount of expenses to be reimbursed unto and the amount of fees to be awarded unto the auditor or master. The Court may assess said expenses and fees upon any party in interest, as it deems fit.

**Local Rule 8.7.2 Confirmation of Auditor's Reports. Exceptions.**

All reports of auditors shall be filed in open Court at the time and date set by the auditor, pursuant to these Rules. Upon the filing of the report, it shall be confirmed nisi, which confirmation shall be made absolute by the Clerk without further order of Court, unless exceptions thereto are filed.

**Local Rule 8.7.3 Confirmation of Master's Reports. Exceptions.**

All reports of masters shall be filed in open Court at the time and date set by the master pursuant to these

Rules. Upon the filing of the report, the Court shall enter a decree nisi either adopting the master's recommendations or rejecting the same. A decree nisi shall be made final by the Clerk without further order of Court, unless exceptions thereto are filed.

**Local Rule 8.8:1 Absolute Confirmation. Auditor's and Master's Expenses and fees.**

No nisi confirmation or decree nisi shall be confirmed absolutely by the Clerk until all expenses and auditor's or master's fees have been paid to the Clerk. Upon absolute confirmation, the Clerk shall pay all expenses and the balance of the auditor's or master's fee to the auditor or master, after deducting ten (10%) percent of the auditor's or master's fee to be paid to the treasurer of the Mercer County Bar Association.

**RULE 9. OFFICIAL EXAMINERS**

**Local Rule 9.1:1 Appointment and Duties of Official Examiners.**

In the exercise of its visitatorial and supervisory powers over charitable trusts the Court will, in its discretion, from time to time, by general rule or special order, direct the official examiner, or a special examiner appointed for the purpose, to make an examination of the assets of a designated trust and an investigation to determine whether the purposes of the trust are being carried out in the manner provided by the trust instrument; and to submit to the Court a written report thereon which shall follow as nearly as may be the form prescribed by these Local Rules for a master's report and shall contain specific recommendation for the Court's consideration.

**Local Rule 9.1:2 Compensation of Official Examiners**

a. *In General*—Each estate or trust shall be liable for the compensation of the examiner based upon a schedule of fees fixed by the Court. In special circumstances, the compensation of the examiner will be fixed by special order of the Court.

b. *Charitable Trusts*—Each charitable estate or trust shall be liable for the compensation of the examiner in such amount as the Court shall specifically fix in each case.

**RULE 10. REGISTER OF WILLS**

**Local Rule 10.2:1 Notice of Appeal.**

Any person desiring to appeal from a judicial act or decision of the Register shall file a written notice thereof with the Register, specifying generally the act or decision complained of, accompanied by an affidavit or verification that said appeal is not taken for delay but because appellant believes that injustice results from the act or decision which is appealed.

**Local Rule 10.2:2 Petition for Appeal.**

Within thirty (30) days from the filing of the notice of appeal, the appellant shall present a petition to the Court which shall set forth:

1. the nature of the proceedings before the Register;
2. a copy of any will in controversy;
3. a statement of the facts and circumstances relied upon;
4. a precise statement of the questions of law or of fact involved;
5. the filing and approval by the Register of the security required by law; and

6. the names and addresses of all parties in interest.

**Local Rule 10.2:3 Certification and Citation.**

a. If the averments of the petition for appeal appear to be prima facie sufficient, the Court shall award a citation and, if it has not been done by the Register on his/her own motion, order certification of the entire record of the Register to the Court. The citation shall be directed to all parties in interest and shall require them to file a complete answer under oath or verification to the averments of the petition, on or before a day certain which shall not be less than ten (10) days after the service thereof, and to show cause as the decree of the Court shall provide.

b. Proof of service of the citation shall be filed with the Register on or before the return date of the citation.

c. The Court may issue a citation and direct that the Register certify to the Court the record, without regard to whether or not testimony has been taken before the Register.

**Local Rule 10.2:4 Argument List and Hearing.**

After the return date of the citation, any party may place the matter on the Argument List for the purpose of fixing a time for taking any testimony required to support the issue or for the argument of any legal issue raised by the pleadings. After the testimony has been transcribed and filed, any party may place the matter on the Argument List for purpose of argument.

**Local Rule 10.2:5 Grant of Jury Trial.**

a. *Determination by Judge*—The Hearing Judge shall determine whether a jury trial will be granted upon any issue of fact arising upon the certification or appeal.

b. *Decree*—If a jury trial is granted, the decree shall specify the issues to be tried,—which may be agreed upon by the parties, or as the Hearing Judge shall determine.

