

THE COURTS

Title 255—LOCAL COURT RULES

MCKEAN COUNTY

Adoption of Civil Procedure; No. 158 December of 1904

Order of Court

And Now, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The McKean County Local Rules of Civil Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District of Pennsylvania is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Civil Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Civil Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Civil Procedure with the Pennsylvania Civil Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Civil Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Civil Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Civil Procedure, any previously adopted local civil rules of court are rescinded and vacated.

JOHN M. CLELAND,
President Judge

THE BUSINESS OF THE COURTS Pa.R.C.P. 201 to 250

RULE L205.2(a) Binding and Attachment

(1) All papers filed with the Prothonotary shall be top bound and prepared for flat filing.

(2) Attachments to any paper filed with the Prothonotary shall be clearly legible. Copies shall faithfully represent the original in every respect.

RULE L205.2(b) Cover Sheet

All papers shall have a cover sheet in substantially the following form:

COURT OF COMMON PLEAS OF MCKEAN COUNTY
PENNSYLVANIA
CIVIL ACTION-(LAW) (EQUITY)
No. _____
Type of Case: _____

_____ Plaintiff
Type of Pleading: _____

VS.
Filed on Behalf of: _____
(Plaintiff/ Defendant)

_____ Defendant
Counsel of Record for this Party: _____
(Name of Attorney)
Supreme Court No.: _____
(Firm name, if any)

(Address)

(Phone)
Dated: _____ Counsel of Record for Adverse Party: _____

RULE L206.1(a) Petition Practice

(a) As used in these rules, "petition shall mean only an application to open a default judgment or a judgment of non pros."

RULE L206.4(c) Procedure for Issuance of A Rule to Show Cause

(a) The issuance of a rule to show cause shall be discretionary with the court and shall be in accordance with Pa.R.C.P. 206.5.

(b) The petition seeking the issuance of a rule shall be supported with an appropriate statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the petition; or, in a routine petition that does not raise complex legal or factual issues, in the body of the petition itself.

(c) Attached to the petition shall be a proposed order in the form prescribed in Pa.R.C.P. 206.5(d). The court in its discretion may delete paragraphs (4) and (5) of the form order (regarding discovery and argument) and provide instead that the matter will proceed before the court on an evidentiary hearing to resolve disputed issues of fact. The court may also enter an order to require the filing of briefs or to authorize discovery to proceed other than by deposition.

(d) Any request for stay of execution pending disposition of a petition to open judgment shall be filed by separate motion.

(e) The petition and any motion seeking a stay of execution shall be scheduled for argument and/or hearing by the Court Administrator and it is not necessary for the moving party to request hearing and/or argument.

RULE L208.2(c) Statement of Authority

All motions shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the

motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

RULE L208.2(d) Uncontested Motions

A motion that is represented to be uncontested shall contain a certification by counsel for the moving party that counsel has conferred with all interested parties and that the requested relief is uncontested.

RULE L208.2(e) Discovery Motions

A motion relating to discovery shall contain a certification by counsel for the moving party that counsel has conferred, or attempted to confer, with all interested parties in an attempt to resolve the matter without court action and has been unable to reach a satisfactory resolution of the issues presented.

RULE L208.3(a) Motion Procedure: Scheduling and Argument

(a)(1) Filing and Scheduling:

(i) All motions shall be filed with the Prothonotary in the form prescribed in Rule L205.2.

(ii) Motions should not be filed with the Court Administrator. Courtesy copies for the court are not required. Motions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(iii) The court will take no action until a motion has been filed of record, except in unusual circumstances.

(iv) All motions, including emergency motions, shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(a)(2) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(a)(3) The Official Court Reporter does not attend arguments unless directed by the court, or unless counsel has made a timely request.

(a)(4) Transcripts: The moving party in all post-trial or post-hearing motions or petitions shall, if the argument relates to the testimony presented, arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

(b) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

RULE L210 Form of Briefs

Briefs shall be typewritten and double spaced (except for quotation) on paper approximately 8-1/2 inches by 11 inches in size, shall be bound at the top, not at the side, and shall contain:

- (a) A history of the case.
- (b) A statement of the question or questions involved.
- (c) A copy of, or reference to, the pertinent parts of any relevant document, report, recommendation, or order.
- (d) An argument with citation of the authority relied upon.

- (e) A conclusion.

RULE L212.2 Pre-Trial Statement

At or before the date set for the pre-trial conference each party shall submit to the court and other counsel a pre-trial statement containing:

(1) A narrative statement of the facts that will be offered by oral or documentary evidence at trial, and a statement of any unusual questions of evidence anticipated with respect to proof of such facts.

(2) A statement of any unusual questions of law anticipated with respect to the issues in the case. All such questions shall be presented with a statement of authority supporting the position taken with respect to such unusual questions of law.

(3) A list of names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses. The listing of a witness by a party shall impose no liability on the party to call the witness or to procure his attendance at trial.

(4) Medical reports of any doctor who treated, examined or was consulted in connection with the injuries complained of, and who may be called as a witness.

(5) The reports of any expert whose opinion will be offered in evidence at the time of trial. Such report shall include the findings and conclusions of the expert.

(6) A list of all items of special damages which the party intends to prove, including medical bills, property damage bills (or estimates if there are no bills) and loss of earnings. Claims for loss of earnings shall set forth the names of employers, dates of absences and rates of pay. If the party is self-employed, information which forms the basis for the loss of income attributable to the injuries shall be supplied.

(7) A list of all exhibits which the party may use at trial.

(8) A copy of any hypothetical questions to be used with regard to any subject except the physical or mental condition of the party, or the cause thereof, together with the name and address of the witness to whom it is to be propounded.

(9) A copy of any plan or plot proposes to be introduced into evidence.

(10) An estimate of the length of time which will be required to present the party's case in chief.

RULE L212.3 Pre-Trial Conference

(a) For purposes of this rule, "pre-trial" shall mean a type of conference described in Pa.R.C.P. No. 212.3.

(b) Except as otherwise ordered by the court, pre-trial conferences shall be held at times directed by the court. Pre-trial conferences are extended to all actions not subject to arbitration under Rule L1301.

(c) Any application for continuance of the conference shall be by motion addressed to the court.

(d) Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and admissions and must have full settlement authority. If counsel does not have such authority then the person or corporation having the actual interest in the case, whether as a party, as an insurance carrier or otherwise, shall be personally present at the pre-trial conference.

(e) If a party, in the exercise of reasonable diligence, first becomes aware after the pre-trial conference of the

necessity or desirability of using a witness, an exhibit, a hypothetical question, plot or plan, he shall forthwith provide the court and other counsel with the same information with respect to such witness, exhibit, hypothetical question, plot or plan as is required on the pre-trial statement set forth in (e) above.

Failure to provide such information shall not be compliance with this subsection, and may, in the discretion of the court, justify refusal by the court to permit the use of such witness, exhibit, hypothetical question, plot or plan at trial.

RULE L223 Proposed Findings of Fact, Conclusions of Law

At any bench trial or arbitration hearing, except by leave of Court or of the board of arbitration, no party shall be permitted to present evidence either in support of or in opposition to any claim or cause of action unless the party has first presented proposed findings of fact, conclusions of law and a memorandum in support thereof.

The Court or board of arbitration, in its discretion, may grant a continuance to allow the non-filing party to prepare the required findings, conclusions and memorandum, except that the costs of litigation thereby caused to the other party or parties to the action may be imposed as a sanction of the non-filing party.

RULE L223.1 Pre-Trial Matters, Points for Charge

(a) Before the beginning of any non-jury trial or trial before a Board of Arbitrators counsel shall submit a concise memorandum of the applicable law and proposed findings of facts.

(b) Before the beginning of any jury trial counsel shall present to the Court a concise memorandum of the applicable law and requested points for charge. Requested points for charge shall be exchanged by counsel at the close of evidence.

(c) All requested points for charge shall contain a citation of authority.

(d) In so far as possible, all exhibits shall be marked for identification before the beginning of trial.

RULE L225 Addresses and Summing Up

(a) Opening addresses may be made by all parties or groups of parties at the commencement of the trial in the order of their appearing in the pleadings. Any party may reserve his opening address until immediately before presenting his evidence.

(b) After the close of the testimony, each party or group of parties shall have the right of final address or argument in inverse order to the order of opening addresses, unless otherwise ordered by the Court.

(c) Counsel shall not consume more than thirty minutes in either the opening address or the summing up address, except by special allowance.

