

# THE COURTS

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 28, 2004, Mohamed Alamgir is *Disbarred on Consent* from the practice of law in this Commonwealth, effective October 28, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Executive Director and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 04-1878. Filed for public inspection October 15, 2004, 9:00 a.m.]

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 15]

#### Order Amending Pa.R.A.P. No. 1512; No. 157 Appellate Court Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 30th day of September, 2004, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. 103(a)(3);

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that the following amendment to Pa.R.A.P. 1512 is adopted.

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

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

#### PETITION FOR REVIEW

#### Rule 1512. Time for Petitioning for Review.

\* \* \* \* \*

(b) *Special appellate provisions.*—A petition for review of:

\* \* \* \* \*

(4) A determination of a Commonwealth agency under section [ 1711 ] 1711.1(g) of the Commonwealth Procurement Code, 62 Pa.C.S. § [ 1711 ] 1711.1(g), shall be filed within [ 14 days of receipt of the decision ] 15 days of the mailing date of a final determination denying a protest.

\* \* \* \* \*

[Pa.B. Doc. No. 04-1879. Filed for public inspection October 15, 2004, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BRADFORD COUNTY Local Civil Rule 1018

#### Order

*And Now*, this 27th day of September 2004, the Court hereby adopts Bradford County Rule of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

*By the Court*

JEFFREY A. SMITH,  
*President Judge*

[Pa.B. Doc. No. 04-1880. Filed for public inspection October 15, 2004, 9:00 a.m.]

### BRADFORD COUNTY Rule 1018 (Caption of Pleadings)

#### Order

*And Now*, September 27, 2004, the court directs that the Prothonotary and Clerk of Courts shall not place in any court file any pleading or other legal paper unless the name or names of the party or parties appearing in the caption is or are substantially consistent with the name or names of the party or parties in the case bearing the number appearing on the pleading or other legal paper. When the number and the named party or parties are not consistent, the Prothonotary and Clerk of Courts shall promptly contact the attorney or party who filed the pleading or other legal paper to determine the intention

of the party and shall then correct the caption as needed and only then shall the pleading be docketed and placed in the official court file.

*By the Court*

JEFFREY A. SMITH,  
*President Judge*

[Pa.B. Doc. No. 04-1881. Filed for public inspection October 15, 2004, 9:00 a.m.]

## ERIE COUNTY

### Revision and Restatement of the Orphans' Court Rules

#### Motion

*And Now*, this 1st day of September, 2004, comes the Orphans' Court Rules Committee of the Erie County Bar Association, by and through its Past Chairman, Raymond A. Pagliari, Esq., and hereby moves this Honorable Court to approve, adopt and promulgate the following proposed and recommended revisions and amendments to the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania.

#### Order

*And Now*, this 9th day of September, 2004, upon consideration of the foregoing Motion, it is hereby *Ordered, Adjudged and Decreed*, that the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania are hereby Amended and Revised in accordance with the previous Motion.

Petitioner shall take all steps necessary to publish these amendments in accordance with the applicable law. Such amendments shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

WILLIAM R. CUNNINGHAM,  
*President Judge*

#### RULE 1

### JUDGES—LOCAL RULES

#### 1.2.1 The Business of the Court

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

(b) *Audit List*. Accounts shall be audited by the Court anytime after the expiration of the deadline for the filing of objections.

(c) *Elimination of Formal Audit Court*. There shall be no formal Audit Court hearing.

#### RULE 6

### ACCOUNTS AND DISTRIBUTIONS

#### 6.1.4 Receipts for Disbursements.

Disbursement receipts or canceled checks of one thousand dollars (\$1,000.00), or more, or reproduced copies of either, shall be presented with the account; except corporate fiduciaries in lieu thereof may file copies of their ledger sheets showing disbursements. In the case of inheritance taxes, bequests and distributive shares, all

receipts or canceled checks or reproduced copies of either shall be filed with the account without regard to the amount thereof.