**RULE 12. SPECIAL PETITIONS**

**Local Rule 12.1.1 Family Exemption. Additional Requirements.**

a. *Contents of Petition*—A petition for a family exemption shall also set forth in separate paragraphs:

1. the name, residence and date of death of decedent;
2. the name, address and relationship of the petitioner to the decedent, and whether the petitioner formed a part of decedent's household at the date of his death;
3. if petitioner be the surviving spouse, the date and place of the ceremonial marriage; or, in case of a common-law marriage, all averments necessary to establish the validity of such a marriage;
4. whether the decedent died testate or intestate; where, when, and to whom letters were granted; and if decedent died intestate, the names, relationship and addresses of those interested as next of kin;
5. the location and valuation of the property claimed;
6. that ten (10) days prior notice of the filing of the petition has been given to the personal representative, or, when no letters have been granted, to the parties adversely affected; and
7. a request for appraisers when an appraisal is required.

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

1. a copy of the will;
2. a copy of the inventory and appraisal showing the valuation of the property claimed, when the exemption is claimed from personal property, and the gross estate exceeds the statutory amount of the family exemption; and
3. an affidavit or verification of return of notice.

**Local Rule 12.1.2 Appraisal.**

a. *When Appraisal Unnecessary*—Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed:

1. from personal property; or
2. wholly or in part from real estate, if all parties in interest agree on the valuation.

b. *Procedure for Appraisal When Required*—

1. Upon petition the Court may appoint two (2) appraisers who shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

2. Upon the filing of the appraisal with the Clerk, the appraisers shall also give notice thereof to the personal representative and to the next of kin; and, if there be neither personal representative nor next of kin, to the Attorney General.

3. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal will be requested and may be allowed by the Court at a stated date, and unless exceptions are filed thereto, the appraisal shall be confirmed absolutely ten (10) days thereafter by the Clerk without further order of Court. Said notice shall be given by the appraisers not less than ten (10) days prior to the date set for nisi confirmation.

**Local Rule 12.1.3 Voluntary Distribution.**

When the personal representative, at his own risk delivers assets of the estate in satisfaction of the exemption, he shall set forth the same as a credit in the account. The same may be the subject of objection by any claimant or party in interest.

**Local Rule 12.2.1 Allowance to Surviving Spouse of Intestate. Additional Requirements.**

a. *Contents of Petition*—A petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:

1. the information required in a petition for family exemption under Local Rule 12.1(a):1, as far as appropriate; and

2. that ten (10) days prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.

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

1. a copy of the inventory and appraisal; and
2. an affidavit or verification of return of notice.

**Local Rule 12.2.2 Conclusiveness of Averments.**

If the averments of the petition are not conclusive as to the right of the spouse to the allowance being claimed, the matter may be referred to a master, auditor, or to a Hearing Judge.

**Local Rule 12.2.3 Appraisal. Notice. Practice and Procedure.**

a. *Filing of Appraisal*—The appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

b. *Notice of Appraisal*—Upon the filing of the appraisal, notice thereof shall be given to the personal representative, and to the next of kin, and if there be neither personal representative nor the next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal and the setting apart of the real estate to the surviving spouse will be requested and may be allowed by the Court at a stated time, and unless exceptions are filed thereto, confirmed absolutely ten (10) days thereafter. Said notice shall be given not less than ten (10) days prior to the date set for nisi confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.

c. *Confirmation and Setting Apart of Allowance*—Unless exceptions are filed to the nisi confirmation, the appraisal and award of real estate shall be confirmed absolutely by the Clerk without further order of Court.

d. *Exceptions*—Exceptions to an appraisal shall be filed with the Clerk within ten (10) days after nisi confirmation. Copies of the exceptions shall be served on the fiduciary, if any, and on the spouse or their attorney, within five (5) days after filing. If exceptions are filed, the matter may be placed on the Argument List by praecipe for disposition.

e. *Claim for Money*—If the entire claim is for money, which need not be appraised, claim may be made at or before the audit of the fiduciary's account, provided no payment shall be made to the spouse until it appears that the money claimed is not required for payment of debts.

**Local Rule 12.3.1 Extension of Time. Contents of Petition.**

A petition for the extension of time in which the surviving spouse may file an election to take against the Will shall set forth:

1. the information required to be set forth in a petition under Supreme Court Rule 12.3(a), paragraphs (1) through (7), inclusive, as far as appropriate; and
2. the facts relied upon to justify an extension of time in which to file the election.