RULE L227.1 Post-Trial Conferences

In every case in which a Motion for Post-Trial Relief has been filed, the court may schedule a post-trial conference to be held as soon as the business of the court permits. The purpose of such conference shall be to determine the precise issue or issues that will be before the court on said motion and the extent of the trial record which will need to be transcribed.

Miscellaneous Court Matters

The Pennsylvania Rules of Civil Procedure do not specifically deal with the matters covered by Rules L300

through L507 and, therefore, there are no Pennsylvania Rules of Civil Procedure corresponding to Local Rules L300 through L507.

RULE L300 Service Requirements of All Papers

Unless otherwise provided by an Act of Assembly or rule of court, a copy of each paper filed in any case, other than the writ, complaint, or other process by which an action is commenced, shall be served by the party filing it promptly upon all other parties to the litigation or their attorneys of record. The manner of service shall be in conformity with Pa.R.C.P. 440. No matter shall be considered by the court unless there has been filed either a proof of service, acceptance of service or certificate of service.

RULE L301 Copies of Writings

Whenever a copy of a writing is attached to a pleading, brief or other paper submitted to the court, such copy shall be clearly legible and faithfully represent the original in every respect, and unless the original itself is not legible the court may require a substitute copy to be made and filed before the pleading, brief or other paper will be considered by the court.

RULE L302 Face Sheet, Flat Filing and Top Binding

(a) All papers filed with the prothonotary in an action at law or in equity and in other matters designated shall be prepared for flat filing. Every pleading shall have a face sheet in substantially the following form:

COURT OF COMMON PLEAS OF McKEAN COUNTY
PENNSYLVANIA

CIVIL ACTION-(LAW) (EQUITY)
No. _____

Type of Case: _____

Type of Pleading: _____

Filed on Behalf of:

(Plaintiff/ Defendant)

Counsel of Record for this Party:

(Name of Attorney)
Supreme Court No.: _____

(Firm name, if any)

(Address)

(Phone)

Dated: _____ Counsel of Record for Adverse Party: _____

(b) All papers described in (a) above shall be bound at the top, not the side, so that they may be assembled with other papers in the case in a top bound file cover.

RULE L303 Matters for Argument

(1) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument, the matter will be

scheduled by the court in an order which will also establish the briefing schedule, if any. If the brief is not presented to the Court when ordered, the Court, in its discretion, may refuse to consider a late brief or to hear oral argument.

(2) The court may, in its discretion, hear oral argument on any motion by speaker telephone conference provided that the conversations of all parties are audible to all persons present, or upon stipulation of all parties, by regular telephone conference call. Upon request of any party, such oral argument may be recorded by a court reporter under such conditions as the court shall deem practicable. Counsel shall schedule such telephone calls at a time mutually agreeable to all parties and the court. The expense of the call will be shared equally by the parties, unless the court directs otherwise.

RULE L303(1) Supporting Memorandum of Law

All motions, exceptions, preliminary objections, and petitions, upon filing, must be supported by a brief or memorandum of law in support thereof. If not so supported, then the motion or exceptions shall be summarily disposed of, unless counsel promptly requests permission for good cause to file the required memorandum or brief at a later date.

The Court will then fix a date for the filing of a reply brief and for oral argument. If no reply brief is filed as ordered, then the non-filing party will not be heard at oral argument except by leave of Court.

This rule shall not apply to exceptions taken to the recommendation of the Family Law Master or Permanent Hearing Officer.

NOTE

It is not the intention of this rule to require "full blown" briefs on simple or routine issues. The extent of memorandums of law or briefs submitted in support of the motion should be in proportion to the complexity of the issue which the motion raises.

Consequently, a complicated motion, such as a motion for summary judgment, should be supported by a brief or memorandum which fully discusses the facts and the applicable law.

A routine motion or a motion presenting uncomplicated issues may be supported by a recitation of fact or authority in the motion itself or in a cover letter. In those situations, all that is required is a citation to the appropriate rule, statute or case law which establishes that the movant is entitled to the relief requested and that the Court has the power to grant it.

RULE L304 Motions and Petitions

(a) Motions and petitions shall be filed with the prothonotary or clerk of the Orphans Court for presentation to the court.

(b) Except for emergency matters and routine matters that are not contested, no motion or petition requesting *ex parte* action shall be heard by the court unless prior notice of its presentation has been given to opposing counsel of record.

RULE L305 Motions: Post-Trial and Post-Hearing

The moving party in all post-trial and post-hearing motions or petitions shall, if argument thereon is to be with reference to the testimony, include a request for a transcript of the testimony, or such part thereof as the moving party desires to have transcribed for the purposes of such motion.

RULE L306 Notice

(a) All notices shall be in writing.

(b) Except as otherwise provided by Act of Assembly, rule or special order of court, whenever any process, paper or notice is required to be served upon a party, such service shall be made in accordance with the procedure set forth in Pa.R.C.P. 400—441; if service is to be made by publication, then service shall be made as provided by Rule L430.

RULE L307 Prothonotary

(a) The prothonotary shall immediately endorse all papers filed with the date of such filing, and shall enter into an appropriate docket all pleadings, rules, orders of court and other papers filed in every case.

(b) The prothonotary shall be responsible for the safe keeping of all records and papers belonging in her office. No paper may be taken from the files of the prothonotary without the consent of the prothonotary or one authorized by the prothonotary to give such consent. A record shall be made of any paper removed from the prothonotary's office and the person who receipts for such paper shall be responsible for return of the same and for any financial loss occasioned by failure to return the paper.

(c) Only the prothonotary, his clerks, attorneys registered in McKean County and such other persons as the prothonotary shall specially authorize shall be permitted direct access to the prothonotary's files.

(d) No entries shall be made in any prothonotary's docket except at the direction of the prothonotary or by order of court.

RULE L308 Trial Sessions, Trial Lists and Continuances

(a) Jury Trial Sessions: Jury trial sessions will be held at such times as shall be established in the annual court calendar.

(b) Praeceptum for Trial: To place a case on the trial list, counsel for one or more of the parties in the case shall file a Praeceptum to List for Trial. The party placing a case on the trial list shall forthwith serve a copy of the Praeceptum upon all other counsel of record, who, if for any reason oppose such certification, shall within ten (10) days thereafter file their reasons opposing listing.

(c) Prothonotary's Active Trial List: Ten days after a Praeceptum to List for Trial has been filed, if no objection thereto has been filed, the prothonotary shall place the case upon the Prothonotary's Active Trial List and twenty days before jury selection the prothonotary shall deliver to the court a copy of the current Trial List.

(d) Pre-Trial Conference: Upon receipt of the Trial List the court shall schedule a pre-trial conference to be held on each case on the Trial List. Said conference shall be held in the manner provided by Local Rule L212.3.

(e) Trial Session List: Upon completion of the pre-trial conferences the court administrator shall prepare and deliver to all counsel of record and unrepresented parties a Trial Session List which shall show the cases that will be called for jury selection and the date and time counsel are to be on hand to select juries. Such notice shall also set forth the dates when non-jury cases will be tried.

(f) Continuances: Any case continued from the Active Trial List or Trial Session List will be stricken from the list and must be praecedent onto the Active Trial List in accordance with this rule.

RULE L308(b) Listing Cases for Trial

(1) To place a case on the trial list, counsel for one or more of the parties in the case shall proceed as herein provided.

(i) File a Praeceptum to List for Trial and serve the praecipe on all other counsel of record and unrepresented parties. The praecipe shall contain a certification by listing counsel that: the pleadings are closed; there are no outstanding motions; all pretrial discovery is completed; all counsel of record and unrepresented parties agree that the matter is presently ready for trial and that they do not object to its listing.

(ii) By motion reciting that all counsel and unrepresented parties do not agree that the case is presently ready for trial, and requesting that the Court order the case for trial. The Court shall then promptly schedule a hearing to consider the matter.

(2) In no event shall any matter proceed to jury selection or shall trial dates be reserved unless the pleadings are closed, discovery is completed, and there is no other impediment to the immediate trial of the case, unless the Court orders otherwise for good cause.

Plaintiff
VS

Defendant
IN THE COURT OF COMMON
PLEAS OF McKEAN COUNTY,
PENNSYLVANIA
CIVIL DIVISION
NO. _____ C.D. 20 _____

MOTION TO PLACE CASE ON TRIAL LIST

COMES NOW, _____ counsel for _____, and requests that the Court place the above captioned matter on the _____ trial list, pursuant to Local Rule L308(b)(i)(ii).