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

#### 6.4.1 Filing for a Particular Audit.

Accounts to appear on a particular audit list must be filed in accordance with the audit calendar published by the Clerk's office.

#### 6.4.3 Attendance at Audit not Required.

Attendance at the audit by the accountant, by the attorney for the accountant or any interested party shall not be required. There shall be no formal Audit Court hearing.

#### 6.6.1 Advertisement of Accounts and Audit Statements.

The Clerk shall give notice of all accounts and audit statements filed both in the Clerk's Office and in the Office of the Register of Wills and of the time and place of audit by advertising once a week for four (4) successive weeks in the legal periodical and in one newspaper of general circulation published in Erie County. An account shall not be audited unless an audit statement has been filed in timely accordance with the audit calendar published by the Clerk's office. The Clerk's notice shall include the last day on which objections may be filed.

#### 6.9.1 Audit Statement

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

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

(c) In the event that an accountant files an account required by these Rules and thereafter for a two (2) year period fails to file an audit statement with proposed distribution, the Court sua sponte, upon recommendation of the Orphans' Court Auditor and/or upon motion of a party in interest, may dismiss without prejudice, and consider the account withdrawn with 10 days prior notice to the Accountant. The Accountant shall have the right to re-file an account, upon the payment of the filing fee. At the time of re-filing an account, the accountant shall be required at a minimum to file an Audit Statement and proposed distribution.

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

(a) Objections to an account, audit statement or statement of proposed distribution shall be filed in timely fashion in accordance with the deadline set forth in the notice to be given by the Clerk pursuant to Rule 6.6.1.

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

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

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

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

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

(g) Upon the filing of Objections, the Court shall schedule a separate hearing date and time for the taking of testimony on the Objections. Notice shall be given by the Orphan Court Auditor.

(h) Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely.

#### RULE 7 EXCEPTIONS

##### 7.1.1 Filing of Exceptions

Exceptions authorized by State Rule 7.1 and by this Rule shall be filed in the office of the Clerk of the Orphans' Court.

##### 7.1.2 Finality of Certain Orders, Decrees and Adjudications

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

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

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

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

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

(C) Those approving a claim for family exemption;

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

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

in each case has served all parties in interest with such notice a copy of such petition, account, audit statement or statement of proposed distribution and proposed decree, if any, the failure by a party in interest to assert objection to such document and/or proposed Order or Decree prior to entry thereof shall constitute a waiver of objections thereto. In such event, exceptions to such Order, Decree or Adjudication shall not be authorized or allowed.

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

(CAPTION)

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

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

*(select one or the other of the following paragraphs)*

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

OR

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

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

IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THE OFFICE BELOW MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

Erie County Lawyers' Referral Service  
P. O. Box 1792  
Erie, PA 16507  
Telephone: (814) 459-4411

\_\_\_\_\_  
Mailing Date

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

**7.1.6 Effect of Exceptions on Adjudications, Orders and Decrees**

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

(b) No Adjudication, Order or Decree to which timely exceptions are taken shall become final for purposes of appeal until the exceptions are disposed of, subject to the provisions of State Rule 7.1(f).

**7.1.7 Other Exceptions**

Exceptions not otherwise covered by State Rules 7.1 and 7.2 or by this Rule shall be filed or presented at such time and place, and in such form, as the Court may direct.

**RULE 12**

**SPECIAL PETITIONS**

**12.5.5 Minors and Incapacitated Persons; Settlement, Compromise or Discontinuance**

(a) *Contents of Petition.* The Petition for Settlement, Compromise or Discontinuance shall:

(1) State the name, residence and parentage of the minor or incapacitated person;

(2) Set forth the factual circumstances of the case;

(3) Set forth the injury sustained and its effect on the property and health of the minor or incapacitated person;

(4) Itemize the expenses and fees incurred in the treatment of the injuries or substantiating and establishing the settlement or compromise;

(5) State whether proceedings have been conducted in a civil action concerning the claim and if so, include detail as to the nature of such proceedings and the presiding Judge;

(6) State the reason why the settlement or compromise is a proper one;

(7) State the amount of counsel fees incurred in obtaining the agreement for settlement or compromise;

(8) Include a proposed Order for hearing on the Petition for approval;

(9) Include a proposed Order for distribution.