**Local Rule 12.3.2 Extension of Time. Practice and Procedure.**

The petitioner shall file the petition with the Clerk and thereafter give ten (10) days written notice of intention to request the extension at a stated day to all persons adversely affected thereby who do not join in the prayer of the petition. In the absence of objection, upon the presentation of an affidavit or verification of return of notice on or after said day, an appropriate decree may be entered by the Court.

**Local Rule 12.4:1 Guardians and Trustees Ad Litem. Appointment and Compensation.**

Each estate shall be liable for the compensation of the guardian ad litem or the trustee ad litem based upon a schedule of fees fixed by the Court. In special circumstances, the compensation of the guardian ad litem or the trustee ad litem will be fixed by special order of the Court.

**Local Rule 12.5.1 Exhibits to Petition.**

The following exhibits shall be attached to the petition:

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

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

- A. his/her business and domicile;
- B. that he/she is a citizen of the United States, able to speak, read and write the English language;
- C. that he/she is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a fiduciary; and that he/she has no interest adverse to the minor.

3. *Consent of Guardian. Corporate*—When the proposed guardian is a corporate fiduciary, its written consent to act as such shall contain, in addition, a statement that it is not the fiduciary of an estate in which the minor has an interest, nor the surety of such a fiduciary; and that it has no interest adverse to the minor.

4. *Funds Arising From Litigation*—If any part of the minor's estate was obtained as a result of litigation or compromise of litigation in a Court of record, a copy of the decree approving the compromise and distribution of the proceeds of the suit shall be attached to the petition.

**Local Rule 12.5.2 Guardians of Minors. Appearance Before the Court.**

a. *Appearance. Minor over Fourteen*—If the minor is over fourteen (14) years of age, the minor shall appear in person at the presentation of the petition and shall make the selection of guardian before the Court. If the minor is unable to appear in person, the reason for the minor's absence shall be set forth in the petition. When a minor appears in person, the minor need only state his/her selection of guardian.

b. *Appearance. Other Persons*—Neither a minor fourteen (14) years of age or under, nor the parents or proposed guardian of the minor need appear in Court at the presentation of the petition.

**Local Rule 12.5.3 Information Required from Counsel.**

At the time of the presentation of the petition for the appointment of an individual guardian, counsel shall state the following in Court:

1. the total amount of the assets;
2. whether or not the minor resides in the same household with the proposed guardian; and
3. whether it is proposed to deposit the share of the minor in a restricted account.

**Local Rule 12.5.4 Minor's Estate. Restricted Account.**

a. *Waiver of Security*—In lieu of the entry of security, the Court, in the decree appointing the guardian, may

authorize the guardian to deposit the funds of the minor in an interest-bearing deposit insured by the Federal Deposit Insurance Corporation subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without order of Court, with a further requirement that the evidence of the deposit or investment, marked to indicate the restriction, shall be promptly exhibited to the Court.

b. *Limitation*: The deposit under paragraph (a) of this Local Rule shall not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103).

c. *Payment at Majority of Minor*—

1. The decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains his majority, upon the joint order of the guardian and the former minor without further order of the Court.

2. If, upon subsequent order of this Court, withdrawals have been made from the account during minority, the guardian shall file a petition for his discharge upon the minor's attaining his majority. There shall be attached to the petition:

A. an affidavit or verified statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated;

B. an affidavit or verified statement by the guardian setting forth the date he attained his majority; that he has examined the account; that he has received the money, or benefit of the money, for which credit is taken in the account; that he approves account and requests that it be confirmed; and that, upon distribution to him of the balance shown thereon, subject to such additional credits as may be authorized by law and set forth in the petition and order, he agrees that the guardian shall be discharged.

d. *Additional Assets*—When the guardian has received assets in addition to the deposit or investment made in accordance with this Local Rule, he shall account as if the restricted account did not form part of the estate.