The undersigned has contacted all counsel of record and unrepresented parties and all parties do not agree that the matter is presently ready for trial.

Proof of Service is attached.

Respectfully Submitted,

Date: _____ Counsel for _____

Plaintiff
VS

Defendant
IN THE COURT OF COMMON
PLEAS OF McKEAN COUNTY,
PENNSYLVANIA
CIVIL DIVISION
NO. _____ C.D. 19 _____

PRAECIPE

To the Prothonotary:

As listing counsel, pursuant to Local Rule 308, I hereby certify:

- 1. The pleadings are closed.
- 2. There are no outstanding motions.
- 3. All discovery is completed.
- 4. All counsel of record and unrepresented parties have been contacted and agree that this matter is presently ready for trial and that they do not object to its listing.

A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,

Counsel for _____

RULE L309 Manner of Scheduling Equity Cases

Any party to an equity proceeding who desires that the case be advanced for early trial listing shall request by motion that the case be given priority trial status. Upon receipt of such request the prothonotary shall forthwith transmit the record papers to the court administrator who shall then schedule the case for pretrial conference and trial as soon as the business of the court permits.

RULE L310 Court Calendar

At the beginning of each calendar year, the court shall prepare a court calendar for the current year which shall have the effect of a rule of court establishing the times that the matters set forth in the court calendar shall be heard.

RULE L311 Security For Costs

(a) The defendant or any interested party may petition the court to require the plaintiff who resides out of state, or who is in bankruptcy, or has insolvency proceedings pending against him, to file security for costs.

(b) The court, by special order upon cause shown, may require a plaintiff or a defendant who seeks affirmative relief to enter security for costs.

(c) The claimant in a sheriff's interpleader issue shall be construed to be a plaintiff within the meaning of this rule.

(d) In default of security entered at the time fixed by the court, judgment of default or other appropriate court order may be made in favor of the party obtaining the order.

RULE L312 Bills of Costs

(a) Bills of costs must contain the names of the witnesses, the dates of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his agent or attorney that the witnesses named were actually present in court, and that, in his opinion, they were material witnesses. A copy of the bill shall be served on opposing counsel.

(b) The party upon whom a bill of costs has been served may, within ten (10) days after such service, file exception thereto, and the issue shall be determined by the court. Failure to file exception within ten (10) days shall be deemed a waiver of all objections.

RULE L313 Default Judgments

(a) Whenever a judgment for money is taken by default and the party in whose favor the judgment is entered has filed an instrument or copy thereof, upon which the amount of the judgment is based and a calculation of the judgment is submitted, the prothonotary shall enter the judgment for the amount shown to be due upon the face of the instrument.

(b) If a default judgment cannot be made certain by computation, Pa.R.C.P. 1037 shall apply.

RULE L314 Judgment on Verdict

Judgment shall not be entered on a verdict within the time allowed for motions for judgment n.o.v., for new trial, or for arrest of judgment, nor until the party obtaining the verdict shall have paid the prothonotary the required jury fee as provided by law.

RULE L315 Striking or Opening Judgments Other Than Confessed Judgments Covered by Pa.R.C.P. 2959

The pleadings and procedure for relief from judgments, other than confessed judgments, shall be the same as the pleadings and procedure for relief set forth in Pa.R.C.P. 2959 and Pa.R.C.P. 2960 for confessed judgments.

RULE L316 Judgment by Agreement

Except in actions to which a minor or an incompetent is a party and in actions for wrongful death in which a minor or incompetent has an interest, verdicts and nonsuits, and judgments by agreement may be entered at any time but only upon written stipulation signed by the parties or by their counsel of record and filed in the case.

RULE L317 Judgments: Re-Indexing

Judgments entered on confession may be subsequently re-indexed against any defendant under any alias name upon the plaintiff's attorney filing a praecipe therefor supported by an affidavit that such alias defendant is the same person against whom the judgment was originally entered and indexed. The subsequent re-indexing shall be noted on the docket of the original number and term and shall be re-indexed on a separate line in the judgment index, clearly showing the date of such re-indexing.

RULE L318 General Pleading Form

Except as otherwise provided by statute, or rule of court, pleadings in all actions shall, as nearly as possible, conform to the rules relating to civil actions law.

RULE L319 Termination of Inactive Civil Cases

(a) On or before November 1st of each year the prothonotary shall list for General Call a list of all civil matters in which no steps or proceedings have been taken for two years or more prior thereto.

(b) The prothonotary shall give at least 30 days notice to counsel of record, and to the parties for whom no appearance has been entered, advising them that the time, place and date of the General Call will be the first Monday in November, and that an order will be entered at that time terminating the case on the grounds of unreasonable inactivity unless some action is taken before the General Call, or good cause is shown as to why the case should not be terminated.

(c) The notice herein required shall be in person or by mail to the last address of record of counsel or the parties setting forth a brief identity of the matter to be terminated.

(d) When the prothonotary is unable to give notice in person or by mail, notice or service shall be made in such form and manner in accordance with Pa.R.J.A. 1901(c) as the court, by order, may direct.

(e) The prothonotary shall file an affidavit of service of the herein prescribed notice of intention to terminate inactive cases.

(f) If no good cause for continuing any case is shown at the General Call, an order shall be issued forthwith by the Court for dismissal of said case.

RULE L400.1 Person to Make Service

With respect to all actions filed in McKean County, Pennsylvania, original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

Note: This Rule is promulgated pursuant to the provisions of Pa.R.C.P. 400.1, as adopted by Order of the Supreme Court of Pennsylvania of June 14, 1999, at No. 316 Civil Procedural Rule Docket No. 5.

RULE L430 Service, Petitions, Rules, Orders And Notices—Publications

Whenever service by publication is authorized by law or rule of court and the manner of publication is not otherwise specified, such service shall be made by publishing the required notice one time in a newspaper of general circulation in McKean County. Affidavits of publication shall be filed in the prothonotary's office.

RULE L500 Auditors and Auditor's Reports

(a) Auditors shall be members of the bar.

(b) Auditors' hearings shall be held at the courthouse and testimony taken either by a court stenographer or by a stenographer to be agreed upon by the parties in interest.

(c) Auditors shall give public notice of the time and place of hearings before them, by advertisement once a week for two successive weeks in a newspaper of general circulation of McKean County, stating therein that all persons must prove their claims before them or be debarred from coming upon the fund. In addition thereto, auditors shall obtain from the assignors or debtors, a list of their creditors, and, if the proceeds of the sale of real estate are to be distributed, searches for liens and encumbrances, and award distribution accordingly, unless objections be made, in which event those whose claims are objected to shall be notified to prove their claims or be debarred from coming in upon the fund.

(d) Any person desiring an issue to be granted shall present his petition to the auditor within forty-eight hours after the testimony in relation to the matter in dispute is closed, setting forth under oath or affirmation that material facts are in dispute and the nature and character thereof; and it shall be the duty of the auditor forthwith to make report thereof to the court for its action.

(e) The auditor shall not file his report until ten days after he has notified all the parties who appeared before him that it is subject to their inspection, and that it will be filed on a given date, unless written exceptions are filed with him before that time. If exceptions are filed, he shall re-examine the subject and amend his report, if, in his opinion, the exceptions are in whole or in part, well founded.

(f) The argument before the court shall be confined to the exceptions filed with the auditor; the court will, however, recommit the report if of the opinion that justice requires it.

(g) If no exceptions are filed with the auditor, the report, on motion, will be confirmed by the court.

(h) When facts are controverted before the auditor, he shall report the same as proved, in a concise or digested form and shall also state concisely the questions of law

raised before him and his decisions thereon, with his reasons therefor, and when distribution is made, a distinct account or schedule of the liens on the funds, paid and unpaid, in a form convenient for review shall be made out and presented with the report showing precisely the disposition made of the funds. The testimony, documentary or otherwise shall be returned separately and filed with the report.

(i) The auditor shall file his completed report with the prothonotary, who shall mark in confirmed nisi, which confirmation shall become absolute, without further order, if no objection thereto is made within ten (10) days. If objection to the report is made, it shall be treated as renewal of the exceptions filed by the party with the auditor; and in this case or if exceptions are filed with the prothonotary within this ten day period, the prothonotary shall enter the case on the argument list to be taken up in due course.

(j) Upon motion made by a party interested, of misconduct or unreasonable delay on the part of any auditor, the court may either vacate his appointment or grant a rule on him to show cause why he should not proceed forthwith in the duties of his appointment; and in case of contempt, may punish him by fine or attachment.