(b) *Manner of Presentment.* Petitions under this Rule shall be presented in accordance with Erie County Civil Procedure Rule 2039.

The Judge to whom the Petition is submitted may require the personal appearance of the minor or incapacitated person, the guardian of the minor, the doctor or any other relevant party, as well as the production of any other evidence deemed necessary for approval of the Petition.

(c) *Notice of Hearing.* Notice of hearing on the Petition shall be given by United States first class mail, or as the Court shall direct, to all parties which shall include the minor or incapacitated person, the minor's parents, the minor's or incapacitated person's guardian(s) and any other person so designated by the Local Rules, the State Rules or the Judge to whom the Petition is presented. Proof of service shall be filed with the Court pursuant to the Local Rules.

(d) *Filing of the Petition.* Petitions presented under this Rule shall be filed as follows:

(1) If the Petition pertains to a matter as to which a civil action has been commenced and docketed, the original Petition shall be filed with the Prothonotary and a copy of the Petition shall be filed with the Register of Wills.

(2) If the Petition pertains to a matter as to which no civil action has been commenced, the original Petition shall be filed with the Register of Wills.

(e) Petitions under this Rule shall be substantially in the following form:

(CAPTION)

**PETITION FOR SETTLEMENT, COMPROMISE, DISCONTINUANCE AND DISTRIBUTION FOR A MINOR/INCAPACITATED PERSON**

To the Judge of your Honorable Court:

This Petition respectfully represents:

1. Petition is \_\_\_\_\_, who resides at \_\_\_\_\_, and is the parent, guardian of the minor/incapacitated person, age \_\_\_\_\_ years, born the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and who resides at \_\_\_\_\_.

2. The minor's parents are \_\_\_\_\_, father, and \_\_\_\_\_, mother, who reside at \_\_\_\_\_.

3. The minor/incapacitated person's claim arises out of the following circumstances (set forth the date, place, time and details): \_\_\_\_\_.

4. The minor/incapacitated person sustained injuries as follows (set forth description of the injuries, the effect of the injuries on the property and health of the minor, including applicable medical reports and records, recovery or prognosis): \_\_\_\_\_.

5. The following expenses were incurred in the treatment of the injuries to the minor/incapacitated person (itemize expenses incurred, noting whether paid or owed); state if any are to be reimbursed out of the settlement and if so, to whom they are payable): \_\_\_\_\_.

6. A civil action pertaining to this claim has/has not been commenced. If an action has been commenced and is not identified above, docketing information pertaining to said action is as follows: \_\_\_\_\_, \_\_\_\_\_. Proceedings in said civil action before the assigned Judge include: \_\_\_\_\_.

7. Petitioner has received an offer from \_\_\_\_\_ to settle the minor's/incapacitated person's claim for the amount of \$ \_\_\_\_\_. A copy of the offer is attached hereto as Exhibit \_\_\_\_\_.

8. Petitioner believes the settlement offered is in the best interest of the minor/incapacitated person for the following reasons (give reasons): \_\_\_\_\_.

9. \_\_\_\_\_, Esq. has been the attorney for the minor/incapacitated person in this matter and requests a counsel fee for services detailed in Exhibit \_\_\_\_\_ attached hereto which, in Petitioner's opinion, is a reasonable fee. Counsel also requests reimbursement for disbursements of \$ \_\_\_\_\_ as shown on Exhibit \_\_\_\_\_.

10. Petitioner and counsel are satisfied the offer of settlement is reasonable and proper in this matter.

11. To consummate the offered settlement, Petitioner, on behalf of the minor/incapacitated person, will be required to execute a release, a copy of which is attached hereto as Exhibit \_\_\_\_\_, and obtain approval of the settlement by your Honorable Court.