**Local Rule 12.5.5 Minor's Estate Not Exceeding Statutory Limitation.**

a. *Disposition. In General*—If the value of the real and personal estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103), the Court may:

1. authorize payment or delivery thereof to the minor or the parent or other person maintaining the minor;
2. direct the deposit of the minor in a restricted account in the name of a natural guardian of the minor or of the minor individually; or
3. make such provision for the retention or deposit of securities or other assets as the Court shall deem for the best interests of the minor.

b. *Mortgage or Sale of Real Property*—If the value of the entire estate of a minor does not exceed the statutory limitation as provided in Section 5103 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5103), the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the

provisions governing the same or mortgage of real property by a guardian. The order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

**Local Rule 12.5.6 Minor's Estate. Allowances.**

a. *In General. Responsibility of Guardian*—Expenditures from income for the benefit of the minor, and Counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.

b. *Permissive Petition*—The guardian may petition the Court for approval of periodical payments from income needed for the maintenance, support, or education of the minor, the minor's spouse or children.

c. *Mandatory Petition*—Except as provided in paragraph (a) of this Local Rule, unless approval by the Court is first obtained, no payments shall be made by the guardian when payment is to be made from principal, or when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

d. *Contents of Petition. Allowance for Maintenance, Support, or Education*—A petition for an allowance from a minor's estate, for the maintenance, support or education of the minor, the minor's spouse or children, shall set forth:

1. the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;

2. the age and residence of the minor; whether the minor's parents are living; the name of the person with whom the minor resides, and, if married, the name and age of the minor's spouse and children;

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

4. the circumstances of the minor, whether employed or attending school; if the minor's parents, or the persons charged with the duty of supporting him, are living, the financial condition and income of such persons and why they are not discharging their duty to support the minor; and whether there is adequate provision for the support and education of the minor, or the minor's spouse and children;

5. the date and amount of any provision allowance by the Court, and the name of the Judge who granted it;

6. the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary; and

7. if the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any, given by him/her for his/her failure to do so.

e. *Contents of Petition. Allowance of Counsel Fees*—A petition for the allowance of counsel fees shall set forth the views of the guardian with respect to the reasonableness of the fees and contain sufficient facts to enable the Court to pass judgment on the matter. The following exhibits shall be attached to the petition:

1. a statement of counsel setting forth in detail the nature and extent of the services performed by him/her; and

2. the joinder of the minor's parents or surviving parent; or, if both parents are deceased, the joinder of the

adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor, and the spouse of a married minor.

**Local Rule 12.6.1 Appointment of a Trustee. Exhibits.**

The following exhibits shall be attached to the petition:

1. a copy of the trust instrument; and
2. the written consent of any co-trustee.

**Local Rule 12.7:1 Discharge of a Fiduciary. Additional Provisions.**

a. *Affidavit or Verification*—The affidavit or verified statement to the petition shall include an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent. If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notices by citation or otherwise.

b. *Exhibits. Consents*—Written consent of all parties in interest, and of the surviving or successor fiduciary, shall be attached to the petition. Such consent may be included in a satisfaction of award attached to the petition.

c. *Discharge of a Personal Representative*—When the value of the gross real and personal estate of a decedent does not exceed the value of the statutory limitation, the personal representative, after the expiration of one (1) year from first complete advertisement of the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S.A. § 3531). The petition shall conform as far as practicable to the requirements of a petition under Supreme Court Rule 12.7.

**Local Rule 12.8:1 Partition. Additional Provisions.**

The fiduciary selling real property in a partition proceeding shall file an account after the sale is completed. The Court may dispose of the matter or may appoint an auditor to ascertain whether there are any liens or other encumbrances on such real property affecting the interests of the parties.

**RULE 13. DISTRIBUTION—SPECIAL SITUATIONS**

**Local Rule 13.3:1 Report by Fiduciary.**

The report required by the Supreme Court Rules shall be submitted to the Court or to an auditor appointed by the Court, and shall include substantially the following:

1. *Unknown Distributee*—If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or his counsel, setting forth:

A. The nature of the investigation made to locate the heirs of the decedent, in complete detail; and

B. in cases of intestacy, or where there are no heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain.

2. *Investigation Defined*—The term "investigation," as used in this Local Rule, shall include inquiry of or as to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; labor union membership; places of employment; social, fraternal, or beneficial organizations; insurance records; church membership;

school records; social security, Veterans' Administration, or military service records; naturalization records, if not native born; and such other sources of information as the circumstance may suggest.

3. *Non-Resident Distributee*—If the fiduciary requests the Court to withhold distribution to a non-resident distributee, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or the fiduciary's counsel, which shall set forth:

A. the relationship of the distributee to the decedent, and any available information concerning the distributee's present whereabouts;

B. in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and

C. the reason for the request that distribution be withheld, and the suggested manner of withholding.

#### **RULE 14. INCOMPETENTS' ESTATES**

##### **Local Rule 14.1:1 Practice and Procedure. In General.**

a. *Evidence, Depositions*—Except for special reason appearing, the deposition of, or sworn or verified statement by, a superintendent, manager, physician or psychiatrist of any state-owned mental hospital or Veterans' Administration hospital, or a physician in attendance to the alleged incompetent will be accepted in evidence as to the mental or physical condition of a patient of said hospital or physician.

b. *Guardians*—

1. *Relatives and Household Residents*—The Court, except in special circumstances, shall not appoint as guardian a relative of the incompetent or a person residing in the same household with him.