RULE L501 Distribution

(a) Whenever the aid of the court is desired in the distribution of money in court or in the hands of any collecting officer of the court, the party asking its interposition shall present to the court a written statement of the facts, showing its necessity or propriety, and thereupon the court may appoint an auditor to report the facts and make distribution or make such other order as may seem best calculated to bring the matter to a speedy close.

(b) The court may, on motion and upon satisfactory evidence, decree distribution of any portion of the fund in court, not included in any controversy, before or during the pendency of the audit, and order such portions of the fund that is being audited to be deposited or invested during the controversy.

(c) Duplicate receipts shall be given for all moneys paid in pursuance of such distribution, one of which shall be filed in the case and the other upon the original lien docket.

RULE L502 Receivers and Assignees for Creditors

(a) Assignees for the benefit of creditors and receivers shall, after they have entered security, give notice of their appointment, to every creditor and party in interest of whom they have knowledge, and shall also publish notice thereon once a week for two successive weeks in a newspaper of general circulation published in McKean County.

(b) The assignee shall file with the account a petition for distribution in form similar to that of petitions for distribution required by the Orphans' Court Division of this county and all such accounts and petitions for distribution shall be filed in the office of the Prothonotary.

(c) The assignee shall give written notice of the filing of the account, the petition for distribution and of the call for the audit or confirmation thereof to all parties interested. Such notice shall be given by mailing the same to the last known address of the one entitled to receive the same, at least three weeks before the presentation of the account to the court, and shall also be published by the prothonotary for two successive weeks in one newspaper of general circulation published in McKean County.

(d) Any such account filed for audit and confirmation shall be audited preliminarily by the prothonotary and then presented to the court, together with the proofs of publication and proof of the giving of the required notice to interested parties at the time fixed for the audit or confirmation thereof; and if no exceptions have been filed, the account may be confirmed absolutely.

RULE L503 Sheriff

It shall be the duty of the sheriff, or his deputy, to always be present in the courthouse when the court is in session and to promptly execute all orders of the court and process issued by it.

RULE L504 Limitations on Bail and Security

Neither the prothonotary, nor his deputy, nor the sheriff or sheriff's deputy or clerk, shall be admitted as bail or surety in any action, civil or criminal unless by leave of the court for special reasons shown.

RULE L506 Money Paid Into Court

(a) A party to an action may, upon motion and such notice to the adverse party as the court may direct, pay into court the amount admitted to be due, together with costs, if any. The party entitled to the money may accept the money and settle and discontinue the action or may refuse the money and proceed with the action. If the adverse party shall not recover more than the amount paid into court, all additional costs shall be deducted from the money. This tender into court shall in no way alter the rights of the parties as to legal tender made before suit.

(b) Parties wishing to extinguish liens upon real estate in which they have an interest may, on motion and such notice to the creditor as the court may direct, pay into court the amount due and have satisfaction entered upon the lien.

(c) Upon payment of money into court, to abide its order, the same shall be deposited by the prothonotary in an account in the name of the prothonotary kept for such purposes, and shall be payable only by a check signed by the prothonotary pursuant to order of court.

(d) Under the provisions of the bulk transfers section of the Uniform Commercial Code, 13 Pa.C.S.A. 6101 et seq, the petition of the transferee, in addition to other necessary allegations, shall give the name, address and amount of claims of creditors of the transferor insofar as the same are known to him and may request the appointment of an auditor. If the petition be approved by the court, an auditor may be appointed forthwith to determine what creditors of the transferor are entitled to recommend distribution to the court. The auditor shall give notice of his appointment and perform all his duties in accordance with the provisions of Rule L500. He shall also give notice of the time of filing claims to the transferors and transferees, or their attorneys, by registered or certified mail to each known creditor whose name and address is set forth in the Petition.

RULE L507 Deputy Constables

Petitions for approval of the appointment or revocation of the appointment of deputy constables shall set forth the following facts:

- (1) The act of assembly authorizing the appointment.
- (2) Name and address of the petitioner.
- (3) The name of the municipality or district in which petitioner was elected.

(4) The date of commencement and expiration of the term of office of the petitioner.

(5) The name and full address of the surety on petitioner's bond and an averment that the surety has had notice of the petition, to be evidenced by the written joinder of the surety in the prayer of the petitioner.

(6) The name and full address of the person to be appointed deputy constable, or whose appointment is to be revoked, and an averment that the person to be appointed is of good repute and has not been convicted of a felony or misdemeanor.

(7) A full statement of the necessity, facts and reasons for making or revoking the appointment.

(8) If any security of any kind is given or to be given by the petitioner or his surety, then the nature, character, and extent shall be fully set forth or, in lieu thereof, an averment that no security is being given.

**CIVIL ACTION—LAW
R.C.P. 1001 to 1038**

RULE L1018.1 Notice to Defend

The person, to be named in the notice to defend, from whom legal help can be obtained is:

Northwestern Legal Services
100 Main Street
Bradford, PA 16701
Telephone: 814-362-6596

RULE L1028(c) Preliminary Objections

(a) Filing. All preliminary objections shall be filed with the Prothonotary in the form prescribed in Rule L205.2. Preliminary objections should not be filed with the Court Administrator. Courtesy copies for the court are not required. Preliminary objections should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the preliminary objections have been filed of record, except in unusual circumstances.

(c) Statement of applicable authority: All preliminary objections shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections.

(d) Scheduling: Preliminary objections shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the preliminary objections within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

RULE L1033 Amended Pleading

Whenever an amended pleading is filed, such pleading shall be a complete pleading and not merely set forth the amendments to the former pleading. The amended pleading shall clearly indicate that it is an amended pleading, the paragraphs shall be renumbered, and the new portion shall be underlined.

RULE L1034(a) Motion for Judgment on the Pleadings

(a) Filing. A motion for judgment on the pleadings shall be filed with the Prothonotary in the form prescribed in Rule L205.2. It should not be filed with the Court Administrator. Courtesy copies for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(c) Statement of applicable authority. It shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

(d) Scheduling: It shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

RULE L1035.2(a) Motion for Summary Judgment

(a) Filing. A motion for judgment on the pleadings shall be filed with the Prothonotary in the form prescribed in Rule L205.2. It should not be filed with the Court Administrator. Courtesy copies for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(c) Statement of applicable authority. It shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form or a brief filed contemporaneously with the motion.

neously with the motion; or in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

(d) Scheduling: It shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

(h) Transcripts: If the argument relates to the testimony presented, the moving party shall arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

RULE L1039 Reserved

ACTION OF EJECTMENT Pa.R.C.P. 1051 to 1057

RULE L1053 Service

Unless otherwise ordered by the court, service by publication shall be made by publication for two consecutive weeks in a newspaper of general circulation within the county. No further action can be taken until twenty (20) days after the last publication. Proof of publication shall be filed in the prothonotary's office.

ACTION TO QUIET TITLE Pa.R.C.P. 1061 to 1066

RULE L1064 Service

(a) If a defendant is dead or his identity or whereabouts is unknown and the plaintiff moves the court for an order authorizing service by publication upon such a defendant, the plaintiff shall attach an affidavit to such motion setting forth the following averments:

1. The plaintiff has caused the records in the offices of the Register and Recorder to be examined to ascertain the date of death of the defendant, whether he died testate or intestate, the names and addresses of all the defendant's heirs, legatees or devisees, and whether or not there has been any adverse conveyance of the real estate that is subject of the suit.

2. That he had made a good faith effort to locate the whereabouts of the defendant or defendants.

3. That in the case of a corporation that has been dissolved, he has caused the records in the offices of the Register and Recorder to be examined to ascertain whether or not there has been adverse conveyance or distribution of the real estate that is the subject of the suit.

(b) Unless otherwise directed by the court, service by publication shall be made two consecutive weeks in a newspaper of general circulation in the county.

RULE L1066 Form of Judgments or Order

Any order entered under subsection (b) (1) of the Pennsylvania Rules of Civil Procedure shall include a description of the property. If notice of the entry of such an order is given by publication, it shall be given as provided by Rule L1064.

RULE L1302 Arbitration

(a) All cases which are at issue, where the amount in controversy (exclusive of interest and costs) shall be \$25,000 or less, except those involving title to real estate, equity actions, actions upon bail bonds and recognizances, actions upon penal statutes, and other actions which do not involve the recovery of money damages, including divorce, mandamus and quo warranto, shall be submitted to and heard and decided by a Board of Arbitration which shall be composed of three (3) attorneys. The Prothonotary shall maintain a list of available arbitrators who shall all be members of the Bar actively engaged in the practice of law primarily in McKean County.