12. Petitioner requests this Honorable court to approve the within offer of settlement and to direct disbursement of the proceeds as follows:

- (a) \_\_\_\_\_, Esq.—attorney fee \$ \_\_\_\_\_
- (b) \_\_\_\_\_, Esq.—reimbursement \$ \_\_\_\_\_
- (c) Other: \_\_\_\_\_ \$ \_\_\_\_\_
- (d) Petitioner on behalf of the minor/incapacitated person as per attached Court Order \$ \_\_\_\_\_

13. The Petitioner requests this Honorable Court to direct the deposit of the above balance for this minor person into one or more federally insured savings accounts in the name of the minor/incapacitated person, to be marked "Not to be withdrawn before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date of minor's 18th birthday) or by further Order of this Court (other disposition may be requested as provided by statute).

WHEREFORE, Petitioner requests this Honorable Court to enter an Order approving the above settlement, directing distribution of the proceeds and expenses as set forth above and authorizing the Petitioner to execute the Release upon payment of the sum of \$ \_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_  
Petitioner

NAME OF LAW FIRM

BY: \_\_\_\_\_

Address  
Telephone  
Attorney No.

VERIFICATION

I, \_\_\_\_\_ (Petitioner), hereby verify, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200 , upon consideration of the foregoing Petition and this Court being satisfied as to the reasonableness of the settlement and that the settlement is in the best interest of the minor/incapacitated person hereto, it is hereby ORDERED, ADJUDGED AND DECREED:

- 1. The settlement set forth in the Petition in the above matter presented to the Court is approved as being in the best interest of the minor/incapacitated person, \_\_\_\_\_.
- 2. Counsel fees to the firm of \_\_\_\_\_, Attorneys-at-Law, of \$ \_\_\_\_\_ and the reimbursement of \_\_\_\_\_, Esq. for expenses, \$ \_\_\_\_\_ from the settlement proceeds are approved.
- 3. The settlement sum of \$ \_\_\_\_\_ is directed to be disbursed as follows:

- A. \_\_\_\_\_, Esq. \$ \_\_\_\_\_  
(attorney's fees per fee agreement)
- B. \_\_\_\_\_, Esq. \$ \_\_\_\_\_  
(reimbursement for expenses)
- C. Other: \_\_\_\_\_ \$ \_\_\_\_\_
- D. \_\_\_\_\_ \$ \_\_\_\_\_  
(minor/incapacitated person's name)
- Total \$ \_\_\_\_\_

4. The total sum payable to \_\_\_\_\_ (minor/incapacitated person's name), \$ \_\_\_\_\_, is directed to be deposited by his/her parents, \_\_\_\_\_ (parent's names) in a savings account in the name of the parent as natural guardian of \_\_\_\_\_ (minor/incapacitated person's name) in a local bank or savings and loan association, either FDIC or FSLIC insured, said account to be marked that no withdrawal may be made until the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ (date of minor/incapacitated person's birthday) or upon further Order of this Court. This deposit shall be made within five (5) business days following receipt of the minor/incapacitated person's proceeds.

5. Upon receipt of the settlement proceeds, \_\_\_\_\_ is authorized to execute and deliver a Release in the form as attached to the foregoing Petition.

6. Petitioner shall file with the Register of Wills proof of the restricted account deposit in accordance with this Order within thirty (30) days of the date of this Order.

J.

(f) *Confirmation of Deposits into Restricted Accounts.* When the Court directs the deposit of the sum payable to the minor or incapacitated person be placed in a restricted account, the deposit shall be made with a copy of the approving Court Order not later than five (5) business days after receipt of the settlement funds by the person directed to make the deposit. The designated depositor shall file or cause to be filed with the Register of Wills proof of the restricted account deposit in compliance with the approving Court Order, including the amount, within thirty (30) days after the date of the Order.