2. *Non-residents*—The Court, except in special circumstances, shall not appoint non-residents as guardians of the estate of incompetents residing within this county.

c. *Security. Individual Guardian*—In lieu of the entry of security, an individual guardian may be authorized to deposit the funds compromising the incompetent's estate in accounts insured by the Federal Deposit Insurance Corporation the account to be marked "Not to be withdrawn except on further Order of the Court." Upon cause shown, the Court may dispense with the requirement of a bond when it finds that no bond is necessary.

d. *Additional Assets*—If, upon the filing of an inventory, it appears that the value of the personal estate which has, or is about to, come into the possession of the guardian exceeds the amount set forth in the original petition, the Clerk shall direct the Hearing Judge's attention to this fact in order that adequate security may be ordered and entered.

e. *Testamentary Writings*—All testamentary writings of the incompetent 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 Hearing Judge for his inspection, together with a copy to be retained by the Judge for his private file.

f. *Certificates of Appointment*—The Clerk, in addition to issuing certified copies of the decree of appointment of a guardian, will issue a "Guardian's Certificate" when the security, if any, ordered by the Court has been entered.

##### **Local Rule 14.1:2 Incompetent's Estate. Decrees.**

a. *In General*—A petition to adjudicate a person incompetent shall have attached thereto:

1. a proposed preliminary order in accordance with Local Rule 3.1:2; and

2. a proposed decree.

b. *Small Estates*—If at a hearing the incompetency is established, and it appears that the gross estate does not exceed the statutory limitation for a small estate, the Court may award the entire estate to the person or institution maintaining the incompetent, or make such order as may be appropriate under the circumstances. In such case, a proposed final decree awarding said estate shall be attached to the face of the petition, in lieu of the final decree appointing a guardian.

##### **Local Rule 14.1:3 Incompetent's Estate. Proof of Service.**

Proof of service of notice shall be presented at the hearing. The affidavit or verification of service shall, in all cases, recite that the petition and citation were read to the alleged incompetent. When the alleged incompetent is in a hospital, service may be made by a physician in charge.

##### **14.2. Adjudication of Incapacity and Appointment of a Guardian of the Estate of an Incapacitated Person.**

a. A petition to adjudicate a person incompetent and to appoint a guardian of his/her estate shall set forth:

1. the name and relationship of the petitioner to the alleged incompetent; if not related, the nature of the petitioner's interest;

2. the age, marital status, and domicile of the alleged incompetent; whether he/she is a patient in a mental hospital; if so, the name and address of the hospital, the date of his/her admission, and whether it is a state-owned mental hospital or a Veterans' Administration hospital;

3. the names and addresses of the next of kin of the alleged incompetent;

4. the gross value of the alleged incompetent's estate, and net income from all sources, to the extent that this information is known by petitioner;

5. whether the alleged incompetent was ever a member of the Armed Services of the United States, or is receiving any benefits from the United States Veterans' Administration or its successor;

6. a general averment of incompetency as defined in Chapter 55 of the Probate, Estates and Fiduciaries Code;

7. the name and address of the proposed guardian, and what, if any, relationship he/she bears to the alleged incompetent;

8. an averment that the proposed guardian has no interest adverse to the alleged incompetent;

9. whether any other court has ever assumed jurisdiction in any proceeding to determine the competency of the alleged incompetent;

10. that the alleged incompetent has no guardian already appointed; and

11. a prayer for a citation, directed to the alleged incompetent, with notice thereof to his/her next of kin and to such other persons as the court may direct, to show cause why he/she should not be adjudged an incompetent and a guardian of his/her estate appointed.

b. The proposed guardian's written consent shall be attached.

#### **RULE 15. ADOPTIONS**

##### **Local Rule 15.4.1 Decree of Involuntary Termination.**

In all cases involving an involuntary termination of parental rights, the Court shall enter a decree nisi. Unless exceptions are filed thereto within ten (10) days of notice of filing the adjudication by any party in interest, the Clerk shall confirm the decree absolutely without further order of Court. No petition for adoption will be presented to the Court until a final decree has been entered.