(b) Cases which are not at issue, and whether or not suit has been filed, may be submitted to a Board of Arbitration by agreement of reference signed by all parties or their counsel. The agreement of reference shall define the issues to be submitted to the Board, and, when agreeable to the parties, shall also contain stipulations with respect to facts agreed or defenses waived. When a case is submitted to the Board by agreement of reference, the agreement shall take the place of pleadings and shall be filed of record in the office of the Prothonotary and shall be assigned a number and term.

(c) Cases shall be placed on the arbitration list by one or more of the parties in the case or their counsel filing a Praecipe for Arbitration, together with a listing fee in the amount of \$100. Ten days after the case has been precaped onto the list, if no objection thereto have been filed, the Prothonotary shall promptly appoint a panel of three (3) arbitrators to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. The chairman so appointed shall forthwith establish the time, date and place of trial and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All trials shall be held within 60 days of the date the chairman is appointed by the Court. In the event the matter is settled prior to hearing but after the chairman has scheduled a hearing, \$50 of the filing fee shall be paid to the chairman as reimbursement for office expenses. In the event the matter has been settled prior to hearing and before the chairman has scheduled a hearing, \$50 of the filing fee shall be refunded to the party who paid it. In either event the remaining \$50 shall be retained by the Prothonotary to reimburse expenses. The filing fee shall be charged to the party first listing the case for hearing, and only be assessed one time per case.

(d) Each member of a Board of Arbitrators who has signed the award shall receive as compensation for his services in each case a fee of Two Hundred Fifty (\$250.00) Dollars. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the Court, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing an award with the Prothonotary. When the same is filed, the Prothonotary shall issue an order for payment of such fees which shall be immediately paid

from County funds as in the case of all other County debts. Fees paid to Arbitrators shall not be taxed as costs nor follow the award as other costs.

(e) Before entering upon their duties the members of the Board of Arbitrators shall subscribe to an oath to perform their duties and decide the case submitted to them justly and equitably, and with due diligence, which oath shall be filed with their award. In all cases, a decision by majority of the members of the Board of Arbitrators shall be conclusive.

(f) The Board of Arbitrators, or a majority of the members thereof, shall conduct the hearing before them with due regard to the law and according to the established rules of evidence, and shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Board as in other civil actions, and to issue an attachment upon allowance by the Court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which they shall deem material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) To adjourn their meetings from time to time. Requests for continuances shall be made to the Court of Common Pleas.

(a) If, after the appointment of a Board of Arbitrators, but before hearings, one of the members thereof shall die or become incapable of acting, or shall refuse to attend the hearing, or shall remove or depart from the county, the remaining members of the Board shall, upon agreement of the parties, proceed to hear the matter at issue.

(b) If a member of the Board dies or becomes incapable of acting, or shall fail or refuse to perform his duties, after hearing but before an award shall be made, the case shall be decided and the award signed by the remaining members of the Board. If they cannot agree, the matters shall be heard de novo by a new Board, to consist of the remaining members plus a third to be appointed by the Prothonotary.

(c) The Board shall have the right to proceed ex parte in a proper case if, after due notice, one of the parties fails to appear at the hearing and does not request a continuance for good cause.

(d) The Board of Arbitrators shall file an award with the Prothonotary within 20 days after the hearing. The award shall be signed by all or a majority of the members of the Board. The Prothonotary shall file the award and enter the same in the proper dockets and transmit a copy thereof by mail to the parties or their counsel. The Prothonotary shall record any award in the judgment index as verdicts are now recorded.

(e) The award, if any, unless appealed from as herein provided, shall be final and shall have all the attributes and legal effect of a judgment entered by a court of competent jurisdiction. If no appeal is taken within the time allotted therefor, execution process may be issued on the award as in the case of other judgments.

(f) An appeal from an award by the Board of Arbitrators may be taken pursuant to procedure established in the Pennsylvania Rules of Civil Procedure.

(g) All appeals shall be de novo. Despite any costs which a successful appellant may recover from the adverse party, he shall nevertheless not be entitled to recover the arbitrators' fees paid by him as a condition of taking his appeal.

(h) Any party may file exceptions with the Court from the decision of the Board of Arbitration within twenty (20) days from the filing of the award for either or both of the following reasons and for no other:

(1) That the arbitrators misbehaved themselves in the conduct of the case;

(2) That the actions of the Board was procured by corruption or other undue means. If such exceptions shall be sustained, the award of the Board shall be vacated by the Court.

(g) Any case not arbitrable under the foregoing provisions of this Rule may be submitted to arbitration according to the procedure herein provided, by stipulations of all Parties thereto or their counsel.

(h) This Rule shall apply to cases involving more than one claim, including counter claims, if none of such claims exceed \$25,000.

(i) This Rule shall govern cases pending in the Court of Common Pleas of McKean County on the effective date hereof, and all such cases to which the rule shall be applicable which are listed for trial shall be stricken from the trial list and referred to arbitration under the provisions hereof.

(j) The Prothonotary shall provide such printed forms as shall be appropriate to effectuate the provisions of this rule.

(k) All rules of this court or portions thereof which are inconsistent herewith are hereby repealed.

MINORS AS PARTIES Pa.R.C.P. 2026 to 2050

RULE L2039 Compromise, Settlement Discontinuance and Distribution

Except as otherwise authorized by the court, no settlement of an action of a minor for personal injuries will be authorized or approved without the appearance of the minor in court, medical evidence or report as to the extent of the minor's injuries, an itemized statement of all expenses incurred, whether or not they have been paid any by whom, and such further information as the court shall deem necessary.

INCAPACITATED PERSONS AS PARTIES Pa.R.C.P. 2051 to 2075

RULE L2064 Compromise, Settlement, Discontinuance and Distribution

Except as otherwise authorized by the court, no settlement of an action for personal injuries to an incompetent party to the action will be authorized or approved without the appearance of the incompetent party in court where practicable, medical evidence or report as to the extent of the incompetent party's injuries, an itemized statement of all expenses incurred, whether or not they have been paid and by whom, and such further information as the court shall deem necessary.

UNINCORPORATED ASSOCIATIONS AS PARTIES Pa.R.C.P. 2151 to 2175

RULE L2152 Actions by Associations

The Plaintiff's initial pleading in an action prosecuted by an association shall set forth the names and addresses

of the officers thereof or of all persons known to be holding themselves out as such. In case the said officers do not constitute the trustees ad litem, or have not consented to the prosecution of the action by consent in writing attached to the initial pleading, the plaintiffs shall serve notice, in the manner provided in Rule 440 of the Pa.R.C.P. of the bringing of the action upon said officers within ten days thereafter and file proof thereof in the action; otherwise, the action shall be automatically stayed until such proof is filed.

ACTIONS FOR WRONGFUL DEATH
Pa.R.C.P. 2201 to 2225

RULE L2205 Notice to Persons Entitled to Damages

Notice shall in all cases be given personally or by registered or certified mail to each person entitled by law to recover damages in the action, unless the plaintiff shall file an affidavit that the identity or whereabouts of any such person is unknown to him after diligent search therefore, in which case the plaintiff shall cause the notice to be advertised one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

SUBSTITUTION OF PARTIES
Pa.R.C.P. 2351 to 2375

RULE L2353 Service of Rule

When a party seeks to serve a successor by publication, he shall advertise a notice of the rule one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

RULE L2952 Confessed Judgments

When a judgment is entered upon any instrument containing a warrant of attorney, which instrument accompanies a mortgage, a statement shall be placed in the complaint showing the book and the page where said mortgage is recorded. If the instrument is entered without a complaint, a statement shall be placed upon the instrument itself.

ENFORCEMENT OF JUDGMENTS
Pa.R.C.P. 3103 to 3149

RULE L3110 Execution Against Contents of Safe Deposit Box

When the Plaintiff seeks to serve a party by publication as provided in paragraph (c) of Pa.R.C.P. 3110, it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proof of such publication shall be filed in the prothonotary's office.

RULE L3112 Service upon Garnishee Real Property of Defendant in Name of Third Party

Whenever a party seeks to serve a garnishee by publication as provided in paragraph (c) of Pa.R.C.P. 3112, it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proofs of publication shall be filed in the prothonotary's office.