*Committee Comment.* The objective of subsection (b) of this Rule is to ensure that an assigned Judge in a civil action who has presided over proceedings which would facilitate an evaluation of the facts and proposed settlement consider a petition under this Rule, petitions in other cases being presented to the Motions Judge of the Orphans' Court. The purpose of including item 6 in the form petition is to make clear potential involvement by the assigned Judge in a civil action so that a Motions Judge of the Orphans' Court to whom a petition is presented can, in his or her discretion, determine whether presentation and determination in Orphans' Court is appropriate in the facts of the case.

#### **12.10.1 Private Sale. Contents of Petition. Additional Requirements.**

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

*Committee Comment.* When seeking Court approval of a private sale or transfer to a personal representative under 20 Pa.C.S.A. § 3556 and/or Orphans' Court Rule 12.10, the petitioner may avoid the need to present/secure a second affidavit of value providing all possible beneficiaries execute a written consent to the relief requested within the petition. The consent shall state that the consenting beneficiary:

- (a) has reviewed the petition and affidavit attached to the petition;
- (b) is satisfied with the value expressed therein, and
- (c) waives the requirement that a second affidavit of value be presented.

The Court Order attached to the petition approving the sale shall not address issues related to the title of the purchaser.

### **RULE 14**

#### **INCAPACITATED PERSONS**

##### **14.1.1 Procedure**

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

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

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

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

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

(d) The petition and citation shall be served personally upon the alleged incapacitated person by the Orphans' Court Investigator.

(e) The petitioner shall serve a copy of the guardianship petition and the Notice of Guardianship form provided by the Clerk of the Orphans' Court by first class mail to the following persons:

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

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

- (3) Any attorney in fact under a durable power of attorney;
- (4) Such other parties as the Court may direct.
- (f) All petitions required by this rule shall be signed by the moving party or that party's counsel and shall contain the following notice:

(CAPTION)  
NOTICE OF GUARDIANSHIP

This notice is to advise you that a Petition for Guardianship has been filed seeking the appointment of a guardian for the above named individual. A hearing on the petition is scheduled for the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M. before Judge \_\_\_\_\_ in Court Room \_\_\_\_\_ of the Erie County Court House, 140 West Sixth Street, Erie, Pennsylvania 16501.

You do NOT have to attend this hearing if you do not oppose the Petition.

If you intend to object to the proposed guardianship or otherwise contest this action, you must immediately send written notice to the assigned Judge and the Family/Orphans' Court Administrator at the Erie County Court House, 140 West Sixth Street, Erie, Pennsylvania 16501. A copy must also be sent to the attorney for the Petitioner at the address listed below.

Your notice must be filed at least seven (7) days before the hearing.

\_\_\_\_\_  
 Attorney for Petitioner  
 Street Address  
 City State Zip  
 Telephone

Date: \_\_\_\_\_

(b) *Notice of Representation.* The petitioner shall notify the Court in writing at least seven (7) days prior to the hearing whether counsel has been retained by or for the alleged incapacitated person. If counsel has been retained, the petitioner shall provide the name, address and telephone number of counsel.

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

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

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

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

[Pa.B. Doc. No. 04-1882. Filed for public inspection October 15, 2004, 9:00 a.m.]

**MONROE COUNTY**

**Rescission of Local Rules of Civil Procedure;  
 Administrative Order No. 11; 8136 CV 2004**

**Order**

*And Now*, this 29th day of September, 2004, it being the Court's intent to incorporate recommendations of the Civil Procedural Rules Committee, the version of Monroe County Amended Local Rules of Civil Procedure, Motions and Petitions practice (Local Rules 205.2, 205.3, 206.1, 206.2, 206.3, 206.4, 206.7, 207.1, 208.1, 208.2, 208.3, 208.4, 209, 210, 1028, 1034, 1035.2), inadvertently published in the *Pennsylvania Bulletin*, Volume 34, Number 38, page 5126 is hereby rescinded and local civil motions and petitions practice shall revert to prior existing local civil rules pending further amendment.

*By the Court*

RONALD E. VICAN,  
*President Judge*

[Pa.B. Doc. No. 04-1883. Filed for public inspection October 15, 2004, 9:00 a.m.]