##### **Local Rule 15.5.1 Information for Certification of Adoption.**

Contemporaneous with the filing of a Petition for Adoption, the information required for a Certificate of Adoption shall be submitted to the Clerk upon a form approved by the Clerk or upon a form approved by the Vital Statistics Division of the Pennsylvania Department of Health.

##### **Local Rule 15.5.2 Preliminary Order and Decree of Adoption.**

A petition for adoption shall have attached thereto:

A. a proposed preliminary order in accordance with Local Rule 3.1:2; and

B. a proposed decree of adoption.

[Pa.B. Doc. No. 04-1773. Filed for public inspection September 24, 2004, 9:00 a.m.]

#### **MERCER COUNTY**

##### **Revision and Restatement of the Local Criminal Rules; No. 1438 Misc. 2004**

#### **Order**

And Now, this 1st day of September, 2004, the court hereby Approves, Adopts and Promulgates the Revision and Restatement of the Local Criminal Rules of the Court of Common Pleas of Mercer County, effective thirty (30) days after the date of publication of these Rules in the *Pennsylvania Bulletin*, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure.

When effective, these Local Rules of Criminal Procedure supercede all prior Local Rules of Criminal Procedure, which are hereby repealed.

It is also Ordered and Directed the Court Administrator of Mercer County, in accordance with Pa. Rule of Criminal Procedure 105, shall file seven (7) certified copies of these Rules with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one certified copy with the Criminal Procedural Rules Committee.

It is further Ordered and Directed that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Courts shall furnish to any person a copy of the Local Rules.

A copy of these Revised and Restated Rules shall be published in the *Mercer County Law Journal*.

By the Court

FRANCIS J. FORNELLI,  
*President Judge*

#### **Local Rules of the Court of Common Pleas of Mercer County, 35th Judicial District Supplementing the Rules of Criminal Procedure Promulgated by the Supreme Court of Pennsylvania**

##### **Rule L310 Admission to A. R. D. in Cases of Driving While Under the Influence of Intoxicating Beverages, Out of State Persons, Administration Fee in D.U.I. Cases, Content of A. R. D. Applications and Orders**

a. Prior to admission into the A. R. D. Program in driving while under the influence of intoxicating beverage cases, the applicant must appear in Mercer County, Pennsylvania, before a certified examiner for the administration of the Mortimer-Filkens test, the results of which shall be evaluated by the Court Reporting Network. (75 Pa.C.S.A. 3816.)

b. All applicants who are accepted into the A. R. D. Program will be required to attend either the Mercer County Counter Attack School Program or the equivalent of the Mercer County Counter Attack School Program in the applicant's home county and state. (75 Pa.C.S.A. 1549)

c. If the Court Reporting Network reports counseling and treatment are necessary, it may be ordered in the applicant's home county and state.

d. All persons who are found guilty of driving while under the influence, plead guilty to driving while under the influence or are accepted into A. R. D. must pay through the Office of the Clerk of Courts, in addition to all other costs, \$150.00 for administration of such cases.

e. All motions requesting admission into the A. R. D. Program shall contain the following: "I request the continuance of any further proceedings in my case until it is determined whether I am eligible for A. R. D., and if I am admitted into it, for the length of time I am in the program, plus ninety days thereafter."

f. All Orders admitting applicants into the A. R. D. Program shall contain the following: "Defendant's request for a continuance of all proceedings in this case pending a determination of his eligibility for the A. R. D. Program and for the time he is in the program plus ninety days is granted."

##### **Rule L528 Percentage Cash Bail System**

a. A defendant charged with a crime in Mercer County, or a third party surety who is not a professional bondsman or an agent or representative of a professional bondsman, may if authorized by the Issuing Authority or the Court execute a bail bond and deposit with the Issuing Authority or Clerk of Courts by depositing money equal to ten percent (10%) of the amount of bail set, but in no event less than fifty dollars (\$50.00).

b. The money furnished shall be receipted for, deposited, accounted for, forfeited or returned in accordance with Pennsylvania Rules of Criminal Procedure 535 and 536.

c. If there has been no forfeiture, upon full and final disposition of the case, the Clerk of Courts or Issuing Authority shall retain any bail-related fees or commis-



sions authorized by law, and the reasonable costs, if any, of administering the cash bail system. The balance shall be returned to the person who deposited it with the Issuing Authority or the Clerk of Courts within twenty (20) days of full and final completion of the case. Notice of the full and final disposition shall be sent by the Clerk of Courts to the person who originally posted the money at the address of record upon a full and final completion of the case. Any money not claimed within one hundred eighty (180) days from the date the notice is sent of the full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Mercer.