RULE L3123 Debtor's Exemption

The sheriff following an appraisal or designation shall immediately thereafter and before sale give notice thereof by first class United States mail to all interested parties of the appraisal or designation, which notice shall set forth the right of appeal to the Court of Common Pleas within forty-eight (48) hours thereof.

RULE L3128 Notice of Sale of Personal Property

One copy of the handbill shall be mailed, by certified United States mail, to the defendant by the sheriff.

DEPOSITIONS AND DISCOVERY
Pa.R.C.P. 4001 to 4020

RULE L4010 Exchange of Medical Reports

When a mental or physical examination has been made pursuant to Pa.R.C.P. 4010, counsel shall be prepared to exchange medical reports, as provided therein, not more than thirty (30) days after the examination has been made.

[Pa.B. Doc. No. 07-1689. Filed for public inspection September 14, 2007, 9:00 a.m.]

MCKEAN COUNTY

Adoption of Criminal Procedure; No. 581 of 1999

Order of Court

And Now, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Criminal Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Criminal Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Criminal Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Criminal Procedure with the Pennsylvania Criminal Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Criminal Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Criminal Procedure

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Criminal Procedure, any previously adopted local criminal rules of court are rescinded and vacated.

By the Court

JOHN M. CLELAND,
President Judge

CRIMINAL PROCEDURE

L120 Appearances

(a) An attorney representing a defendant at a preliminary hearing shall sign a praecipe for entrance of appearance and deliver the same to the District Justice before the beginning of the preliminary hearing.

(b) The District Justice shall transmit the praecipe for entrance of appearance with the docket transcript and the same shall be filed of record with the said docket transcript.

(c) This procedure for entry of appearance shall meet the requirements of Pa.R.Crim.P. 120.

(d) If a criminal information is filed by the District Attorney, but is assigned to an Assistant District Attorney for prosecution, the defense counsel having entered an appearance shall be notified promptly of the assignment by the District Attorney.

L441 Procedure In Certain Court Cases Initiated by Arrest Without Warrant

(a) When a defendant has been arrested without a warrant and the most serious offense charged is a misdemeanor of the second degree the arresting officer, if he deems it appropriate, may release the defendant from custody rather than taking him before the Issuing Authority if the following conditions are met:

- (1) the defendant is a resident of the Commonwealth;
- (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- (3) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- (4) the defendant does not demand to be taken before an Issuing Authority.

(b) When a defendant is released pursuant to paragraph (a) above, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided in Rule 440 of the Pennsylvania Rules of Criminal Procedure.

L542.1 Scheduling at Preliminary Hearing

(a) At the preliminary hearing the defendant and his attorney shall be assigned a date at which the defendant and his attorney must appear in Court for arraignment (unless waived), criminal conferences, and jury selection.

(b) If the defendant is not represented by counsel at the preliminary hearing, the District Justice shall assign a date for arraignment at which the defendant must appear in Court. At arraignment the arraigning officer shall set the dates at which the defendant and his counsel must appear for criminal conferences and jury selection.

(c) The dates so established for arraignment and jury selection shall be deemed orders of court and may not be changed except by leave of Court.

L575 Motions

All motions or petitions involving disputed legal or factual issues shall contain a citation of appropriate authority in support of the requested relief, or, alternatively, be supported by a concise brief.

L588 Informations

Pursuant to Pa.R.Crim.P. 588, in any case in which an information has not been filed within thirty days from when a defendant has been bound over to Court by action of the District Justice, on motion of the defendant the Court will issue a rule directed to the District Attorney to appear and show cause why the case should not be dismissed, without prejudice, for failure to prosecute.

Upon receipt of such a motion or petition a hearing or argument will be scheduled, and a date established for the presentation of a reply brief if required.

[Pa.B. Doc. No. 07-1690. Filed for public inspection September 14, 2007, 9:00 a.m.]

MCKEAN COUNTY

Adoption of Domestic Relations Procedure; No. 158 December Term of 1904

Order of Court

And Now, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Domestic Relations Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;
2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:
 - a. File seven certified copies of this Order and the Local Rules of Domestic Relations Procedure with the Administrative Office of Pennsylvania Courts;
 - b. File two certified copies and a computer diskette containing this Order and the Local Rules of Domestic Relations Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
 - c. File one certified copy of this Order and the Local Rules of Domestic Relations Procedure with the Pennsylvania Domestic Relations Procedural Rules Committee;
 - d. Provide one copy of this Order and the Local Rules of Domestic Relations Procedure to each member of the McKean County Bar Association; and
 - e. Keep continuously available for public inspection copies of this Order and the Local Rules of Domestic Relations Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Domestic Relations Procedure, any previously adopted local domestic relations rules of court are rescinded and vacated.

JOHN M. CLELAND,
President Judge

COMMON PLEAS COURT RULES

RULE L1920.51 Family Law Rules and Procedure in Divorce and Support Proceedings

A. Duties of Master. A Family Law Master shall be appointed by the Court to hear actions in divorce under 23 Pa.C.S.A. Section 3301, subsections (a), (b), and (d) of the Divorce Code, actions of annulment, and other issues permitted by law relating to the termination or validity of marriages. The Master will also conduct hearings on the economic issues raised in divorce complaints and other pleadings, including but not limited to, claims for alimony, alimony pendente lite, spousal support, equitable distribution of marital property, child support, counsel fees, costs and expenses, or any aspects thereof. The Master shall also serve as the Hearing Officer for the purposes of Pa.R.C.P. 1910.12. The Master shall make appropriate reports and recommendations to the Court.

B. An original and one copy of each divorce complaint or other pleading that raises an issue for the Master to

hear shall be filed with the Prothonotary, who shall schedule each such case for a Preliminary Conference. The Prothonotary shall forward a copy of the divorce complaint or pleading to the Master together with a notice of the Conference date.

C. Preliminary Conference

1. The Preliminary Conference will be in the nature of a status conference designed to promote settlement of cases, to gather information about the issues in the case, to determine the need for discovery, if any, and to establish a time table for the progress of the case.

2. Counsel and unrepresented parties will prepare and present at the Preliminary Conference the following: income and expense statements, inventory of marital assets, asset values, debts, tax returns for the preceding year, and at least three recent pay stubs for each party.

3. The Master will prepare a Family Law Conference Report and Scheduling Order and serve one copy of each on counsel and unrepresented parties at the end of the Conference. No further hearing notices will be issued unless a continuance is granted resulting in rescheduling.

D. Trial Deposit and Pretrial.

1. Seven (7) days before the pretrial conference scheduled by the Master in the Scheduling Order, the Plaintiff will pay to the Family Law Office a trial deposit of \$600.00, and counsel for both parties will file with the Prothonotary and provide the Master with a copy of a Pretrial Statement substantially in the form required by Rule L212 and L222. Upon timely request to the Master, the Master may order that payment be waived, apportioned between the parties, or assessed as part of the final recommendation. Payment may be made in cash or by check made payable to the "Prothonotary" and delivered to the Family Law Office.

2. Upon the request of either party or counsel, the Master may, in proper cases, allocate the responsibility for payment of the trial deposit between the parties or assess it to the Defendant. No divorce decree will be issued by the Prothonotary unless the trial deposit has been paid.

3. In any case settled at the pretrial conference (or otherwise before the final hearing is held), the Master may direct the Prothonotary to return up to \$500.00 of the deposit to the party who paid the deposit.

4. All cases not resolved at the pretrial conference will be scheduled for final hearing within 40 days of the pretrial conference. The Master will prepare and serve upon counsel and unrepresented parties a pretrial order setting the final hearing date and defining the responsibilities of each party, and specifying the issues to be addressed at final hearing.

E. Final Hearing.

1. Pursuant to the schedule established at the pretrial conference the Master shall proceed to take testimony and shall report to the Court as required by Pa.R.C.P. 1910.12 and 1920.51, et seq.

2. The Master will tape record the final hearing unless the parties or counsel request at the pretrial conference that a Court reporter take down and transcribe the testimony and agree to be responsible for the cost thereof. The parties will also be responsible for the cost of preparation of transcripts of the tape recorded hearings. The parties and/or counsel may waive the preparation of the transcripts unless exceptions are filed to the Master's Recommendation. Factual issues raised in the exceptions

will be deemed waived unless a transcript is prepared and filed. Deposits will be required to be paid for transcripts in accordance with procedures established from time to time.

F. Child Support Hearing Officer.

1. The Alternative Hearing Procedure of Pa.R.C.P. 1910.12 is hereby adopted, except that the Hearing Officer will hold a combined conference/hearing and issue a Recommended Support Order in all disputed cases.

2. The Hearing Officer shall conduct the hearing with due regard to the law and according to the established rules of evidence, which, however, shall be liberally construed to promote justice. The Hearing Officer shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Hearing Officer as in other civil actions, and to issue an attachment upon allowance by the Court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which shall be deemed material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) The hearing Officer/Family Law Master will make a recommendation to the Court concerning the amount of child or spousal support or alimony pendente lite and/or payment on arrears, and this amount will become collectible immediately, subject to later modification if exceptions are filed. The Hearing Officer will also issue a temporary wage attachment order that will be adopted as an Order by the Court, together with the Recommendations if no exceptions are filed or, if exceptions are filed, after disposition of the exceptions.

3. The Hearing Officer shall not be required to transcribe the record of the testimony. Transcripts will be made available on the same basis as described in Rule L 1920.51 E(2) hereof.

4. If the Respondent fails to appear as directed by the Court after due notice and does not request a continuance for good cause the hearing may proceed without the Respondent. The Hearing Officer may also recommend that a warrant be issued for the arrest of any Respondent who fails to appear without explanation.

G. Continuances.

(1) All requests for continuances in divorce or support hearings shall be by Motion addressed to the Court filed with the Prothonotary and a copy delivered to the Master/Hearing Officer at least seven (7) days before the hearing sought to be continued. No such request will be granted unless good cause for the continuance is shown. Continuances will be granted only in accordance with the Court's continuance policy. (See memorandum of November 16, 1993).

H. Penalties.

(1) The Master/Hearing Officer may, in proper cases, recommend to the Court that attorney's fees and fines or other appropriate sanctions be assessed (*See*, for example 42 Pa.C.S. Section 2503) against parties or their counsel for vexations or dilatory conduct, lack of preparation, failure to appear, failure to request timely continuances, or other behavior interfering with the expeditious progress of the case.

**RULE 1.1940.1 Contested Child Custody Cases—
Mediation Referral Procedure**

1. All contested child custody cases shall in the first instance be referred to mediation, unless waived by leave of Court. The purpose of the mediation sessions, which shall be conducted by a Court appointed Mediator, is to provide a nonadversarial forum for the parties to attempt to work out their custody problems with the assistance of the Mediator and their attorneys, if any.

2. Custody matters raised in a Divorce Complaint shall be referred to the Court Mediator by the Family Law Master. All other custody complaints or petitions raising issues of custody shall be automatically referred to the Mediator by the Prothonotary, unless counsel has requested and received leave of Court to waive mediation.

3. Custody mediation shall be conducted in accordance with procedures established by the Court from time to time.

4. All parties attending mediation sessions shall be required to sign any Agreement or portion of an Agreement to which they voluntarily consent. If agreement is reached before, during or after mediation, the agreement shall be reduced to a written stipulation and shall thereafter be incorporated into a consent Order of Court.

5. If mediation does not result in agreement between the parties, the Mediator shall refer the parties for evaluations and refer the matter to the Court for hearing and disposition. If the parties do not agree that evaluations should be done or to whom the parties should be referred for evaluation, the case shall be sent to the Judge, who will make a ruling on the disposition of these issues.

[Pa.B. Doc. No. 07-1691. Filed for public inspection September 14, 2007, 9:00 a.m.]

MCKEAN COUNTY**Adoption of Orphans' Court Procedure; No. 42 of
07-0197****Order of Court**

And Now, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Orphans' Court Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Orphans' Court Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Orphans' Court Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Orphans' Court Procedure with the Pennsylvania Criminal Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Orphans' Court Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Orphans' Court Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Orphans' Court Procedure, any previously adopted local orphans' court rules are rescinded and vacated.

JOHN M. CLELAND,
President Judge

ORPHANS' COURT DIVISION**RULE 1.2:1 Matters for Argument**

(a) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument, the matter will be scheduled by the Court in an order which will also establish the briefing schedule, if any. If the brief is not presented to the Court when ordered, the Court, in its discretion, may refuse to consider a late brief or to hear oral argument.

(b) The Court may, in its discretion, hear oral argument on any motion by speaker telephone conference provided that the conversations of all parties are audible to all persons present, or upon stipulation of all parties, by regular telephone conference call. Upon request of any party, such oral argument may be recorded by a court reporter under such conditions as the Court shall deem practicable. Counsel shall schedule such telephone calls at a time mutually agreeable to all parties and the Court. The expense of the call will be shared equally by the parties, unless the Court directs otherwise.

RULE 1.2:3 Costs

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

RULE 1.2:4 Acknowledgment and Satisfaction

The receipt of all sums of money or property ordered to be paid or delivered by any award or decree of this Court shall be evidenced by a writing filed with Clerk, or evidenced in such other manner as the Court may order.

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.

RULE 1.2:8 Individual Sureties

(a) Application for Approval. Justification for Surety—Except as otherwise provided by paragraph (b) of this Rule, an application for the approval of an individual surety shall be accompanied by an affidavit of the proposed surety, setting forth:

(1) his name, residence address;

(2) location of the real property owned by him;

(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 or encumbering said property;

(6) the encumbrance upon the real property, including lease, agreement of sale, option, and the like;

(7) the assessed value of the property for taxation purposes;

(8) a certification of the value of the said property;

(9) a certification that the surety is not a party in a pending divorce action.

(b) Nothing in this rule shall preclude the Register from approving an individual surety justified by the surety's ownership of personal property.

(c) **Bond Without Surety. Confession of Judgment**—The Court, in its discretion, may permit a party in interest to execute his individual bond, without surety. When a party in interest is authorized to execute his 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.

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 when required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

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 authorized by statute or otherwise, shall be held in the name of the fiduciary as such.

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:

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

RULE 3.1:1 Notice to Defend or Plead

Where a notice to defend or to plead filed in accordance with the Rules of Civil Procedure has been endorsed on a pleading, the pleadings and practice shall conform with the pleading and practice in equity of the local Court of Common Pleas insofar as the requirement of responsive pleadings are concerned.

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 space for the insertion of a date and time for a hearing and for the taking of testimony if necessary.

RULE 6.1(e):1 Form of Accounts. Additional Requirements

In addition to complying with the Supreme Court Rules, each account shall be accompanied by a certificate of the attorney for the accountant that to the best of his 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. An attorney also acting as the accountant may sign the certificate in both capacities.

RULE 6.3:1 Contents of Notice. Additional Requirements

In addition to complying with the Supreme Court Rules, the notice to parties in interest shall set forth:

(1) The date on which the account and any statement of proposed distribution will be presented to the Court for nisi confirmation, and that they will be confirmed absolutely unless objections are filed within twenty (20) days thereafter;

(2) If a copy of the account is not provided with the notice, then the accountant must inform any party in interest that the account will be provided upon request.

RULE 6.3:2 Advertisement of Accounts

All accounts filed with the Clerk shall be advertised by the Clerk in the manner prescribed by law and shall also state that unless objections are filed within twenty (20) 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.

RULE 6.9(a):1 Form of Statement of Proposed Distribution

The statement of proposed distribution, if any, shall accompany the account and shall specify the names of the person or persons to whom the balance available for distribution is awarded, the amount or share awarded to such person or persons, and whether the proposed distribution is in cash or in kind.

RULE 6.9(b):1 Notice and Advertisement

Notice and advertisement of the filing of a statement of proposed distribution shall be included in the notice and advertisement as provided in Local Rules 6.3:1 and 6.3:2.

RULE 6.10:1 Objections

Objections to an account or statement of proposed distribution shall be in writing, shall state such material facts as may entitle the objectant to relief, and shall be filed with the Clerk prior to or within twenty (20) days after nisi confirmation. Any issue not raised by the written objections is waived. The objectant shall serve a copy of the written objection on the accountant promptly upon filing. Upon receipt of the written objection, the accountant shall promptly notify all parties identified in Rule 6.3 of the filing of the objections and their content.

RULE 6.11(a):1 NISI Confirmation

The accounts of fiduciaries shall be presented to the 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.

RULE 6.11(a):2 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 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.

RULE 6.11(a):3 Confirmation of Title to Real Property

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

(b) 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 should include information pertinent to the derivation of title.

(c) 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.

RULE 7.1:1 Exceptions, Rules Governing

(a) Proceedings Commenced Before the Register—Orders and decrees entered upon appeal or upon certifications from the Register shall become absolute as of course, unless written exceptions thereto are filed with the Clerk within ten (10) days from the entry thereof.