INSTRUCTIONS FOR POSTING BAIL

1. Both a resident and a non-resident may be eligible to post percentage cash bail at the discretion of the

District Justice or the Judge of the Court of Common Pleas.

2. You must post 10% of the bail as set by the District Justice or the Court, but in no event less than \$50.00.

3. The defendant must attend all Court hearings in his case, or be subject to being placed in jail on a Bench Warrant issued by the Court, and subject to the bail money being forfeited.

4. After the defendant's case is completed, the Clerk of Courts Office will return the bail to the surety. Bail will be returned only to the person who posted it within twenty (20) days of the full and final completion of the case.

5. The surety is liable to forfeit 10% of the bail amount which has been posted, and if the defendant does not appear as ordered, 100% will be forfeited.

I HAVE READ OR HAD READ TO ME THE ABOVE INFORMATION, AND I FULLY UNDERSTAND ITS CONTENTS.

Defendant \_\_\_\_\_

Surety \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_\_

APPLICATION FOR BAIL

This application is to be filled out by any person placed on bail.

INFORMATION

Name \_\_\_\_\_ Telephone No. \_\_\_\_\_

Alias \_\_\_\_\_

Address \_\_\_\_\_

With Whom Living \_\_\_\_\_

Relationship to this Person \_\_\_\_\_

Charges \_\_\_\_\_

Prosecutor \_\_\_\_\_

Single ( ) Married ( ) Separated ( ) Divorced ( )

ADDITIONAL PERSONAL INFORMATION

Date of Birth \_\_\_\_\_ Race \_\_\_\_\_ Male \_\_\_\_\_ Female \_\_\_\_\_

Weight \_\_\_\_\_ Height \_\_\_\_\_ Build \_\_\_\_\_

Color of Eyes \_\_\_\_\_ Eyeglasses: Yes \_\_\_\_\_ No \_\_\_\_\_ Color of Hair \_\_\_\_\_

Length of Hair \_\_\_\_\_ Bald: Yes \_\_\_\_\_ No \_\_\_\_\_ Partly Bald: Yes \_\_\_\_\_ No \_\_\_\_\_

False Teeth: Yes \_\_\_\_\_ No \_\_\_\_\_ Describe any physical handicaps: \_\_\_\_\_

Scars: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe \_\_\_\_\_

Tattoos: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe \_\_\_\_\_

Facial Marks: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe \_\_\_\_\_

List Previous Convictions: \_\_\_\_\_

Social Security No. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Driver's License No. \_\_\_\_\_

Motor Vehicle Registration No. \_\_\_\_\_ State of Issuance \_\_\_\_\_

State Your Source of Income: \_\_\_\_\_

Employer's Name and Address: \_\_\_\_\_

If unemployed, list last employer and address \_\_\_\_\_

If on Public Assistance, Claim Number \_\_\_\_\_

If not on Public Assistance, but have Medical Card, Medical Card No. \_\_\_\_\_

If on Unemployment Compensation, State Claim Number \_\_\_\_\_

Are you under order to pay support? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what court and for whom? \_\_\_\_\_

Have you ever been on bail before? Yes \_\_\_\_\_ No \_\_\_\_\_ If so, what court? \_\_\_\_\_

Do you have any bank accounts? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, name of bank and address: \_\_\_\_\_

Have you ever been a patient in a Mental Institution? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, where and when? \_\_\_\_\_

Are you addicted to alcohol? Yes \_\_\_\_\_ No \_\_\_\_\_ Have you ever received treatment for this addiction?

Yes \_\_\_\_\_ No \_\_\_\_\_ If so, where and when? \_\_\_\_\_

Are you addicted to drugs? Yes \_\_\_\_\_ No \_\_\_\_\_ Have you ever received treatment for this addiction?

Yes \_\_\_\_\_ No \_\_\_\_\_ If so, where and when? \_\_\_\_\_

State the names and addresses of any other relatives living in Mercer County:

\_\_\_\_\_  
\_\_\_\_\_

MERCER COUNTY INFORMATION SHEET FOR PERCENTAGE CASH BAIL SYSTEM  
THIRD PARTY CASH BAIL INFORMATION

(In addition to the Application for Bail, the following information should be obtained from the person posting the Cash Bail and should be attached to the Application for Bail of the defendant.)