(b) Other Exceptions—Other exceptions shall be filed with the Clerk within ten (10) days from entry of the decree or order, unless extended by Order of Court.

(c) Form of Exceptions—Exceptions may be filed by any party to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to the decree or adjudication nisi. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived, unless, prior to final decree, leave is granted to file exceptions raising these matters.

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 on all parties in interest or their attorneys as provided in Rule 5.1.

(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. Otherwise, notice of subsequent hearings shall be given as set forth in (a) above.

RULE 8.6:1 Notice of Filing Report, Preliminary Exceptions

After the report is prepared, the auditor or master shall serve on the parties who have appeared before him, 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, in his opinion, the preliminary exceptions are, in whole or in part, well founded. If the report is not filed at the time fixed therefor 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 his report the manner and time of serving the notice herein required.

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 auditor or master shall make a recommendation on the allocation of expenses and fees among the parties. The Court may assess said expenses and fees upon any party in interest, as it deems fit.

RULE 8.7(a):1 Confirmation of Auditor's Reports, Exceptions

All reports of auditors shall be filed on the 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.

RULE 8.7(b):1 Confirmation of Master's Reports, Exceptions

All reports of master shall be filed on the 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.

RULE 8.8:1 Absolute Confirmation. Auditor's and Master's Expenses and Fees

Unless authorized by order of Court, 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.

RULE 10.2:1 Appeal by Petition

All appeals under Rule 10.2 shall be by 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 upon which he relies;
- (4) a precise statement of the questions of law or of fact involved;
- (5) the names and addresses of all parties in interest

RULE 10.2:2 Certification and Citation; Bond

(a) If the averments of the petition for appeal appear to be prima facie sufficient, and, if any bond or security required by law has been filed and approved by the Register, the Court shall award a citation and, if it has not been done by the Register on his 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 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.

RULE 10.2:3 Grant of Jury Trial

(a) Determination by Court—The Court will determine preliminarily whether a jury trial shall be granted upon any issue of fact arising upon the certification or appeal. The Court may grant a jury trial based on the testimony taken before the Register; or, if the parties agree that the case be heard on the testimony taken before the Register, the Court may grant or refuse to grant a jury trial, depending, in each instance, on whether or not he finds that a substantial issue of fact exists.

(b) Decree—If a jury trial is granted, the decree shall specify the issues to be tried, which may be in form agreed upon by the parties, or as the Court shall determine.

RULE 12.1(a):1 Family Exemption. Additional Requirements

(a) Contents of Petition—In addition to complying with the Supreme Court Rules, 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 appraisement 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.

RULE 12.1(b):1 Appraisal

(a) Procedure when Appraisal Required—Unless otherwise directed by the Court, upon petition the Court may appoint such appraisers as required by law who shall, within thirty (30) days after appointment, file with the Clerk an appraisal of the property claimed.

(b) Upon the filing of the appraisal with the Clerk the appraiser 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.

(c) 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 appraiser not less than ten (10) days prior to the date set for nisi confirmation.

RULE 12.2(a):1 Allowance to Surviving Spouse of Intestate. Additional Requirements.

(a) Contents of Petition—In addition to complying with the Supreme Court Rules, 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 appraisement; and
- (2) an affidavit or verification of return of notice.

RULE 12.2(a):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 by the Court to a master or auditor.

RULE 12.2(b):1 Appraisal. Notice. Practice and Procedure.

(a) Filing of Appraisal—The appraiser 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 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.

RULE 12.3(b):1 Extension of Time. Contents of Petition.

A petition for the extension of time in which the surviving spouse may file an election 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.

RULE 12.3(b):2 Extension Time. Practice and Procedure.

The petitioner shall file the petition with the Clerk and serve copies thereof on all persons adversely affected thereby who do not join in the prayer of the petition. The Court shall issue a rule to show cause why the prayer of the petition should not be granted, and service thereof shall be made by the Petitioner on all parties served with the original 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.

RULE 12.5(c):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, his written consent to act as such shall contain, in addition, the following statements:

(A) his business and domicile;

(B) that he 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 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.

RULE 12.5(e):1 Guardians of Minors. Appearance Before the Court.

(a) Appearance. Minor over Fourteen—If the minor is over fourteen (14) years of age the Court shall hold a hearing at which he shall appear in person and state his preference of guardian. If the minor is unable to appear in person, the reason for his absence shall be set forth in the petition.

(b) Appearance. Other Persons—The Court may excuse the appearance of a minor fourteen (14) years of age or under, or the parents or proposed guardian of the minor at any hearing scheduled by the Court.

RULE 12.5:1 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 or the Federal Savings and Loan 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) 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 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.

RULE 12.5:2 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 5101 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5101), 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 himself; 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 5101 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5101), 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.

RULE 12.5:3 Minor's Estate. Allowances.

(a) **In General. Responsibility of Guardian.**—Except in the case of funds deposited in a restricted account under Local Rule 12.5:1, 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, his 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, his 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 his parents are living; the name of the person with whom he resides, and, if married, the name and age of his 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 his 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 his family unit, 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 for his 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; 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.

RULE 12.6(b):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.

RULE 12.7:1 Discharge of A Fiduciary. Additional Provisions.

(a) **Affidavit or Verification.**—The Court may discharge without hearing any fiduciary who files a Petition for Discharge which shall have attached consents and contain 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 receipt and release attached to the petition.

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 circumstances may suggest.

(3) Other Distributee—If the fiduciary requests the Court to withhold distribution to a distributee, he shall submit a written report, sworn to or verified by the fiduciary or his counsel, which shall set forth:

(A) the relationship of the distributee to the decedent, and any available information concerning his 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 14.1:1 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 for cause shown, shall not appoint as guardian, of the estate a relative of the incompetent or a person residing in the same household with him.

(2) Nonresidents—The Court, except for cause shown, shall not appoint nonresidents as guardians 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 comprising the incompetent’s estate in accounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan 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 Court’s attention to this fact in order that adequate security may be ordered and entered.

(e) 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.

RULE 14.1:2 Incapacitated Person’s Estate. Decrees.

(a) In General—A petition to adjudicate a person incapacitated 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 incapacity 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 incapacitated person, 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. (See: 20 P. S. § 5505)

RULE 14.1:3 Incapacitated Person’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 contents of the petition and citation were made known to the alleged incapacitated person.

RULE 15.4(d):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 shall be filed until a final decree has been entered.

RULE 15.5(a):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.

RULE 15.5(a):2 Preliminary Order and Decree of Adoption.

A petition for adoption shall have attached thereto:

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

(2) a proposed decree of adoption.

RULE 16.1 McKean County Orphans’ Court Rules.

The Local Rules of the Orphans’ Court Division of the Court of Common Pleas of McKean County shall be known as the McKean County Rules of Court—Orphans’ Court Division; and shall be cited as Local Orphans’ Court Rules or Local O. C. Rules.

[Pa.B. Doc. No. 07-1692. Filed for public inspection September 14, 2007, 9:00 a.m.]

WESTMORELAND COUNTY
Rescinding Rule WJUV 1330; Misc. 7 of 2007

Order

And Now, this 29th day of August, 2007, it is hereby ordered that Westmoreland County Rule of Juvenile Procedure WJUV 1330 is rescinded effective immediately.

By the Court

JOHN E. BLAHOVEC,
Acting President Judge

[Pa.B. Doc. No. 07-1693. Filed for public inspection September 14, 2007, 9:00 a.m.]

**DISCIPLINARY BOARD OF
 THE SUPREME COURT**

Notice of Disbarment

Notice is hereby given that Philip G. Gentile, having been disbarred from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated February 26, 2007, the Supreme Court of Pennsylvania issued an Order on August 30, 2007, disbarring Philip G. Gentile, from the Bar of this Commonwealth, effective September 29, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1694. Filed for public inspection September 14, 2007, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Michael L. Block having been suspended from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated February 20, 2007, the Supreme Court of Pennsylvania issued an Order dated August 30, 2007, suspending Michael L. Block from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey. 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,
Secretary
*The Disciplinary Board of the
 Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 07-1695. Filed for public inspection September 14, 2007, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated August 30, 2007, Rubina Arora Wadhwa is suspended from the Bar of this Commonwealth for a period of 9 months effective September 29, 2007. 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,
Secretary
*The Disciplinary Board of the
 Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 07-1696. Filed for public inspection September 14, 2007, 9:00 a.m.]