Client's Name \_\_\_\_\_ No. \_\_\_\_\_

Name of third party posting bond \_\_\_\_\_

Address \_\_\_\_\_ Telephone \_\_\_\_\_

Occupation \_\_\_\_\_ Employer \_\_\_\_\_

Employer's Phone No. \_\_\_\_\_

( ) Own Resident ( ) Rent Residence ( ) Own Other Real Estate

If Yes as to Other Real Estate, describe \_\_\_\_\_

\_\_\_\_\_

Mortgage held by \_\_\_\_\_

Date of Birth \_\_\_\_\_ Race \_\_\_\_\_ Male \_\_\_\_\_ Female \_\_\_\_\_

Weight \_\_\_\_\_ Height \_\_\_\_\_ Build \_\_\_\_\_

Color of Eyes \_\_\_\_\_ Eyeglasses: Yes \_\_\_\_\_ No \_\_\_\_\_

Color of Hair \_\_\_\_\_ Length of Hair \_\_\_\_\_

Bald: Yes \_\_\_\_\_ No \_\_\_\_\_ Partly Bald: Yes \_\_\_\_\_ No \_\_\_\_\_

False Teeth: Yes \_\_\_\_\_ No \_\_\_\_\_

Describe any physical handicaps: \_\_\_\_\_

\_\_\_\_\_

Scars? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe \_\_\_\_\_

Tattoos? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe \_\_\_\_\_

( ) Own Automobile ( ) Automobile Financed by \_\_\_\_\_

Title \_\_\_\_\_ Plate \_\_\_\_\_ Year \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_

Amount deposited by third party \_\_\_\_\_

Defendant \_\_\_\_\_ Others \_\_\_\_\_

Have you ever been on bond before? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, what court? \_\_\_\_\_

Do you have any bank accounts? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, name of bank & address: \_\_\_\_\_

Have you ever been a patient in a Mental Institution?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, where and when? \_\_\_\_\_

Are you addicted to alcohol? Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, have you received treatment for this addiction? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, where and when? \_\_\_\_\_

Are you addicted to drugs? Yes \_\_\_\_\_ No \_\_\_\_\_

Have you ever received treatment for this addiction?

Yes \_\_\_\_\_ No \_\_\_\_\_ If so, where and when? \_\_\_\_\_

State the names and addresses of any other relatives living in Mercer County:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Additional Information: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

[Pa.B. Doc. No. 04-1774. Filed for public inspection September 24, 2004, 9:00 a.m.]

**WESTMORELAND COUNTY**

**Promulgation of Rules of Criminal Procedure WC 114 and WC 576; No. 2 Civil of 2004**

**Order**

*And Now This* 8th day of September 2004, it is hereby *Ordered* that new Westmoreland Rules of Criminal Procedure WC114 and WC576 are adopted and current Rules WC114 and WC576 are rescinded effective November 1, 2004.

*By the Court*

DANIEL J. ACKERMAN,  
*President Judge*

**WC 114. Orders and Court Notices: Filing; Service; and Docket Entries.**

(A) Pursuant to Pa.R.Crim.P. 114(A)(1) and (2), warrants, court orders, and court notices shall be docketed and placed in the criminal case file within two working days of receipt.

(B) Pursuant to Pa.R.Crim.P. 114(B), the Westmoreland County Court Administrator is designated to serve court notices. The Westmoreland County Clerk of Courts shall serve all Orders.

1. The Court Administrator shall place in the mail or otherwise serve all notices within two working days of printing.

2. The Clerk of Courts shall give a copy of all Court Orders to the defendant or to the deputy sheriff who has custody of the defendant when the defendant reports to the Clerk of Courts. A copy of all such Court Orders that affect a defendant's custodial status shall also immediately be sent by facsimile transmission to the Records Division of the Westmoreland County Prison.

3. The Clerk of Courts shall serve all Court Orders not covered by Subsection (B)(2) by placing such Orders in the mail or by other means listed in Pa.R.Crim.P. 114(B)(3) within two working days of filing.

Comment: This Rule is promulgated pursuant to the responsibility given the president judge by Pa.R.Crim.P. 116.

**WC 576. Filing and Service by Parties**

(A) The Clerk of Courts shall immediately time stamp all written motions, notices, or documents presented for filing, and shall docket and place in the criminal case file all such papers within two working days of filing.

(B) Pursuant to Pa.R.Crim.P. 576 (B)(3)(d) any document required to be served upon the court administrator may be served by facsimile transmission.

[Pa.B. Doc. No. 04-1775. Filed for public inspection September 24, 2004, 9:00 a.m.]